



Brussels, 2.9.2022  
COM(2022) 437 final

**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**

## 1. Introduction

European Union (EU) citizenship, ‘destined to be the fundamental status of nationals of the Member States’<sup>1</sup> of the EU, offers protection to EU citizens when they travel or reside abroad. As part of EU citizenship rights, Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union (TFEU) provide that every EU citizen is entitled, in the territory of a third (i.e. non-EU) country in which the Member State of which they are a national is not represented, to protection by the diplomatic and consular authorities of any Member State, on the same conditions as the nationals of that Member State.

The fundamental right for unrepresented citizens to receive consular protection from represented Member States on the same conditions as their own nationals<sup>2</sup> is an expression of the external dimension of EU citizenship, a manifestation of Member States’ solidarity, and strengthens the identity of the EU in third countries. It protects EU citizens who find themselves in difficulty abroad. Its importance is most clearly felt in the context of large-scale crisis situations, natural or caused by human activity, which may require urgent relief and repatriation of large numbers of EU citizens.

On 20 April 2015, the Council adopted Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented EU citizens in third countries (the ‘Directive’)<sup>3</sup>, the first piece of EU secondary law adopted in this field<sup>4</sup>. The Directive’s purpose is to: (i) establish in EU law the applicable coordination and cooperation measures necessary to facilitate day-to-day consular protection for unrepresented EU citizens; (ii) enhance legal certainty regarding the scope, conditions and procedures related to consular protection; and (iii) optimise the use of Member States and EU resources including in times of crisis. Member States had to transpose the Directive into national law by 1 May 2018.

Over the last few years, several events have posed challenges relevant to consular protection, in particular the COVID-19 pandemic, the crisis in Afghanistan, and Russia’s war of aggression against Ukraine. These crises demonstrated the benefits of consular protection to EU citizens, as part of the rights flowing from EU citizenship<sup>5</sup>.

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<sup>1</sup> Judgment of 18 January 2022, *Wiener Landesregierung (Révocation d’une assurance de naturalisation)*, C-118/20, EU:C:2022:34, paragraph 38 and case-law cited.

<sup>2</sup> See Article 46 of the Charter of Fundamental Rights of the European Union (the ‘Charter’).

<sup>3</sup> OJ L 106, 24.4.2015, p. 1.

<sup>4</sup> Until the entry into force of the Lisbon Treaty, the right related to consular protection was governed by Article 20 of the Nice Treaty and, prior to that, Article 8c of the Maastricht Treaty, which left it to Member States to ‘establish the necessary rules among themselves’ to secure this protection. To comply with Article 8c and considering that common protection arrangements would ‘strengthen the identity of the Union as perceived in third countries’ and the ‘idea of European solidarity’, Member States adopted 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). The Lisbon Treaty replaced this method of implementation. Under the new approach, the Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, was empowered to adopt directives establishing the coordination and cooperation measures necessary to facilitate protection by the diplomatic or consular authorities of any Member State to EU citizens in the territory of a third country in which the Member State of which that person is a national is not represented. In view of the legal framework established by the Lisbon Treaty, the Directive also repealed Decision 95/553/EC.

<sup>5</sup> See for comprehensive information the article “Good stories on consular support for EU citizens stranded abroad” at [https://www.eeas.europa.eu/eeas/good-stories-consular-support-eu-citizens-stranded-abroad\\_en](https://www.eeas.europa.eu/eeas/good-stories-consular-support-eu-citizens-stranded-abroad_en).

Consular protection is prone to become more relevant in the future as the frequency, severity and duration of crises could increase, notably the crises related to global warming, causing unavoidable multiple climate hazards and presenting multiple risks to ecosystems and humans<sup>6</sup>. This shows the need to ensure that the infrastructure is in place to give effect to EU citizens' rights related to consular protection in practice. It also shows the need to reinforce the EU consular protection legal framework, in particular to improve crisis preparedness and to take into account the reduced overall EU consular presence of Member States further to the United Kingdom's (UK) withdrawal from the EU.

In this regard, the UK's withdrawal from the EU also affected the territorial scope of application of the Directive, by creating a new third country, which is home to at least 5.5 million EU citizens<sup>7</sup>.

As mentioned in the 2020 EU citizenship report<sup>8</sup>, the 2021 Commission work programme<sup>9</sup> announced a review of EU rules on consular protection to improve the EU's and Member States' preparedness and capacity to protect and support EU citizens in times of crisis. This would involve strengthening the EU's supporting role and making best use of its unique network of EU Delegations<sup>10</sup>.

In addition, the Strategic Compass for Security and Defence<sup>11</sup> submitted by the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission (HR/VP) and endorsed by the Heads of State and of Government of the EU<sup>12</sup>, states that '[t]he EEAS crisis response mechanisms, our consular support and field security will also be reviewed and strengthened to better assist Member States in their efforts to protect and rescue their citizens abroad, as well as to support our EU Delegations when they need to evacuate personnel'<sup>13</sup>.

Moreover, in its June 2022 Communication on the follow up measures to the Conference on the Future of Europe, the Commission announced that it would consider new areas of actions such as 'making European citizenship more tangible to citizens, including by

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<sup>6</sup> See report of Intergovernmental Panel on Climate Change "Climate Change 2022, Impacts Adaptation and Vulnerability" page 15.

<sup>7</sup> Considering only beneficiaries of the EU-UK Withdrawal Agreement (i.e., EU citizens who have lived in the UK before 31 December 2020 and continue to do so) to the exclusion of EU citizens who have moved to the UK after 31 December 2020. In the UK, all Member States are represented and there is an EU Delegation: the possibility of an EU citizen to be unrepresented is very limited. Local consular cooperation meetings are regularly convened locally, and consular crisis contingency planning is ongoing. Measures taken to adapt to the UK becoming a third country from the Directive's perspective include adapting joint frameworks. Consular protection is not covered by the EU-UK Withdrawal Agreement nor by the EU-UK Trade and Cooperation Agreement.

<sup>8</sup> [EU Citizenship Report 2020](#) – Empowering citizens and protecting their rights.

<sup>9</sup> COM(2020) 690 final.

<sup>10</sup> This initiative is subject to relevant better regulation requirements and has not yet been presented.

<sup>11</sup> A Strategic Compass for Security and Defence, for a European Union that protects its citizens, values and interests and contributes to international peace and security, [https://www.eeas.europa.eu/sites/default/files/documents/strategic\\_compass\\_en3\\_web.pdf](https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf).

<sup>12</sup> EU 7371/22.

<sup>13</sup> Following on this call an EEAS Crisis Response Centre (CRC) was created in July 2022 as the EEAS permanent crisis response capability, liaising with all EU Institutions', Member States' and partners' crisis cells.

reinforcing the rights attached to it and by providing reliable and easily accessible information about it'<sup>14</sup>.

## **2. Scope of the implementation and application report**

In accordance with Article 19(1) of the Directive<sup>15</sup>, the Commission is to submit a report to the European Parliament and the Council on the implementation and application of the Directive by 1 May 2021. The delivery of this report was postponed in order to take into account recent developments with major impact on consular protection, such as the lessons learned from the large-scale repatriations made necessary by the outbreak of the COVID-19 pandemic, the crisis in Afghanistan, and Russia's war of aggression against Ukraine<sup>16</sup>.

The description and analysis contained in this report are based primarily on information provided by Member States, the EEAS and EU Delegations, supplemented by external studies<sup>17</sup> and direct feedback from EU citizens<sup>18</sup>.

The report focuses on the measures Member States have taken to implement and apply the Directive. It assesses whether Member States implemented the Directive within the specified timeframe, and whether national legislation and practice achieve the objectives and fulfil the requirements of the Directive. In addition, pursuant to Article 19(2) of the Directive, this report also considers the possible need for additional measures, including, where appropriate, amendments to adapt the Directive with a view to further facilitate the exercise of EU citizens' rights related to consular protection<sup>19</sup>.

## **3. Purpose and main elements of the Directive**

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

In line with Article 23 of the TFEU, the Directive refers to consular protection in third countries being provided by represented Member States to unrepresented EU citizens 'on

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<sup>14</sup> Annex to COM(2022) 404 final.

<sup>15</sup> All future references to articles concern the Directive unless stated otherwise.

<sup>16</sup> The reporting period therefore runs from 1 May 2018, when Member States were required to transpose the Directive into national law, to the date of publication of this report.

<sup>17</sup> Forthcoming "Study to support the preparation of an impact assessment on a potential EU policy initiative on the coordination & cooperation measures to facilitate the exercise of the EU citizens' right to consular protection", Tetra Tech Europe, Asterisk Research & Analysis and VVA, and "Consular protection of unrepresented EU citizens in third countries effectiveness and future of the EU citizenship right to consular protection outside the EU", EU-CITIZEN: Academic Network on European Citizenship Rights.

<sup>18</sup> *Flash Eurobarometer 485: EU Citizenship and Democracy*, February/March 2020, [https://data.europa.eu/data/datasets/s2260\\_485\\_eng?locale=en](https://data.europa.eu/data/datasets/s2260_485_eng?locale=en).

<sup>19</sup> Any legislative proposal would be subject to the relevant better regulation requirements, such as evaluation and impact assessment if relevant.

<sup>20</sup> Recital 4 and Article 1(1) of the Directive.

the same conditions' as to their own nationals. This means that the Directive does not harmonise the level of assistance Member States are required to provide to unrepresented citizens. Rather, unrepresented EU citizens are entitled to *equal treatment*, that is, to receive the same level of protection the assisting Member States would provide to its own nationals in the same situation. In practice, this means that unrepresented EU citizens may receive different types of protection and different levels of service depending on the Member State from which they seek protection, due to the differing protection provided by Member States to their own nationals.

The Directive contains the following elements:

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

#### **4. General assessment**

##### **4.1. Transposition of the Directive into national law**

Pursuant to Article 17, Member States were required to transpose the Directive into national law by 1 May 2018.

At the date of expiry of the transposition period, 10 Member States had not communicated the necessary measures to the Commission. The Commission engaged with the relevant Member States to ensure full transposition of the Directive and is still in dialogue with Member States on the implementation of specific elements of the Directive.

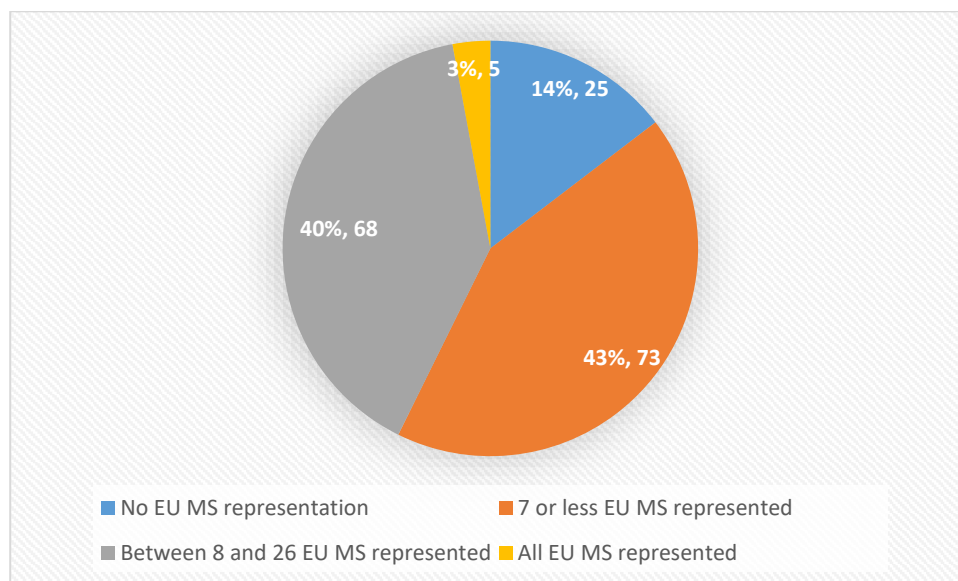
The Commission will continue to closely monitor the situation and take the necessary steps to ensure conformity with the Directive throughout the EU, including, where and if necessary, by initiating infringement proceedings under Article 258 TFEU.

## 4.2. Application of the Directive and potential gaps

Since the date of its entry into application, the Directive has proven to be a useful tool to ensure protection and support to EU citizens, in particular in the context of the outbreak of the COVID-19 pandemic in 2020. However, a number of specific gaps and new needs pose challenges to EU citizens.

First, the Directive starts from the premise that unrepresented EU citizens can always turn to another Member State when seeking consular protection in a third country. However, there are **many countries where no Member State has an in-country embassy or consular post**. In addition, in those countries where only few Member States are present, the **pressure on those Member States' consular networks may be high, particularly in crisis situations**. In particular, there are 25 third countries where no Member State has an in-country embassy or consular post<sup>21</sup>. In five of these countries, the EU Delegation is the only EU diplomatic presence<sup>22</sup>. However, in many more third countries, the consular or diplomatic presence by Member States is very low, and thus at high risk of being overwhelmed if a larger-scale crisis occurs. For example, in more than half of third countries, a maximum of seven Member States are represented, often with limited resources. EU Delegations, present in most of the third countries concerned, could provide useful additional support to Member States, if required, to assist unrepresented EU citizens.

**Figure 1: EU Member States' representation in third countries**



Second, the **support provided by EU Delegations** to EU citizens at Member States' request goes beyond the terms set out in Article 11 of the Directive<sup>23</sup>, which mainly

<sup>21</sup> These are Afghanistan, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bhutan, Cook Island, Dominica, Eswatini, Grenada, Guyana, Kiribati, Lesotho, Liechtenstein, the Maldives, Marshall Islands, Micronesia, Nauru, Palau Republic, Saint Kitts and Nevis, St Vincent and the Grenadines, Samoa, Solomon Islands, Tonga, Tuvalu. The number of third countries where no Member State has an in-country embassy or consular post has increased following the UK's withdrawal from the EU.

<sup>22</sup> Afghanistan, Barbados, Eswatini, Guyana and Lesotho.

<sup>23</sup> In this context, see also Article 221(2) of the TFEU and Article 5(10) of the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU) OJ L 201/30 of 3 August 2010.

covers coordination and logistical support<sup>24</sup>. This is notably the case in third countries where no Member State is represented and EU Delegations have been providing assistance to EU citizens in need. This has also been the case in crisis situations where EU Delegations have often taken an active role in assisting the Member States in providing assistance to EU citizens.

More importantly, since the date the Directive entered into application, EU Delegations have been essential for the functioning of local and crisis cooperation. Following the outbreak of the COVID-19 pandemic, EU Delegations, the EEAS and Commission services including its Emergency Response Coordination Centre (ERCC) supported the Member States in organising the unprecedented joint exercise to repatriate about 600 000 EU citizens affected by travel restrictions across the world, notably through the Union Civil Protection Mechanism (UCPM)<sup>25</sup>. While this demonstrated the benefits of consular protection as part of the EU citizenship rights, it also underscored the need to reinforce the existing EU framework for Member States and the EU to be able to face, in a more effective manner, possible similar challenges in the future. In its interim assessment of the “COVID-19 lessons learned”, the German Presidency of the Council<sup>26</sup> considered that the repatriation exercise showed that ‘the existing instruments provide a solid foundation to further enhance coordinated consular crisis response’<sup>27</sup>.

The description of the role of EU Delegations in the Directive seems, on all available evidence, too narrow to completely reflect the support they provide on the ground and their actual engagement, in particular during times of crisis. EU Delegations report being asked, on a regular basis, to act directly to support citizens in need of assistance, well beyond the mandate envisaged for them when the Directive was adopted<sup>28</sup>. However, this

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<sup>24</sup> “Union delegations shall closely cooperate and coordinate with Member States’ embassies and consulates to contribute to local and crisis cooperation and coordination, in particular by providing available logistical support, including office accommodation and organisational facilities, such as temporary accommodation for consular staff and for intervention teams. Union delegations and the EEAS headquarters shall also facilitate the exchange of information between Member States’ embassies and consulates and, if appropriate, with local authorities. Union delegations shall also make general information available about the assistance that unrepresented citizens could be entitled to, particularly about agreed practical arrangements if applicable.”

<sup>25</sup> Decision 1313/2013/EU states that the UCPM may “be used to provide civil protection support to consular assistance to the citizens of the Union if requested by the consular authorities of the Member States concerned”. The UCPM co-financed 408 repatriation flights from 85 third countries, organised by 19 Member States, 2 Participating States and the UK (still part of the UCPM during the transition period), bringing back to Europe 100,313 people, of which 90,060 EU citizens).

<sup>26</sup> ST 13613/20.

<sup>27</sup> In this context, see also the Council conclusions on enhancing preparedness, response capability and resilience to future crises of 23 November 2021 where the Council stated that ‘Many recent lessons learned derive from the COVID-19 pandemic. Despite shortcomings, the EU has coped well, thanks to coordination and solidarity. While exposing gaps in terms of preparedness and response to cross-sectoral crises, our response to the pandemic has proven the necessity and added value of working together. The use of EU consular cooperation and coordination for the successful repatriation by Member States with support from the EEAS and Union Civil Protection Mechanism (UCPM) of EU nationals stranded abroad because of emergency travel restrictions (...) underlines where relevant the importance of consular coordination and cooperation during crises and the need to draw lessons from the response to the COVID-19 outbreak and other crises, and awaits the presentation of a Commission proposal in 2022 on a revision of the EU consular protection directive.’ (<https://data.consilium.europa.eu/doc/document/ST-14276-2021-INIT/en/pdf>).

<sup>28</sup> As examples of recent direct provision of assistance to EU citizens by an EU Delegation we can cite an EU citizen in Afghanistan in dealing with travel documents and assistance over the rescue of an EU citizen whose boat went adrift in a location 100 km from Somalia.

situation is not ideal as it fails to provide the necessary legal certainty. Legal clarity and certainty regarding such situations could be improved, for example, by empowering EU Delegations to act when needed, at the request of Member States<sup>29</sup>.

Third, the Directive is silent regarding **consular protection of certain vulnerable groups among unrepresented citizens**. This may include demands for consular protection by pregnant women, unaccompanied minors, persons with reduced mobility, persons with disabilities, or individuals subject to discrimination on any ground provided for in Article 21 of the Charter. Moreover, the Directive does not outline a specific regime for the consular assistance of victims of crime, which may include victims of domestic and gender-based violence. Access to adequate consular protection, especially in times of crisis, may be more complicated for individuals from these groups given their special needs. Whereas Member States prioritise assistance to unrepresented vulnerable groups in practice, legal certainty could be improved. This could possibly involve amendments to the Directive clarifying the special situation of vulnerable unrepresented citizens.

Fourth, further steps could be taken to ensure that **EU citizens are aware of their rights related to consular protection** and have access to **reliable and up-to-date information enabling its full exercise**. Such information should include the contact details of other Member States' embassies and consulates, honorary consuls able to provide consular protection and arrangements between Member States. While the Directive includes references to the provision of information in several articles, it does not include a dedicated article on communication relayed by EU channels and the provision of relevant information to EU citizens covering all the above-mentioned aspects. Such an addition would be beneficial to ensure that a minimal and consistent level of information is provided to citizens further facilitate the exercise of EU citizens' rights related to consular protection.

In this regard, Article 2(2) provides that Member States need to inform unrepresented citizens regarding the extent to which honorary consuls are competent to provide protection in a given case. In addition, Article 7(2) states that Member States and the EU need to publicise existing practical arrangements between Member States to ensure transparency for unrepresented citizens. However, Member States do not always take specific steps to inform unrepresented citizens on these particular aspects and the collection of information at EU level, to disseminate it via EU channels, is not comprehensive. As a result, unrepresented EU citizens may not have easily accessible and/or adequate information on the practical arrangements. It follows that comprehensive and effective information requirements would improve overall consular protection. Complementing the steps taken by Member States<sup>30</sup>, the EU could play a stronger role in that regard by streamlining the information and/or providing a central point of access and/or make further use of its global and local communication channels to relay information.

There is also room for greater efficiency in the flow of information during times of crisis between the EEAS, EU Delegations, Member States and their representations, and, where applicable, the Commission. Improving the information flow to citizens is equally crucial. For example, local consular cooperation could agree on a central source of

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<sup>29</sup> See footnote 27.

<sup>30</sup> Several EU Member States inform their citizens of their rights related to consular protection as EU citizens, for example through references on passports, official websites, and information material for citizens living or traveling abroad.



information which would serve as the primary tool of communication with unrepresented EU citizens in crisis situations in each third country. The channel(s) could either be managed by EU Delegations or by Member States appointed to this role .

Lastly, Member States should provide **access to an effective legal remedy and redress** to unrepresented EU citizens, to ensure unrepresented citizens have an avenue to seek legal remedy and redress when their rights related to consular protection have been violated<sup>31</sup>. In order to further facilitate the exercise of EU citizens' rights related to consular protection, it could possibly be considered to introduce an **explicit legal basis in the Directive for the processing of personal data of EU citizens** in particular in crisis situations. In addition, in view of the increasing number and scale of crises, greater use of foresight mechanisms for crisis-preparedness is needed, especially given the human cost involved in consular protection failure.

## 5. Specific points of assessment

The following section evaluates the implementation and application of Chapter 1 of the Directive (general provisions and scope), Chapter 2 (coordination and cooperation measures) and Chapter 3 (financial provisions).

### 5.1. General provisions and scope

#### 5.1.1. Honorary consuls (Article 2(2)).

Pursuant to Article 2(2), Member States may decide whether the Directive is to apply to the consular protection provided by honorary consuls. The Article requires Member States to ensure that unrepresented citizens are duly informed about such decisions and the extent to which honorary consuls are competent to provide protection in a given case.

As a result of the Directive's flexibility in this regard, the implementation of this provision by Member States varies. Some Member States explicitly include the provision of consular protection to unrepresented citizens by honorary consuls in their legislation. The national legislations of some of these Member States further specifies that honorary consuls can provide such assistance to unrepresented citizens only if they have been expressly instructed to do so by the Ministry of Foreign Affairs. Other Member States expressly specify in their legislation that the Directive does not apply to honorary consuls, or else did not adopt an explicit provision on this matter.

Regarding the application of Article 2(2) in practice, some of the Member States without specific legal provisions on the matter may involve their honorary consuls on a case-by-case basis, including by enabling them to participate in local cooperation meetings where this is agreed at local level. Conversely, in some of those Member States where national law allows honorary consuls to provide consular protection, honorary consuls do not take such a role in practice. Overall, it is worthwhile noting that in most Member States, honorary consuls are rarely or never involved in the provision of consular protection to unrepresented EU citizens. Only in one Member State are honorary consuls involved to a moderate degree (10-25% of all consular protection provided to unrepresented EU citizens). Reasons mentioned by Member States for not extending the scope of the Directive to honorary consuls include their limited powers in general (also vis-à-vis their own nationals), the limited services they can provide (for instance most of them cannot

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<sup>31</sup> See article 47 of the Charter of Fundamental Rights.

issue emergency travel documents), and their limited capacity<sup>32</sup>. In this regard, in the large majority of Member States, the consular powers assigned to honorary consuls are more restricted than those of ordinary consular officials.

Member States do not always take specific measures to inform citizens and other Member States about the extent to which honorary consuls are competent to provide protection in a given case. For example, it may not be clear whether or not an honorary consul of a Member State is empowered to issue emergency travel documents to unrepresented EU citizens. This may create uncertainty.

In conclusion, honorary consuls generally have limited powers and are mostly involved in consular protection in exceptional circumstances. Nevertheless, in crisis situations their role may be essential. In this regard, the way in which Member States inform each other and EU citizens about the existence of honorary consuls and the extent to which they are able to provide consular protection to unrepresented EU citizens could be improved.

#### 5.1.2. Unrepresented citizens in third countries (Articles 4 and 6)

Articles 4 and 6 provide for a definition of ‘unrepresented citizen’. This definition covers every citizen holding the nationality of a Member State that is not represented in a third country, i.e. it has no embassy or consulate established there on a permanent basis, or it has no embassy, consulate or honorary consul there which is effectively in a position to provide consular protection in a given case.

Accordingly, when a citizen’s Member State of nationality has an embassy, consulate or honorary consul established in a third country, but these are for any reason unable to provide the protection the citizen concerned would otherwise be eligible to receive according to national law or practice in a given case, that citizen should also be considered ‘unrepresented’. As stated in Recital 8 of the Directive, accessibility and proximity should also be taken into consideration in this context. For example, a citizen who seeks consular protection from the embassy or consulate of another Member State should not be redirected to the embassy, consulate or honorary consul of his or her own Member State of nationality when it is not possible, due to local circumstances (e.g. as a result of disruptions to the transport system due to a natural disaster) or lack of resources, for the citizen to safely reach or be reached by those latter instances in a way allowing him or her to receive consular protection. This will necessarily require a case-by-case assessment. The notion of absence of representation should be interpreted in a way that ensures the effectiveness of the right of unrepresented citizens to be protected by another Member State’s embassy or consulate on the same conditions as to its own nationals, taking into account the circumstances of each particular case, especially crisis situations. As explained below, the Commission considers that there could be a need to further clarify and ensure the legal certainty of situations where an EU citizen can be deemed to be unrepresented because there is no embassy, consulate or honorary consul in a third country which is effectively in a position to provide consular protection.

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<sup>32</sup> A new format for the EU emergency travel document will apply 36 months after the adoption of forthcoming additional technical specifications for emergency travel documents established by Council Directive (EU) 2019/997. The new format will require the use of equipment for printing the uniform format for visas. It may therefore impact the possibility to provide this type of consular protection assistance in places where Member States’ presence is limited.

Most Member States have transposed the definitions included in Articles 4 and 6<sup>33</sup>.

Overall, cases in which Member States refuse to provide consular protection to an EU citizen holding the nationality of another Member State because he or she is not considered to be unrepresented appear to be very rare.

Most Member States have reported being able to determine the scope of the Directive with regard to ‘unrepresented citizens’ in most cases. However, some Member States have voiced difficulties in determining whether an existing embassy, consulate or honorary consul is effectively in a position to provide consular protection. In particular, when determining whether consular representations can effectively provide consular protection in a third country, Member States interpret concepts such as ‘accessibility’ and ‘proximity’ differently. While some Member States consider the issue of remoteness or capacity as a factor in the assessment, others do not. Some Member States noted difficulties in determining to what extent lack of proximity could give rise to a lack of representation. Some Member States expect citizens to make an effort to access representations of their Member State of nationality, including over larger distances. Member States have reported that in case of doubt, they directly contact the Ministry of Foreign Affairs of the Member State of nationality and will, as a rule, defer to the assessment by that Member State in determining whether an individual should be considered as ‘unrepresented’. Generally, most Member States take the view that the threshold for assessing whether an individual is unrepresented varies depending on the nature and urgency of the situation. In particular in crisis situations, where Member States are faced with urgent requests for assistance, it can be very difficult, for them to confirm whether a citizen is unrepresented in a timely manner.

In view of the above, there may be scope to further clarify the concept of ‘unrepresented citizen’, notably for situations where the Member State of nationality has no embassy, consulate or honorary consul that is effectively in a position to provide consular protection. Further clarifications, including as regard crisis situations, would facilitate the exercise of EU citizens’ rights related to consular protection. This could include, for example, a ‘presumption of unrepresentedness’ in times of crisis, linked to the urgency of the request for assistance.

#### 5.1.3. Family members of unrepresented citizens in third countries (Article 5)

Pursuant to Article 5, Member States are to provide consular protection to family members, who are not themselves EU citizens and who are accompanying unrepresented EU citizens in a third country, to the same extent and on the same conditions as would be provided to the family members of the citizens of the assisting Member State, who are not themselves EU citizens, in accordance with its national law or practice. As noted in Recital 9 of the Directive, such protection might, depending on the individual circumstances of each case, be necessary to ensure the effectiveness of the right related to consular protection and of the right to respect for private and family life as recognised in Article 7 of the Charter.

Only three Member States reported that they would not provide consular assistance to non-EU family members of unrepresented EU citizens as a matter of principle, given that, in line with their national laws, they are not providing consular protection for the

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<sup>33</sup> The Commission continues to be in dialogue with Member States to verify the full implementation of the Directive.

family members of their own nationals. One of those Member States may provide support to such family members exceptionally in crisis situations, on the same conditions as their own nationals.

In most Member States, the provision of consular protection to non-EU family members of an unrepresented EU citizen is assessed on a case-by-case basis. Depending on the Member State's national law and practice, a family member can be an individual from the immediate family (such as children, spouses or parents) but may also cover extended family (such as siblings, uncles, aunts, cousins, etc.). Similarly, Member States interpret what it means to 'accompany' the unrepresented citizen differently. In practice, first-degree relatives are typically prioritised for assistance. Compared to Member States' practice in non-crisis times, increased protection is provided in times of crisis, depending on and proportional to the gravity and emergency of the crisis situation.

#### 5.1.4. Access to consular protection and other arrangements (Article 7)

Article 7(1) establishes the general principle that unrepresented citizens are entitled to seek protection from the embassy or consulate of any Member State.

However, that does not prevent Member States from entering into bilateral arrangements, as set out in Article 7(2) of the Directive, for the purpose of ensuring the effective protection of unrepresented EU citizens<sup>34</sup>. First, Member States may represent another Member State on a permanent basis as provided for in Article 8 of the Vienna Convention on Consular Relations. Second, Member States' embassies or consulates may, wherever deemed necessary, conclude practical arrangements on sharing responsibilities for providing consular protection to unrepresented citizens. Such arrangements are to be notified to the Commission and the EEAS and publicised by the EU and Member States to ensure transparency.

In cases where a practical arrangement has been concluded, 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, is, pursuant to Article 7(3) of the Directive, required to ensure that the application is redirected 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.

All Member States have concluded such arrangements in some form. In this regard, two issues have been identified which can result in unrepresented EU citizens facing delays or obstacles in receiving the consular assistance they are entitled to.

First, most arrangements lack a sufficient level of publicity to ensure transparency and effective use by unrepresented citizens. Further efforts could entail referencing all permanent arrangements between Member States in a centralised location, to complement locally tailored information. This would help in clarifying which Member State is responsible for assisting the unrepresented citizens of other Member States following a previous arrangement.

There could be scope to further strengthen the obligation for Member States to notify bilateral and practical arrangements to the Commission, the EEAS and EU Delegations

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<sup>34</sup> See also Recital 10 of the Directive.

(so that they can be included on EU communication channels for further publicity), for example by including a timeframe within which the notification should be made. Similar notification requirements could be usefully added regarding travel advice and lists of contacts for Member States' consular networks, including honorary consuls and the extent to which they can provide consular protection, for those Member States that apply Article 2(2).

Second, in some instances, Member States have requested that a bilateral agreement be concluded between the respective foreign ministries before providing assistance to an unrepresented citizen of another Member State, even though the Directive does not include such a requirement. In addition, in some instances, represented Member States refused to provide consular protection to unrepresented citizens arguing that this responsibility would fall, due to bilateral arrangements, to other represented Member States. In this respect, it should be recalled that Article 7 provides that unrepresented EU citizens are entitled to seek protection from the embassy or consulate of any Member State. Moreover, it considers that, in cases where arrangements have been concluded, it is incumbent on the authorities of the Member States approached, not the citizen concerned, to redirect the application to the relevant embassy or consulate.

Overall, there appears to be a lack of clarity and understanding regarding the procedure for redirecting applications from unrepresented EU citizens. In addition, although the Directive allows for bilateral agreements to be put in place between Member States, there seems to be a need to further clarify that this is not a precondition for providing consular assistance to unrepresented EU citizens.

#### 5.1.5. Identification (Article 8)

Article 8(1) requires that applicants seeking consular protection to establish that they are citizens of the EU by producing their passports or identity cards. Under Article 8(2), if the EU citizen is unable to produce a valid passport or identity card, nationality may be proven by any other means, if necessary including verification with the diplomatic or consular authorities of the Member State of which the applicant claims to be a national. Article 8(3) provides that with respect to the family members referred to in Article 5, the identity and existence of the family relationship may be proven by any means, including verification by the assisting Member State with the diplomatic or consular authorities of the Member State of nationality of the EU citizens referred to in Article 8(1).

Most Member States have transposed Article 8 into national law<sup>35</sup>.

The application of this provision appears overall effective, and Member States have not reported major issues in identifying unrepresented EU citizens or their family members seeking consular protection.

#### 5.1.6. Types of assistance (Article 9)

Article 9 enumerates, in a non-exhaustive manner<sup>36</sup>, the most common situations in which unrepresented EU citizens may seek consular assistance from represented Member States:

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<sup>35</sup> The Commission continues to be in dialogue with Member States to verify the full implementation of the Directive.

- arrest or detention;
- being a victim of crime;
- a serious accident or serious illness;
- death;
- relief and repatriation in case of an emergency; and
- a need for emergency travel documents.

In any of those situations, Member States must provide unrepresented EU citizens with whatever assistance they would provide to their own nationals. As a result, the level of support received may differ from one Member State to another.

All Member States provide consular protection in the six situations listed in Article 9 of the Directive. The exact types of assistance that Member States provide in practice seem to vary greatly across Member States and usually takes into account the specific circumstances of each case. Most Member States explicitly mention the six situations provided for in Article 9 in their national law, with the exception of two Member States where the six situations are covered through policy or practice. In addition, several Member States expressly provide for the application of the Directive also in situations other than those listed in Article 9, such as in relation to unaccompanied minors.

Evidence suggests that the need for an emergency travel document is the main case of assistance provided by Member States to citizens of other Member States during non-crisis situation, with queries and information requests second. This is one of the reasons for the adoption of Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP<sup>37</sup>, which is expected to apply as of 2025. In 2020, most cases of assistance provided to unrepresented EU citizens were for relief and repatriation in case of emergency, given the context of the COVID-19 crisis. It is estimated that at least 500 EU citizens and their family members evacuated from Afghanistan were unrepresented.

Although the situation list described above is non-exhaustive, several EU Delegations have reported cases of unrepresented EU citizens that have been denied consular protection by a Member State. In such cases, the reason cited by the Member State for its refusal was that the assistance requested was not one of the listed types, even though its own national legislation required it to provide such assistance to its own nationals.

It is important to note that the types of assistance mentioned in Article 9 are not exhaustive, meaning that unrepresented EU citizens are also entitled, in a non-discriminatory manner, to other types of consular protection assistance that Member States provide to their own nationals.

It follows from these findings that clarity as to the consular assistance to be provided by Member States to unrepresented EU citizens could be improved, with a view to ensuring more predictability and legal certainty.

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<sup>36</sup> As noted in Recital 14 of the Directive, '[s]ince the protection needed always depends on the factual situation, consular protection should not be limited to the situations specifically mentioned in this Directive'.

<sup>37</sup> OJ L 163, 20.6.2019, p. 1

## 5.2. Coordination and cooperation measures

### 5.2.1. General rules (Article 10)

Article 10(1) requires Member States to closely cooperate and coordinate with one another and with the EU to ensure protection of unrepresented citizens. Paragraphs 2 and 3 of Article 10 specify the way in which the assisting Member State is to cooperate with the Member State of nationality of the unrepresented citizen when receiving a request for consular protection. Paragraphs 2 and 3 also include requirements for the exchange of information on the request for assistance and the identity of the unrepresented citizen requesting assistance and of any family members to whom consular protection may also need to be provided. The assisting Member State is also to facilitate the exchange of information between the citizen and their Member State of nationality, while the Member State of nationality is responsible for contacts with the family members of the citizen, as well as any other relevant persons or authorities. Article 10(4) specifies that Member States are to notify the EEAS through its secure internet site of the relevant contact point(s) in the ministries of foreign affairs.

Most Member States have transposed Article 10 into national law<sup>38</sup>.

Member States reported that cooperation and coordination between them is effective overall. In an overwhelming majority of cases, EU Delegations ensure in practice this coordination, and local consular cooperation meetings usually take place in their facilities. However, a number of issues have been identified. These are set out below.

First, although rare, there have been instances where unrepresented EU citizens requested assistance from another Member State, which then forwarded the request to the nearest embassy of the citizen's Member State nationality in a neighbouring jurisdiction.

Second, in some instances, Member States of nationality have refused to provide information on their citizens to assisting Member States arguing protection of their personal data.

Third, represented Member States are sometimes overwhelmed by the number of individual requests from EU citizens in crisis situations, also due to the limited access of unrepresented Member States to information circulated in local coordination networks. Typically, the embassies and consulates that are the quickest in responding to citizens' requests tend to receive the highest volume of requests over time, and are therefore disincentivised to take prompt action. In these cases, further digitalisation of consular services and enhanced cooperation could reduce pressure on the Member States present in a third country.

Cooperation between Member States regarding the provision of consular protection to unrepresented citizens is overall effective. However, given the situations outlined above, some inefficiencies have the potential to lead to delays or even omissions in unrepresented citizens receiving assistance. Of particular note in this respect are the lack of digital tools, capacity issues notably in times of crisis, and the lack of explicit legal basis for the processing of personal data of EU citizens (including on data transfers). In addition, consular authorities' awareness of the principles and requirements provided for

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<sup>38</sup> The Commission continues to be in dialogue with Member States to verify the full implementation of the Directive.

in the Directive could be improved further to ensure that they live up to their obligation to provide assistance when required.

### 5.2.2. The role of EU Delegations (Article 11)

Article 11 provides that EU Delegations are to closely cooperate and coordinate with Member States' embassies and consulates in order to contribute to local and crisis cooperation and coordination, in particular by providing logistical support and providing information about the assistance that unrepresented citizens could be entitled to. In addition, EU Delegations and the EEAS headquarters facilitate the exchange of information between Member States' embassies and consulates and, if appropriate, with local authorities. Lastly, EU Delegations must also make general information available about the assistance that unrepresented citizens could be entitled to, particularly about agreed practical arrangements if applicable

The mandate of EU Delegations in the field of consular protection is further defined in Article 5(10) of the EEAS Decision, which requires these delegations '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'<sup>39</sup>. This clarifies that EU Delegations are expected to provide support to Member States in assisting both unrepresented and represented EU citizens.

EU Delegations are essential for the functioning of local consular cooperation networks. They play a lead role in chairing or supporting the chair of local consular cooperation meetings, in hosting these meetings, and in coordinating Member States' consular crisis preparedness and response locally. Their role with regard to EU citizens primarily consists in the coordination and establishment of contacts between citizens and the representations of Member States available to provide consular protection. In this regard, the active role of EU Delegations, serving as a focal point for Member States (and in some cases EU citizens) repeatedly goes beyond the requirements of the Directive.

While Member States consider the overall cooperation with, and coordination by, EU Delegations to be effective, many have highlighted the need to strengthen the overall role of EU Delegations. Already today, EU Delegations take a proactive role both in crisis and non-crisis situations, and are often requested by Member States to act beyond their strict remit, notably by providing direct assistance to EU citizens in need, as demonstrated by recent examples.

During the COVID-19 pandemic, almost all EU Delegations were particularly active in the overall coordination of Member States action, including coordinating repatriation flights and exchanging information both with professional representations and honorary consuls. In some cases, as in Fiji, where few Member States maintain a diplomatic presence, the EU Delegation assumed the main role in coordinating the repatriation flights for EU citizens<sup>40</sup>.

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<sup>39</sup> See also Article 221(2) TFEU.

<sup>40</sup> In its Decision of 4 May 2022 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2020 (P9\_TA(2022)0153), the European Parliament " Congratulates the EEAS on its crucial role in the major emergency action to repatriate more than 600 000 Union citizens stranded around the world, while also helping to set up the large-scale humanitarian and assistance



During the 2021 Kabul airlift in Afghanistan, Member States without a presence at Kabul airport turned to the EEAS and the EU Delegation to secure access to the airport and seats on board planes for their citizens. The EEAS and the EU Delegation acted to connect these citizens with colleagues of Member States who were present in Kabul airport.

In Eswatini, during the unrest in the summer of 2021, Member States contacted the EU Delegation, the only EU diplomatic presence in the field, to share information about the presence of their most vulnerable citizens and enquire about the security situation and possible evacuation options. A clarification of the EU Delegations' role in situations where it is the only EU diplomatic representation would have been essential to ensure a possible follow-up on evacuation had the situation presented itself.

In Eritrea, the EU Delegation directly assisted an unrepresented EU citizen by reaching out to the local authorities to ensure transport and hospitalisation, enabling a safe return to Europe.

In the context of Russia's war of aggression against Ukraine, the EU Delegation in Kyiv successfully organised two "diplomatic train" operations by arranging with the Ukrainian Railways to book special wagons on the train from Kyiv to Chelm (Poland). Through this initiative, several hundreds of EU citizens, their family members as well as local agents of the EU Delegation and of Member States embassies were successfully evacuated from Ukraine in two operations organised on 9 March and 14 March 2022.

In June 2022, acting on a request from a Member State, the EU Delegation in Somalia helped with the rescue of an EU citizen whose boat had broken in a location about 100 km from Somalia, Kismayo coast. The EU Delegation engaged with the Jubaland State Authorities, which made available four boats for the successful rescue operation.

The survey of EU Delegations conducted as part of an ongoing impact assessment for a possible review of the Directive<sup>41</sup> showed that citizens already frequently request assistance from EU Delegations (in particular since the outbreak of the COVID-19 pandemic) and that these figures are on the rise<sup>42</sup>.

In addition, the network of EU Delegations in the Caribbean and the EU Delegation in Fiji are among the few EU diplomatic posts in these large regions. The lack of a consular footprint of Member States is particularly critical in the Caribbean, which is prone to natural disasters while also being a tourist hub. Similarly, the EU Delegations in the landlocked countries of Eswatini and Lesotho, as well as the EU Delegations in Barbados and Guyana and, currently, in Afghanistan are the only EU diplomatic presence in these countries.

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operation 'Team Europe' to help partners around the world who were fighting the pandemic with far fewer resources than the Union.

<sup>41</sup> Forthcoming "Study to support the preparation of an impact assessment on a potential EU policy initiative on the coordination & cooperation measures to facilitate the exercise of the EU citizens' right to consular protection", Tetra Tech Europe, Asterisk Research & Analysis and VVA.

<sup>42</sup> Prior to the COVID-19 pandemic, the majority of EU Delegations (c. 48%) responded that they received such requests sporadically / on a yearly basis. Since the beginning of the COVID-19 pandemic, there appears to be a substantial growth in the number of EU Delegations receiving requests for assistance from EU citizens directly: c. 82% of respondents stated they received requests. Furthermore, the frequency of requests also increased: c. 30% of EU Delegations claimed they receive requests on a weekly basis.

Overall, it follows from the above that it could be necessary to clarify and enhance the role of EU Delegations to better reflect their ever more visible role on the ground and ensure legal certainty, including by endowing them with competences to directly assist EU citizens abroad, in certain circumstances and at Member States' request. Further use of the extensive network of EU Delegations would reinforce the support offered to EU citizens who find themselves in need abroad.

There should be room for solutions that are tailor-made to the individual third country and to the individual situation in order to make optimal use of available resources. Solutions with limited budgetary impact should be given priority. For example, the enhanced use of joint consular teams which would bring together EU and Member States consular staff ready to be deployed or sent as reinforcement, notably in response to emergency and crisis situations. Member States' consular staff could also be seconded to specific EU Delegations to reinforce consular expertise in the field in countries with limited consular footprint.

Possible ways to address these developments could include expanding the assisting role of EU Delegations, notably in those third countries where Member States' consular footprint is very small. In this regard, in a Eurobarometer on EU citizenship and democracy from March 2020, more than nine in ten respondents agreed that, if they were in a country outside the EU where their Member State of nationality was not represented, they would like to seek support from an EU Delegation instead<sup>43</sup>.

### 5.2.3. Local cooperation (Article 12)

Article 12 specifies that local cooperation meetings are to include a regular exchange of information on matters relevant to unrepresented citizens. It further specifies that in the context of such meetings, Member States are to agree, wherever necessary, on practical arrangements as referred to in Article 7 to ensure that unrepresented citizens are effectively protected in the third country concerned. Local cooperation meetings are chaired by a Member State representative in close cooperation with the EU Delegation, unless otherwise agreed by Member States.

Overall, local cooperation meetings are useful and efficiently run, although the level and effectiveness of such meetings may vary from one third country to another. Since the outbreak of the COVID-19 pandemic, local cooperation meetings have largely been held remotely. In practice, there does not seem to be a clear hierarchy or designation of meeting chairs (with the EU Delegations increasingly being offered to chair).

For Member States with lightly staffed representations, local coordination is crucial both as a source of information and as a practical tool to solve issues arising in the context of the provision of consular protection. However, as reported by EU Delegations, participation to local consular cooperation meetings is uneven (in particular, in normal times and outside of crisis situations). This may be explained by the difficulty for some lightly staffed representations to participate in all discussions, or for unrepresented Member States to access these local cooperation networks (as given the nature of the discussions, remote participation is not always possible or desirable).

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<sup>43</sup> *Flash Eurobarometer 485: EU Citizenship and Democracy*, February/March 2020, [https://data.europa.eu/data/datasets/s2260\\_485\\_eng?locale=en](https://data.europa.eu/data/datasets/s2260_485_eng?locale=en).

Information discussed during local consular cooperation meetings is not always available or accessible to those Member States not present locally. Although meetings minutes are uploaded onto the EEAS consular online platform (CoOL) in order to facilitate discussion and feedback, EU Delegations could inform unrepresented Member States of the agenda of such meetings in advance to ensure a continuous information flow. While it may not always be necessary and possible to involve permanently and remotely unrepresented Member States with a low number of citizens present in the third country concerned, their involvement in times of crisis is crucial.

In view of the above, additional measures could be envisaged to strengthen information exchange with and participation of unrepresented Member States in the context of local consular cooperation. In addition, the most reliable way of knowing the number of unrepresented citizens in a third country is through the national authorities (at least for permanent residents). Member States should be encouraged to ensure that their citizens have the possibility to register with the authorities of the Member State of nationality when travelling or living in countries where they are unrepresented.

#### 5.2.4. Crisis preparedness and cooperation (Article 13)

Member States represented in a third country are to coordinate contingency plans among themselves and with the EU Delegation to ensure that unrepresented citizens are fully assisted in the event of a crisis. The EU and Member States are to cooperate closely to ensure efficient assistance for unrepresented citizens in the event of an emergency or crisis and are to inform each other of available evacuation capacities in a timely manner where possible.

Article 13(3) of the Directive provides that a ‘lead state’ or the Member State(s) coordinating assistance is in charge of coordinating any support provided for unrepresented citizens, with the support of the other Member States concerned, the EU Delegation and the EEAS headquarters. In addition, it provides that Member States are to provide the lead state or the Member State(s) coordinating assistance with all relevant information regarding their unrepresented citizens present in a crisis. The lead state or the Member State(s) coordinating assistance for unrepresented citizens may seek, if appropriate, support from instruments such as the crisis management structures of the EEAS and the UCPM.

Crisis preparedness and cooperation is highly relevant in particular after the recent crises, allowing the combined capabilities of the EU and its Member States to be deployed for evacuation/repatriation operations, the sharing of analyses and information, and the provision of support to represented and unrepresented EU citizens. The responsiveness, efficiency, and assistance from the EEAS, the relevant EU Delegations and the Commission’s ERCC in supporting cooperation between Member States has been essential during the COVID-19 pandemic, Russia’s war of aggression against Ukraine and other situations of political crisis or (natural) disasters.

In the context of crisis preparedness and cooperation, Article 13 calls for joint contingency planning (**joint frameworks**); exchanges of information between Member States; assigning a coordination role to the lead state (or any other Member State coordinating the assistance); joint consular teams; and potential support from the EEAS (including EU Delegations) and the UCPM. EU Delegations have a leading role in coordinating the preparation of joint frameworks.

The EEAS estimates that about 94 joint frameworks are in place worldwide, and about 20 more are expected to be adopted by the end of 2022<sup>44</sup>. Joint frameworks have been particularly useful already by the mere fact that they raise awareness of the need for crisis preparedness as such. However, they do not exist yet for each third country, and require frequent updates in order to be useful in times of crises. The joint response to the COVID-19 crisis by the EU and its Member States has helped advance cooperation between Member States. In the aftermath of the COVID-19 outbreak, there has been a greater focus on such information sharing and keeping up to date the joint contingency planning. However, the extent to which such planning includes updated information regarding the citizens of the unrepresented Member States in the territory is different in each third country.

The COVID-19 lessons learned assessment reinforced the idea of a larger role for EU Delegations in crisis, including their role in assessing crisis situations. It also highlighted the need review the joint frameworks locally in view of the local experiences acquired during the COVID-19 crisis<sup>45</sup>. What is more, in third countries without Member State presence, the main responsibility for preparing the joint frameworks falls on the EU Delegations. For instance, the EU Delegations in Eswatini and Lesotho already prepared joint frameworks. Similarly, the EU Delegation in Barbados prepared a draft joint framework for the whole Eastern Caribbean which is presently pending input by Member States.

**‘Lead states’** are present in 22 third countries. While the lead state concept is generally viewed favourably, particularly by Member States that are regularly unrepresented, the concept has its practical limitations as in an immediate crisis the lead state may be overburdened. The concept is also less comprehensive in terms of crisis preparedness than the subsequently adopted concept of joint frameworks<sup>46</sup>. In addition, EU Delegations sometimes take on a coordinating role similar to the role a lead state would play. Such overlaps can lead to confusion.

The COVID-19 lessons learned assessment noted the need to review the ‘lead state’ concept in light of the shortcomings observed during that crisis<sup>47</sup>. In particular, it noted that, should the concept be retained, innovative means of support for lead states could be considered in order to ensure fair burden sharing. This could involve increasing the role of the EU Delegations to coordinate an EU response together with the lead state.

**Joint consular teams** have been used by some Member States in previous crises. For instance, the concept proved very effective during the early stages of the COVID-19 pandemic, notably to ease the burden on the represented Member States. Such teams had been set up during the 2018 Football World Cup in Russia and after the earthquake in Indonesia in 2018. However, the concept could be better integrated into the Directive, including by providing for clear rules and procedures for unrepresented Member States to engage with each other more actively in times of crisis and balance out the burden of responsibilities.

The Directive’s recitals provide that the **Union Civil Protection Mechanism** may be relied on as a subsidiary means at the discretion of Member States. During the COVID-

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<sup>44</sup> EEAS internal data.

<sup>45</sup> ST 13613/20.

<sup>46</sup> See EU guidelines on the implementation of the consular Lead State concept (2008/C 317/06).

<sup>47</sup> ST 13613/20.

19 crisis, support from the UCPM was requested an unprecedented number of times (408 flights, 100.313 passengers repatriated on UCPM-financed flights)<sup>48</sup>. Though it offers opportunities to support other consular crisis activities, prior to this extraordinary event, the UCPM was rarely used for consular support. There is a need to facilitate and advise on its further use when repatriations are necessary. Member States should be aware of the possibility and the process to activate the UCPM.

The extent to which the different concepts for crisis preparedness and cooperation referred to in Article 13 of the Directive are used and how they are used varies across third countries. Joint contingency planning is not in place in all third countries and its quality and content is mixed. Similarly, the role of lead state has been taken up in a fairly limited number of third countries. Moreover, Member States do not seem to be fully familiar with the activation of the UCPM for consular purposes, which could point to a need to provide further guidance on how it can be used and adapt it further to respond to practical needs<sup>49</sup>. Finally, although the use of joint consular teams has been limited to date, it seems to have been an effective and efficient tool to alleviate the burden on the represented Member States in times of crisis. Although the Directive makes a reference to the concept, there could be a need to encourage its use and to clarify the concept further if necessary.

In view of the above, regarding a possible review of the concepts referred to by Article 13, it is necessary to take into account the outcome of recent local experiences, including the possibility of assigning a larger role to EU Delegations in crisis preparedness. In particular, crisis preparedness mechanisms are not consistent across all countries: while in some countries coordination responsibilities are defined in joint frameworks, in others the lead state concept is still being used, and when joint frameworks are in place, these are not at the same level of quality. In some third countries where the EU is solely represented by EU Delegations, the main responsibility for preparing the joint frameworks falls on them. In addition, the circumstances when and how the UCPM can be activated are not well known. Moreover, there is no consistency in who is chairing local consular cooperation meetings, and the extent to which unrepresented Member States participate in them varies. Lastly, there is a lack of clarity on how to exchange information on unrepresented EU citizens in line with the General Data Protection Regulation (GDPR) and the Data Protection Regulation for the EU institutions.

### 5.3. Financial procedures (Articles 14 and 15)

Unrepresented citizens are to undertake to repay to their Member State of nationality the cost of consular protection that would have to be borne by nationals of the assisting Member State under the same conditions. Article 14(2) provides that the assisting Member State may request reimbursement from the Member State of nationality of the unrepresented citizen, and that reimbursement is to take place within a reasonable period, not exceeding 12 months. Finally, the unrepresented citizen's Member State of nationality may ask the unrepresented citizen concerned to reimburse the costs concerned. Article 14(3) further provides that the assisting Member States can request reimbursement from the Member State of nationality for any unusually high but essential and justified costs in relation to assistance provided in cases of arrest or detention.

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<sup>48</sup> Prior to this extraordinary event, the UCPM was rarely used for consular support (up to 10 times in 20 years).

<sup>49</sup> The Commission's ERCC is finalising guidelines on the use of the UCPM for consular assistance.

Article 15 provides that in crisis situations, the assisting Member State may submit any requests for reimbursement of the costs of any support provided to an unrepresented citizen to the unrepresented citizen's Member State of nationality even if the unrepresented citizen has not signed an undertaking to repay. The assisting Member State may ask the unrepresented citizen's Member State of nationality to reimburse such costs on a pro-rata basis, by dividing the full value of the actual costs incurred by the number of citizens assisted. Where the assisting Member State was financially supported by way of assistance from the UCPM, any contribution from the unrepresented citizen's Member State of nationality is to take into account the EU's contribution.

Articles 14 and 15 are transposed in most Member States<sup>50</sup>.

As reported by Member States, reimbursement rules are rarely applied in practice. Only four Member States reported having applied requested reimbursement from another Member State.

The Directive is not explicit about the possibility for the assisting Member State to seek reimbursement from the unrepresented EU citizens directly, even though Member States are using this method in practice. Some 12 Member States provide the option of recovering cost of consular protection directly from the assisted unrepresented citizens. Several of these Member States appear to first attempt direct reimbursement from the unrepresented citizen and, only if this fails, seek it from the Member State of nationality.

In view of the above, there could be a need for more clarity as regards the financial reimbursement procedures in the Directive. In addition, in the context of a possible review, to cover situations in which Member States have decided to voluntarily assist represented citizens, it could be considered whether to amend the reimbursement forms in the Annexes to the Directive to cover reimbursement both for unrepresented and represented EU citizens alike.

## **6. Conclusions**

The assessment of the application of the Directive by the Member States has shown that it has been mostly effective in achieving its objective to facilitate the exercise by EU citizens of their rights related to consular protection in non-EU countries where the Member State of which they are nationals is not represented.

However, crises resulting in requests for consular protection are increasing in number and scale. In particular, the COVID-19 pandemic (unprecedented in scale and complexity), the crisis in Afghanistan, Russia's war of aggression against Ukraine and the subsequent consular crises provided a context to identify gaps and reflect on how to strengthen EU citizens' rights related to consular protection and to further facilitate its exercise.

There could be room for clarifying and streamlining measures in order to further facilitate the provision of consular protection to unrepresented EU 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

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<sup>50</sup> The Commission continues to be in dialogue with Member States to verify the full implementation of the Directive.

use of foresight mechanisms is needed for our crisis-preparedness, especially given the human cost involved in consular protection failure. Moreover, the formal role of EU Delegations and their coordination and cooperation with Member States could better reflect the reality of their work on the ground thereby giving them greater legal certainty.

The primary obligation for providing consular protection remains with the Member States. However, there could be an argument to consider empowering EU Delegations in well-defined circumstances to interact more directly with EU citizens, at Member States' request. For example, in cases of assistance with repatriation notably by issuing emergency travel documents where EU Delegations are in the sole position to do this, and more effectively coordinate an EU response to support unrepresented and represented citizens in particular during crisis situations. It will be important to monitor the application of the new format for the EU emergency travel documents, which may have an impact on the possibility to provide this type of consular protection assistance in places where Member States' presence is limited. Strengthening the role of EU Delegations in this way could help increase burden sharing and thereby contribute to a more efficient use of the overall pool of available EU resources in third countries.

Such a strengthened role for the EU Delegations would imply making use of the *passerelle* under Article 25 TFEU. Article 25 TFEU provides a simplified procedure for expanding EU citizenship rights, whereby the Council, acting unanimously and after obtaining the consent of the European Parliament, adopts provisions to strengthen or to add to the rights of EU citizens, including the right related to consular protection of unrepresented citizens. The Council's adoption of such a decision would be a first step to creating the legal basis necessary to adopt, in a second step, a legal framework that strengthens the role of the EU Delegations in the area of consular protection.