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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 930 final
Subject:	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

Delegations will find attached document COM(2023) 930 final.

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EUROPEAN
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COM(2023) 930 final

2023/0441 (CNS)

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

{SEC(2023) 930 final} - {SWD(2023) 940 final} - {SWD(2023) 941 final} -
{SWD(2023) 942 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Union citizens travelling to or living in a third country where their Member State of nationality is not represented by an embassy or consulate 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 Union citizenship right, established by the Treaty of Maastricht, is set out in Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union (TFEU) and Article 46 of the Charter of Fundamental Rights of the European Union (the 'Charter').

This right is the external dimension of Union citizenship, one of the practical benefits of being a Union citizen, and a tangible example of European solidarity. It protects Union citizens who find themselves in need of help in a third country where they are not represented by their Member State of nationality, for example due to an accident, serious illness, being victim of a crime or loss of travel documents.

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[1], replacing the intergovernmental framework that used to govern consular protection[2]. The Member States had three years, until May 2018, to implement the Directive into national legislation[3].

The 2021 Commission work programme[4] announced a review of Union rules on consular protection to improve the Union's and Member States' preparedness and capacity to protect and support Union citizens in times of crisis. This review would involve strengthening the Union's supporting role and making best use of its unique network of Union delegations.

In addition, the Commission, in its Communication in the follow-up on the Conference on the Future of Europe, 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*"[5].

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[6] announced that the European External Action Service's (EEAS)

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1 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, ELI: http://data.europa.eu/eli/dir/2015/637/oj).

2 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, ELI: http://data.europa.eu/eli/dec/1995/553/oj).

3 Article 17(1) of the Directive.

4 COM(2020) 690 final.

5 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).

6 ST 7371/22.

"*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*"[7].

As noted in the Commission's report of 2 September 2022 on the implementation and application of Council Directive (EU) 2015/637[8], crises resulting in requests for consular protection are increasing in frequency and scale. The COVID-19 pandemic (unprecedented in scale and complexity), the crisis in Afghanistan, Russia's war of aggression against Ukraine, the conflict in Sudan, the repatriations from Israel and Gaza and other similar crises allowed to identify gaps and reflect on how to strengthen Union citizens' right to consular protection.

In view of the above, the Commission proposes to amend Directive (EU) 2015/637 with a view to improving and strengthening the coordination and cooperation measures necessary to facilitate consular protection of Union citizens.

To improve legal certainty for consular authorities and citizens, the Commission proposes to clarify when a Union citizen is to be considered as 'unrepresented' and thus entitled to receive consular protection from the consular authorities of other Member States. Changes to Directive (EU) 2015/637 should ensure that the cooperation between consular authorities, supported by Union delegations, is streamlined.

To make best use of the network of Union delegations, in particular in third countries where few Member States are present, the Commission considers that their tasks should be clarified and their supporting role enhanced, notably in the area of crisis preparedness and response. In that area, the proposal provides that so-called joint consular contingency plans (also known as 'Joint EU Consular Crisis Preparedness Frameworks') be drawn up for all third countries to facilitate the response to any possible future consular crises. In addition, the proposal provides a legal basis for the possible deployment of so-called joint consular teams, that is, voluntary multi-disciplinary teams staffed by consular experts from Member States and Union institutions, to support potentially lightly staffed local consular services of Member States in times of crisis[9].

The Commission also proposes to improve the information flow between Member States and Union institutions and the information provided to Union citizens, with a view to allowing them to make better-informed decisions regarding travel.

Finally, the Commission proposes to streamline the provisions on the financial reimbursements of costs resulting from the provision of consular protection. In the future, Member States should be entitled to request reimbursement directly from the citizen concerned to avoid lengthy bureaucratic procedures. In addition, Union delegations should also be entitled to obtain financial reimbursements if they support the provision of consular protection to unrepresented citizens. These new financial procedures should also apply in the

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7 In response, the EEAS Crisis Response Centre (CRC) was created in July 2022 as the EEAS' permanent crisis response capability, liaising with the crisis cells of Union institutions, Member States and partners.

8 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).

9 See also the Joint Presidency and the EEAS paper on Joint Consular Teams (ST 13619/20).

context of Directive (EU) 2019/997[10], which lays down rules on the conditions and procedure for unrepresented citizens in third countries to obtain an EU Emergency Travel Document ('EU ETD') and establishes a uniform format for such document.

Improving consular protection of Union citizens abroad by reinforcing Union solidarity and cooperation in this field ensures that Union citizens continue to benefit from this fundamental right according to the highest standards, in particular during times of crisis.

- **Consistency with existing policy provisions in the policy area**

Article 9(f) of Directive (EU) 2015/637 explicitly refers to the issuance of such emergency travel documents. This proposal ensures that Directive (EU) 2015/637 and the specific rules applicable to EU ETDs provided for by Directive (EU) 2019/997 remain aligned.

This proposal also ensures consistency with Council Decision 2010/427/EU[11], which defines the mandate of Union delegations. According to Article 5(10) of that Decision, Union delegations are, acting in accordance with the third paragraph of Article 35 of the Treaty on European Union, and upon request by Member States, to 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.

Directive (EU) 2015/637 contains references to the Union Civil Protection Mechanism (UCPM)[12], which is used to provide civil protection support to consular assistance efforts. The proposal ensures full alignment between Directive (EU) 2015/637 and the rules on the UPCM, including in view of the experiences gained from the COVID-19 pandemic and the 2021 consular emergency in Afghanistan.

To ensure the practical implementation of the right to consular protection, the Union continues to negotiate the inclusion of so-called consular protection clauses in international agreements to dispense with the obligation, provided for in Article 8 of the 1963 Vienna Convention on Consular Relations[13], for represented Member States to notify the third country where an unrepresented Union citizen is located of the provision of consular protection.

- **Consistency with other Union policies**

This proposal is consistent with policies concerning civil protection and crisis response.

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10 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, ELI: http://data.europa.eu/eli/dir/2019/997/oj).

11 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, ELI: http://data.europa.eu/eli/dec/2010/427/oj).

12 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, ELI: http://data.europa.eu/eli/dec/2013/1313/oj).

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposed directive would amend Directive (EU) 2015/637. It thus shares the legal basis of that Directive, namely Article 23 TFEU. Pursuant to the second paragraph of that provision, the Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate consular protection for unrepresented Union citizens. This provision applies to all Member States.

The amendments of this proposal aim to improve the measures necessary to facilitate the provision of consular protection to unrepresented citizens provided for in Directive (EU) 2015/637.

• Subsidiarity

Consular protection for unrepresented citizens entails, by definition, a cross-border dimension, given its nature as a Union citizenship right enjoyed vis-à-vis the authorities of Member States other than those of one's nationality.

The objectives of this proposal, namely to improve the exercise of the right set out in point (c) of Article 20(2) TFEU by unrepresented citizens, cannot effectively be achieved by the Member States independently, given that doing so requires amendments to certain provisions of Directive (EU) 2015/637. Action at Union level is thus necessary.

Absence to act at Union level would result in the rules of Directive (EU) 2015/637 not being adapted to address the shortcomings identified in their application. In addition, the rules would not take into account the experience gained during recent consular crises. As a result, Union citizens would not be able to enjoy their right of consular protection to a degree that would be possible by action at Union level.

• Proportionality

The objectives of this proposal can be achieved by way of amendments to certain provisions of Directive (EU) 2015/637.

In doing so, the proposal does not go beyond what is necessary to achieve this objective, as it does not fundamentally alter the existing rules and procedures of Directive (EU) 2015/637. In particular, it does not propose the introduction of additional procedures, but rather strives to streamline existing ones to lower the administrative burden on Member States and facilitate the provision of consular protection. For example, the proposal would allow assisting Member States to collect costs, in a non-discriminatory manner, directly from unrepresented citizens, rather than having to seek reimbursement from the citizen's Member State of nationality.

Additional explanations as to the proportionality of the different policy options – including the policy options not retained – can be found in the impact assessment accompanying this proposal[14].

• Choice of the instrument

In line with the second paragraph of Article 23 TFEU, the proposed instrument is a directive.

[14] SWD(2023) 941 final.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

This proposal takes into account the discussions in the Working Party on Consular Affairs of the Council, in particular the exchanges of views on further facilitating the exercise of Union citizens' right to consular protection in third countries that took place after the adoption of the Commission's report on the implementation and application of the Directive (EU) 2015/637[15]. Concluding those discussions, the Council Presidency considered that there was scope to review the Directive, in particular based on the experiences from consular crises in the past years.

A dedicated questionnaire among Member State authorities was used to collect quantitative data on Member States' national legislation and procedures, their consular networks and assets, the consular protection they provide, and on their travel and communication channels. Additionally, Member State authorities were also asked to provide qualitative feedback on the application of Directive (EU) 2015/637, on possible policy options, and on the lessons learnt from the consular response to the COVID-19 pandemic.

An online survey with Union delegations was used to obtain their assessment of the situation under the status quo (including under times of crisis, such as around the COVID-19 outbreak), on views regarding the functioning of Directive (EU) 2015/637, as well as on views regarding the policy options available.

In the course of 2021, in-depth interviews with Union delegations, Member State representations and tourist/expat organisations were carried out in five selected third countries[16], as well as with officials from Union bodies with a supporting role in the field of consular protection.

More information on the feedback received can be found in the impact assessment accompanying this proposal.

• Collection and use of expertise

The Commission carried out Flash Eurobarometer 485 on EU Citizenship and Democracy[17] on a range of issues associated with Union citizenship and democracy, for which fieldwork was done in the Member States in February/March 2020. Among other things, the survey explored Union citizens' understanding of the rights conferred by Union citizenship, including consular protection. A similar survey was carried out in 2023[18].

A public consultation for the 2020 EU Citizenship Report[19] took place between 9 July 2020 and 1 October 2020 and contained questions on consular protection. The report described the unprecedented repatriation effort, in which Member States, supported by Commission services and the EEAS, managed to repatriate, between February and May 2020, over half a million Union citizens affected by COVID-19 travel restrictions across the world. The report

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15 ST 15876/22.

16 Costa Rica, Ethiopia, Fiji, Montenegro and Russia.

17 Flash Eurobarometer 485: EU Citizenship and Democracy; February/March 2020.

18 Flash Eurobarometer 528: Citizenship and democracy, April/May 2023.

19 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).

estimated that, in 2020, 76% of Union citizens were 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.

In addition, the Commission used public feedback received as part of the consultation process to prepare the analysis of the impact assessment.

Finally, evidence was gathered and analysed in a dedicated study carried out on behalf of the Commission[20]. More information can be found in the impact assessment accompanying this proposal.

- **Impact assessment**

As outlined in the impact assessment[21], the general objective of this initiative is to improve the exercise of the right of citizens of the Union 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 Member State.

This would be achieved through the following specific objectives: (i) to enhance the legal certainty for Union citizens with respect to the scope of the right to consular protection; (ii) to ensure clear roles, coordination and cooperation mechanisms between Member States and Union delegations, including in times of crisis; (iii) to improve the information provision and communication with (unrepresented) Union citizens; and (iv) to increase the efficiency and use of the financial reimbursement procedures.

The impact assessment examined several policy options for each specific objective with a range of potential measures to address the problems.

The options considered under the first objective seek to ensure that the definition of 'unrepresented citizen' is clarified and improved to avoid that unrepresented citizens are not assisted on the basis of a wrong interpretation or assessment of the situation by the Member States or Union delegations. Policy option 1(a) consists of soft measures, while policy option 1(b) consists of legislative changes to clarify the definition and personal scope of Directive (EU) 2015/637. Policy option 1(c) consists of the introduction of a new 'presumption of unrepresentedness'.

Under the second specific objective, the impact assessment examined options that address the problems related to the main concepts and processes through which Member States and Union delegations interact for the purposes of providing consular assistance to unpresented citizens. On local consular cooperation networks, policy option 2(a) consists of soft measures to better structure the different responsibilities in such networks. Policy option 2(b) proposes to assign the role of the chair of local cooperation meetings to Union delegations. Policy option 2(c) consists of legislative amendments defining the assignment of clear tasks, in the joint consular contingency plans, to the different actors involved, and a review of the 'Lead State' concept. It also proposes to include such plans and so-called joint consular teams in Directive (EU) 2015/637. Policy option 2(d) consist of legal amendments to clarify the supporting role of Union delegations, notably by aligning it with the EEAS Decision. Option 2(e) consists of legal amendments granting Union delegations new competences that enable them to provide

[20] Study supporting the impact assessment, including its annexes.
[21] SWD(2023) 941 final.

direct consular protection to unrepresented citizens in uncovered third countries on the latter's request.

Options that pursue the third specific objective address the main drivers of the problems of communication with citizens: i) the problems with information provision by Member States and the Union and ii) the lack of information on citizens travelling or residing abroad. On the first issue, policy option 3(a) consists of legal amendments with new requirements on provision of information, while policy option 3(b) consists of the establishment of a Union travel advice portal. On the second issue, policy option 3(c) recommends a Union-wide communication campaign and policy option 3(d) would require Member States to promote measures enabling Union citizens to inform on/record their travels or residence abroad.

Finally, the options under specific objective four aim to reduce the complexity and ineffectiveness of financial reimbursements procedures with a view to increasing their use and accelerate the processes for the benefit of Union citizens and Member States. Policy option 4(a) consists of soft measures to clarify the process and provide training to Member States while policy option 4(b) consists of legal amendments to improve the procedures and to extend them to Union delegations to ensure compliance with the cost-neutrality requirement provided for in the EEAS Decision.

Based on the analysis outlined in the impact assessment, the preferred combination of options is made up of the following specific policy options: 1(b), clarifying the definition and personal scope of Directive (EU) 2015/637, 2(b), assigning the role of the chair of local cooperation meetings to Union delegations, 2(c), assigning clear tasks, in the joint consular contingency plans, to the different actors involved, and reviewing the 'Lead State' concept, 2(d), clarifying the supporting role of Union delegations, 3(a), provision of information, 3(d), promoting measures enabling Union citizens to inform on/record their travels or residence abroad, and 4(b), improving financial procedures.

The main benefits of the preferred combination of options are the increased safeguarding and effectiveness of Union citizens' fundamental right to consular protection on the same conditions as the nationals of the Member State providing assistance. This is achieved through a clarification of procedures and enhanced legal certainty for Member States and Union delegations. Other benefits include improved communication with Union citizens through facilitated access to reliable information and increased recording of their travels and residence abroad. The preferred measures also entail small savings and efficiencies for national administrations and time savings and less burden for Union citizens.

The costs of the preferred option are very limited and are born by Member States and the Union, including Union delegations.

On 6 July 2023, the Regulatory Scrutiny Board issued a 'positive opinion with reservations' on the resubmitted draft impact assessment[22].

- **Regulatory fitness and simplification**

No specific impacts on small and medium-sized enterprises have been identified in the preparation of this proposal. In line with the 'digital by default' principle, the proposal

[22] SEC(2023) 930.

provides for provision of information in machine-readable form to facilitate automated processing.

- **Fundamental rights**

This proposal implements the fundamental right of Union citizens to diplomatic and consular protection, guaranteed by Articles 20(2)(c) and 23 TFEU and Article 46 of the Charter.

Insofar as it strengthens the role and the functioning of Union delegations in supporting the provision of consular protection, this proposal has a direct and beneficial impact on the application of Article 41 of the Charter, which contains the fundamental right of Union citizens to have their affairs handled fairly, transparently, and efficiently by Union institutions and other Union bodies.

The proposal also affects Article 7 of the Charter on the respect of private life and Article 8 on the right to the protection of personal data. Processing of the personal data of citizens, including collection, access and use of personal data, affects the right to privacy and the right to protection of personal data under the Charter. Interference with these fundamental rights must be justified[23]. Regarding the right to the protection of personal data, including data security, the relevant Union rules apply[24]. No derogation from the Union's data protection regime is envisaged. Clear rules, conditions and safeguards must be implemented by Member States in line with the Union data protection rules.

By adding a dedicated provision, the proposal would also ensure the right to an effective remedy (Article 47 of the Charter).

4. BUDGETARY IMPLICATIONS

This proposal has implications in terms of administrative costs for the Commission and Union delegations. The limited recurrent costs of staff and other administrative expenditure would be covered under the budgetary heading 'Administrative expenditure'.

The financial and budgetary impacts are explained in detail in the legislative financial statement annexed to this proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

It is important to adopt a realistic approach to monitoring the implementation of Directive (EU) 2015/637 as amended and not to overburden national consular authorities. Member States are asked to provide the Commission with information on a limited number of key indicators on a yearly basis.

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23 See, for example, judgment of 17 October 2013, *Schwarz*, C-291/12, EU:C:2013:670.

24 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) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj) and 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 (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

After eight years, the Commission will carry out an evaluation of Directive (EU) 2015/637 as amended by the proposal and publish a report on the main findings.

- **Explanatory documents**

To ensure the proper implementation of this directive, explanatory documents in the form of correlation tables are necessary.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 contains the following amendments to Directive (EU) 2015/637 (the remaining provisions would remain unchanged):

Article 6: The changes to this Article seek to clarify when a Member State is not to be considered as represented in a third country due to the fact that it has no embassy or consulate effectively in a position to provide consular protection. For this purpose, a new paragraph is introduced, setting out the criteria to be taken into account by the embassy or consulate from which the unrepresented citizen seeks consular protection to determine whether a Member State has no embassy or consulate effectively in a position to provide consular protection in a given case. Those criteria should be applied in light of local circumstances.

Another new paragraph clarifies that the presence of an honorary consul of the citizen's Member State of nationality may only be taken into account if the assistance requested by the citizen is covered by the competences of the honorary consul. This is to avoid that citizens are denied assistance with reference to an honorary consul who is not competent to assist them.

Article 7: Provisions on the notification of arrangements between Member States would be moved to the newly introduced Article 13b, grouping them with other notification requirements. A new paragraph is introduced that would allow represented Member States to transfer requests for assistance based on available capacity in crisis situations. This is to ensure efficient use of available resources in such situations.

Finally, the changes seek to clarify that applications are to be transferred by the consular authorities approached. Unrepresented citizens seeking assistance should not themselves be asked to approach another Member State. In addition, citizens should be kept informed of the transfer of applications.

Article 9: A reference to 'evacuation' is added to this Article to comprehensively cover situations where Union citizens are rescued and moved from areas affected by an emergency to a safe location, which must not necessarily be the territory of a Member State, as well as situations where Union citizens are repatriated to Union territory. In addition, the reference to Decision 96/409/CFSP[25] is replaced by a reference to Directive (EU) 2019/997, given that the latter repealed the former.

Article 10: A new paragraph is added to clarify that Member States may involve, in their coordination and cooperation measures, security and military personnel, honorary consuls, international organisations or diplomatic and consular authorities of third countries. In

[25] Decision 96/409/CSFP 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, ELI: http://data.europa.eu/eli/dec/1996/409/oj).

addition, the abbreviation of 'EEAS' is introduced in paragraph 4 given the changes to Article 7.

Article 11: The changes to this Article clarify the supporting role of Union delegations, notably by listing the most relevant tasks in this context. The newly introduced paragraph 2 lays down that Union delegations are to support Member States in providing consular protection in accordance with Article 5(10) of the EEAS Decision, that is, upon request by Member States and on a resource-neutral basis, including by providing specific consular assistance tasks.

Article 12: Rules on local consular cooperation would be clarified, notably by listing the topics to be addressed by local consular cooperation meetings.

Article 13: This Article would be split in two, with Article 13 focusing on crisis preparedness and the newly added Article 13a focusing on crisis response. Within Article 13, joint consular contingency plans are established as the key instrument for crisis preparedness, together with annual consular exercises to test them.

A new paragraph would require Member States to offer their citizens the possibility to register with or inform competent national authorities of their travels to or residence in third countries. This is meant to improve the information available on the estimated number and location of Union citizens present in a third country for the purposes of crisis preparedness and crisis response. It would also make it easier to contact citizens affected by a crisis situation.

Finally, Member States would need to make efforts to coordinate changes to their travel advice at an early stage, notably in the context of crisis situations.

Article 13a: This new Article is based on paragraphs 2-4 of Article 13 of Directive (EU) 2015/637. Provisions on 'intervention teams at Union level', previously found in Article 13(2), are expanded to address the possible deployment of joint consular teams, participation in which should be voluntary for Member States.

Article 13b: This new Article consolidates the different notification requirements already found in Directive (EU) 2015/637. In addition, Member States would be required to provide limited statistical data to improve the monitoring of the Directive. Where necessary, that data should be provided in machine-readable format.

Article 13c: This new Article provides that Member States should take measures to inform citizens of their right to consular protection as set out in point (c) of Article 20(2) TFEU. To this end, the Article lists examples of possible measures that could be taken in this context, such as reproducing the first sentence of Article 23 TFEU on national passports as already recommended by Commission Recommendation C(2007) 5841[26]. Commission services and the EEAS should contribute to these efforts.

Article 14: The rules on the reimbursement of the costs for consular protection would be adapted to provide that such costs are primarily to be reimbursed by the assisted unrepresented citizen directly, either when making the request or at a later stage. Only if such reimbursement does not take place, the assisting Member State should approach the Member

[26] Commission Recommendation C(2007) 5841 of 5 December 2007 on reproducing the text of Article 20 TEC in passports (OJ L 118, 6.5.2008, p. 30, ELI: http://data.europa.eu/eli/reco/2008/355/oj).

State of nationality for reimbursement. Finally, a dedicated paragraph is added to establish the rules for the reimbursement of costs borne by Union delegations supporting Member States.

Articles 15: The changes to this Article ensure alignment with the changes to Article 14. In addition, a new paragraph provides that Member States that assist represented citizens in crisis situations may also ask for the reimbursement of costs, given that it may not be possible or practically feasible to distinguish them from unrepresented citizens in crisis situations. This is to reduce the administrative burden that would result from having to apply two different procedures. The last paragraph is adapted to ensure that reimbursements pursuant to Directive (EU) 2015/637 are taken into account in determining any contribution of the Union Civil Protection Mechanism, in line with the financial provisions applicable to such contributions.

Article 15a: This new Article concerns the committee procedure applicable to the adoption of implementing acts as foreseen by Articles 13b(4) and 14(6).

Article 16a: This new Article contains the rules applicable to the processing of personal data for the purposes of providing consular protection, including, where needed due to the nature of the consular case, special categories of personal data, and the transfer of personal data to third countries and international organisations, such as when organising evacuation flights.

Article 16b: This new Article implements the fundamental right to an effective remedy in the context of consular protection.

Article 19: A new paragraph is added to this Article to provide for an evaluation of Directive (EU) 2015/637 eight years after the transposition of the amendments.

Article 2 contains the following amendments to Directive (EU) 2019/997:

Article 5: The reference in this Article to the financial provisions of Directive (EU) 2015/637 is adapted given that this proposal adapts the numbering of the paragraphs in Article 14 of Directive (EU) 2015/637.

2023/0441 (CNS)

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 23, second paragraph, thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[1],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive (EU) 2015/637[2] gives effect to the right enshrined in Article 23, first paragraph, of the Treaty on the Functioning of the European Union (TFEU) and restated in Article 46 of the Charter of Fundamental Rights of the European Union (the Charter) by laying down the cooperation and coordination measures necessary to facilitate consular protection for unrepresented citizens of the Union.

(2) Crises resulting in requests for consular protection are increasing in frequency and scale. The COVID-19 pandemic, the crisis in Afghanistan, Russia's war of aggression against Ukraine, the conflict in Sudan, the repatriations from Israel and Gaza and other similar crises have provided a context to identify gaps and reflect on how to further facilitate the exercise of the right to consular protection. Drawing lessons from those experiences, and in order to simplify procedures for citizens and consular authorities, the rules and procedures of Directive (EU) 2015/637 should be clarified and streamlined so as to improve the effectiveness of the provision of consular protection to unrepresented citizens of the Union, in particular in crisis situations. Best use should be made of the available resources at Member State and Union level, both locally in third countries and at capital level.

(3) Directive (EU) 2015/637 defines 'unrepresented citizen' as every citizen holding the nationality of a Member State which is not represented in a third country. Pursuant to that 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

[1] OJ C […], […], p. […].

[2] 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, ELI: http://data.europa.eu/eli/dir/2015/637/oj).

consular protection in a given case. Given the absence of more detailed criteria in Directive (EU) 2015/637, past experiences have shown that it may be difficult to determine whether the latter criterion is fulfilled. This can result in citizens being wrongly considered, by the consular authorities they have approached, as represented by their Member State of nationality and thus refused consular protection.

(4) To improve legal certainty for consular authorities and citizens, it is appropriate to lay down more detailed criteria that aid in the assessment whether a Union citizen is to be considered as unrepresented and thus eligible to receive consular protection from the Member State whose consular authorities have been approached. Those criteria should be sufficiently flexible and applied in light of local circumstances, such as ease of travel or security situation in the third country concerned. In this context, accessibility and proximity should remain important considerations.

(5) As first criterion, consular authorities should take into account the difficulty for citizens to safely reach or be reached by the embassy or consulate of their Member State of nationality within a reasonable period of time, taking into account the nature and urgency of the assistance requested and the means, notably financial resources, available to them. For example, the need for an EU Emergency Travel Document as a result of the loss of travel documents should, in principle, result in the citizen being considered as unrepresented if reaching the embassy or consulate of his or her Member State of nationality would require overnight or air travel, as he or she cannot be expected to travel under such circumstances.

(6) Possible closures of the embassy or consulate of the citizen's Member State of nationality should also be considered, notably during crisis situations. Where the embassy or consulate from which the unrepresented citizen seeks consular protection cannot confirm, in a timely manner, that the embassy or consulate of the citizen's Member State of nationality is operational and accessible, the citizen should be considered as unrepresented.

(7) The notion of absence of representation should be interpreted with a view to ensuring the effectiveness of the right to consular protection. Where, by redirecting the citizen to the embassy or consulate of his or her Member State of nationality, consular protection would likely be compromised, in particular where the urgency of the matter requires immediate action by the requested embassy or consulate, the citizen should also be considered as unrepresented. This is particularly relevant in crisis situations, where lack of timely assistance might have particularly negative impacts on the citizen.

(8) Given that honorary consuls usually do not offer the same range of services as embassies or consulates, the presence of an honorary consul of the citizen's Member State of nationality should only be taken into account to determine whether a citizen is unrepresented if the assistance requested by the citizen is covered by the competences of the honorary consul.

(9) Unrepresented citizens are entitled to seek protection from the embassy or consulate of any Member State. At the same time, Directive (EU) 2015/637 offers Member States the possibility to enter into bilateral arrangements for the purpose of ensuring the effective protection of unrepresented citizens. Such arrangements, however, are not a precondition for providing consular protection to unrepresented citizens. It should be clarified that, in cases where such arrangements have been concluded, it is incumbent on the authorities of the Member State approached, not the citizen concerned, to transfer the application to the relevant embassy or consulate.

(10) Where a crisis situation results in a large number of applications for consular protection, the embassies and consulates of the Member States represented in the third country concerned should be given the possibility to agree to distribute applications based on available capacity with a view to making best use thereof. For that purpose, they may be assisted by Union delegations.

(11) Applications should not be transferred if consular protection would thereby be compromised, in particular if the urgency of the matter requires immediate action by the embassy or consulate of the Member State approached. That could be the case, for example, in cases of serious medical emergencies or seemingly arbitrary arrests. In addition, unrepresented citizens should be kept informed about any such transfers.

(12) Article 9 of Directive (EU) 2015/637 lists, in a non-exhaustive manner, the most common situations in which unrepresented citizens may seek consular assistance from represented Member States. For reasons of legal clarity, it should nevertheless be clarified that the types of assistance cover both evacuations, that is, the rescue and transfer of persons from areas affected by an emergency to a safe location, which can be in in the same country or another third country, as well as repatriations, that is, the transfer of persons to the territory of the Member States.

(13) When providing consular protection to unrepresented citizens, Member States should take into account the specific needs of vulnerable groups, such as unaccompanied minors, pregnant women, persons with reduced mobility, persons with disabilities or individuals at risk of discrimination on any ground such as those referred to in Article 21 of the Charter.

(14) It is necessary to ensure optimal access to justice for Union citizens victimised in third countries, which requires closer contact and cooperation between authorities and support organisations of third countries and consular authorities and support organisations of Member States.

(15) For the sake of legal clarity, the reference to emergency travel documents should be updated following the adoption of Council Directive (EU) 2019/997[3].

(16) Where appropriate and necessary to provide consular protection, Member States should also be entitled to involve, in their coordination and cooperation measures, their security and military personnel, honorary consuls, international organisations or diplomatic and consular authorities of third countries. This may be particularly relevant in crisis situations.

(17) Recent events have highlighted the important contribution of Union delegations, in close cooperation with Member States, to the implementation of the right to consular protection. This has been the case in particular in third countries where few Member States are represented, in crisis situations, and as regards the exchange of information. Against this background, it is appropriate to clarify the supporting role of Union delegations in the implementation of the right to consular protection. For reasons of consistency and business continuity, Union delegations should normally chair local consular cooperation meetings and lead the setting up and agreement of joint consular contingency plans. In order to ensure coordination and effective protection of

[3] 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, ELI: http://data.europa.eu/eli/dir/2019/997/oj).

unrepresented citizens, Union delegations should also take part in the coordination of crisis response in close cooperation with the Member States.

(18) Directive (EU) 2015/637 sets out practical means by which Union delegations can, pursuant to Article 35 of the Treaty on European Union (TEU), contribute to the implementation of the right of consular protection. When supporting Member States in the provision of consular protection to unrepresented citizens, Union delegations should do so upon request by Member States and on a resource-neutral basis, as provided for in Article 5(10) of Council Decision 2010/427/EU[4]. In this context, Member States should also be able to request Union delegations to perform specific consular assistance tasks, including those referred to in Article 9 of Directive (EU) 2015/637. To be able to carry out their supporting tasks, Union delegations should be provided with all the relevant information by the assisting Member State or, as the case may be, the Member State of nationality.

(19) In order to ensure preparedness regarding possible consular crises requiring the provision of assistance to unrepresented citizens, local consular cooperation among Member States and Union delegations in third countries should include exchanges on matters relevant to such citizens, including their security and safety, the establishment of joint consular contingency plans and the organisation of consular exercises. In this context, it can be particularly relevant for the consular authorities of unrepresented Member States to be included in such local consular cooperation when coordinating on consular crisis preparedness and response.

(20) Consular crisis preparedness is an essential requirement to ensure effective consular crisis response. Member States, supported by the European External Action Service (EEAS), should therefore ensure that adequate consular preparedness measures for the protection of unrepresented citizens are discussed and implemented in all third countries.

(21) Past crises have shown the relevance of contingency planning and the usefulness of joint consular contingency plans, known as 'Joint EU Consular Crisis Preparedness Frameworks', in third countries, involving the participation of the diplomatic and consular authorities of all Member States, as well as of the local Union delegation. Such plans should be tailored to local circumstances, set a clear division of responsibilities between represented and non-represented Member States and the Union delegation and include a set of procedures and activities to be carried out at local level in case of a crisis, with a specific attention to the consular protection of unrepresented citizens.

(22) The effectiveness of existing coordination measures set out in Directive (EU) 2015/637 should be enhanced by making the preparation and annual update of joint consular contingency plans mandatory for all third countries, even if their level of detail may differ depending on local circumstances. For that purpose, the essential elements of such plans should be established, such as an analysis of the consular situation in the third country concerned, including a risk assessment of the most plausible scenarios affecting unrepresented citizens, arrangements for consular crisis preparedness, communication within local consular cooperation and with Union citizens, and cooperation with local authorities and relevant third countries.

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[4] 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, ELI: http://data.europa.eu/eli/dec/2010/427/oj).

(23) Joint consular contingency plans should also take into account, where appropriate, the roles and responsibilities of Lead States, that is, Member States represented in a given third country that are in charge of coordinating and leading the assistance of unrepresented citizens during crises, to ensure the effective coordination of consular assistance. In addition, joint consular contingency plans should be evaluated annually in the context of consular exercises to ensure their continued relevance. At the same time, joint consular contingency plans should not be understood as replacing existing national crisis plans of Member States or affecting their responsibility to provide consular assistance to their own nationals.

(24) The estimated number and location of Union citizens present in a third country is crucial information for the preparation of a joint consular contingency plan, notably where an evacuation or repatriation becomes necessary. In addition, Union citizens should be able to receive relevant information from their Member State of nationality in case of a crisis. It is therefore important that Member States provide their citizens with the possibility to register with or inform competent national authorities, by appropriate means and tools, of their travels to or residence in third countries. For that purpose, Member States should, in accordance with Union and national law regarding personal data protection, lay down the categories of personal data required and the retention periods of such data.

(25) Travel advice, that is, information issued by Member States about the relative safety of travelling to specific third countries, enables travellers to make an informed decision about a particular travel destination, including third countries where their Member State of nationality is not represented. While the issuance of travel advice is the responsibility of Member States, it is appropriate that they coordinate on that topic, notably in the context of crisis situations, with a view to ensuring, to the extent possible, consistency in the level of advice given. This could include agreeing on a common structure of the levels of risk indicated in travel advice, making use of the secure platform of the EEAS. Where possible, such coordination should take place at an early stage when Member States are planning to change the level of their travel advice.

(26) Efficient coordination is vital to ensure effective crisis response. To ensure such coordination, Member States should be supported by the Crisis Response Centre of the EEAS and the Emergency Response Coordination Centre of the Commission. Coordinated Union crisis response is particularly important in cases requiring evacuations to ensure that available support is provided efficiently, and that best use is made of available evacuation capacities. For that reason, information on available evacuation capacity should be shared in a timely manner, including in case of rescue and evacuation operations using military assets.

(27) 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 referred to as joint consular teams. The deployment of a joint consular team to a third country in crisis situations can be critical in helping to prevent that the consular authorities of represented Member States become overwhelmed with the demands of the situation.

(28) Joint consular teams should be based on the principles of voluntary participation, solidarity with represented Member States, equality with regard to decisions on internal working structures, simplicity regarding composition of teams, cost-sharing – with each Member State, Union institution or body bearing its own operational costs –

flexibility, visibility of the coordinated Union response and openness to relevant third countries.

(29) To make best use of available capacity in crisis situations, the deployment of joint consular teams should ensure synergies with other crisis response measures, such as by taking advantage of outgoing repatriation flights or flights transporting humanitarian assistance.

(30) To support Union citizens in need, it is important to provide them with reliable information on how to avail themselves of consular assistance in third countries. The Commission services and the EEAS should contribute to that objective by disseminating relevant information, including information to be provided by Member States on their consular networks and third countries where they have concluded practical arrangements on sharing responsibilities for providing consular protection to unrepresented citizens. To facilitate the processing of such information, it should be provided in machine-readable format.

(31) Member States should take additional measures to further contribute to raising Union citizen's awareness of their right to consular protection, also taking into account the specific needs of persons with disabilities. Given the limited costs it entails for the Member States, one possible way to do so would be to reproduce the wording of Article 23 TFEU in passports issued by Member States as a way to enhance citizens' awareness of the right to protection by diplomatic and consular authorities, as already recommended by Commission Recommendation C(2007) 5841[5]. Member States could also feature information on the right to consular protection enjoyed by unrepresented citizens in travel advice and campaigns relating to consular assistance. They could also cooperate with passenger transport service providers and transport hubs offering travel to third countries, for example by inviting them to add relevant information on the right to consular protection to the information materials made available to customers.

(32) The financial provisions of Directive (EU) 2015/637 should be adapted to simplify reimbursements and continue ensuring financial burden-sharing. In particular, it should be possible for unrepresented citizens to directly reimburse costs, under the same conditions as nationals of the assisting Member State, for the service provided by that Member State to avoid the administrative burden resulting from seeking reimbursements from the citizen's Member State of nationality. In addition, Member States should also be allowed to waive the charging of such costs. As, in certain situations, unrepresented citizens may not be able to pay when making the request for assistance, notably when their cash and means to access funds have been stolen, it is necessary to provide that they may be required by the consular authorities of the assisting Member State to sign an undertaking to repay. On the basis of such an undertaking, the authorities of the assisting Member State may ask for the reimbursement of the costs once four weeks have passed since the assistance was provided.

(33) In cases where the costs have not been repaid by the citizen directly, that is, neither immediately when making the request or at a later stage when having been requested to do so by the assisting Member State on the basis of the undertaking to repay, the assisting Member State should be entitled to ask for the reimbursement of the costs due from the unrepresented citizen's Member State of nationality. To avoid being

[5] Commission Recommendation C(2007) 5841 of 5 December 2007 on reproducing the text of Article 20 TEC in passports (OJ L 118, 6.5.2008, p. 30, ELI: http://data.europa.eu/eli/reco/2008/355/oj).

faced with requests for reimbursement after long periods, the assisting Member State and Member State of nationality should be given a reasonable deadline to, respectively, make the request and reimbursement.

(34) Member States should reimburse Union delegations for their support in providing consular protection to unrepresented citizens to ensure that such support is provided on a resource-neutral basis, as required by Article 5(10) of Decision 2010/427/EU.

(35) The forms included in Annexes I and II to Directive (EU) 2015/637 are outdated and should thus be deleted. This should not prevent Member States currently providing for the use of those forms in their national laws from continuing to use them after the adoption of this Directive.

(36) When providing assistance in crisis situations, it may not be possible or practically feasible to distinguish between unrepresented and represented citizens and the possibility to provide assistance to unrepresented persons may require or imply the assistance to Union citizens who may also be represented. It should be clarified that in such situations, the provisions of Directive (EU) 2015/637 regarding the reimbursement of costs should also apply to consular protection provided by the assisting Member State to represented citizens of another Member State. This should avoid the existence of two separate reimbursement procedures depending on whether the assisted citizen is to be considered as represented or unrepresented.

(37) Where the Union Civil Protection Mechanism is used, in accordance with Article 16(7) of Decision No 1313/2013/EU of the European Parliament and of the Council[6], to provide civil protection support to consular assistance to Union citizens in disasters in third countries, the financial provisions in that Decision apply. In particular, the Member States applying for financial assistance and benefitting from such assistance are to provide the Commission with information about financial contributions collected from other sources, including the Member States and citizens assisted, and to ensure that there is no double funding received from other sources.

(38) In order to ensure uniform conditions for the implementation of this Directive regarding the machine-readable format to be used by Member States to provide information and the forms to be used in the context of the financial procedures, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[7].

(39) The provision of consular protection to unrepresented citizens requires the processing of personal data for the purpose of verifying the identity of the person who seeks consular protection, cooperating and coordinating among the authorities of the assisting Member State and the Member State of nationality, carrying out the assistance requested, processing of financial reimbursement requests, and the exchange of relevant contact information. Any processing of personal data by the Member States should comply with Regulation (EU) 2016/679 of the European

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6 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, ELI: http://data.europa.eu/eli/dec/2013/1313/oj).

7 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).

Parliament and of the Council[8], including the principles of purpose limitation and data minimisation. Similarly, processing of personal data by Union institutions and bodies within the meaning of Regulation (EU) 2018/1725 of the European Parliament and of the Council[9] should comply with the rules set out in that Regulation.

(40) Given that consular tasks can vary significantly, covering sensitive situations such as arrest, incarceration, injury or being a victim of a crime, it is necessary to ensure that competent authorities of the Member States and relevant Union institutions and bodies have access to and can exchange all the necessary information, including personal data, that is required to provide consular protection to Union citizens. In that context, the competent authorities of the Member States and, where they provide support, Union institutions and bodies should be entitled to process special categories of personal data, where doing so is strictly necessary to provide consular protection to the person concerned. This should cover health data, which may need to be processed in order to provide consular protection to an unrepresented citizen who has been seriously injured or has fallen seriously ill. Persons' facial images need to be processed notably in cases where an EU Emergency Travel Document is to be issued. Providing assistance to an unrepresented citizen, including in the defence of legal claims, may also exceptionally require the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or data concerning sexual orientation. In certain cases, providing consular assistance may also require the processing of genetic data, such as when providing assistance in the context of serious accidents requiring the unique identification of an incapacitated person or in the context of establishing paternity. Finally, consular cases linked to arrest or detention may likely require the competent authorities to process personal data relating to criminal convictions and offences.

(41) When processing such special categories of personal data, the competent authorities of the Member States and Union institutions and bodies should ensure suitable and specific measures to safeguard data subjects' interests. This should include, where possible, encrypting such personal data and specific attribution of access rights for personnel who have access to the specified types of special categories of personal data.

(42) Where the provision of consular protection requires the transfer of personal data of Union citizens to third countries or international organisations, such as the United Nations, collaborating in the crisis response measures, such transfers should comply with Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725.

(43) It is necessary to further specify safeguards applicable to the personal data processed, such as the maximum retention period of personal data collected. To ensure the collection of any applicable costs, a maximum retention period of 12 months for the assisting Member State or Union institutions and bodies and 24 months for the

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[8] 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) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

[9] 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 (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

Member State of nationality is necessary. The longer retention period applicable to the Member State of nationality is also necessary to prevent possible abuses or other fraudulent activities, including by persons who repeatedly seek consular protection and attempt to conceal such behaviour by approaching the consular authorities of different Member States. Finally, where the personal data concerns the contact details of public officials such as honorary consuls, the personal data should be retained for as long as the person remains the relevant contact. The erasure of personal data of applicants should not affect Member States' abilities to monitor the application of this Directive.

(44) Pursuant to Article 47 of the Charter, everyone whose rights guaranteed by Union law are violated must have the right to an effective remedy. To implement this fundamental right in the context of consular protection, a provision on legal redress should be added to Directive (EU) 2015/637.

(45) Directive (EU) 2015/637 should therefore be amended accordingly.

(46) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the need to adapt existing rules at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(47) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[10], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(48) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on XXXX[11],

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2015/637 is amended as follows:

(1) Articles 6 and 7 are replaced by the following:

'Article 6
Absence of representation

1. For the purposes of this 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 or consulate there which is effectively in a position to provide consular protection in a given case.

[10] OJ C 369, 17.12.2011, p. 14.
[11] OJ C […], […], p. […].

2. To determine whether a Member State has no embassy or consulate which is effectively in a position to provide consular protection in a given case, the embassy or consulate from which the unrepresented citizen seeks consular protection shall take into account the following criteria, in light of local circumstances:

   (a) the difficulty for the citizen concerned to safely reach or be reached by the embassy or consulate of his or her Member State of nationality within a reasonable period of time, taking into account the nature and urgency of the assistance requested and the means available to the citizen;

   (b) possible closures of the embassy or consulate of his or her Member State of nationality, including when it cannot be confirmed, within a reasonable period of time, as operational and accessible;

   (c) whether, by redirecting the citizen to the embassy or consulate of his or her Member State of nationality, consular protection would likely be compromised, in particular if the urgency of the matter requires immediate action by the requested embassy or consulate.

3. For the purpose of determining, in accordance with paragraph 2, whether a Member State has an embassy or consulate which is effectively in a position to provide consular protection in a given case, the presence of an honorary consul of the citizen's Member State of nationality may only be taken into account if the assistance requested by the citizen is covered by the competences of the honorary consul.

Article 7
Access to consular protection and other arrangements

1. Unrepresented citizens shall be entitled to seek protection from the embassy or consulate of any Member State.

2. Without prejudice to Article 2, a Member State may represent another Member State on a permanent basis and Member States' embassies or consulates may, wherever deemed necessary, conclude practical arrangements on sharing responsibilities for providing consular protection to unrepresented citizens.

   In such cases, an embassy or consulate from which the unrepresented citizen seeks consular protection, and which is not designated as competent according to the specific arrangement in place, shall transfer the application from the citizen to the relevant embassy or consulate, unless consular protection would thereby be compromised, in particular if the urgency of the matter requires immediate action by the requested embassy or consulate.

3. Where a crisis situation results in a large number of applications for consular protection, the embassies and consulates of the Member States represented in the third country concerned may, supported by the Union delegation, agree to distribute applications based on available capacity, unless consular protection would thereby be compromised, in particular if the urgency of the matter requires immediate action by the requested embassy or consulate. Such distribution may also be pre-agreed in the context of a joint consular contingency plan referred to in Article 13 and may derogate from practical arrangements that have been concluded in accordance with paragraph 2.

4. Unrepresented citizens who seek protection pursuant to paragraph 1 shall be kept informed of any transfers pursuant to paragraphs 2 or 3.';

(2) in Article 9, points (e) and (f) are replaced by the following:

'(e) relief, evacuation and repatriation in case of an emergency;

(f) need for an EU Emergency Travel Document established by Directive (EU) 2019/997*.

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* 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, ELI: http://data.europa.eu/eli/dir/2019/997/oj).';

(3) Article 10 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. Member States shall notify the European External Action Service (EEAS) through its secure internet site of the relevant contact point(s) in the Ministries of Foreign Affairs.';

(b) the following paragraph 5 is added:

'5. Where appropriate and necessary to provide consular protection, Member States may also involve, in their coordination and cooperation measures, honorary consuls and their security and military personnel, international organisations or diplomatic and consular authorities of third countries.';

(4) Articles 11, 12 and 13 are replaced by the following:

'Article 11
The role of Union delegations

1. Union delegations shall closely cooperate and coordinate with Member States' embassies and consulates to contribute to local consular cooperation, crisis preparedness and crisis response, in particular by:

(a) providing available logistical support, including office accommodation and organisational facilities, such as temporary accommodation for consular staff and joint consular teams referred to in Article 13a(2);

(b) facilitating the exchange of information between Member States' embassies and consulates;

(c) facilitating, where appropriate, the exchange of information with local authorities, diplomatic and consular authorities of third countries and international organisations;

(d) making general information available about the assistance that unrepresented citizens could be entitled to, particularly about agreed practical arrangements if applicable;

(e) chairing local consular cooperation meetings referred to in Article 12(2);

(f) coordinating the setting up and agreement of joint consular contingency plans referred to in Article 13;

(g) participating in crisis response activities in accordance with Article 13a, including, where relevant and appropriate, by providing support to the Lead State.

2. Union delegations shall support Member States in the provision of consular protection to unrepresented citizens in accordance with Article 5(10) of Decision 2010/427/EU. Such support may include carrying out, upon request by and on behalf of Member States, specific consular assistance tasks. The assisting Member State and the Member State of nationality shall provide the Union delegation with all the relevant information in the case concerned.

Article 12
Local consular cooperation

1. The consular authorities of the Member States and the Union delegation shall engage in local consular cooperation within each third country.

2. Local consular cooperation meetings shall include regular exchanges on:

(a) the security and safety of Union citizens and on other matters relevant to them;

(b) the drafting and delivery of joint consular demarches to third country authorities, where relevant;

(c) the setting up, agreement and review of joint consular contingency plans referred to in Article 13;

(d) the organisation of joint consular exercises;

(e) practical arrangements referred to in Article 7(2) to ensure that unrepresented citizens are effectively protected in the third country concerned.

3. Unless otherwise agreed by the consular authorities of the Member States, the Chair shall be a representative of the Union delegation. Where no Union delegation is present, meetings shall be chaired by a representative of a Member State.

Article 13
Crisis preparedness

1. In the context of local consular cooperation referred to in Article 12, Member States and the EEAS shall set up and agree a joint consular contingency plan for each third country. The joint consular contingency plan shall be updated annually and contain:

(a) an analysis of the consular situation in the country, including an overview of Member State embassies or consulates, an estimate of the number and location of Union citizens, and a risk assessment of the most plausible scenarios affecting Union citizens;

(b) joint consular crisis preparedness arrangements, including communication channels and contacts within local consular cooperation and with local authorities and relevant third countries;

(c) joint consular crisis response arrangements, including information-sharing and communication processes within local consular cooperation and with Union citizens, crisis meetings, cooperation with local authorities and relevant third countries and crisis and post-crisis actions;

(d) where a Member State assumes the role of Lead State in a given third country as referred to in Article 13a(3), a description of its responsibilities;

(e) other relevant information.

2. Where present, Union delegations shall coordinate the setting up and agreement of joint consular contingency plans, based on contributions made by the embassies or consulates of the Member States represented in the third country concerned and the consular authorities of unrepresented Member States. Joint consular contingency plans shall be made available to all Member States, the EEAS and the Commission services.

In third countries where no Union delegation is present, the coordination shall be done by the Chair of the local consular cooperation agreed pursuant to Article 12(3), supported by the EEAS.

3. Member States and Union delegations shall annually carry out consular exercises to update and improve local joint consular crisis preparedness and response.

4. Member States shall, in accordance with national law, provide their citizens with the possibility to register with or inform competent national authorities, by appropriate means and tools, of their travels to or residence in third countries.

5. Member States shall exchange information on changes to their travel advice to citizens at an early stage, in particular in the context of crisis situations, and shall seek to ensure consistency in the level of travel advice given.';

(5) in Chapter 2, the following Article 13a is inserted:

'Article 13a
Crisis response

1. In the event of a crisis, the Union and Member States shall closely cooperate to ensure efficient assistance for unrepresented citizens. They shall, where possible, inform each other of available evacuation capacities in a timely manner, including in case of operations using military assets.

2. Where necessary, Member States may be supported by joint consular teams composed of experts from Member States, in particular from Member States not represented in the third country affected by the crisis, the EEAS and the Commission services. Joint consular teams shall be available for rapid deployment to third countries affected by a consular crisis. Participation in joint consular teams shall be voluntary.

3. Where applicable, the Lead State or the Member State(s) coordinating the assistance shall be in charge of coordinating any support provided for unrepresented citizens, with the support of the other Member States concerned, the Union delegation and the EEAS central administration. Member States shall provide the Lead State or the Member State(s) coordinating assistance

with all relevant information regarding their unrepresented citizens present in a crisis situation.

4. When providing assistance, Member States may seek, if appropriate, support from Union instruments such as the crisis management structures of the EEAS and its Crisis Response Centre and, via the Emergency Response Coordination Centre established by Article 7 of Decision No 1313/2013/EU, the Union Civil Protection Mechanism.';

(6) the following Chapter 2a is inserted:

'CHAPTER 2a
PROVISION OF INFORMATION

Article 13b
Provision and dissemination of information

1. At least once per year, Member States shall provide the Commission and the High Representative of the Union for Foreign Affairs and Security Policy with the following information:

   (a) up-to-date lists of contacts for their consular networks;

   (b) lists of third countries where they are represented by another Member State or where they represent another Member State on a permanent basis in accordance with Article 7(2);

   (c) practical arrangements concluded pursuant to Article 7(2);

   (d) the number of unrepresented citizens having been provided consular protection referred to in Article 2 during the previous year, broken down by nationality and third country;

   (e) the number of reimbursement requests submitted and received pursuant to Articles 14 and 15 during the previous year.

   Where a Member State has decided, pursuant to Article 2(2), to apply this Directive to the consular protection provided by honorary consuls, the list referred to in point (a) shall include honorary consuls as well as information on the extent to which honorary consuls are competent to provide protection in a given case, in particular whether they are empowered to issue EU Emergency Travel Documents.

2. Member States, the Commission services and the EEAS shall make the information referred to in paragraph 1, points (a), (b) and (c), publicly available in a manner that ensures the coherence of the information provided.

3. Where requested by the Commission, Member States shall provide the information referred to in paragraph 1 in a machine-readable format.

4. The Commission may adopt implementing acts establishing the specific machine-readable format in which the information referred to in paragraph 1 is to be provided. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15a(2).

Article 13c
Information to Union citizens

1. Member States shall take measures to inform their citizens of their right set out in Article 20(2), point (c), TFEU. This may include in particular the following measures:

   (a) reproducing the first sentence of Article 23 TFEU on national passports;

   (b) including information on the right to consular protection in travel advice and campaigns relating to consular protection;

   (c) cooperating on information campaigns with passenger transport service providers and transport hubs offering travel to third countries.

2. The Commission services and the EEAS shall contribute to informing Union citizens about their right to consular protection.';

(7) Articles 14 and 15 are replaced by the following:

'*Article 14*
General rules

1. Any costs charged by an assisting Member State for the provision of consular protection to unrepresented citizens shall be the same as the costs it would charge to its own nationals.

2. If an unrepresented citizen is unable to pay the costs referred to in paragraph 1 to the assisting Member State when making a request for assistance, the assisting Member State may require the unrepresented citizen to sign an undertaking to repay. On that basis, the assisting Member State may ask the unrepresented citizen concerned to pay such costs once four weeks have passed since the assistance was provided.

   Being unable to pay the costs referred to in paragraph 1 when making a request for assistance shall not affect the right of the unrepresented citizen to receive consular protection.

3. If an unrepresented citizen to whom consular protection was provided has not paid the costs referred to in paragraph 1, neither when making a request for assistance nor when having been requested to do so by the assisting Member State pursuant to paragraph 2, the assisting Member State may, within 12 months of the date of signature of the undertaking to repay referred to in paragraph 2, ask for the payment of the costs from the unrepresented citizen's Member State of nationality.

   The unrepresented citizen's Member State of nationality shall reimburse those costs within a reasonable period of time not exceeding 12 months from the date of the request. The unrepresented citizen's Member State of nationality may ask the unrepresented citizen concerned to repay such costs.

4. When the consular protection provided to an unrepresented citizen involves unusually high but essential and justified costs related to travel, accommodation or translation for the diplomatic or consular authorities, the assisting Member State may, within 12 months of the assistance provided, ask for the reimbursement of such costs directly from the unrepresented citizen's

Member State of nationality, which shall reimburse them within a reasonable period of time, not exceeding 12 months.

5. Member States shall reimburse Union delegations for their support in providing consular protection to unrepresented citizens. In that case, reimbursement of costs by the citizen's Member State of nationality shall ensure that the support provided by Union delegations is on a resource-neutral basis.

6. The Commission may adopt implementing acts establishing standard forms to be used for the undertaking to repay referred to in paragraph 2 and for the repayment of the costs from the Member State of nationality referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15a(2).

Article 15
Facilitated procedure in crisis situations

1. In crisis situations, and unless the costs of the support provided have already been repaid by the unrepresented citizen directly, the assisting Member State may seek reimbursement of the costs from the unrepresented citizen's Member State of nationality even if the unrepresented citizen has not signed an undertaking to repay pursuant to Article 14(2). This shall not prevent the unrepresented citizen's Member State of nationality from pursuing repayment from the unrepresented citizen concerned on the basis of national rules.

2. The assisting Member State may ask the unrepresented citizen's Member State of nationality to reimburse the costs referred to in paragraph 1 on a pro-rata basis, by dividing the full value of the actual costs incurred by the number of citizens assisted.

3. Where, in the crisis situations referred to in paragraph 1, it is not possible or practically feasible to distinguish between represented and unrepresented citizens, and where the possibility to provide assistance to unrepresented citizens requires or implies assistance to citizens who may also be represented, the procedure in paragraphs 1 and 2 shall also apply to consular protection provided by the assisting Member State to represented citizens of another Member State in crisis situations.

4. Paragraphs 1, 2 and 3 shall apply also to situations where a Union delegation has supported a Member State in providing consular protection. In that case, reimbursement of costs by the citizen's Member State of nationality shall ensure that the support provided by Union delegations is on a resource-neutral basis.

5. Reimbursements requested pursuant to paragraphs 1, 2 and 3 shall be taken into account in determining any contribution of the Union Civil Protection Mechanism, in accordance with Decision No 1313/2013/EU, for the provision of civil protection support to consular assistance to Union citizens in disasters in third countries.';

(8) in Chapter 4, the following Article 15a is inserted:

'Article 15a
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).';

(9) the following Articles 16a and 16b are inserted:

'Article 16a
Protection of personal data

1. For the purposes of this Directive, the competent authorities of the Member States shall process personal data only to:

   (a) transmit the application of a person seeking consular protection in accordance with Article 3 or Article 7;

   (b) verify the identity of a person seeking consular protection in accordance with the procedure set out in Article 8;

   (c) provide consular protection to that person, in particular by providing the types of assistance referred to in Article 9;

   (d) cooperate, coordinate and provide support in accordance with Article 10, Article 11, Article 13(1) and Article 13a;

   (e) provide the contact information referred to in Article 10(4) and Article 13b(1);

   (f) process financial reimbursement requests regarding the consular protection provided in accordance with Article 14 and Article 15.

2. Processing of personal data by Union institutions and bodies within the meaning of Regulation (EU) 2018/1725 of the European Parliament and of the Council* for the purposes of this Directive shall take place only where necessary to carry out the tasks referred to in Article 10(1), Article 11, Article 13 and Article 13a, to process information received pursuant to Article 10(4) and Article 13b(1), or to process financial reimbursement requests in accordance with Article 14(5) and Article 15(4).

3. When processing personal data pursuant to paragraphs 1 and 2, the competent authorities of Member States and Union institutions and bodies shall be considered, within the scope of their respective activities under this Directive, as the controller referred to, respectively, in Article 4(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council** and Article 3(8) of Regulation (EU) 2018/1725.

4. Personal data processed pursuant to paragraphs 1 and 2 shall be limited to what is necessary to carry out the tasks referred therein, such as the identity of the person in need of consular protection and the circumstances of the consular case.

5. The competent authorities of the Member States and Union institutions and bodies may process personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, data concerning sex life or sexual orientation or personal data relating to criminal convictions and offences of a person in need of consular protection where doing so is strictly necessary to be able to carry out the tasks referred to in Article 9, Article 10, Article 11 and Article 13a in relation to that person.

6. When processing the personal data referred to in paragraph 5, the competent authorities of the Member States and Union institutions and bodies shall ensure suitable and specific measures to safeguard data subjects' interests. They shall also introduce internal policies and undertake necessary technical and organisational measures to prevent unauthorised access and transmission of such personal data.

7. For the purposes of this Directive, the competent authorities of the Member States shall transfer personal data to a third country or international organisation only to carry out the tasks referred to in Article 9, Article 10 and Article 13a and in accordance with Chapter V of Regulation (EU) 2016/679.

   For the purposes of this Directive, Union institutions and bodies shall transfer personal data to a third country or international organisation only to carry out the tasks referred to in Article 10(1), Article 11 and Article 13a and in accordance with Chapter V of Regulation (EU) 2018/1725.

8. The assisting Member State, the Member State of nationality and, where applicable, Union institutions and bodies shall retain the personal data of an assisted person only for as long as necessary to carry out the tasks referred to in paragraphs 1 and 2. In no case shall that personal data be retained longer than 12 months by the assisting Member State and Union institutions and bodies, or longer than 24 months by the Member State of nationality, from the date of collection. Contact details exchanged in accordance with Article 10(4) and Article 13b(1) shall only be retained for as long as the persons exercise the relevant function.

   The personal data shall be erased as soon as possible after the tasks referred to in paragraph 1 or 2 have been completed and at the latest upon the expiry of the retention periods referred to in the first subparagraph.

Article 16b
Remedies

Member States shall ensure that unrepresented citizens have an effective remedy under national law in the event of a breach of their rights under this Directive.

_____

* 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 (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

** 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) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).';

(10) in Article 19, the following paragraph 3 is added:

'3. No sooner than *[eight years after the transposition deadline of the amending Directive]*, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament and the Council.

Member States shall provide the Commission with the information necessary for the preparation of that report.';

(11) Annexes I and II are deleted.

Article 2

Article 5(3) of Directive (EU) 2019/997 is replaced by the following:

'3. Where applicants are unable to pay any applicable fees to the assisting Member State when submitting their application, Article 14(2) and (3) and Article 15 of Directive (EU) 2015/637 shall apply.'.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[two years after the entry into force]* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

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3.2.3. Summary of estimated impact on administrative appropriations

3.2.3.1. Estimated requirements of human resources

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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

1.2. Policy area(s) concerned

Consular protection

1.3. The proposal/initiative relates to:

☐ **a new action**

☐ **a new action following a pilot project/preparatory action**[38]

☒ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective

The overarching general objective of the policy initiative is to improve the exercise of the right to consular protection.

1.4.2. Specific objective(s)

Specific objective No 1

Enhance legal certainty for Union citizens as to the scope of the right to consular protection.

Specific objective No 2

Ensure clear roles, coordination and cooperation mechanisms between Member States and Union delegations, including in times of crisis.

Specific objective No 3

Improve the information provision and communication with unrepresented Union citizens.

Specific objective No 4

Increase the efficiency and use of the financial reimbursement procedures.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The impacts of this proposal are expected to adapt the consular protection framework to present and future challenges and thus be positive compared to the status quo. A clarification of the definition of 'unrepresented citizen' will bring increased legal certainty, leading to more effective consular assistance to Union citizens. A strengthened supporting role of Union delegations and a clearer division of tasks

[38] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

between Member States and Union delegations in local cooperation meetings is expected to result in increased legal certainty and effectiveness of the Directive's rules applicable to crisis and non-crisis situations. More efficient and smooth coordination would have the effect of better assistance to Union citizens, especially in crisis situations, making best use of all Union resources allocated to that task. In addition, more effective and consistent communication with Union citizens on consular matters will flow from enhanced cooperation between Member States' consular networks and the Union. More registrations of citizens abroad will allow Member States to better assist them.

Finally, a simplification and reduction of the current administrative burden for both the assisting and the Member State of nationality will increase the usefulness of financial reimbursement procedures. What is more, the extension of the reimbursement mechanism to Union delegations will fill in a gap hindering their practical support to Member States on the provision of assistance to Union citizens.

A more comprehensive overview of the implications of the initiative is available in the impact assessment accompanying the proposal.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Specific objective No 1

- Number of unrepresented Union citizens assisted.
- Number of complaints received, and court cases launched by unrepresented Union citizens with respect to violations of their right to consular protection.

Specific objective No 2

- Number of local consular coordination exercises organised.
- Number and type of support requests from Member State authorities to Union delegations.

Specific objective No 3

- Level of awareness of Union citizens regarding their right to consular protection.
- Number of citizens registering as living or traveling abroad.
- Number of awareness-raising campaigns and other measures with similar purpose organised at national level.

Specific objective No 4

- Number of reimbursement requests submitted and received.
- Average time from submission of request to pay out.
- Number of cases where reimbursement is not completed.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

A provisional implementation timeline can be illustrated as follows:

2024: Entry into force of the Directive. 2026: Transposition and application by Member States.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

As already outlined in the impact assessment accompanying the Commission's proposal for what would become Directive (EU) 2015/637[39], providing for common Union standards, safeguards and clear procedures for cooperation and coordination regarding unrepresented citizens is better achieved at Union level. The subsidiarity justifications set out in that impact assessment remain valid. The right to consular protection remains a cross-border issue and an integral part of Union citizenship, requiring cooperation and coordination at Union level. Since the expiry of its transposition deadline in 2018, the Commission has closely monitored the implementation of Directive (EU) 2015/637 and concluded that further action at Union level is needed. Without timely and effective Union action, the problems and causes outlined in the impact assessment accompanying this proposal would continue to hinder the effective exercise of the right to consular protection. Without action at Union level, the effectiveness of Union citizens' rights related to consular protection would continue to be put at risk and the added value of Union delegations in this context would remain unexploited. In particular, fostering cooperation to support Union citizens in need abroad can only be achieved by a coordinated Union intervention. The Union, and in particular the EEAS and the Commission (Directorate-General for European Civil Protection and Humanitarian Aid Operations, DG ECHO), 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.

1.5.3. Lessons learned from similar experiences in the past

On 2 September 2022, the Commission published a report on the implementation and application of Directive (EU) 2015/637. The report showed that Directive (EU) 2015/637 has been mostly effective in achieving its objective to facilitate the exercise by Union citizens of their rights related to consular protection in third countries where the Member State of which they are nationals is not represented. However, the report noted that crises resulting in requests for consular protection were increasing in number and scale. The COVID-19 pandemic (unprecedented in scale and complexity), the crisis in Afghanistan, Russia's war of aggression against Ukraine, the conflict in Sudan, the repatriations from Israel and Gaza and other similar crises provided a context to identify gaps and reflect on how to strengthen Union citizens' right to consular protection.

[39] SEC(2011) 1556 final.

The report noted that there was room to clarify and streamline measures in order to further facilitate the provision of consular protection to unrepresented citizens, including increasing legal certainty with respect to beneficiaries and ensuring such protection regardless of where they are in the world. In addition, consideration could be given to improving information provision and communication coordination. Furthermore, greater use of foresight mechanisms was needed for crisis-preparedness, especially given the human cost involved in failures to provide adequate consular protection. Moreover, the formal role of Union delegations and their coordination and cooperation with Member States could better reflect the reality of their work on the ground, thereby providing for greater legal certainty.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

This proposal is aligned with the Union Civil Protection Mechanism (UCPM) established by Decision No 1313/2013/EU.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The costs necessary will be financed from existing budgetary means.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from 2024 to 2026,

– followed by full-scale operation.

1.7. Method(s) of budget implementation planned

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Directive will be evaluated eight years after the expiry of its transposition deadline. The Commission will report on the findings to the European Parliament and to the Council.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

This proposal does not alter the management mode, funding implementation mechanisms, payment modalities or control strategy already in place and employed by the Commission.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

This legislative financial statement concerns staff expenditure. Standard risks and control systems for this type of expenditure apply.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

This initiative does not affect the cost-effectiveness of existing Commission controls.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

This legislative financial statement concerns staff expenditure. Standard rules for this type of expenditure apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[40]	from EFTA countries [41]	from candidate countries and potential candidates [42]	fromother third countries	other assigned revenue
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

[40] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[41] EFTA: European Free Trade Association.

[42] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☒ The proposal/initiative does not require the use of operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	

DG: <…….>			Year **N**[43]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
○ Operational appropriations										
Budget line[44]	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes[45]										
Budget line		(3)								
TOTAL appropriations for DG <…….>	Commitments	=1a+1b +3								
	Payments	=2a+2b								

43 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

44 According to the official budget nomenclature.

45 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

		+3								

○ TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
○ TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

If more than one operational heading is affected by the proposal / initiative, repeat the section above:

○ TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework	7	'Administrative expenditure'

EUR million (to three decimal places)

		Year **2026**	Year **2027**	**TOTAL (under the current MFF[46])**
DG: JUST				
○ Human resources		0.043	0.014	**0.057**
○ Other administrative expenditure				
TOTAL DG JUST	Appropriations	0.043	0.014	**0.057**
DG: EEAS				
○ Human resources				
○ Other administrative expenditure		0.038	0.038	**0.076**
TOTAL EEAS	Appropriations	0.038	0.038	**0.076**
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	**0.081**	**0.052**	**0.133**

EUR million (to three decimal places)

		2026	**2027**	**TOTAL**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	**0.081**	**0.052**	**0.133**
	Payments	**0.081**	**0.052**	**0.133**

[46] Future financial implications of this initiative for the years post 2027 are without prejudice to the MFF after 2027.

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[47]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[48]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

47 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

48 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Summary of estimated impact on administrative appropriations

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2026	**2027**	**TOTAL**
HEADING 7 of the multiannual financial framework			
Human resources	0.043	0.014	**0.057**
Other administrative expenditure	0.038	0.038	**0.076**
Subtotal HEADING 7 of the multiannual financial framework	**0.081**	**0.052**	**0.133**

Outside HEADING 7[49] of the multiannual financial framework			
Human resources			
Other expenditure of an administrative nature			
Subtotal outside HEADING 7 of the multiannual financial framework			

TOTAL	**0.081**	**0.052**	**0.133**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[49] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units**

		2026	2027
20 01 02 01 (Headquarters and Commission's Representation Offices)		0.25	0.083
20 01 02 03 (Delegations)			
01 01 01 01 (Indirect research)			
01 01 01 11 (Direct research)			
Other budget lines (specify)			
20 02 01 (AC, END, INT from the 'global envelope')			
20 02 03 (AC, AL, END, INT and JPD in the delegations)			
XX 01 xx **yy zz** [50]	- at Headquarters		
	- in Delegations		
01 01 01 02 (AC, END, INT - Indirect research)			
01 01 01 12 (AC, END, INT - Direct research)			
Other budget lines (specify)			
TOTAL		**0.25**	**0.083**

* The Heading 7 staff administrative expenditure concerns one FTE for three months in the first year of implementation and one month per year thereafter at DG JUST. Therefore, the estimated human resources required amount to full time equivalent units of less than 1.

Consular protection is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Collecting collecting and disseminating information received from Member States on the website of the Commission.
External staff	

[50] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[1]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[1] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[2]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[2] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.