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

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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 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. 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 on the same conditions as the nationals of that State is one of the specific rights that point (c) of Article 20(2) of the Treaty on the Functioning of the European Union (TFEU) grants to citizens of the Union.

(2) The Treaty of Lisbon reinforced the status of citizenship of the Union and strengthened the rights attached to it. Article 23 TFEU thus provides for the adoption of directives establishing the cooperation and coordination measures necessary to facilitate consular protection for unrepresented citizens of the Union.

(3) The values on which the Union is founded include solidarity, non-discrimination and respect for human rights; in its relations with the wider world the Union should uphold its values and contribute to the protection of its citizens. The fundamental right to consular protection of unrepresented citizens of the Union under the same conditions as nationals, enshrined in Article 46 of the Charter of Fundamental Rights of the European Union (the Charter), is an expression of European solidarity. It provides an external dimension to the concept of citizenship of the Union and strengthens the identity of the Union in third countries.

(4) The aim of this Directive is to lay down the cooperation and coordination measures necessary to further facilitate consular protection for unrepresented citizens of the Union. Those measures should enhance legal certainty as well as efficient cooperation and solidarity among consular authorities.

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(5) In accordance with point (c) of Article 20(2) TFEU and Article 23 TFEU, Member States should provide consular protection to unrepresented citizens on the same conditions as to their own nationals. This Directive does not affect Member States' competence to determine the scope of the protection to be provided to their own nationals.

(6) This Directive does not affect consular relations between Member States and third countries, in particular their rights and obligations arising from international customs and agreements, in particular from the Convention of 24 April 1963 on Consular Relations (the Vienna Convention), that Member States apply in compliance with Union law. Under Article 8 of the Vienna Convention, Member States may provide consular protection on behalf of another Member State upon appropriate notification and unless the third country concerned objects. Difficulties may occur, in particular, in relation to situations involving citizens who are also nationals of the host country. Member States, supported by local consular cooperation, should undertake the necessary measures in relation to third countries to ensure that consular protection can be provided on behalf of other Member States in any given case.

(7) Where unrepresented citizens need protection in third countries, efficient cooperation and coordination is required. The assisting Member State present in a third country and the Member State of nationality of the citizen should cooperate closely. Local consular cooperation in respect of unrepresented citizens can be particularly complex, as it requires coordination with authorities not represented locally, including where relevant with the competent embassies or consulates. To fill the gap caused by the absence of an embassy or consulate of the citizen's own Member State, a clear and stable set of rules should be laid down. Existing measures also need to be clarified to ensure effective protection.

(8) Citizens of the Union should be considered to be unrepresented in a third country if their Member State of nationality has no embassy, consulate or honorary consul established there. Citizens should also be considered to be unrepresented if the embassy, consulate or honorary consul established locally is unable for any reason to provide, in a given case, the protection the person concerned would otherwise be entitled to receive according to national law or practice. Embassies and consulates should inform each other about any exceptional circumstances that may temporarily affect their capacity to provide consular protection. Accessibility and proximity should also be taken into consideration. For example, a citizen who seeks consular protection or assistance 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 or lack of resources, for the citizen safely to reach or be reached by those latter instances in a way allowing him or her to receive consular protection. The notion of absence of representation should be interpreted with a view to ensuring the effectiveness of the right of unrepresented citizens to be protected by another Member State's embassy or consulate in a non-discriminatory way, taking into account the circumstances of each particular case. Citizens holding the nationality of more than one Member State should be considered

unrepresented if none of the Member States of their nationality is represented in the third country concerned.

(9) With a view to ensuring the effectiveness of the right enshrined in point (c) of Article 20(2) TFEU and of the right to respect for private and family life as recognised in Article 7 of the Charter, and taking into account national law and practice, an assisting Member State might have to provide protection to third-country family members of citizens of the Union, depending on the individual circumstances of each case. This Directive does not preclude that during the consultations which should take place before assistance is provided, the assisting Member State and the unrepresented citizen's Member State of nationality, whenever appropriate, agree on the possibility to extend assistance to third-country family members of the unrepresented Union citizen beyond what is required by the law of the assisting Member State or what is dictated by its practice, taking into account as much as possible requests from the unrepresented citizen's Member State of nationality, and in so far as what is agreed does not fall short of what is required by Union law. However, Member States might not be in a position to deliver certain types of consular protection, such as emergency travel documents, to third-country family members. Where assistance for minors is concerned, the best interests of the child should be a primary consideration, in accordance with Article 24 of the Charter, and as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.

(10) Unrepresented citizens should be able to seek consular protection from the embassy or consulate of any Member State. However, that should not prevent Member States from entering into practical arrangements for the purpose of sharing responsibilities for providing consular protection to unrepresented citizens in accordance with this Directive. Such arrangements are beneficial to citizens, since they allow for better preparedness to ensure effective protection. Member States that receive requests for protection should assess whether, in a specific case, it is necessary to provide consular protection or whether the case can be transferred to the embassy or consulate which is designated as competent according to any arrangement already in place. Member States should notify the Commission and the European External Action Service (EEAS) of any such arrangement, which should be publicised by the Union and Member States to ensure transparency for unrepresented citizens.

(11) This Directive should not prevent the Member State which is not represented in a third country from delivering consular protection to one of its nationals, for example by providing online consular services, where appropriate. The Member State of nationality of an unrepresented citizen should be allowed to request the Member State from which that citizen seeks or receives consular protection to transfer the application or case in order itself to deliver consular protection. Such a transfer should not result in the unrepresented citizen being deprived of consular protection.

(12) Notwithstanding the varying traditions of Member States regarding the competences of honorary consuls, they usually do not offer the same range of services as embassies or consulates. Considering that honorary consuls often fulfil their mission on a voluntary basis, it should be left to each Member State to decide whether this Directive should

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apply to its honorary consuls. Honorary consuls could be required to provide consular protection to unrepresented citizens, depending on the circumstances of each case.

(13) Requests for protection should be processed if applicants present a valid Union citizen's passport or identity card. However, unrepresented citizens in need of consular protection might no longer be in possession of their identity documents. The fundamental status of citizenship of the Union is conferred directly by Union law and identity documents are of merely declaratory value. If applicants are unable to provide valid identity documents, they should therefore be able to prove their identity by any other means. If necessary, the identity of the person concerned could be verified when consulting the authorities of the Member State of which the applicant claims to be a national. With regard to third-country family members accompanying the applicant, the authorities of the Member State of nationality of the applicant should also be able to help the assisting Member State in verifying the identity and existence of a family relationship with the applicant.

(14) In order to establish which coordination and cooperation measures are necessary, the scope of consular protection under this Directive should be specified. Consular protection for unrepresented citizens should include assistance in a number of typical situations in which Member States provide consular protection to their own nationals depending on the individual circumstances of each case, such as in cases of arrest or detention, serious accident or serious illness and death, as well as with regard to providing relief and repatriation in cases of distress, or the issuance of emergency documents. Since the protection needed always depends on the factual situation, consular protection should not be limited to the situations specifically mentioned in this Directive.

(15) Where applicable, the citizen's wishes, including as to whether family members or other related persons should be informed and if so whom, should be duly respected. Similarly, in the event of death, due account should be taken of the wishes of the next of kin concerning the arrangements to be made with regard to the remains of the deceased citizen. The Member State of nationality of the unrepresented citizen should be responsible for these contacts.

(16) Member States' authorities should closely cooperate and coordinate with one another and with the Union, in particular the Commission and the EEAS, in a spirit of mutual respect and solidarity. To ensure swift and efficient cooperation, Member States should provide and continuously update information on relevant contact points in the Member States through the secure website of the EEAS (Consular OnLine).

(17) In third countries the Union is represented by the Union delegations, which, in close cooperation with the diplomatic and consular missions of the Member States, contribute to the implementation of the right of Union citizens to consular protection, as specified further in Article 35 of the Treaty on European Union. This Directive fully recognises, and further enhances, the contribution already provided by the EEAS and by Union delegations, in particular during crisis situations, in accordance with Council Decision 2010/427/EU[(2)], in particular Article 5(10) thereof.

(18) Regarding local cooperation, competences and respective roles of all relevant actors should be clarified in order to ensure that unrepresented citizens receive the assistance to which they are entitled in accordance with the principle of non-discrimination. Local consular cooperation should pay due attention to unrepresented citizens, for example by collecting and regularly updating information on relevant contact points and sharing it with the local embassies and consulates of Member States and with the Union delegation.

(19) Local consular cooperation meetings, organised in close cooperation with the Union delegation, should include a regular exchange of information on matters relevant to unrepresented citizens, such as safety of citizens, prison conditions, consular notification and access and crisis cooperation. In those meetings, represented Member States should, wherever necessary, agree on practical arrangements to ensure that unrepresented citizens are effectively protected. Such agreements might not be necessary if, for example, the number of unrepresented citizens is small.

(20) A clear division of responsibilities between represented and unrepresented Member States and the Union delegation is essential to ensure adequate crisis preparedness and crisis management. Crisis contingency planning should therefore be coordinated and fully take unrepresented citizens into account. To this end, in the framework of local crisis response preparedness, Member States which do not have an embassy or consulate established locally should provide all available and relevant information regarding their citizens in the territory. Such information should be updated as appropriate in the event of a crisis. Competent embassies and consulates, and Union delegations should be informed and, wherever appropriate, involved in crisis preparedness arrangements. Information regarding those arrangements should be made available to unrepresented citizens. In the event of a crisis, the Lead State or the Member State(s) coordinating the assistance should coordinate the support provided for unrepresented citizens and the use of available evacuation capacities on the basis of the agreed planning and local developments, on a non-discriminatory basis.

(21) Interoperability between consular staff and other crisis-management experts should be enhanced, in particular through their participation in multi-disciplinary crisis teams, such as those under the EEAS crisis response and operational coordination and crisis management structures and under the Union Civil Protection Mechanism[(3)].

(22) It should be possible to request the support of the Union Civil Protection Mechanism if it is needed for the consular protection of unrepresented citizens. That support could be requested, for instance, by the Lead State or the Member State(s) coordinating the assistance.

(23) The term ‘Lead State’ used in this Directive refers to one or more Member State(s) represented in a given third country, and in charge of coordinating and leading the assistance of unrepresented citizens during crises. The concept of Lead State, as established in the relevant Union guidelines[(4)], could be further developed in compliance with Union law and, in particular, with this Directive.