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2018/0186 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP**

{SEC(2018) 263 final} - {SWD(2018) 272 final} - {SWD(2018) 273 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The right to equal treatment regarding consular protection is one of the specific rights granted by the Treaties to EU citizens on the basis of their EU citizenship. EU citizens are entitled to seek help from the embassy or consulate of any EU Member State if they need assistance outside the EU, and there is no embassy or consulate from their own Member State to help them (that is, if they are ‘unrepresented’<sup>1</sup>). Member States must assist unrepresented EU citizens on the same conditions as they assist their own nationals. This right, enshrined in Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union (TFEU) and in Article 46 of the Charter of Fundamental Rights of the European Union (‘the Charter’), is an expression of EU solidarity and one of the practical benefits of being an EU citizen. It is a good example of how the EU can be brought closer to its citizens, which is a priority of the Commission<sup>2</sup>.

One form of assistance provided to unrepresented citizens is the issuance of emergency travel documents (‘ETDs’). ETDs are documents issued to citizens when their passports or travel documents have been lost, stolen or destroyed or are temporarily unavailable. In 1996, Decision 96/409/CFSP<sup>3</sup> introduced a common format emergency travel document (the ‘EU ETD’), to be issued by Member States to unrepresented EU citizens in third countries (that is, countries outside the EU).

ETDs constitute the most frequent type of assistance provided by Member States to unrepresented EU citizens in distress in third countries<sup>4</sup> and are indispensable in helping these citizens return home safely. In this context, EU citizens can rely on the protection deriving from their status as EU citizens in third countries.

It is now 20 years since the introduction of EU ETDs, and there is a need to update the rules of Decision 96/409/CFSP and the format of the EU ETD. Recent changes to EU rules on consular protection are not reflected in Decision 96/409/CFSP, and the EU ETD in its current form is not adapted to the current global security environment.

One issue of particular concern is that the current EU ETD format is not sufficiently future-proof. It does not take account of improvements in the security of travel documents and offers insufficient protection against fraud and counterfeits. This has led to fragmentation in the use

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<sup>1</sup> See also Article 6 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 (OJ L 106, 24.4.2015, p. 1).

<sup>2</sup> [https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf)

<sup>3</sup> Decision 96/409/CFSP of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document (OJ L 168, 6.7.1996, p. 4).

<sup>4</sup> According to the 2017 EU Citizenship Report (COM(2017) 30 final/2), the ‘*issuance of emergency travel documents is in practice the most frequent form of assistance given by the MSs to unrepresented EU citizens (more than 60 % of all cases)*’. In absolute terms, the number of EU ETDs issued is relatively small. The annual numbers have been estimated at around 320 outside the EU and another 250 within the EU. It is estimated that another 400-500 unrepresented citizens annually are issued national ETDs rather than the EU ETD format. However, the figures for EU ETDs are fragmentary and probably underestimated, as currently not all Member States collect precise statistical data on EU ETDs (more information available in the evaluation accompanying this proposal).

of the EU ETD across the Union. Some Member States no longer use the common ETD format due to concerns over its security features.

Moreover, Decision 96/409/CFSP is not aligned with Council Directive (EU) 2015/637<sup>5</sup>. This Directive, which Member States were obliged to transpose by 1 May 2018, governs consular protection for unrepresented citizens in general, and thus also contains rules applicable to the issuance of EU ETDs. Finally, certain design features of the common ETD format (for example the lack of space to affix any necessary third-country transit visa) make it less likely to be accepted by third countries.

This proposal follows the invitation of the Council to make a proposal for the development of a new EU ETD that contains security features in line with current practices, updating the features described in Decision 96/409/CFSP<sup>6</sup>.

In its 2016 action plan on document security of December 2016<sup>7</sup> and its 2016 Communication on ‘Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders’<sup>8</sup>, the Commission addressed travel document fraud, highlighted the need for secure travel documents and committed to exploring possibilities to enhance the security features of ETDs. Moreover, in the 2017 Citizenship Report<sup>9</sup>, the Commission made a commitment to explore possibilities to modernise the rules on ETDs for unrepresented EU citizens, including the security features of the EU common format ETD, to guarantee that citizens can effectively exercise their right to consular protection.

In its Council conclusions on the action plan<sup>10</sup> and the 2017 Citizenship Report<sup>11</sup>, the Council emphasised the importance of secure travel and identity documents to tackle the phenomenon of travel document fraud. The conclusions also called on the Commission to ensure appropriate follow-up.

The European Parliament, in its resolution on the 2017 Citizenship Report<sup>12</sup>, called on the Commission to make a proposal for a new, more secure format for the EU ETD.

The Commission Work Programme 2018<sup>13</sup> includes the review of the proposal for a Council directive to replace the Decision on the establishment of an emergency travel document (REFIT). The aim of the review is to modernise the rules on emergency travel documents for unrepresented EU citizens, including the security features of the EU common format, to

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<sup>5</sup> Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (OJ L 106, 24.4.2015, p. 1).

<sup>6</sup> <http://data.consilium.europa.eu/doc/document/ST-5287-2011-INIT/en/pdf>

<sup>7</sup> COM(2016) 790 final.

<sup>8</sup> COM(2016) 602 final.

<sup>9</sup> COM(2017) 30 final/2.

<sup>10</sup> Council Conclusions on the Commission action plan to strengthen the European response to travel document fraud adopted on 27 March 2017 <http://data.consilium.europa.eu/doc/document/ST-7696-2017-INIT/en/pdf>

<sup>11</sup> Council Conclusion on the EU Citizenship Report 2017 adopted on 11 May 2017 <http://data.consilium.europa.eu/doc/document/ST-9080-2017-INIT/en/pdf>

<sup>12</sup> European Parliament resolution of 12 December 2017 on the EU Citizenship Report 2017: Strengthening Citizens’ Rights in a Union of Democratic Change <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0487&language=EN&ring=A8-2017-0385>

<sup>13</sup> [https://ec.europa.eu/info/sites/info/files/cwp\\_2018\\_annex\\_ii\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2018_annex_ii_en.pdf)

guarantee that citizens can effectively exercise their right to consular protection. By enhancing the security features of the EU ETD, the risk of counterfeiting and forgery would be reduced, thereby combating fraud as well as the misuse of travel documents. In turn, this should support the fight against terrorism and organised crime.

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

Every citizen of the EU situated in the territory of a third country in which his or her Member State of nationality is not represented is entitled to consular protection by any Member State on the same conditions as the nationals of that Member State.

To lay down the cooperation and coordination measures necessary to facilitate consular protection for unrepresented citizens, the Council adopted, in 2015, Directive (EU) 2015/637. Directive (EU) 2015/637 contains general rules on measures to facilitate consular protection for unrepresented citizens. Its Article 9(f) states explicitly that it also applies to the issuance of emergency travel documents.

One of the aims of this proposal is to fully align the specific rules applicable to EU ETDs with Directive (EU) 2015/637. Where required, this proposal further specifies the general rules contained in Directive (EU) 2015/637, for example on the cooperation and coordination between Member States when processing an EU ETD application. The proposed directive does not alter any rights established by Directive (EU) 2015/637.

- **Consistency with other Union policies**

Secure and reliable documents are an important element of border management.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This proposal is based on Article 23 TFEU, as is Directive (EU) 2015/637 on consular protection. Pursuant to paragraph 2 of this provision, the Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate consular protection for unrepresented EU citizens. This provision applies to all Member States.

The proposal aims to establish the measures necessary to facilitate consular protection for the most frequent type of consular assistance provided to unrepresented citizens, namely the issuance of emergency travel documents. This objective is to be achieved by establishing a standardised procedure of cooperation between the Member States for the issuance of emergency travel documents in a uniform format based on improved security features. This will allow citizens to exercise their right to consular protection effectively and in a more secure environment.

- **Subsidiarity (for non-exclusive competence)**

The issuance of EU ETDs entails a cross-border dimension as it concerns the protection offered by a Member State to citizens of another Member State.

The current format for EU ETDs as laid down by Decision 96/409/CFSP needs to be updated. Changes to this format can only be proposed by the Commission. An EU ETD with updated security features will improve the overall security of the EU, as these documents allow those

holding them to cross EU borders. Furthermore, greater use of the uniform format and harmonised security features will increase recognition by third countries. Such objectives cannot be achieved by Member States alone.

Without an updated uniform EU ETD format, Member States may increasingly rely on national ETDs to comply with their Treaty obligation to offer consular protection to unrepresented EU citizens under the same conditions as for their own nationals. This creates a risk of fragmentation among Member States in terms of the documents being used and the procedures being followed. It also creates a risk of ‘forum shopping’ (where citizens seek emergency travel documents from one Member State and not another because the documents of certain Member States are more widely recognised, cheaper or easier to obtain than those of other Member States).

- **Proportionality**

Article 5 of the Treaty on European Union states that action by the Union must not go beyond what is necessary to achieve the objectives of the Treaty. The form chosen for this EU action must enable the proposal to achieve its objective and be implemented as effectively as possible.

This proposal makes the use of EU ETDs compulsory for unrepresented citizens outside the EU. Member States would be obliged to issue an EU ETD to unrepresented citizens who fulfil the applicable conditions. The proposal covers situations already provided for by the legal obligation to provide consular protection.

The proposal improves the security features of the EU ETD to the standard expected by Member States and third countries. It does so by relying on existing standards established in the context of the uniform format for visas<sup>14</sup>. The proposal therefore allows for equipment that is already available in Member State embassies and consulates to be used for EU ETDs, limiting the need for new equipment and training.

- **Choice of the instrument**

In line with Article 23(2) TFEU, the proposed instrument is a directive.

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

- **Ex-post evaluations/fitness checks of existing legislation**

The evaluation of Decision 96/409/CFSP found that the issuance of EU ETDs has been effective in providing genuine help to EU citizens in distress in third countries. The evaluation also found that EU ETDs have provided a practical demonstration of the benefits of EU citizenship, and are expected to remain relevant in future.

However, the legal framework for EU ETDs should be adapted to address certain implementation issues identified by the evaluation. In particular, these adaptations should aim to ensure consistency with Directive (EU) 2015/637 and to improve the security features of the EU ETD in the context of changing security needs. The key problems identified by the evaluation are the fragmented approach to the issuance of ETDs (not all Member States use

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<sup>14</sup> Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas as amended by Regulation (EU) 2017/1370 of the European Parliament and of the Council of 4 July 2017 amending Council Regulation (EC) No 1683/95 laying down a uniform format for visas.

the ETD format established by Decision 96/409/CFSP) and their perceived reduced acceptability, legal uncertainty, enforceability, and concerns about the security of the ETD common format. This proposal aims to address the issues identified by the evaluation of Decision 96/409/CFSP.

- **Stakeholder consultations**

The consultation process combined tools of a more general scope, such as a public consultation, with more targeted consultations and surveys of Member States and stakeholder groups. Some of the stakeholders that were consulted included Member States' competent authorities; Member States' missions in third countries; third countries' authorities; trade associations (including tour operators, airline companies and insurance companies); citizens and citizens' groups; and experts from the European Commission, the European External Action Service and the Council Secretariat. These stakeholders' views were taken into consideration in the preparation of this proposal.

Detailed information on the results of the consultation process can be found in Annex 2 of the impact assessment accompanying this proposal.

- **Collection and use of expertise**

The Commission, under the relevant framework contract, commissioned a study on 'the evaluation of an existing EU instrument on a European emergency travel document and impact assessment'.

- **Impact assessment**

The impact assessment supporting this proposal received a positive opinion by the Regulatory Scrutiny Board, with some suggestions for improvement<sup>15</sup>. The impact assessment considered a number of possible policy options: maintenance of the status quo; adopting non-binding measures only; revoking Decision 96/409/CFSP and doing away with EU ETDs; new legislation making EU ETDs compulsory for all EU citizens; new legislation establishing an EU ETD with enhanced security features; and new legislation establishing an EU ETD with biometrics.

The options of maintaining the status quo or doing away with EU ETDs were considered unsatisfactory and inefficient in achieving the objectives. Making EU ETD compulsory for all EU citizens was considered disproportionate. Soft, non-binding measures were also considered unsatisfactory if implemented on their own. However, soft measures should accompany the option ultimately chosen to assist in its implementation.

Of the two options requiring new legislation, the option to establish an EU ETD with enhanced security features was deemed more preferable than to establishing an EU ETD with biometrics, primarily for reasons of cost-efficiency and proportionality. In particular, while the former option would make use of existing equipment used for printing the uniform format for visas, the latter would require the installation of equipment capable of printing biometric information. This would likely result in significant costs for Member States and citizens.

The preferred option is expected to bring benefits in several areas. Unrepresented EU citizens in need would be able to obtain an EU ETD from all Member States' consulates according to a streamlined procedure based on Directive (EU) 2015/637. They would benefit from a right

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<sup>15</sup> The opinion of the Regulatory Scrutiny Board is available at: <http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>

to an EU ETD in more situations than envisaged under the current EU ETD Decision. They would also benefit from clearer issuance procedures and deadlines.

Member States and the EU would benefit from the increased security features of the new EU ETD. Increased use of the new document has the potential to increase its acceptance by third countries, and the adoption of up-to-date standards for machine-readability should result in easier border processing at the borders. Better recognition by third countries would help unrepresented citizens save money by reducing the need for additional hotel stays and alternative travel arrangements. A more secure EU ETD format, multilingual and produced at EU-level, can also be a cost-efficient alternative for Member States considering replacing any outdated national ETDs. Finally, the Commission would be able to enforce the new EU ETD legislation and monitor its implementation.

- **Regulatory fitness and simplification**

The initiative is included in the Commission Work Programme 2018 under the Regulatory Fitness and Performance Programme (REFIT) initiatives in the Area of Justice and Fundamental Rights Based on Mutual Trust<sup>16</sup>. In this context, the Commission has looked at opportunities to simplify and reduce burdens.

The proposal aims to streamline the procedure for issuing EU ETDs, leading to a reduced burden for public administrations and citizens in distress due to the loss of travel documents. At the same time, the proposal increases the security features of the EU ETD, as it can be used to enter the territory of the EU. To that end, the proposal relies on existing equipment and expertise in the context of the visa sticker. A uniform, more secure EU ETD can reduce costs and inconveniences for citizens and businesses (for example, airline companies) by improving acceptance by third countries and processing at the EU's external border.

The simplification elements are estimated at EUR 93,000 annually for citizens. Given the lack of reliable data, the potential savings for businesses and border authorities have not been quantified.

- **Fundamental rights**

This proposal implements the fundamental right of EU citizens to diplomatic and consular protection, guaranteed by Article 46 of the Charter.

The proposal also affects Article 7 of the Charter on the respect of private life and Article 8 on the right to the protection of personal data. Processing of the personal data of citizens, including collection, access and use of personal data, affects the right to privacy and the right to protection of personal data under the Charter. Interference with these fundamental rights must be justified<sup>17</sup>.

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<sup>16</sup> [https://ec.europa.eu/info/sites/info/files/cwp\\_2018\\_annex\\_ii\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2018_annex_ii_en.pdf)

<sup>17</sup> The Court of Justice of the European Union set out the criteria for justification of such interference in the context of Council Regulation (EC) No 2252/2004 in Case C-291/12 *Schwarz v Stadt Bochum*, ECLI:EU:C:2013:670. It recalled that limitations to Charter rights must be 'provided for by law, respect the essence of those rights, and, in accordance with the principle of proportionality, [be] necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others'. It also found that the objective 'to prevent the falsification of passports and the second, to prevent fraudulent use thereof' met those criteria.

Regarding the right to the protection of personal data, and data protection including data security, the relevant EU rules<sup>18</sup> apply. No derogation from the data protection regime is envisaged. Clear rules, conditions and safeguards must be implemented by Member States in line with the EU data protection rules as appropriate. This initiative does not provide for the legal basis for the storage of data collected thereunder or for the use of such data for purposes other than verifying the identity of the applicant, printing the EU ETD sticker and facilitating travel of the person concerned. Any such storage of data would need to comply with the data protection rules as laid down in Regulation (EU) 2016/679. The compulsory inclusion on the sticker as well as transfer, to the Member State of nationality for the purposes of verifying the applicant's identity, of the applicant's personal data, including facial image, will be implemented with an adequate set of safeguards.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the EU budget.

#### **5. OTHER ELEMENTS**

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

Taking into account the limited number of EU ETDs issued by Member States, it is important to adopt a realistic approach to monitoring the implementation of the proposal and not to overburden national authorities. Member States are asked to provide the Commission with information on a limited number of key indicators on a yearly basis. If need be, it can be decided to collect additional information. After five years, the Commission will evaluate the implementation of the directive.

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

Chapter I (Articles 1 and 2) describes the subject matter of the proposal and sets out a number of definitions. The proposal lays down the conditions and procedure for unrepresented citizens to obtain an EU ETD, and establishes a uniform format for such documents. It uses the same definition of 'unrepresented citizen' as Directive (EU) 2015/637.

Chapter II sets out in Article 3 the conditions to be issued with an EU ETD. Generally, an EU ETD should be issued to unrepresented citizens whose passport or travel documents are, for different reasons, unavailable, for a single journey to the citizen's Member State of nationality or residence. The document should be issued after the citizen's Member State of nationality has been consulted by the assisting Member State.

Article 4 describes the procedure for issuing an EU ETD, including the consultation between the Member State assisting the unrepresented citizen and the citizen's Member State of nationality, as well as the applicable deadlines. Article 4 also sets out exceptions in duly justified cases or in crisis situations. It also contains security measures.

According to Article 5, an EU ETD should be valid for barely longer than the minimum period required for the return journey.

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<sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).



Article 6 provides that Member States may introduce or retain more favourable provisions provided they are compatible with the Directive

In particular, Article 7 lays down possible additional situations in which Member States can issue an EU ETD. Recipients of an EU ETD other than unrepresented EU citizens in third countries could be, for example, accompanying family members, a Member State's own citizens or residents, and represented EU citizens of another Member State. Member States can also decide to issue EU ETDs within the EU.

Chapter III sets out in Article 8 the uniform format to be used for EU ETDs, consisting of a uniform form and sticker. The relevant data on the recipient of an EU ETD is printed on the sticker, which is then affixed to the form.

Article 9 lays down the procedure used to issue additional technical specifications for EU ETDs. These specifications can be secret if necessary.

Article 10 concerns Member State bodies that are responsible for printing EU ETDs. These bodies must be communicated to the Commission and other Member States.

Article 11 contains rules on the committee tasked with assisting the Commission in implementing the Directive.

Article 12 tasks the Union delegations in third countries with notifying the EU ETD uniform format to third countries and providing them with EU ETD specimens.

Chapter IV contains a number of final provisions.

Article 13 specifies the data protection framework.

Article 14 sets out the Member States' obligation to monitor the application of the Directive and to supply information to the Commission on a yearly basis.

According to Article 15, the Commission should carry out an evaluation of the Directive and present a report on the main findings to the European Parliament and the Council.

Article 16 repeals Decision 96/409/CFSP.

Article 17 sets the date by which the Member States should transpose the Directive into national law.

Article 18 lays down that the Directive enters into force on the twentieth day following its publication in the Official Journal of the European Commission.

According to Article 19, the Directive is addressed to all Member States.

Annexes I and II contain specifications for the uniform EU ETD form and sticker.

Proposal for a

## **COUNCIL DIRECTIVE**

### **establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 23(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Citizenship of the Union is the fundamental status of nationals of the Member States. It confers on every citizen of the Union the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of another Member State under the same conditions as the nationals of that Member State. Council Directive (EU) 2015/637<sup>2</sup> gives effect to that right by laying down the cooperation and coordination measures necessary to facilitate consular protection for unrepresented citizens of the Union.
- (2) Directive (EU) 2015/637 refers to emergency travel documents as one type of consular assistance to be provided by Member States' embassies and consulates to unrepresented citizens. An emergency travel document (ETD) is a single-journey document, allowing the bearer to return home, or, exceptionally, to another destination, in the event that they do not have access to their regular travel documents, for example because they were stolen or lost.
- (3) Decision 96/409/CFSP of the Representatives of the Governments of the Member States<sup>3</sup> established a common emergency travel document for issue by Member States to citizens of the Union in places where those citizens' Member State of nationality have no permanent diplomatic or consular representation. It is now necessary to update the rules of that Decision and to establish a modernised and more secure format for the EU Emergency Travel Document (EU ETD). Consistency should be ensured between the specific conditions and procedure for issuing EU ETDs and the general rules on consular protection laid down by Directive (EU) 2015/637, since that Directive, including the financial procedure provided by its Article 14, applies to the issuance of

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (OJ L 106, 24.4.2015, p. 1).

<sup>3</sup> Decision 96/409/CFSP of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document (OJ L 168, 6.7.1996, p. 4).

EU ETDs to unrepresented citizens. This Directive should provide additional rules to be applied alongside those in Directive (EU) 2015/637 where necessary.

- (4) Upon his or her request, an EU ETD should be issued to any unrepresented citizen whose passport or travel document has been lost, stolen or destroyed, is temporarily unavailable, has expired, or can otherwise not be obtained within a reasonable time, for example to new-borns born during travel, once the Member State assisting the unrepresented citizen has received confirmation of the citizen's nationality from the Member State of nationality.
- (5) Since the loss of a passport or travel documents can cause significant distress to citizens in third countries, it is necessary to establish a simplified procedure for cooperation and coordination between the assisting Member State and the unrepresented citizen's Member State of nationality. At the same time, it is necessary to maintain sufficient flexibility in exceptional cases. In crisis situations, the assisting Member State should be able to issue EU ETDs without prior consultation of the Member State of nationality. In these situations, the assisting Member State should notify the Member State of nationality as soon as possible of the assistance granted on its behalf to ensure that the Member State of nationality is adequately informed.
- (6) For security reasons, recipients of EU ETDs should return them once they have returned home safely. Moreover, a copy of each EU ETD issued should be stored at the issuing authority of the assisting Member State and another copy should be sent to the applicant's Member State of nationality. The returned EU ETDs and stored copies should be destroyed after a certain period.
- (7) Unrepresented citizens should be able to apply for an EU ETD at the embassy or consulate of any Member State. As provided for by Article 7(2) of Directive (EU) 2015/637, Member States may conclude practical arrangements for the purpose of sharing responsibilities for providing EU ETDs to unrepresented citizens. Member States that receive EU ETD applications should assess, on a case by case basis, whether it is appropriate to issue the EU ETD or if the case should be transferred to the embassy or consulate which is designated as competent under the terms of any arrangement already in place.
- (8) In line with its purpose as a single-journey document, the EU ETD should be valid for the period required to make that journey. In view of the possibilities and speed of modern-day travel, the validity of an EU ETD should, save in exceptional circumstances, not exceed 15 calendar days.
- (9) This Directive should not affect more favourable national provisions in so far as they are compatible with this Directive.
- (10) This Directive should not preclude Member States from issuing EU ETDs in other situations, taking into account national law and practice. Member States should also be able to issue EU ETDs to unrepresented citizens within the territory of the Union, to represented citizens, and to their own nationals or residents. When doing so, Member States should take the necessary measures in order to prevent abuse and fraud.
- (11) In accordance with Article 5 of Directive (EU) 2015/637 and with a view to ensuring the effectiveness of the right enshrined in point (c) of Article 20(2) of the Treaty and the right to respect for private and family life as recognised in Article 7 of the Charter of Fundamental Rights of the European Union, and taking into account national law and practice, an assisting Member State should be able to issue EU ETDs to third-

country family members of citizens of the Union, taking into account the individual circumstances of each case.

- (12) The EU ETD, consisting of a form and a sticker, should contain all the necessary information and meet high technical standards, in particular as regards safeguards against counterfeiting and falsification. It should be suitable for use by all Member States and bear universally recognisable security features clearly visible to the naked eye.
- (13) The uniform EU ETD form should contain blank pages so that transit visas, if required, can be affixed directly to the form. That form should serve as the carrier for the EU ETD sticker, which contains the relevant information on the applicant. The sticker should be modelled upon the uniform format for visas as laid down by Council Regulation (EC) No 1683/95<sup>4</sup> and should contain equivalent security features. The EU ETD sticker should be personalised in the assisting Member State's embassy or consulate using the same printers as for visas.
- (14) In order to increase the security and speed of the issuing process, a facial image of the applicant used for the EU ETD should be taken live at the embassy or consulate by digital camera or equivalent means. The same facial image should be transferred to the Member State of nationality for confirmation of the citizen's identity.
- (15) This Directive should lay down specifications that should not be kept secret. Where appropriate, those specifications may need to be supplemented by further secret specifications to prevent counterfeiting and falsification.
- (16) In order to ensure the secrecy of any additional technical specifications, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>5</sup>.
- (17) To ensure that the information on additional technical specifications is not made available to more persons than necessary, each Member State should designate one body having responsibility for printing the uniform EU ETD. Member States should be able to change the body, if necessary. For security reasons, each Member State should communicate the name of the competent body to the Commission and the other Member States.
- (18) In order to increase the acceptance of EU ETDs, Union delegations in third countries should notify to the relevant authorities of third countries the uniform EU ETD format and any subsequent modifications and promote its use.
- (19) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making<sup>6</sup>, the Commission should evaluate this Directive, in particular on the basis of information collected through specific monitoring arrangements, in order to assess the effects of the Directive and the need for any further action.

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<sup>4</sup> Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

<sup>5</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>6</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

- (20) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>7</sup> applies to the processing of personal data carried out by Member States when implementing this Directive. The EU ETD system requires the processing of the personal data necessary for the purpose of verifying the identity of the applicant, printing the EU ETD sticker and facilitating travel of the data subject concerned. It is necessary to further specify safeguards applicable to the personal data processed, such as the maximum retention period of personal data collected. A maximum retention period of three years is necessary to prevent possible abuses. The erasure of personal data of applicants should not affect Member States' abilities to monitor the application of this Directive.
- (21) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the need to avoid fragmentation and resulting decreased acceptance of emergency travel documents issued by Member States to unrepresented citizens, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (22) This Directive aims to promote consular protection as guaranteed by Article 46 of the Charter of Fundamental Rights of the European Union. It respects the fundamental rights and observes the principles recognised in particular by the Charter, including the right to respect for private and family life and the right to the protection of personal data. This Directive should be interpreted and applied in accordance with those rights and principles.
- (23) Decision 96/409/CFSP should be repealed,

HAS ADOPTED THIS DIRECTIVE:

## **CHAPTER I**

### **SUBJECT MATTER AND DEFINITIONS**

#### *Article 1* *Subject matter*

This Directive lays down rules on the conditions and procedure for unrepresented citizens in third countries to obtain an EU Emergency Travel Document (EU ETD) and establishes a uniform format for such documents.

#### *Article 2* *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (1) 'unrepresented citizen' means any citizen holding the nationality of a Member State which is not represented in a third country as set out in Article 6 of Directive (EU) 2015/637;
- (2) 'applicant' means the person applying for an EU ETD;

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<sup>7</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (3) 'assisting Member State' means the Member State receiving an application for an EU ETD;
- (4) 'Member State of nationality' means the Member State of which the applicant claims to be a national;
- (5) 'EU Emergency Travel Document' or 'EU ETD' means a travel document issued by a Member State to an unrepresented citizen in a third country for a single journey to the citizen's Member State of nationality or residence, as requested by the citizen, or exceptionally, to another destination.

## **CHAPTER II**

### **THE EU EMERGENCY TRAVEL DOCUMENT (EU ETD)**

#### *Article 3*

#### *The EU Emergency Travel Document (EU ETD)*

Member States shall issue EU ETDs to unrepresented citizens in third countries whose passports or travel documents have been lost, stolen or destroyed, are temporarily unavailable, have expired, or can otherwise not be obtained within a reasonable time, in accordance with the procedure outlined in Article 4.

#### *Article 4*

#### *Procedure*

1. Where a Member State receives an application for an EU ETD, it shall, within 24 hours, consult the Member State of nationality in accordance with Article 10(2) of Directive (EU) 2015/637 for the purpose of verifying the nationality of the applicant.
2. The assisting Member State shall provide the Member State of nationality with all relevant information, including:
  - (a) the data on the applicant to be included on the EU ETD sticker in accordance with Annex II;
  - (b) a facial image of the applicant, to be taken, save in exceptional circumstances, by the authorities of the assisting Member State on the day of the application.
3. Within 36 hours after receipt of the information referred to in paragraph 2, the Member State of nationality shall respond to the consultation in accordance with Article 10(3) of Directive (EU) 2015/637 and shall confirm whether the applicant is its national. Upon confirmation of the applicant's nationality, the assisting Member State shall provide the applicant with the EU ETD on the working day following that on which the response from the Member State of nationality is received at the latest.
4. In duly justified exceptional cases, the Member States may take longer than the time-limits laid down in paragraphs 1 and 3.
5. In crisis situations, the assisting Member State may issue an EU ETD without prior consultation of the Member State of nationality. The assisting Member State shall notify the Member State of nationality, as soon as possible, of the fact that an EU ETD has been issued and of the identity of the person to whom the EU ETD was issued. That notification shall include the name of the person and all data which were included on the EU ETD.

6. The authority of the Member State issuing the EU ETD shall store one copy of each EU ETD issued and shall send another to the applicant's Member State of nationality. The copies shall be destroyed within 60 days after the expiry of the EU ETD, unless they are necessary for the issuance of a new passport or travel document.
7. The recipient of an EU ETD shall be asked to return the EU ETD, regardless of whether it has expired, when they apply for a new passport or travel document. The Member States shall ensure the safe destruction of any returned EU ETD in a timely fashion.
8. Article 14 of Directive (EU) 2015/637 shall apply to applications for an EU ETD.

*Article 5*  
*Validity*

An EU ETD shall be valid for the period required for completion of the journey for which it is issued. In calculating that period, allowance shall be made for necessary overnight stops and for making travel connections. The period of validity shall include an additional 'period of grace' of two days. Save in exceptional circumstances, the validity of an EU ETD shall not exceed 15 calendar days.

*Article 6*  
*More favourable treatment*

Member States may introduce or retain provisions more favourable than those of this Directive in so far as they are compatible herewith.

*Article 7*  
*Additional EU ETD recipients*

Where the applicant's passport or identity card has been lost, stolen or destroyed, is temporarily unavailable, has expired, or can otherwise not be obtained within a reasonable time, a Member States may issue EU ETDs:

- (a) to family members of unrepresented citizens, who are not themselves citizens of the Union, accompanying unrepresented citizens, in accordance with Article 5 of Directive (EU) 2015/637;
- (b) to its own nationals or residents;
- (c) to nationals of another Member State which is represented in the country where those nationals seek to obtain the EU ETD;
- (d) to EU citizens and their family members within the territory of the Union;
- (e) to other persons connected with it and whom it is willing to admit.

## **CHAPTER III**

### **UNIFORM FORMAT FOR EU ETDs**

#### *Article 8*

##### *Uniform format for EU ETDs*

1. EU ETDs shall consist of a uniform form and sticker. The form and sticker shall conform to the specifications set out in Annexes I and II and as provided for by Commission Implementing Decision C(2018) 674 of 9 March 2018 as regards further technical specifications for the uniform format for visas and repealing Commission Decision C(2010) 3191.
2. When the EU ETD sticker is filled in, the sections set out in Annex II shall be completed and the machine-readable zone filled in, in line with ICAO document 9303, Part 2.
3. Member States may add any necessary national entries in the ‘remarks’ section of the EU ETD sticker. Those national entries shall not duplicate the sections set out in Annex II.
4. All entries on the EU ETD sticker shall be printed. No manual changes shall be made to a printed EU ETD sticker.
5. EU ETD stickers may be filled in manually only in cases of technical force majeure. No changes shall be made to an EU ETD sticker which has been filled in manually.
6. If an error is detected on an EU ETD sticker which has not yet been affixed to the EU ETD form, the EU ETD sticker shall be invalidated. If an error is detected after the EU ETD sticker has been affixed to the form, both shall be destroyed and new ones shall be produced.
7. The printed EU ETD sticker containing the completed sections shall be affixed to the EU ETD form in accordance with Annex I.
8. In crisis situations, a different format than established by this Article may be used, provided that it contains all sections to be completed set out in Annex II.

#### *Article 9*

##### *Additional specifications*

The Commission shall adopt implementing acts containing additional technical specifications for EU ETDs relating to the following:

- (a) the design, size and colours of the uniform EU ETD form and sticker;
- (b) additional security features and requirements including enhanced anti-forgery, counterfeiting and falsification standards;
- (c) other rules to be observed for the filling in and issuing of the EU ETD.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2). It may be decided that these specifications shall be secret and not be published. In that case they shall be made available only to the bodies designated by the Member States as responsible for the printing of EU ETDs and to persons duly authorised by a Member State or the Commission.



*Article 10*  
*Printing of EU ETDs*

Each Member State shall designate one body having responsibility for printing EU ETDs. It shall communicate the name of that body to the Commission and the other Member States. The same body may be designated by two or more Member States. Where a Member State changes its designated body, it shall inform the Commission and the other Member States accordingly.

*Article 11*  
*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 12*  
*Notification to third countries*

1. By 21 months after the entry into force of this Directive at the latest, the Member State holding the Presidency of the Council in accordance with Article 16(9) of the Treaty on European Union shall provide generic specimens of the uniform EU ETD form and sticker to the Commission and the European External Action Service.
2. The European External Action Service shall transmit the generic specimens of the form and sticker to Union delegations in third countries.
3. The Union delegations in third countries shall notify the relevant authorities in the third countries of the uniform EU ETD format as well as its main security features, including by providing generic specimens of the form and sticker for reference purposes. The Union delegations in third countries shall make generic specimens of the uniform EU ETD form and sticker available to the diplomatic and consular missions of the Member States for training or reference purposes.
4. Each time the uniform EU ETD form or sticker is modified, the procedure outlined in paragraphs 1-3 shall be repeated. The deadline referred to in paragraph 1 shall be 3 months after the adoption of the modified format.

## **CHAPTER IV** **FINAL PROVISIONS**

*Article 13*  
*Protection of personal data*

1. Personal data processed for purposes of this Directive, including the facial image taken of the applicant in accordance with Article 4(2), shall only be used to verify the identity of the applicant in accordance with the procedure outlined in Article 4, to print the EU ETD sticker, and to facilitate travel of the person concerned. The assisting Member State and the Member State of nationality shall ensure appropriate security of personal data.

2. Without prejudice to the application of Regulation (EU) 2016/679, an applicant to whom an EU ETD is issued shall have the right to verify the personal data contained in the EU ETD and, where appropriate, to ask for corrections to be made.
3. No information in machine-readable form shall be included in an EU ETD unless it also appears in the sections referred to in points 6 to 14 of Annex II.
4. The assisting Member State and the Member State of nationality shall retain the personal data of an applicant for no longer than three years. Upon expiry of the retention period, the personal data of an applicant shall be erased.

*Article 14*  
*Monitoring*

1. Member States shall regularly monitor the application of this Directive based on the following indicators:
  - EU ETDs issued in accordance with Article 3;
  - EU ETDs issued in accordance with Article 7;
  - Cases of EU ETD fraud and counterfeits.
2. Member States shall organise the production and gathering of the data necessary to measure the change in the indicators described in paragraph 1 above, and shall supply that information to the Commission on a yearly basis.
3. In accordance with the examination procedure referred to in Article 11(2), the Commission may adopt implementing acts establishing additional indicators to those mentioned in paragraph 1.

*Article 15*  
*Evaluation*

1. No sooner than five years after the date of transposition of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament and the Council, including on the appropriateness of the level of security of personal data.
2. Member States shall provide the Commission with the information necessary for the preparation of that Report.

*Article 16*  
*Repeal*

1. Decision 96/409/CFSP is repealed with effect from 24 months after the entry into force of this Directive.
2. References to the repealed Decision shall be construed as references to this Directive.
3. Member States shall ensure the destruction of ETD forms produced according to Decision 96/409/CFSP by the date mentioned in paragraph 1.

*Article 17*  
*Transposition*

1. Member States shall adopt and publish, by 12 months after the entry into force of this Directive at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 24 months after the entry into force of this Directive.

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

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

*Article 18*  
*Entry into force*

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

*Article 19*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*