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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Effective consular protection in third countries: the contribution of the European Union

Action Plan 2007-2009

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1. INTRODUCTION

The protection by diplomatic and consular authorities of Union citizens in third countries is one of the strategic policy objectives for the Commission in 2007.

Article 20 of the Treaty establishing the European Community ("Article 20 TEC") provides that "every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic and consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection". The same right is enshrined in Article 46 of the Charter of Fundamental Rights of the European Union.

This Action Plan is a non-exhaustive roadmap for measures that the Commission intends to propose in 2007-2009. It follows a public consultation launched on 28 November 2006 with the publication of a Green Paper on these issues.

The 27 Member States apply already high standards of protection and cooperation between themselves. However, more can be done to facilitate the application of Article 20 TEC and ensure the best possible protection of Union citizens in third countries. All measures taken in this field, at national and/or Community level, should be fully consistent with this objective. The aim of this Action Plan is to assist Member States to fulfil their obligations in this field, in order to assist citizens in need of help.

2. THE NEED TO STRENGTHEN THE PROTECTION OF UNION CITIZENS IN THIRD COUNTRIES

Currently, all 27 Member States are represented in only three of the 166 third countries: the People's Republic of China, the Russian Federation and the United States of America¹. The lack of representation was accentuated by the enlargement of the European Union. There are 18 countries in which no Member State is

¹ Council document 16838/1/06 of 23 March 2007 on Presidency diplomatic representation in third countries, not published.

represented, 17 countries in which only one Member State is represented and 11 countries in which two Member States are represented. These countries include a number of popular tourist destinations for Union citizens (e.g. Bahamas, Barbados, Madagascar, Maldives and Seychelles). The Member States' diplomatic and consular representations are especially limited in Central America and the Caribbean, Central Asia and Central and West Africa. It is estimated that 8,7% of the EU citizens travelling outside the EU go to third countries where their Member State does not have a consular or diplomatic representation. Based on the number of trips made annually by EU citizens to third countries, the estimated number of "unrepresented" EU citizens travelling abroad annually is at least 7 million. It is estimated around 2 million EU expatriates live in a third country where their Member State is not represented².

These numbers are likely to grow. Union citizens are increasingly travelling to and living in third countries as tourists, workers, students etc. EUROSTAT³ estimated the number of trips at around 80 million in 2005. Half of the Union's citizens expect to travel to a third country in the next 3 years⁴. The Council estimated in 2006 that Union citizens make some 180 million trips per year.

Most Member States do not keep records of the exact numbers of requests for consular assistance. On the basis of the replies given by Member States, it is estimated that around 0,53% of EU citizens need consular assistance while travelling outside the EU, which would amount to at least 425 000 cases per year. It is estimated that at least 37 000 of these cases concern Union citizens whose Member States are not represented in the third country⁵.

The relatively low number of requests for consular assistance might be due to the limited knowledge by citizens of Article 20 TEC. The public consultation confirmed that most Union citizens are unaware of Article 20 TEC. In a Eurobarometer survey published in 2006, only 23% of those interviewed had heard of the possibilities offered by Article 20 TEC. At the same time, the public consultation showed that citizens have high expectations of Europe in this area.

Member States have already put in place some coordination mechanisms in this field, as demonstrated during the tsunami in 2004 and the 2006 Lebanon crisis. However, there is still room for improved cooperation, coordination and burden-sharing between Member States⁶. Moreover, protection by diplomatic and consular authorities is not limited to crisis situations, but includes day-to-day assistance to solve individual problems such as loss of passports, theft and serious accidents.

² Impact assessment, points 2.2 and 2.8.

³ Database on population, section on tourism. Data include holiday and business trips of more than one day in 2005.

⁴ Eurobarometer No 118 of July 2006.

⁵ Impact Assessment, point 2.2.

⁶ Several initiatives to improve the Union's capability to respond to crises situations have been presented in the last years. One example is the report presented 9 May 2006 by Michel Barnier: "For a European civil protection force: Europe aid".

The "Lead State" framework should be mentioned in this context. This new form of consular cooperation is designed to strengthen consular cooperation and improve protection for EU nationals in times of crisis in third countries where few Member States are represented. One or more Member States are designated as a "Lead State" in the third country to ensure the protection of unrepresented Union citizens on behalf of the other Member States. In case of evacuation, the "Lead State" is responsible for the evacuation of all Union citizens to a safe place. In the context of Article 20 TEC, the Commission sees the "Lead State" arrangement as a positive step towards more effective burden-sharing in crises situations.

The Community rules are very limited in this area, consisting of two Decisions adopted by the Representatives of the Governments of the Member States. Decision 95/553/EC⁷ entitles unrepresented Union citizens to consular protection by any Member States' diplomatic and consular representation on the same conditions as the nationals of that State, e.g. in case of death, serious accidents, arrest and repatriation. The Decision is not exhaustive as it does not explicitly cover other instances where Union citizens may need assistance. Decision 96/409/CFSP⁸ entitles unrepresented Union citizens who have lost their travel document to an emergency travel document issued by any other Member State represented on the spot. Member States have also drawn up non-binding Guidelines on consular protection within the Council⁹. Calls for improved consular protection will almost certainly increase in the future as Union citizens become more aware of their rights under Article 20 TEC and as a result of the increase in international travel. Natural disasters, terrorist attacks and political instability are other reasons for concern.

The entry into force of the Reform Treaty will provide a clear legal basis for EU law in this area. The modified wording of Article 20 TEC enables the Council to adopt directives "establishing the coordination and cooperation measures necessary to facilitate such protection".

The aim of this Action Plan is to propose actions aiming to give substance to Article 20 TEC and to address present and foreseeable shortcomings in this area.

3. THE OUTCOME OF THE PUBLIC CONSULTATION

In 2006, the Commission launched a wide public consultation with the publication of a Green Paper on diplomatic and consular protection of Union citizens in third countries¹⁰ which proposed a number of possible measures. The response to the Green Paper revealed a significant interest in this matter¹¹. A public hearing was held on 29 May 2007.

⁷ OJ L 314, 28.12.1995 p. 73.

⁸ OJ L 168, 16.7.1996, p. 4.

⁹ Document 10109/06 of the Council of the European Union, 2.6.2006.

¹⁰ COM(2006) 712.

¹¹ The replies to the Green Paper are available at:
http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_public_en.htm

Civil society, other European institutions and individual respondents argued for more impetus to be given to Article 20 TEC as a tangible expression of Union citizenship. Several Member States called for caution and recalled that they have primary responsibility for ensuring protection to their nationals.

4. THE NEED FOR A PROGRESSIVE AND GRADUAL APPROACH

The effective strengthening of the right to protection by diplomatic and consular authorities enshrined in Article 20 TEC is a complex challenge which cannot be achieved by one single initiative, but requires a comprehensive package of measures based on a long-term strategy. It is indeed the case that Member States have primary responsibilities in this area. The Commission wishes to help them discharge those responsibilities. A progressive and gradual approach is therefore necessary.

The legal and technical complexity of certain measures requires in-depth analysis and preparation in close cooperation with Member States.

- The Commission proposes the following Action Plan for the years 2007-2009 including a series of legislative and non-legislative measures.

5. AREAS IDENTIFIED FOR ACTION 2007-2009

5.1. Information for citizens

The public consultation confirmed that public awareness is limited in this area. The Commission launched an information campaign in April 2007 with posters describing Article 20 TEC and Decision 95/553/EC in a user-friendly way. The poster has been distributed at request to travel agencies in several Member States. In addition, the Secretariat of the Council of the European Union has distributed a brochure on "European Consular Assistance"¹². Member States have also disseminated information on Article 20 TEC at national level. Notwithstanding these efforts, the large majority of citizens remain unaware of the existence and scope of Article 20 TEC.

5.1.1. Recommend Member States to print Article 20 TEC in passports

As a first measure, attached to this Action plan, the Commission is presenting a Recommendation to Member States to reproduce the wording of Article 20 TEC in passports. This idea, which was mentioned in the Green Paper, was previously suggested in the Barnier report¹³ and by the Austrian Presidency of the Council of the European Union in 2006¹⁴. The proposal encountered almost unanimous support during the public consultation as an efficient means to reach individuals travelling to third countries. It was also suggested to print a reference to a European web-site to

¹² <http://www.travel-voyage.consilium.europa.eu>

¹³ See footnote 6.

¹⁴ Document 10551/06 of 15.6.2006.

enable citizens to find more detailed information. The Commission is recommending that Member States print Article 20 TEC in passports issued after 1 July 2009. As regards passports issued before that date, the Commission recommends the distribution of stickers reproducing the text of Article 20 TEC to be affixed on the outside rear cover of passports. It is for the Member States to decide if and how to make them available. This measure would significantly enhance citizens' awareness of Article 20 TEC with limited costs.

- The Commission recommends that Member States print Article 20 TEC in passports issued after 1 July 2009 and distribute stickers to be affixed on the outside rear cover of passports issued before that date (2008 onwards)

5.1.2. Pursue the information campaign to the general public

The Commission will make available a poster on consular protection for distribution in strategic places, such as airports, ports, external border posts and railway stations, in partnership with Member States.

- The Commission will make available a poster on consular protection for distribution in strategic places in partnership with Member States (2007 onwards)

5.1.3. Set up an EU website on consular protection

The Commission intends to create in 2008 a special web-site on the "Europa" site dedicated to consular protection. The web site will be used to publish practical information as outlined below.

The web-site could also be used to facilitate access to Member States' travel advice notices. It could provide links to the Member States' travel advice notices and to the web-site of the Council Secretariat¹⁵.

- The Commission will set up a web-site on the "Europa" site to publish information on consular protection (2008)

5.1.4. Publish information on Member States' representation in third countries

Many people could find it useful to have an up-to-date list of the Member States' embassies and consulates in third countries. This information, which is collected on a bi-annual basis by the Council Secretariat¹⁶, is currently not easily available to the public. The Commission will publish it on the proposed web-site.

- The Commission will ask Member States for up-dated information on their representations in third countries and publish it on line (2008 onwards)

¹⁵ www.travel-voyage.consilium.europa.eu

¹⁶ "Presidency diplomatic representation in third countries – First half of 2007" document 16838/1/06 of the Council of the European Union, 23.3.2007.

5.1.5. *Publish measures implementing Article 20 TEC*

The Commission will publish the relevant measures implementing Article 20 TEC on the proposed web-site. It recommends that such measures be published also in the *Official Journal of the European Union*.

- The Commission will publish measures implementing Article 20 TEC on its future web-site (2008 onwards)

5.1.6. *Set up an EU telephone number on consular protection*

The Commission will examine the possibility of providing by 2009 telephone information on consular protection issues, e.g. the contact details of the Member States' consulates or embassies in third countries.

- The Commission will examine the possibility of providing telephone information on consular protection issues (2009)

5.2. **Scope of protection for Union citizens**

It emerged during the public consultation that Article 20 TEC is subject to different interpretations. Some consider it to cover both diplomatic and consular protection whereas others claim that its scope is confined to consular protection. Diplomatic protection consists of the invocation by a State of the responsibility of another State for an injury caused to a natural or legal person that is a national of the former State¹⁷.

It appears that the majority of cases in which EU citizens need help in third countries concern consular protection¹⁸. In the time-frame covered by this Action Plan, the Commission will therefore concentrate on improving consular protection of Union citizens in third countries. This is without prejudice to possible future action in the area of diplomatic protection.

5.2.1. *Ensure that all EU citizens have similar levels of protection*

It emerged during the public consultation that the extent of consular protection varies between Member States. Discrepancies may deprive Article 20 TEC of its full effect. The Commission will examine Member States' legislations and practices on consular protection and assess the extent and nature of these discrepancies.

- In cooperation with Member States, the Commission will assess the extent and nature of discrepancies in legislations and practices in the field of consular protection (2008 onwards).

¹⁷ See full text of draft Article 1 of the UN Report of the International Law Commission 2006 (A/61/10).

¹⁸ Consular protection is the provision of support and assistance by a state to citizens abroad, either its nationals or those nationals to whom it has agreed to provide assistance. It can be provided by consular or diplomatic authorities.

5.2.2. *Protection to Union citizens' family members who are third country nationals*

It is estimated that approximately 6 million Union citizens are married to third country nationals¹⁹. The lack of protection for third-country nationals who are members of an EU citizen's family can cause great difficulties and distress when citizens and their families are in trouble. Certain Member States already provide for protection to citizens' family members who are third country nationals, while others do not, or only do so on a discretionary basis. In order to strengthen Union citizens' right to protection, the Commission will examine the possibility of providing consular protection under Article 20 TEC to Union citizens' family members. This would be consistent with Community legislation in the area of free movement of Union citizens²⁰. Several questions require further examination, such as the definition of family members and the issue of dual nationality.

- The Commission will examine the possibility of ensuring consular protection to Union citizens' family members who are third country nationals (2009)

5.2.3. *Protection for the identification and repatriation of remains*

At a time of great distress, complex and expensive administrative formalities on the identification and repatriation of the dead make a difficult situation worse. The public consultation showed wide agreement on the need to simplify the often complex and expensive administrative procedures for the identification and repatriation of remains.

In this context, the Commission notes the overall positive experience of the 15 Member States which are contracting parties to the 1973 Council of Europe Convention on transfer of corpses²¹. The Commission recommends that the remaining 12 Member States accede to this instrument. Ratification by all Member States should take place as soon as possible.

This could create a strong common platform to act at multilateral level to consider how to simplify procedures for the repatriation of remains from third countries.

- The Commission will recommend the Member States that have not yet acceded to the 1973 Council of Europe Convention to do so (2008)
- The Commission will consider how best to simplify procedures for repatriation of remains from third countries at multilateral level (2009)

5.2.4. *Consider the need to simplify the procedures for financial advances*

The Green Paper's suggestion to simplify procedures for financial advances (Article 6 of Decision 95/553/EC) met with mixed reactions. Some Member States

¹⁹ See Impact Assessment, point 5.3.

²⁰ See e.g. Directive 2004/38/EC (OJ L 158, 30.4.2004, p. 77).

²¹ Agreement on the Transfer of Corpses, Strasbourg 26.10.1973. The convention has to date been ratified by 21 States, including 15 Member States.

considered that the existing procedures function well, while others favour a simplification and/or the creation of a compensation system.

The "Guidelines on Consular Protection" advocate that Member States reimburse the assisting State in a pragmatic way. In cases of repatriation, Member States are encouraged to reimburse each other on a pro-rata basis; the requesting Member State pursues the payment from its nationals. The Commission will examine further whether the existing procedures are satisfactory.

The possibility of setting up a compensation system between Member States will be examined. It could provide for Member States to be reimbursed for the costs incurred in providing consular protection to EU citizens of other Member States. The system should be administratively simple and efficient.

- The Commission will consider the need to simplify the procedures for financial advances (2009)
- The possibility of setting up a compensation system between Member States will be examined (2009)

5.3. Structures and resources

Several Member States use co-location arrangements²² in third countries as a means to bring down costs and improve coordination. In Dar es Salaam and Abuja, the Commission delegations share premises with certain Member States. Each partner owns and pays its part of the building and the common costs are shared on a pro-rata basis.

The creation of common offices, available to all EU citizens, would compensate for the limited consular presence in third countries and these offices could be housed together with Commission delegations. The costs should be shared pro-rata between the participating Member States building on existing arrangements. In addition to the benefits which could derive from co-location (cost-saving and enhanced mutual cooperation), the common offices would function on the basis of a clear and transparent system of mutual representation. This system would constitute a step towards increased protection of EU citizens in need since it would function at all times, and not just for extraordinary events, such as conflicts and natural disasters. In this sense, it would complement the "Lead State" framework.

The Commission will examine the possibility of setting up, in cooperation with Member States and as a pilot project, a common office in a third country where few Member States are represented. The Commission will first examine the functions, organisation, resources, financing and burden-sharing of the pilot project. A system of deputising already exists, in particular in the field of the common visa policy where significant progress has been made through the Common Consular Instructions and the inauguration of the first EU "Common Visa Application Centre"

²² This is the case e.g. in Abuja, Almaty, Ashgabat, Dar es Salaam, Pyongyang, Quito, Reykjavik, Minsk and Chisinau.

in Moldova. The functions of the Common Visa Application Centre are currently very different from those of the envisaged common offices. However, in the long term, it could be envisaged to merge the two concepts into common offices which would perform a wide range of consular services, including the handling of visa applications.

Following an evaluation of the pilot project, the common offices could be expanded to other areas of the world.

- The Commission will propose to set up a common office in cooperation with Member States to be co-located with the Commission delegation in one region as a pilot project to be evaluated (2008)

5.4. Exchange of best practices and training

The public consultation confirmed the need to discuss common problems, promote the exchange of best practices and facilitate exchange of information between different actors. The Commission organised a seminar at the end of 2007, the results of which will serve as a basis for future action in this area.

- The Commission has organised a seminar to identify common problems and needs in this area (2007) with a view to facilitating the exchange of best practices and training (2008 onwards)

5.5. The consent of third country authorities

The requirement to obtain the consent of third countries is a general rule of international law. Article 20 TEC provides that Member States shall "start the international negotiations required to secure this protection". It has been argued that a unilateral notification to the receiving State could suffice in accordance with Article 8 of the Vienna Convention on Consular Relations²³ However, the explicit consent would enhance legal certainty and give European citizenship concrete meaning also vis-à-vis third countries.

Subject to the flexibility needed to take account of the specific circumstances of each negotiation and deal with this issue on a case by case basis, the Commission recommends Member States to include a consent clause in future bilateral agreements with third countries. Similarly, the Commission intends to propose to include a consent clause in future "mixed" agreements concluded by the Community and its Member States with third countries.

In the longer term, the Commission will also consider the possibility of obtaining the consent of third countries to allow the Union to exercise its protection through the Commission delegations. Although the Member States have the primary responsibility for ensuring protection to their citizens, the delegations could, where

²³ This Article reads: "Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State".

authorised by the Council, exercise protection in matters falling under Community competence in line with the case-law of the Court of First Instance²⁴.

- The Commission recommends that Member States negotiate a consent clause in bilateral agreements with third countries to ensure the protection of Union citizens by diplomatic and consular authorities (2007)
- The Commission intends to propose to negotiate a consent clause in future "mixed" agreements with third countries to ensure the protection of Union citizens by diplomatic and consular authorities (2008 onwards)
- The Commission will consider the possibility for the Union to exercise its protection through the Commission delegations in cases falling under Community competence (2009)

6. ACTION PLAN 2007-2009

Actions for 2007:

- Recommend that Member States print Article 20 TEC in passports
- Pursue information campaign
- Organise a seminar with Member States to explore their needs for exchange of best practices
- Recommend Member States to negotiate a "consent clause" in bilateral agreements with third countries

Actions for 2008:

- Set up an EU web-site on consular protection
- Recommend that Member States accede to the 1973 Convention on transfer of corpses
- Assess the extent and nature of discrepancies in Member States' legislations and practices in the field of consular protection
- Follow-up to the seminar
- Propose to set up a common office in a third country as a pilot project in cooperation with Member States
- Propose to negotiate a "consent clause" in "mixed" agreements with third countries

²⁴ Case T-572/93.

Actions for 2009:

- Provide telephone information on consular protection issues
- Examine the possibility of ensuring consular protection to Union citizens' family members who are third country nationals
- Consider how to simplify procedures for the repatriation of remains at multilateral level
- Consider the need to simplify the procedures for financial advances
- Examine the possibility of setting up a compensation system
- Consider the possibility for the Union to exercise protection through the Commission delegations in cases falling under Community competence