Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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[(2)] 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 embassies and consulates of Member States to unrepresented citizens of the Union. An emergency travel document 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. Another destination could be, for example, a neighbouring or similarly close country where the unrepresented citizen's Member State of nationality has an embassy or consulate.

(3) Decision 96/409/CFSP of the Representatives of the Governments of the Member States, meeting within the Council[(3)] established a common emergency travel document for issuance 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 for in Article 14 thereof,

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

(4) Upon his or her request, an EU ETD should be issued to any unrepresented citizen in a third country whose passport or travel document has been lost, stolen or destroyed, or can otherwise not be obtained within a reasonable time, for example to newborns born during travel or to persons whose documents have expired and cannot be easily replaced by the Member State of nationality. An EU ETD should be issued once the Member State assisting the unrepresented citizen has received confirmation of the citizen's nationality and identity from the Member State of nationality.

(5) Since the loss of a passport or travel documents can cause significant distress to unrepresented 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. Member States should ensure that consultations are carried out as quickly as possible, typically within a few working days. At the same time, it is necessary to maintain sufficient flexibility in exceptional cases. The assisting Member State should only be allowed to issue EU ETDs without prior consultation of the Member State of nationality in cases of extreme urgency. Before doing so, Member States should normally have exhausted all available means of communication with the Member State of nationality. For example, Member States should first attempt to transmit part of the relevant information, such as the name, nationality and date of birth of the applicant. 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, for example to border officials or to the authorities responsible for issuing passports. Moreover, a copy or scan of each EU ETD issued should be stored at the issuing authority of the assisting Member State and another copy or scan should be sent to the recipient's Member State of nationality. The returned EU ETDs and stored copies should be destroyed as soon as possible.

(7) Unrepresented citizens should be able to apply for an EU ETD at the embassy or consulate of any Member State. As provided for in Directive (EU) 2015/637, it is possible for Member States to conclude practical arrangements for the purpose of sharing responsibilities for issuing 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) In addition to issuing EU ETDs to unrepresented citizens in third countries, 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 their own nationals, to Union citizens who are not represented within the territory of the Member States, and to citizens of another Member State which is represented in the country where they seek to obtain an EU ETD. When doing so, Member States should take the necessary measures in order to prevent abuse and fraud. However, Member States might also decide not to issue EU ETDs in such situations.

(10) 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 on the Functioning of the European Union (TFEU) 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 (the 'Charter'), and taking into account national law and practice, an assisting Member State should be able to issue EU ETDs to family members, who are not Union citizens, accompanying Union citizens, where those family members are legal residents in a Member State, taking into account the individual circumstances of each case.

(11) Certain family members who are not Union citizens might be required to obtain, in addition to the EU ETD, visas to return to the territory of the Union. Pursuant to Article 5(2) of Directive 2004/38/EC of the European Parliament and of the Council[(4)], family members who are not nationals of a Member State are only required to have an entry visa in accordance with Regulation (EU) 2018/1806 of the European Parliament and of the Council[(5)] or, where appropriate, with national law. Possession of a valid residence card referred to in Article 10 of Directive 2004/38/EC exempts such family members from the visa requirement. Member States are to grant such persons every facility to obtain the necessary visas. Such visas are to be issued free of charge as soon as possible and on the basis of an accelerated procedure.

(12) The EU ETD should consist of a uniform EU ETD form and a uniform EU ETD sticker. The EU ETD should contain all the necessary information and meet high technical standards, in particular as regards safeguards against counterfeiting and falsification. It should be cost-effective, 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 visas, if required, can be affixed directly to the form. That form should serve as the carrier for the uniform EU ETD sticker, which contains the relevant information on the recipient. The uniform EU ETD sticker should be modelled upon the uniform format for visas as laid down by Council Regulation (EC) No 1683/95[(6)] and should contain similar security features. The uniform EU ETD sticker should be filled in in the assisting Member State's embassy or consulate using the same printers as for visas. In the event of technical *force majeure*, it should be possible for the uniform EU ETD sticker to be filled in manually. To avoid reduced acceptance and security risks, manual filling-in should be limited as much as possible and should take place only where it is not possible to issue the uniform EU ETD sticker filled in by means of a printer within a reasonable time.

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(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. Only where this is not feasible, a photograph may be used after the embassy or consulate has ensured that it matches the applicant. The same facial image or photograph should then be transferred to the Member State of nationality for confirmation of the identity of the applicant.

(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 that the information on additional technical specifications is not made available to more persons than necessary, each Member State should designate a body having responsibility for producing the uniform EU ETD forms and stickers. For the purpose of efficiency, Member States are encouraged to designate one single body. Member States should be able to change the body designated by them, if necessary. For security reasons, each Member State should communicate the name of that body to the Commission and to the other Member States.

(17) In order to address the need to adapt the specifications of the uniform EU ETD form and sticker in response to technical progress, as well as to change the Member State responsible for providing specimens for the notification of the uniform EU ETD format to third countries, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(7)]. In particular, to ensure equal participation in the preparation of delegated acts, the Council receives all documents at the same time as Member States' experts, and its experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(18) In order to ensure uniform conditions for the implementation of this Directive regarding any additional technical specifications and indicators for the monitoring of the application of this Directive, 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[(8)].

(19) In order to increase the acceptance of EU ETDs, Union delegations in third countries should notify the uniform EU ETD format and any subsequent modifications to the relevant authorities of third countries, report on the acceptance of the EU ETD by third countries and promote its use. The specimens used for this purpose should be provided to the European External Action Service (EEAS) by a Member State with the support of the Commission.

(20) This Directive should not affect more favourable national provisions in so far as they are compatible with this Directive.

(21) Regulation (EU) 2016/679 of the European Parliament and of the Council[9] should apply 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 uniform 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 180 days for the assisting Member State and two years for the Member State of nationality is necessary to ensure the collection of any applicable fees and to prevent possible abuses or other fraudulent activities. The erasure of personal data of applicants should not affect Member States' abilities to monitor the application of this Directive.

(22) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, 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 this Directive and the need for any further action. That evaluation could also take into account future technical developments allowing for the introduction of electronic emergency travel documents (eETD).

(23) Since the objective of this Directive, namely to establish the measures necessary to facilitate consular protection of unrepresented citizens by means of the issuance of safe and widely accepted emergency travel documents, 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 (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(24) This Directive aims to promote consular protection as guaranteed by Article 46 of the Charter. 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.

(25) Decision 96/409/CFSP should be repealed,

HAS ADOPTED THIS DIRECTIVE: