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Accompanying document to the

Commission Communication "Effective consular protection in third countries: the contribution of the European Union" and the Commission Recommendation on reproducing the text of Article 20 EC in passports

SUMMARY OF THE IMPACT ASSESSMENT

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1. INTRODUCTION

Article 20 of the Treaty establishing the European Community ("Article 20 EC") entitles Union citizens who are in a third country in which their Member State is not represented to protection by the diplomatic and consular authorities of any Member State represented, under the same conditions as the nationals of that State. This is a summary of the impact assessment examining different policy options for rendering this right more effective.

The Commission launched a public consultation in November 2006 with the publication of a Green Paper on the right to diplomatic and consular protection of Union citizens in third countries. The Commission received 50 replies to the Green Paper. A public hearing took place on 29 May 2007 attended by 160 participants. A questionnaire was sent to Member States and other stakeholders to gather necessary information.

The Impact Assessment was revised to take into account the opinion issued by the Impact Assessment Board on 7 September 2007. The Impact Assessment Board issued a second opinion on 28 September 2007.

2. STATE OF PLAY AND PROBLEMS

The 27 Member States already apply high standards of protection. Nevertheless, more can be done to render Union citizens' fundamental right to consular and diplomatic protection in third countries even more effective. To date, all 27 Member States are represented in only three of the 166 third countries: China, the Russian Federation and the United States of America¹. There are 18 countries in which no Member State is represented, 17 countries in which only one Member State is represented and 11 countries in which two Member States are represented.

It is estimated that around 7 million EU citizens travel each year to third countries in which their Member States do not have any consular or diplomatic representation. It is estimated that around 2 million EU citizens live in a third country in which their Member State is not represented. These numbers are likely to grow.

The public consultation identified the following shortcomings:

- Poor awareness of EU citizens about their right to diplomatic and consular protection in third countries

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

The majority of citizens are not aware of the existence and contents of Article 20 EC. A Eurobarometer survey carried out in 2006 showed that only 23% of the citizens were aware of this right.

- Unclear scope of protection under Article 20 EC

Certain Member States recognise the right to consular protection under national law whereas others do not confer this right under national law. Only some Member States recognise the right to appeal against a refusal to provide consular assistance. Only a limited number of Member States extend the right to consular protection to family members who are third country nationals. The existing acquis is limited and the main instrument, Decision 95/5553/EC, is non-exhaustive. This may lead to legal uncertainty insofar as it is not clear whether it applies to matters that are not explicitly included in its scope, e.g. the repatriation of remains.

- Limited representation of Member States in third countries and lack of clear burden-sharing between Member States

There is a need to compensate for Member States' limited consular presence in third countries by favouring the pooling of resources, burden-sharing and the exchange of best practices. It emerged from the public consultation that Member States already cooperate in third countries, but that more can be done in this respect to increase coverage in third countries and thereby ensure protection to Union citizens.

- Lack of consent of third countries to secure protection under Article 20 EC

It is unclear to what extent Member States have obtained the necessary consent of third countries and, if so, by what means. The consultation with Member States showed that the majority of the countries obtain the consent of third country authorities to protect citizens of another state through simple notification.

3. POLICY OBJECTIVES

The Commission has identified the following policy objectives:

1. To increase awareness of EU citizens of their fundamental right to diplomatic and consular protection when they are outside the EU;
2. To reinforce and clarify the scope of consular protection of unrepresented EU citizens and their family members and to ensure that all EU citizens receive a similar level of protection;
3. To ensure more effective protection on the ground for unrepresented EU citizens in third countries;
4. To ensure the consent of third countries to secure protection under Article 20 EC.

Specific and operational policy objectives have been elaborated for each of the four objectives.

4. POLICY OPTIONS

Four different options have been identified:

- Option 1: A status quo policy option involving no new actions;
- Option 2: An option including mainly non-legislative actions focusing on awareness-raising of Article 20 EC;
- Option 3: An option comprising the actions listed in option 2 plus eleven additional non-legislative and legislative actions which seek to address the four identified problems;
- Option 4: A very ambitious option measures including all actions listed in options 2 and 3 with additional actions which are legally and technically complex and need more examination and likely to be long term in nature.

Overview of Policy Options

Policy Option 1	No changes are made to the current situation other than those that are already planned and confirmed.
Policy Option 2	<p>Legislative action:</p> <p>INFORMATION:</p> <p>(1) A recommendation to Member States to print Article 20 EC in new passports and to affix a sticker on the outside rear cover of existing passports</p> <p>Non-legislative action:</p> <p>(2) Publish guidelines and other measures connected with the implementation of Article 20</p> <p>(3) Set up an EU web-site on "Europa" on consular protection</p> <p>(4) Put posters explaining the rights of EU citizens to consular protection in airports, ports, railway stations etc.</p> <p>(5) Assess the extent and nature of discrepancies in Member States' legislations and practices in the field of consular</p>

	<p>protection</p> <p>(6) Publish updated contact details of embassies and consulates of the Member States represented in each third country</p> <p>(7) Explore the possibility of a coordinated presentation of travel advice</p> <p>(8) Explore the need for sharing best practices and provide training for key actors</p>
<p>Policy Option 3</p>	<p>All measures mentioned under Policy option 2 plus:</p> <p>Legislative action:</p> <p>SCOPE:</p> <p>(9) Examine the possibility of ensuring that citizens receive a similar level of protection irrespective of their nationality</p> <p>(10) Ensuring consular protection for the identification and repatriation of remains</p> <p>(11) Simplify the procedures for repatriating remains</p> <p>(12) Examine the possibility of ensuring protection to EU citizens' family members who are not EU nationals</p> <p>(13) Explore the need to simplify procedures for financial advances required under Decision 95/553</p> <p>Non-legislative action:</p> <p>INFORMATION:</p> <p>(14) Examine the possibility of setting up an EU telephone number on consular protection</p> <p>SCOPE:</p> <p>(15) Recommend to Member States, which have not yet ratified the 1973 Council of Europe Convention on transfer of corpses, to accede to it</p> <p>STRUCTURES:</p> <p>(16) Examine the possibility of setting up a compensation system between Member States</p>

	<p>(17) Set up a "common office" in one area as a pilot project to be evaluated.</p> <p>(18) Publish arrangements on burden-sharing between Member States in third countries (guidelines, the idea of "lead State" etc).</p> <p>CONSENT:</p> <p>(19) Propose to insert a "consent clause" in "mixed" agreements concluded with third countries and recommend Member States to insert "consent clauses" in their bilateral agreements concluded with third countries</p> <p>(20) Consider the possibility of obtaining the consent of third countries to allow the Union to exercise protection through the Commission delegations in cases falling under Community competence</p>
<p>Policy Option 4</p>	<p>All measures mentioned under Policy options 2 and 3 plus:</p> <p>Legislative action:</p> <p>SCOPE:</p> <p>(21) Ensure consular protection to third country nationals who are long-term residents in another Member State of the EU</p> <p>STRUCTURES:</p> <p>(22) Set up "common offices" in four areas (the Caribbean, the Balkans, the Indian Ocean and West Africa)</p> <p>(23) Allow "common offices" to perform consular functions, such as issuing visas or legalising documents</p> <p>(24) Establish a "European Consular Code" to define the burden-sharing between Member States</p> <p>Non-legislative action:</p> <p>(25) Create an EU Consular Academy</p> <p>(26) Encourage research and development for the identification of remains</p>

5. COMPARISON OF THE POLICY OPTIONS

A comparison of the options based on effectiveness and likely impacts indicates that:

- Option 1: If no changes are made to the current situation, the majority of citizens will remain unaware of their rights under Article 20 EC and Article 20 EC might be deprived of its full effect.
- Option 2: This option would adequately address the problem of awareness-raising. However, it is not sufficient and it is also necessary to reinforce and clarify the scope of protection provided by diplomatic and consular authorities.
- Option 3: This option includes a package of non-legislative and legislative actions which would effectively address the four policy objectives and give impetus to Article 20 EC.
- Option 4: This option includes ambitious measures that are not likely to be implemented in the short- and medium- term. They raise technical and legal issues that need in-depth examination with stakeholders, including Member States. Some of the measures could potentially entail significant costs and could also be politically controversial.

6. THE PREFERRED OPTION

Comparison suggests that option 3 would be the most appropriate as it effectively addresses the four identified problems. It is a package of legislative and non-legislative actions which includes the awareness-raising actions listed in policy option 2, including the Recommendation to Member States to print Article 20 EC in new passports (action 1) and the setting up of a web-site on the "Europa" site dedicated to consular protection (action 3). It also proposes several actions with a view to clarifying and reinforcing EU citizens' right to protection. As an example, it proposes to examine the possibility to ensure that EU citizens receive a similar level of protection (action 9), to facilitate the often burdensome procedure of repatriation of mortal remains (actions 10, 11 and 15) and to examine the possibility of ensuring consular protection to EU citizens' family members who are not EU nationals (action 12). Actions are also foreseen to assist Member States in pooling resources, in particular to set up a "common office" as a pilot project to be evaluated (Action 17) and publish existing rules on burden-sharing (Action 18). The preferred option finally addresses the question of the consent of third countries where it proposes to insert a "consent clause" in bilateral and "mixed" agreements with third countries (Action 19). The Commission will also consider the possibility for the Union to exercise a duty of protection in cases falling under Community competence (Action 20).

7. MONITORING AND EVALUATION

The impact assessment indicates potential indicators to monitor the extent to which the specific and operational policy objectives have been met. The main information sources are periodic surveys of citizens (Eurobarometer surveys) and consular offices, to be carried out at a biannual basis initially.