



**COUNCIL OF
THE EUROPEAN UNION**

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17517/12

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2011/0432 (CNS)**

**COCON 43
PESC 1523
COTRA 46**

“I” ITEM NOTE

from:	Presidency
to:	Coreper (Part II)
Subject:	Proposal for a Council directive on consular protection for citizens of the Union abroad - State of play

Delegations will find in Annex a Presidency note regarding the proposal for a Council Directive on consular protection for citizens of the Union abroad, which the Presidency is forwarding to Coreper for information.

This note was presented for information to the delegations of Working Party on Consular Affairs (COCON) on 11 December 2012.

ANNEX

I. INTRODUCTION

1. On 19 December 2011, the Commission forwarded to the Council its proposal for a Council directive on consular protection for citizens of the Union abroad. The proposal aims at establishing cooperation and coordination measures to facilitate the right to consular protection for unrepresented Union citizens on a non-discriminatory basis as referred to in Articles 20(2) c and 23 TFEU. Moreover, this proposal is a response to the call from the European Council¹ to consider appropriate measures establishing cooperation and coordination to facilitate consular protection in accordance with Article 23 TFEU.
2. A priority of the Cyprus Presidency has been to conclude a detailed article-by-article examination of the proposal for a Council directive on consular protection for citizens of the Union abroad and, where appropriate, to present a report to COREPER on the state of play. The proposal was examined in detail by the Working Party at its four meetings on 4 July, 14 September, 11 October and 7 December 2012. Member States have submitted written comments on the proposal².
3. A number of Member States are maintaining a general reservation on the proposal.
4. The European Parliament delivered its opinion on 25 October 2012³.
5. The Council Legal Service gave an opinion on burden-sharing arrangements, confirming that consular protection for EU citizens abroad may be organised through cooperation and coordination measures, providing for burden-sharing arrangements that are binding on applicant citizens. However, the Legal Service stressed that the effective protection must not in any way be compromised by the application of such arrangements.⁴

¹ 17024/09, adopted by the European Council on 10/11 December 2009.

² 12573/12 + ADD 1-6; 12300/3/12 REV 3.

³ A7-0288/2012.

⁴ 14723/12.

6. Following constructive discussions in the Working Party on Consular Affairs and in order to make progress on the proposal, the Presidency submitted a revised text for Chapter 1 (General provisions) and Chapter 2 (Coordination and cooperation measures)⁵ in view of the meeting of the Working Party on Consular Affairs on 7 December.

II. STATE OF PLAY

1. At the meeting of 7 December 2012, all Member States welcomed the revised text on Chapter 1 and Chapter 2⁶ and the Presidency's efforts to find a compromise during the meeting of 7 December. Under the understanding that "nothing is agreed until everything is agreed", a preliminary agreement was reached on Article 6 (Types of assistance) and Chapter 2: Article 7 (General rules), Article 8 (Arrest or detention), Article 9 (Victim of crime, serious accident or serious illness) and Article 10 (Death). Article 1 (Subject matter); Article 1 a (General principle) and Article 5 (Identification) were agreed in principle, subject to additional clarifications.
2. The Presidency notes that further discussions are necessary on some Articles such as Article 2(2) (third country family members), Article 3 (1) and (2) (notion of accessibility) and Article 4 (1) and (2) (burden-sharing arrangements). Articles 3 and 4 could be re-examined in the light of further detailed discussions on Chapter 3 (Financial procedures) and Chapter 4 (Local and crisis cooperation and coordination). The Presidency considers that the following require additional discussions and/or clarifications:

Family members as beneficiaries (Article 2 (2))

Member States supported the Presidency proposal for a definition of "unrepresented citizens" in Article 2(1). However, some Member States maintained their reservation on Article 2(2) regarding non-EU family members of unrepresented citizens. Some of these Member States would like to delete Article 2(2) while others would prefer to limit its scope to crisis situations.

⁵ 16296/12 + REV 1.

⁶ *idem*.

Accessibility (Article 3 (1) and (2))

While Member States welcomed the revised notion of accessibility⁷, given the importance of this notion for the purpose of defining the scope of the Directive, a few Member States and the Commission entered a scrutiny reservation.

Honorary Consuls (Article 3(3))

A few Member States argued that Honorary Consuls assume their role on a voluntary basis and that this provision may thus be difficult to supervise and complied with due to their lack of or limited competence.

Burden-sharing (Article 4 (2))

One delegation considered that it should be mandatory to conclude burden-sharing arrangements in all third countries whereas a majority of delegations recognised the merit of burden-sharing arrangements as a possibility for sharing the burden.

3. In order to achieve further progress towards reaching a compromise including Chapters 3 and 4, the Presidency notes that additional discussions are needed on the following two outstanding issues:
 - As regards the financial aspects of the proposal, the potential financial impact of implementing the non-discrimination principle as laid down Article 20(2) TFEU has been raised by a number of delegations. In this context, one delegation has presented options for the financing of consular services⁸.
 - As to the role of EU delegations, some Member States call for enhancement of this role in supporting the Member States, in particular during a crisis, whereas the EEAS pointed out that, at this stage, it does not have the necessary financial appropriations to take on tasks other than those currently carried out.

⁷ 16296/1/12 REV 1.

⁸ 12573/12, p. 11-13.

4. The Presidency notes that, in view of the above, further discussions on this file are necessary before an agreement can be reached on the proposed Directive in the Working Party on Consular Affairs.

III. CONCLUSION

The Presidency proposes that the Permanent Representatives Committee:

- take note of the state of play of the proposal for a Council directive on consular protection for citizens of the Union abroad;
- take note of the preliminary Presidency compromise for Chapters 1 and 2, as set out in 16296/2/12 REV 2 COCON 38 PESC 1393 COTRA 39, and
- invite the incoming Irish Presidency to continue the work together with the Member States, the Commission and the EEAS, focusing on Chapters 3 and 4 in order to reach an agreement on this Council Directive at a future date.