



EUROPEAN COMMISSION

Brussels, 14.12.2011  
SEC(2011) 1556 final

**COMMISSION STAFF WORKING PAPER**

**IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a DIRECTIVE OF THE COUNCIL**

**on coordination and cooperation measures regarding consular protection for  
unrepresented EU citizens**

{COM(2011) 881 final}  
{SEC(2011) 1555 final}

*Disclaimer: This report commits only the Commission's services involved in its preparation and does not prejudge the final form of any decision to be taken by the Commission.*

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## 1. INTRODUCTION

*This impact assessment examines the coordination and cooperation measures regarding consular protection for unrepresented EU citizens with the aim of further facilitating consular protection in third countries. Special attention is given to financial reimbursement in crisis situations. It will be safeguarded that unrepresented EU citizens are treated by the assisting consular authority in the same way as its own nationals; and quality of service for unrepresented EU citizens as well as the solidarity and collaboration between consular authorities will be further enhanced.*

An EU citizen, travelling to or living in a third country where his/her Member State is not represented by an embassy or consulate, has the right to enjoy the protection of the diplomatic and consular authorities of any other Member State under the same conditions as the nationals of that State. This right is 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.

Recent major crises have affected a considerable number of EU citizens in third countries (for instance in Libya, Egypt and Bahrain after the democratic uprisings in spring 2011 or in Japan after the earthquake in March 2011). Yet also in day-to-day situations (e.g. in the event of serious illness or when someone is a victim of crime) assistance by consular authorities is often essential (for instance assisting with access to medical facilities or issuing emergency travel documents). The need for consular protection is expected to further increase in the future<sup>1</sup>.

This impact assessment accompanies the Commission's proposal for a draft Directive on the coordination and cooperation measures regarding consular protection for unrepresented citizens of the Union.

## 2. CONTEXT AND CONSULTATION

### 2.1. Policy context

The right to equal treatment on consular protection for unrepresented EU citizens is one of the specific rights granted by the concept of EU citizenship. It is commonly regarded as an expression of EU solidarity and of the identity of the Union in third countries, as well as one of the practical benefits of being an EU citizen.

Consular protection for EU citizens is an integral component of the Union's policy, fostering the rights of the EU citizens. The Stockholm Programme prioritises over the coming years the needs and interests of the citizens and it emphasises that all opportunities offered by the Lisbon Treaty, in order to strengthen the European area of freedom, security and justice for the benefit of EU citizens, should be used by the European institutions<sup>2</sup>. Regarding consular protection the European Council invited the Commission to 'consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU'<sup>3</sup>.

In its Resolution of 25 November 2009 the European Parliament emphasised the importance of strengthening the coordination and cooperation of consular protection; as it considered that the

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<sup>1</sup> See below under point 3.1.

<sup>2</sup> OJ 2010/C 115/01 - The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Council document 17024/09 of 2 December 2009.

<sup>3</sup> *Idem*.

exercise of the rights of EU citizens must be secured beyond national borders, and that they must be able to fully exercise their specific rights, even outside the Union<sup>4</sup>. This was a follow-up to its Resolution of 11 December 2007 advocating the adoption of common concepts and binding guidelines for establishing common standards in the field of consular protection, and – once the Lisbon Treaty has been ratified – subsequent submission of a proposal for amending Decision 95/553/EC<sup>5</sup>.

The EU Citizenship Report 2010, a strategic initiative of the Commission, stemmed from President Barroso's political commitment to obtain a comprehensive overview of the obstacles citizens still face and to propose how they can best be removed<sup>6</sup>. It stressed that there was still a gap between the applicable legal rules and the reality confronting citizens in their daily lives, particularly in cross-border situations, and underlined the importance of making EU citizenship more effective in practice. According to action 8 of the report, the Commission would consider increasing the effectiveness of the right of EU citizens to be assisted in third countries, including in times of crisis, by the diplomatic and consular authorities of all Member States, by proposing legislative measures in 2011 and by better informing citizens via a dedicated website and targeted communication measures. The Commission reiterated this commitment<sup>7</sup> in its Communication of 23 March 2011 on consular protection for unrepresented EU citizens<sup>8</sup>, which took stock of the Union's contribution to effective consular protection in third countries as announced in the Commission's Action Plan 2007-2009<sup>9</sup> and presented the way forward based on the experience gained and the renewed institutional framework.

The **Lisbon Treaty** takes account of the increased need for a European dimension for consular protection by reinforcing and clarifying the capacity of the Union to act.

Consular protection for EU citizens, introduced by the Maastricht Treaty, is also enshrined in Article 46 of the Charter of Fundamental Rights of the European Union. This right confers a clear individual entitlement for the citizen of a non-represented Member State to be treated by the consular and diplomatic authorities of another Member State as if he/she were its own national. Articles 20(2)(c) and 23 form an integral part of Chapter II on non-discrimination and citizenship of the TFEU.

Under the previous legal regime Member States had to establish the necessary rules themselves. Two succinct sui generis decisions were adopted (Decision 95/553/EC on consular protection for unrepresented EU citizens<sup>10</sup> and Decision 96/409/CFSP regarding Emergency Travel Documents<sup>11</sup>), as well as non-binding guidelines (on consular protection of EU citizens in third countries in general as well as on specific terms of Decision 95/553 and on crisis cooperation<sup>12</sup>). The Lisbon

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<sup>4</sup> European Parliament Resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0090&format=XML&language=EN>).

<sup>5</sup> European Parliament Resolution of 11 December 2007 on the Green Paper: Diplomatic and consular protection of Union citizens in third countries (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0592&language=EN&ring=A6-2007-0454>).

<sup>6</sup> COM(2010) 603 final.

<sup>7</sup> See also the Commission Work Programme 2011 (COM(2010)623 final).

<sup>8</sup> COM(2011) 149 final.

<sup>9</sup> COM(2007) 767 final.

<sup>10</sup> OJ L 314, 28.12.1995, p. 73.

<sup>11</sup> OJ L 168, 16.7.1996, p. 4.

<sup>12</sup> Guidelines on consular protection of EU citizens in third countries (Council document 10109/2/06 of 16 June 2006 revised by Council document 15613/10 of 05 November 2010 (not published)). Guidelines for further

Treaty conferred on the Commission the right to initiate legislative proposals, i.e. directives establishing cooperation and coordination measures necessary to facilitate the right regarding consular protection for unrepresented EU citizens<sup>13</sup>. Any such legislative proposal would, following consultation of the European Parliament, be subject to qualified majority voting in the Council<sup>14</sup>.

The Lisbon Treaty also allowed for the creation of the European External Action Service (EEAS)<sup>15</sup>. Article 35 of the Treaty on European Union (TEU) stipulates that the diplomatic and consular missions of the Member States and the Union delegations in third countries shall contribute to the implementation of the right of EU citizens as referred to in Article 20(2)(c) TFEU and of the measures adopted pursuant to Article 23 TFEU.

#### Right to equal treatment as regards consular protection

Every EU citizen has, in a third country in which his/her Member State of nationality is not represented, the right to protection by the diplomatic or consular authorities of any EU Member State, under the same conditions as the nationals of that State. This means that an EU citizen who travels to (or lives in) a non-EU country, where his/her home Member State does not have an embassy or a consulate, can turn to another Member State's embassy or consulate and ask for protection. The EU citizen then has the right to be treated in the same way as the assisting Member State would treat its own nationals (non-discrimination).

## **2.2. Consultation and chronology**

### *2.2.1. Consultation of stakeholders*

The views of Member States and other stakeholders were widely sought in accordance with the general principles and minimum standards applicable to the consultation of interested parties. In a comprehensive public consultation on EU citizens' rights in 2010, contributions from all citizens and relevant stakeholders were sought with a view to identifying concrete actions. Particular attention was given to consular protection for EU citizens. This public consultation followed a previous one connected with the Green Paper of 2007 on diplomatic and consular protection of EU citizens in third countries<sup>16</sup>. The ideas put forward during the public consultation informed the policy debate at the conference "EU citizens' rights – the way forward" of 1-2 July 2010, during which consular protection was discussed in depth.

A 2010 Eurobarometer on Citizenship revealed that consular protection for unrepresented EU citizens constitutes the least known EU Citizenship right<sup>17</sup>. Stakeholders involved in consular protection (such as Member States, travel associations, non-governmental organisations and academics) were consulted, including via two dedicated workshops which took place on 24 September 2010 and on 23 June 2011. Consular and diplomatic authorities of all the Member States were informed in the Council Working Group Consular Affairs (COCON) and consulted via an

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implementing a number of provisions under Decision 95/553/EC (Council document 11113/08). Lead State concept (Council document 10715/07) and European Union guidelines on implementation of the consular Lead State concept (document 2008/C317/06, OJ C317/06, p. 6). See as well Decision of the Representatives of the Governments of the Member States, meeting within the Council, on measures implementing the Decision regarding protection for citizens of the European Union by diplomatic and consular representations (Council document 11107/95 (not published)).

<sup>13</sup> Article 23(2) TFEU.

<sup>14</sup> Article 16(3) TEU.

<sup>15</sup> Article 27 TEU.

<sup>16</sup> OJ C 30 of 10.2.2007, p. 8.

<sup>17</sup> Eurobarometer(2010), Flash EB No 294, European Union Citizenship.

online survey and bilateral interviews and six representative Member States were recently visited. To ensure that any measures proposed would be appropriate and proportional and to provide for a 'reality check', field missions to four selected third countries (Kazakhstan, Sri Lanka, Cuba and Egypt) were undertaken by an external consultancy to directly consult consular practitioners working on the ground.

### 2.2.2. *Studies on consular protection*

This impact assessment also draws on four recent studies on consular protection for unrepresented EU citizens.

- A study (2009) on Member States' legislations and practices, carried out by the Instituto Europeo de Derecho, examined laws and practices of Member States in the field of consular protection, including as regards the implementation of the Decision 95/553/EC on unrepresented EU citizens.
- Through the CARE (Citizens Consular Assistance Regulation in Europe) project activities (2009-2011), realised with the financial support of the Fundamental Rights & Citizenship Programme of the European Commission, the legal framework of Member States on consular and diplomatic protection was comprehensively analysed. Special attention was given to Article 23 TFEU.
- An external study (2010) by the consultancy GHK supported the Commission in its analysis of policy options and the related costs, focusing on crisis situations and financial reimbursement.
- A second external study (2011) undertaken by the consultancy Matrix Insight provided further evidence, including via missions to third countries, evaluated Decision 95/553/EC and the current functioning of cooperation and coordination and examined how consular protection for unrepresented EU citizens could be further improved.

### 2.2.3. *Internal consultation and scrutiny of the Impact Assessment*

An Interservice Impact Assessment Steering Group involving representatives from DG ECHO, EEAS, DG HOME as well as the Legal Service and the Secretariat-General was created.

IASG meetings were held on 17 June, 1 July and 15 July 2011. The IASG also supported the work on financial reimbursement in crisis situations through meetings on 15 July and 22 October 2010. Feedback received at the meetings and through further contacts has been taken into account throughout this report. The European Commission's Impact Assessment Board examined this impact assessment in written procedure and issued its opinion on 16 September 2011. The opinion is fully taken into account in the Impact Assessment. In particular, explanations about the estimated costs/benefits and the similarities and variations of standard consular services have been developed and the analysis of consular protection in crisis situations and regarding third country family members have been further elaborated. Stakeholders' views about the option elements and the expected benefits of awareness-raising measures have been further detailed.

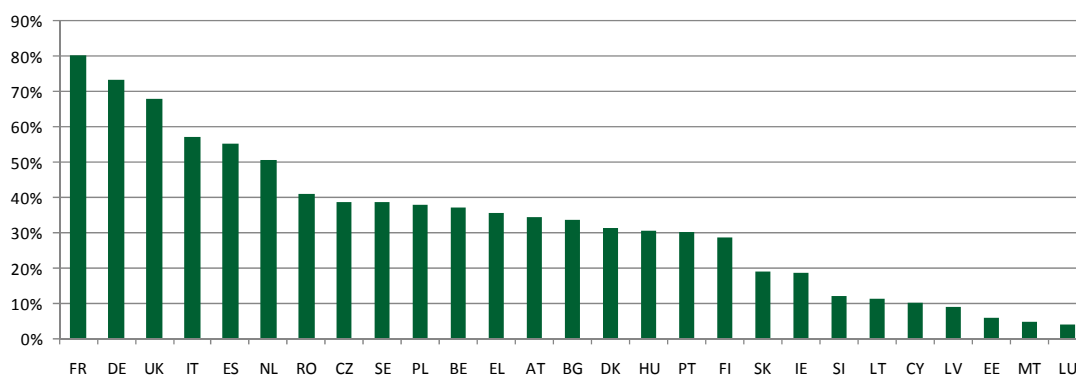
### 3. PROBLEM DEFINITION

#### 3.1. Magnitude

Large numbers of EU citizens have been affected by recent crises. In Libya around 5.800 EU citizens were evacuated, in Haiti 2.700 EU citizens were affected. In Egypt there were at least 100.000 EU citizens (mostly tourists in the Red Sea region) and in Japan around 37.000 EU citizens involved<sup>18</sup>. Apart from their security, humanitarian or nuclear safety impacts, all these events were also consular crises<sup>19</sup>, as they required an appropriate consular response: providing information on safety measures, coordination of evacuations, issuance of emergency travel documents.

All 27 Member States are represented in only three third countries: China, Russia and the United States (Annexes I and II present an overview of Member States' representations in third countries). France, Germany, the UK, Italy and Spain (combined population of 314.815.000) are in the top quintile with representation in more than 50% of all third countries. Malta, Estonia, Luxembourg, Latvia and Cyprus (combined population of 5.301.000) are in the bottom quintile with representations in less than 10% of all third countries.

**Figure 1: Number of representations in third countries per Member State (as a percentage of total third countries)**



**Source:** General Secretariat of the Council, 17770/2/09 REV 2 PESC 1795 RELEX 1235 COCON 47, EU diplomatic representation in third countries, second half of 2010

Currently there are no systematic data on unrepresented EU citizens travelling to or living in third countries. To obtain the number of unrepresented EU citizens travelling or residing in third countries, relevant travel and emigration patterns around the world have been analysed. Eurostat has information about trips to third countries in 2009 (both for holidays and business), and the UNWTO World Tourism Barometer<sup>20</sup> provides comprehensive data on international tourist arrivals in third countries. National statistical sources as well as information by travel associations are used for validation and to fill remaining gaps. Regarding the total number of EU citizens living in third

<sup>18</sup> See COM(2011) 149 final.

<sup>19</sup> A consular crisis is any situation caused by natural or manmade disaster that affects a high number of persons, requiring the immediate and direct intervention of a consular authority to ensure safety and security of its citizens present abroad.

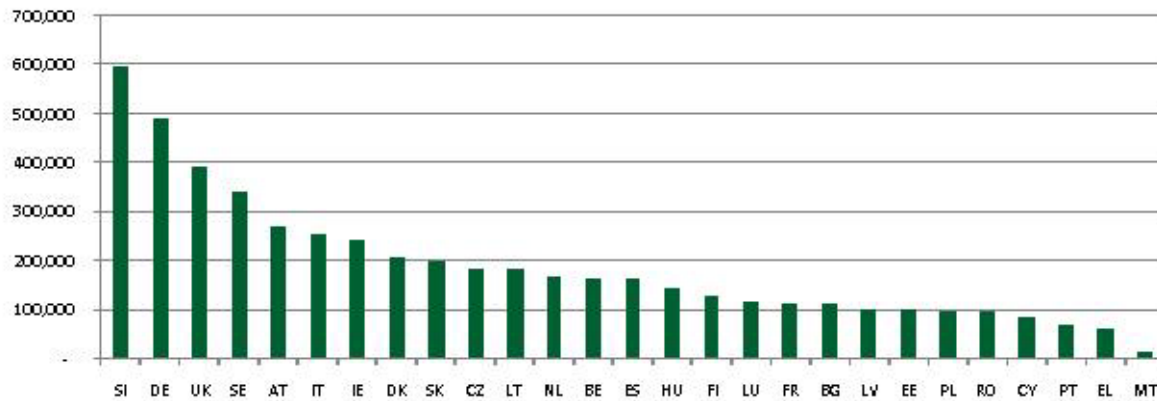
<sup>20</sup> UNWTO(2010), World Tourism Barometer, Vol 8, No 2, June 2010.



countries Eurostat emigration figures were used to reflect the total number of emigrants both by Member State and by third country<sup>21</sup>.

Following a comparison of the numbers of representations and the actual number of citizens travelling to or residing in third countries, an estimated 6.86 million EU citizens travel to (5.12 million) or live in (1.74 million) third countries where their Member State is not represented<sup>22</sup>.

**Figure 2: Estimate of total number of instances when travelling EU citizens are unrepresented in third countries (2009)**



On the basis of the information provided by Member States, in 2009 consular protection was provided in total in almost 300.000 cases<sup>23</sup>. According to reported data, represented EU citizens appear to ask for and obtain consular protection much more often than unrepresented EU citizens. If one assumes that represented and unrepresented EU citizens are equally likely to get into a situation in which they could request consular protection (e.g. victim of robbery) around 7.300 unrepresented EU citizens have been thus affected in third countries<sup>24</sup>. In fact, only 16% of these citizens have actually benefited from consular protection - although according to a recent Eurobarometer survey 79% of EU citizens know about the existence of this right<sup>25</sup> - a right that has however not yet been fully established<sup>26</sup>.

<sup>21</sup> A Member State's share of total emigration to third countries can be used to estimate the number of citizens of a particular Member State residing outside the EU. Further indications about the number of EU citizens living in third countries were obtained from expatriate associations.

<sup>22</sup> Please see Annex III for further details on the methodology.

<sup>23</sup> 295.490 cases in 2009. As not all Member States reported cases this figure is partially based on extrapolations (see Annex III).

<sup>24</sup> Compared to how often represented nationals requested consular protection.

<sup>25</sup> Eurobarometer(2010), Flash EB No 294, European Union Citizenship.

<sup>26</sup> For the various reasons please see the following section.

Figure 3: Unrepresented EU Citizens Potentially in Need of Consular Protection



As time goes by more and more citizens will find themselves in situations where they may be eligible for consular protection of another Member State (see point 3.4 on the baseline scenario). This trend is further aggravated by the ongoing rationalisation of Member States' consular networks.

EU citizens travelling to and living in third countries are also increasingly exposed to crisis situations (both natural and manmade). As outlined in the Commission's recent Communication "Towards a stronger European disaster response: the role of civil protection and humanitarian assistance"<sup>27</sup>, the recorded annual number of disasters has increased fivefold - from 78 in 1975 to nearly 400 currently. This is the effect of climate change, population growth combined with increasing urbanisation and other factors<sup>28</sup>. The frequency and intensity of disasters are likely to continue increasing. Also terrorism and civil unrests remain a significant security threat. Consular crises involving unrepresented EU citizens are even more likely to take place in the future due to an increasing number of EU citizens travelling to third countries or residing there. In 2010, several consular crises had an impact on unrepresented EU citizens<sup>29</sup>; also the consular crises in the first half of 2011, in Tunisia, Yemen and in particular in Libya, involved unrepresented EU citizens.

### 3.2. General problem

*In line with the case-law of the European Court of Justice<sup>30</sup>, citizenship of the Union should be the fundamental status of EU citizens when exercising their rights under the Treaties. Citizens should be able to make use of their rights in the same way as they use their rights as national citizens. However, the **implementation of EU citizenship as a concrete reality ensuring equal treatment in regard to consular protection** is currently not secured. There is no clear consensus on the content of Article 23 TFEU and about the responsibilities which this right entails. Cooperation and coordination often work on an ad-hoc basis, depending to a large extent on personalities involved, rather than on clear divisions of responsibilities and established procedures. These issues are*

<sup>27</sup> COM(2010)600 final, 26.10.2010.

<sup>28</sup> Such as increased industrial activity and environmental degradation.

<sup>29</sup> Haiti earthquake, Chile earthquake, Thailand civil unrest, Kyrgyzstan civil unrest, volcanic ash cloud, Ladakh floods, Yemen civil unrest, Ivory Coast civil unrest. According to information provided by the Member States in Haiti assistance was provided to more than 200 unrepresented EU citizens, in Kyrgyzstan to 89 unrepresented citizens. See also Annex VI.

<sup>30</sup> See for instance case C-184/99 *Grzelczyk*.

*examined in more depth below (points 3.2.1 and 3.2.2); they are further considered through a number of specific parameters which are analysed subsequently (point 3.3.).*

### 3.2.1. *Scope and content not clear*

#### Article 23 TFEU

*"Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.*

*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 such protection."*

Article 23 TFEU constitutes a Treaty right, even a fundamental right. To be effective as a right with concrete meaning, the succinct wording of Article 23 TFEU is not sufficient. A tangible right requires form and shape.

Currently, national consular laws and practices diverge considerably as do views about the underlying concepts of consular protection for unrepresented EU citizens. Clear, distinct and adequate demarcation as to the applicability and content of this right, including 1) which entity is responsible 2) under what conditions and 3) for what assistance are not sufficiently in place. This is all the more important as consular cases frequently involve unrepresented EU citizens and their relatives in very difficult life situations (death, serious illness, detention, crime). Often, consular protection is the only way to get help (e.g. in cases of evacuation or detention) or at least greatly mitigates the process (e.g. transferral of corpse and help with burdensome administrative procedures).

The current legal framework mainly consists of Decision 95/553/EC, a succinct sui generis decision adopted by representatives of Member State governments outside the framework of EU law as provided for by the Lisbon Treaty<sup>31</sup>. This decision is supplemented by dispersed non-binding guidelines<sup>32</sup>, whose implementation is left to the discretion of the consular authorities in place in third countries. The current framework, despite providing a basis on which any future measures should be fully built, is thus liable to create ambiguities and divergences in interpretation and application, and leaves significant room for further clarification. Citizens are accordingly unable to rely on a right with a clear ambit (e.g. a clear definition of when citizens are "unrepresented" or clarity as to which Member State they can turn to in a specific third country) and it is difficult to meet their expectations. Although general awareness about this right is relatively high (79%), a

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<sup>31</sup> OJ L 314, 28.12.1995, p. 73. Article 23(2) TFEU abandons the previous logic of intergovernmental decision-making (see policy context under point 2.1).

<sup>32</sup> Guidelines on consular protection of EU citizens in third countries (Council document 10109/2/06 of 16 June 2006 revised by Council document 15613/10 of 05 November 2010 (not published)). Guidelines for further implementing a number of provisions under Decision 95/553/EC (Council document 11113/08). Lead State concept (Council document 10715/07) and European Union guidelines on implementation of the consular Lead State concept (document 2008/C317/06, OJ C317/06, p. 6). See as well Decision of the Representatives of the Governments of the Member States, meeting within the Council, on measures implementing the Decision regarding protection for citizens of the European Union by diplomatic and consular representations (Council document 11107/95 (not published)).

2010 Eurobarometer on Citizenship revealed that consular protection for unrepresented EU citizens constitutes the least known EU citizenship right;<sup>33</sup> but citizens' expectations are high. Even though consular protection provided by Member States varies, the majority of EU citizens (62%) would expect the same kind of help regardless of which Member State's embassy they turn to, while a third of EU citizens (28%) expect at least a minimum standard of help provided by any Member State<sup>34</sup>. The current divergences make it difficult for the citizen to establish and be aware of the clear content of this right and under which conditions he/she is entitled to ask for assistance. Current lack of clarity also encourages disproportionate expectations on the part of citizens as to what this right entails<sup>35</sup>.

The specific areas where more clarity is needed will be examined below (point 3.3).

Member States generally acknowledge that the current legal framework should be brought into line with the Lisbon Treaty and that this should provide an opportunity to achieve further clarity and simplification. Accordingly, the European Council invited the Commission to consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU<sup>36</sup>.

### 3.2.2. *Cooperation and coordination procedures not sufficiently established*

Under Article 23 TFEU the assisting Member State has to treat an unrepresented EU citizen as if he/she was its own national. However, unlike dealing with own nationals, assisting an unrepresented citizen requires cooperation and coordination with other Member States.

Firstly, this concerns cooperation and coordination between the assisting Member State present on the ground and the Member State of origin. The citizen's Member State of origin often has necessary information about the citizen/ his or her relevant contact persons, which may need to be provided or sought for further guidance (for instance if the citizen is detained or in a coma). Currently, there is not always a clear framework on cooperation and coordination between the relevant authorities which would fill the gap caused by the lack of an accessible own consular representation (see below under point 3.3 for further details).

It is currently not easy to establish how and by whom unrepresented EU citizens would be taken care of, including in a crisis. This appears all the more important as unrepresented EU citizens may in a crisis find things even more difficult to deal with (given the absence of national authorities and single contact points). Unrepresented EU citizens constitute a vulnerable group: consular protection is often needed by citizens in difficult life situations, and they face an "entry barrier" to assistance given the absence of their own representation in loco. Whereas for nationals it is evident that the local embassy/consulate is responsible for providing help, the situation for unrepresented citizens is more complex, since it involves foreign nationals and requires coordination and cooperation with authorities not represented on the ground. This is the case both for local cooperation (i.e. cooperation between the embassies/consulates in a given third country) and for cooperation in crisis situations (e.g. evacuation of citizens). Despite the need for a certain degree of flexibility, the division of roles and responsibilities for unrepresented EU citizens is often not sufficiently clear, so their equal treatment is not guaranteed. For example regarding local cooperation on the ground in

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<sup>33</sup> Eurobarometer(2010), Flash EB No 294, European Union Citizenship.

<sup>34</sup> *Idem*.

<sup>35</sup> E.g. that a citizen would be unrepresented and could turn to another Member State's representation if his/her national embassy was situated in another part of the capital city.

<sup>36</sup> OJ 2010/C 115/01 - The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Council document 17024/09 of 2 December 2009.

third countries the EU's role is ambiguous, which induces a suboptimal use of resources and capacities. In crisis situations financial burden-sharing regarding unrepresented EU citizens is not established and current reimbursement procedures are cumbersome and do not reflect the specificities of crisis situations. As a result assisting Member States often bear the whole financial responsibility for the protection of unrepresented EU citizens which may deter them from taking a proactive approach. These aspects will be further developed below.

### 3.3. Specific parameters

In this section the general problems are further examined by reference to the following specific parameters:

1) *Who is an unrepresented EU citizen?*

2) *Which Member State assists an unrepresented EU citizen and how is this assistance to be coordinated with the citizen's Member State of origin?*

3) *How should the consular actors in a given third country cooperate with each other and coordinate their action (in particular, how can the EU level provide added value in this respect)?*

4) *How and by whom should unrepresented EU citizens be assisted in crisis situations and how should the financial burden be shared between the assisting and the unrepresented Member State?*

These parameters will be analysed in turn. They are accompanied by examples illustrating these parameters further.

#### 3.3.1. *Who is an unrepresented EU citizen? (Personal scope)*

*Example 1: Andreas from Member State A was travelling in the vast non-EU country X. In a remote region of X he was robbed and deprived of his passport. He is in need of consular protection (advice and issuance of an emergency travel document) and finds out that his own Member State A has an embassy in the capital of X, which is however several travel hours away. It is unclear whether he has the right to turn to Member State B, which has a consulate in the region, or whether he needs to travel to the capital. Current non-binding guidelines point to factors such as convenient distance and reasonable time, depending on the individual circumstances in the third country concerned, without clarifying what constitutes "convenient distance" or "reasonable travel time". Andreas therefore travels to the capital. Besides considerable transport costs he has to bear the cost of staying in a hotel, as he is not able to return the same day.*

*Variation: Andreas is accompanied by his wife Angela, a non-EU national. Angela was also robbed and deprived of her belongings. It is currently not clear to what extent she would also be entitled to assistance (as a family member of an unrepresented EU citizen).*

*Example 2: Albert has been living in Member State A for 10 years but has not become a national. Nadja is a recognised refugee in Member State A. They were both on a bus journey in X when an accident happened. Albert was severely injured, Nadja died instantly. It is currently not clear to what extent Albert/ Nadja's parents would be eligible to request assistance like a national (e.g. assistance with medical care and in informing relevant persons, obtaining the death certificate and assisting with the repatriation of the corpse) in view of Article 23 TFEU.*

An EU citizen is unrepresented not only if his/her home Member State has no consular and diplomatic representation at all in a given third country, but also – as stipulated in Article 1 of

Decision 95/553 - if this representation is not "accessible". There is however currently no clear and common understanding about when a consular representation is "accessible". According to non-binding guidelines a permanent representation is accessible if it is "safely reachable, by an EU citizen by land (road or rail), within convenient distance and reasonable time, depending upon specific circumstances in the third country concerned"<sup>37</sup>. This leaves considerable scope for interpretation and means that an EU citizen cannot possibly know in practice whether he/she has the right to turn to a nearer consulate of another Member State or not. Representatives of Member States consulted expressed diverging views and interpretations (for instance distance of 400 km or on an island), other stakeholders stressed the need to render the right enshrined in Article 23 TFEU fully effective. Stakeholders further emphasised that the urgency of the assistance needs to be taken into account.

Further, it is currently not sufficiently established in practice as to which extent non-EU family members of unrepresented EU citizens are given assistance. Consular practitioners consulted during study visits to third countries pointed out that this is a rather difficult and sensitive question. The decision to include non-EU family members generally appears to be taken on a case-by-case basis without clear criteria, though in times of crisis rules on family members tend to be applied in a more comprehensive way<sup>38</sup>. Similarly, it is currently not clear whether long-term residents and recognised refugees residing in a Member State would be entitled to consular protection like unrepresented EU citizens in the event that their Member State of residence is not represented in a third country.

*3.3.2. Which Member State assists an unrepresented EU citizen and how and which type of assistance is coordinated with the citizen's Member State of origin? (access and coordination/cooperation)*

*Maria from Member State M lost her passport in non-EU country Y where there is no representation of her home Member State. She phoned the consulates of Member States A and B but was not offered assistance. She then personally visited the consulates of Member States C and D but was still not granted assistance (as the consular officials did not share her view that she had a right to turn to them). As a consequence, Maria was stuck for one week in Y until she - also thanks to the intervention of her home Member State - was finally assisted. Besides the personal inconvenience and distress she also had to bear additional costs of accommodation and a loss in income.*

According to the wording of the Treaty an unrepresented EU citizen can seek protection from the embassy or consulate of "any" other Member State, thus allowing the citizen to choose which representation he/she prefers to turn to. In practice, representations of Member States do not always accept that they have to assist an unrepresented EU citizen, but sometimes request him/her to turn to another Member State. There are also agreements between some Member States, according to which a specific Member State is represented by another Member State on consular matters (either generally or regarding specific third countries). Further local burden-sharing arrangements exist, whereby a specific Member State should take care of citizens of specific nationalities. These arrangements may be acceptable as long as an efficient treatment of unrepresented citizens is secured. They tend however not to be widely publicised and this makes it difficult for a citizen to know which representation would assist him/her.

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<sup>37</sup> Guidelines for further implementing a number of provisions under Decision 95/553/EC (Council document 11113/08 of 24 June 2008).

<sup>38</sup> Communication on consular protection, p. 7 as well as CARE study and study of the Instituto Europeo de Derecho.

*The unrepresented EU citizen Sandro, a citizen of Member State S, has just been arrested and is being held in a Latinamerican prison. He would like to ask for consular protection from the embassy of Member State B. Currently it is not clarified which types of assistance the assisting Member State generally may deliver and how it cooperates and coordinates with the citizen's home Member State. For instance in the case of arrest or detention, Sandro may be visited and his family members or other related persons informed at his request, minimum standards of treatment may be monitored and information on his rights provided. The authorities of the assisted Member State S should be provided with all the relevant information about Sandro and then should liaise with his family members or other related persons (if the detainee so wishes). The authorities should be informed after any visit made to the detainee and instantly be informed about any complaint of ill-treatment. Currently some cooperation rules exist but they are non-binding and merely indicative, so local consular staff of Member State B feel obliged to ask centrally for instructions, which might impair an efficient and swift treatment of the case. There is also currently no clear system in place via which the consular staff of Member State B would establish the relevant contact person(s) of the citizen's home Member State.*

Assisting an unrepresented EU citizen, unlike assistance to own nationals, often requires efficient cooperation with the consular authorities of the citizen's home Member State. The latter has a certain "duty of protection" vis-à-vis its nationals. It may be in a better position to liaise with the citizen's family and relatives and may wish to provide further assistance from a distance (e.g. regarding complaints about ill-treatment in prison). Despite the fact that consular protection often concerns citizens in particularly difficult circumstances and the necessity to safeguard efficient treatment, clear rules for cooperation and coordination between the assisting Member State and the citizen's Member State of origin are currently not sufficiently established. This comprises which types of assistance consular protection for unrepresented EU citizens typically entails (e.g. in case of death, victim of crime, etc.) and how the assistance is to be coordinated between the assisting Member State and the citizen's Member State of origin. It has emerged from consultations that consular officials would turn frequently first to their own authorities in the capital to ask for specific instructions on how to proceed. Cooperation and coordination appear to be based more on personal relations and knowledge than on clearly established communication channels and rules for standard-type situations, inducing time loss as well as possible discrimination because the citizen is not a national of the assisting Member State.

Further, simple forms of legalization of third-country documents and simple notary services for unrepresented EU citizens are currently not included in the scope of consular protection measures explicitly codified in Article 3(1) of Decision 95/553/EC. This refers to the authentication of third-country documents of unrepresented EU citizens and the confirmation of an unrepresented citizen's signature at his/her request by the consular authorities of another Member State. These activities may not be related to cases of immediate emergency, but having to travel to another third country to obtain this service is often rather cumbersome.

3.3.3. *How should the consular actors present in a given third country cooperate with each and coordinate their action (in particular, how can the EU level add value and contribute to facilitate cooperation)?*

*In a third country the representatives of the locally present consular and diplomatic representations generally meet and exchange their views on consular matters (e.g. prison conditions, experiences with third-country authorities). How should the issue of unrepresented EU citizens be included in this local cooperation? What is the role of the Union delegation as regards this local cooperation and what other tasks can it perform?*

Currently local cooperation meetings on consular protection are being organised to exchange information on issues of interest. According to non-binding consular guidelines<sup>39</sup>, unless otherwise agreed by the Ministries of the Foreign Affairs centrally, these meetings are chaired by Member State representatives decided locally (the so-called local Chair), with the support of the Union delegation.

To ensure coordination and cooperation in regard to unrepresented EU citizens, the consular authorities present in a given third country need to liaise with each other and have specific information available (for instance contact details of unrepresented Member States' authorities as well as of translators/lawyers/doctors speaking the language of unrepresented citizens). Pertinent information for unrepresented EU citizens is currently not systematically collected (which may bring about losses in time and efficiency when dealing with unrepresented EU citizens), but depend on the initiative and engagement of local staff.

Further, pursuant to the Treaty,<sup>40</sup> the Union delegations are obliged to ("shall") contribute to the implementation of the right to equal consular protection of unrepresented EU citizens. Respective spheres of competence and scope for action are not yet spelled out and accordingly depend to a large degree on the persons, circumstances and views represented locally. For instance it may entail taking part in local cooperation meetings or put at disposal available logistics. The current setting is thus not conducive to a fully coherent external action of the Union. Stakeholders underlined the importance of setting out clearly what Union delegations can and cannot do, in order to avoid duplications and allow for full use of resources.

*3.3.4. How and by whom should unrepresented EU citizens be assisted in crisis situations, and how should the financial burden be shared between the assisting and the unrepresented Member State? (assistance in crisis situations and financial reimbursement)*

Also in crisis situations unrepresented EU citizens have a right to equal consular protection. In a crisis, preparedness and a clear division of responsibilities is key.

*Due to huge floods in third country Y most of its infrastructure has been destroyed. Tourists from Europe in the seaside resorts have been repatriated by their tour operators. However, about 500 EU citizens (mostly backpack travellers) are still stranded in remote locations, of whom about 100 are unrepresented. It is however not specified which actor should coordinate assistance regarding the unrepresented EU citizens (both when preparing for a crisis and when the crisis hits). In the following days the consular authorities of non-represented Member States establish lists of nationals, which could be caught up in the crisis, on the basis of information from families and friends. These lists are being passed on (via Member States' Foreign Ministries) to all the Member States' consular representations present in country Y with a request to start cooperation to provide assistance. The stranded unrepresented citizens are in considerable distress, because the information they receive from different sources (their home Foreign Ministries, consulates of other EU countries) on their situation and when they might be evacuated is contradictory.*

According to legally non-binding guidelines of March 2006 (updated in November 2010)<sup>41</sup> Member States should meet regularly and share consular contingency and evacuations plans. These activities should be coordinated by the so-called local consular Chair (see 3.3.3 above). In 2006/2007 the

<sup>39</sup> Council document 10109/2/06 of 16 June 2006 revised by the Council document 15613/10 of 05 November 2010 (not published).

<sup>40</sup> Article 35 of the Treaty on European Union.

<sup>41</sup> Council document 10109/2/06 of 16 June 2006 revised by the Council document 15613/10 of 05 November 2010 (not published).



Member States endorsed the Lead State<sup>42</sup> concept – i.e. a Member State can volunteer to be "Lead State" in a specific third country and would consequently assume the responsibility for consular crisis coordination. Coordination is being supplemented at EU level by practical tools managed by the EEAS Situation Centre (secure website to facilitate information exchange between consular authorities and teleconferences).

In recent years crisis coordination has improved considerably but there is still scope for further improvement regarding unrepresented EU citizens<sup>43</sup>. The current legal framework does not give a concrete response on who should focus on assisting unrepresented EU citizens in crisis situations, including as to the role of the Lead State. As a result, protection of unrepresented EU citizens cannot be as efficient as in the case of represented nationals. The non-binding guidelines are not fully adhered to in practice. Contingency planning does not specifically cater for unrepresented EU citizens; in a crisis it is difficult to establish the number of unrepresented EU citizens. Activities are at times fragmented (individual actions focusing on own nationals rather than a coordinated approach). Information on needs and available resources is not always sufficient. Particularly in serious crises it is difficult for local staff to cope without support from crisis intervention specialists. The coordination framework and the sharing of responsibilities are still being further developed. Lead States are currently established in 28 third countries out of 146 where at least one Member State is represented<sup>44</sup>. There are nevertheless many countries at risk where – despite the presence of many EU citizens but only a few Member State representations – Lead States have not been established. Local consular Chairs, which are also important as they could assume at least a coordinating if not an operational role, are established in less than 50 % of third countries<sup>45</sup>.

*Among the stranded EU citizens, there are also about 50 citizens of country B. Two represented Member States have chartered planes, which are not sufficient to cover all the remaining tourists. Regarding available places priority is given to the nationals of assisting Member States. The consulate of Member State B would like to charter a small plane with 60 available seats, but would need to receive additional funds from its capital. It is unclear how the financial burden would be shared and how (and by whom) assistance will be reimbursed; consultations on this issue would take time, whilst action is needed urgently.*

During a crisis consular protection usually covers also activities which generate considerable costs, like the organisation of evacuations (sometimes including medical assistance) or of temporary shelter and subsistence. The question then arises how the financial burden should be shared.

Evacuations and other types of assistance are undertaken by consular authorities when no other 'usual' solutions are available (like commercial means or assistance by travel operators or insurance companies)<sup>46</sup>. Member States have different approaches regarding seeking payment of emergency assistance from their nationals. Some ask their citizens for payment (e.g. via their insurance), whilst most appear not to charge for these costs<sup>47</sup>.

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<sup>42</sup> Lead State concept (Council document 10715/07) and European Union guidelines on the implementation of the consular Lead State concept, document 2008/C317/06, OJ C317/06, p. 6.

<sup>43</sup> Studies and interviews with Member States' consular representatives in capitals and third countries, stakeholder workshops on 24 September 2010 and 23 June 2011.

<sup>44</sup> EEAS Situation Centre – update of 20 June 2011.

<sup>45</sup> EEAS document – update of 16 June 2011 and non-paper of the Council working party COCON.

<sup>46</sup> Council Directive 90/314/EEC on package travel, package holidays and package tours requires travel operators to give 'prompt assistance' to European consumers who find themselves in difficulty, even if it is caused by force majeure (Article 5 (2)). It should however be noted that only 19% of the trips of EU consumers fall under this regime. Moreover, business trips are in principle excluded from the current framework of the Directive.

<sup>47</sup> CARE project study.

If payment is required and an unrepresented EU citizen does not have accessible financial means, according to the current legal framework the assisting Member State and the citizen's home Member State should arrange necessary guarantees and reimbursement. Current legislation and guidelines provide generic yet quite cumbersome procedures in this respect (as illustrated in the Annex V on current procedures of the financial reimbursement framework). A few Member States also signed additional bilateral arrangements<sup>48</sup>.

However, in practice the current reimbursement procedures are generally not applied. Regarding the recent crises, only in one case was a request for reimbursement sent<sup>49</sup>.

There are a number of reasons for this. Firstly, to receive reimbursement the assisting Member State would need to establish intensive contacts with the authorities of the unrepresented Member States, before providing the assistance and following its delivery. A standard practice has not been established. Decision 95/553/EC does not provide for a specific procedure in crisis situations. Its general, time-consuming procedure does not reflect the specificities of crisis situations (notably time pressure and high number of citizens requesting assistance) and standard formats or templates are not included. More recent non-binding guidelines clarify that costs could be requested on a pro-rata basis (i.e. total costs divided proportionally according to the number of persons assisted by an unrepresented Member State). The way these guidelines relate to the procedure of Decision 95/553/EC is however not clear.

Further, in most cases Member States are determined to give assistance to their own nationals and offer unrepresented citizens their spare places (for which they then do not charge). As described above only in a limited number of countries are there pre-established Lead States, expected to take action in times of crisis. One of the reasons is that assuming this role may entail considerable costs. If financial burden-sharing is not clear and is not taking place in practice, there is less incentive to take a proactive approach which entails responsibilities not related to own nationals. Finally, there may be difficulties in keeping track of costs incurred. According to Member States it is cumbersome and not always possible to establish the costs of particular evacuations.

Consular protection in crises can in specific situations be **supported at EU level** to complement and support national resources. The **European Civil Protection Mechanism** can support consular assistance to EU citizens in major emergencies in third countries, if requested by the consular authorities of Member States<sup>50</sup>. The Mechanism was activated in past crises such as Libya (2010)<sup>51</sup>, Mumbai (2008)<sup>52</sup> and Lebanon (2006)<sup>53</sup>. Its operational centre, the Monitoring and Information

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<sup>48</sup> E.g. Agreement between Poland and Lithuania (1999), Baltic Treaty between Estonia, Latvia and Lithuania (1999).

<sup>49</sup> Kyrgyzstan crisis (2010).

<sup>50</sup> See Article 2(10) of the Council Decision 2007/779/EC Euratom establishing the EU Civil Protection Mechanism (Recast), OJ L 314, 1.12.2007, p. 9.

<sup>51</sup> In Libya the Mechanism was triggered by the HU Presidency to support the pooling of resources to evacuate EU citizens. In particular two grants (value of €12,000) were awarded to two Member States which evacuated about 150 EU citizens.

<sup>52</sup> In Mumbai the Mechanism was triggered by the French Presidency and activated in order to assist severely wounded EU citizens after the Mumbai attacks; this operation complemented bilateral operations undertaken by Member States to evacuate more than 100 non-wounded EU citizens to Europe. One Member State (Sweden) offered a MEDEVAC aircraft and team, supported also by civil protection experts from France (the costs of such evacuation were co-funded at 50% by the Civil Protection Financial Instrument).

<sup>53</sup> The Civil Protection Mechanism was activated to provide help in addressing the difficult logistical situation resulting from the large influx of evacuees. Requests regarded making available additional ships and aircrafts from the States participating in the Mechanism, to use the aircrafts and vessels to bring the humanitarian assistance to Cyprus and to repatriate nationals to their respective countries of origin. In addition, the MIC was requested to dispatch experts to assist the Cypriot authorities, Commission services and the Member States in

Centre (MIC), gives access to a network of civil protection resources allowing for pooling and mobilisation of resources (e.g. transport means, medical assistance and evacuation, temporary shelter). Through the Mechanism a team of EU civil protection experts from Member States can be deployed and the Civil Protection Financial Instrument can cover transport evacuation costs up to 50%<sup>54</sup>. The added value of the Civil Protection Mechanism in recent crises was generally assessed positively. There is still scope for further improvement as to the level of EU transport co-funding and regarding interoperability between civil and consular protection<sup>55</sup>. A reform to be presented in the second half of 2011 in parallel to this impact assessment and proposal on consular protection is currently under preparation<sup>56</sup>. The consequences of a reinforced Civil Protection Mechanism and synergies are analysed further in the baseline scenario (see point 3.4). On the ground, the **Union delegations** supported Member States in crisis situations in specific cases upon request. Their tasks in times of crisis are currently not clearly spelled out. A small dedicated budget line was set up for assisting with logistical support. It was used once during the Gaza crisis in January 2009, when about 100 persons were evacuated in armoured buses.

### 3.4. The baseline scenario

All things being equal, the implementation of EU citizenship as a concrete reality for unrepresented EU citizens is likely to remain at current levels. Content and operability of this right would continue to lack clarity and accordingly hamper its full effectiveness for citizens. Whilst there may be a trend towards more cooperation, such a development would be predominantly reactive and mainly concern crisis cooperation. It is unlikely that such cooperation would unify the understanding of the underlying concepts and terms and that all Member States would be included and progress at the same pace.

The underlying legal framework would continue to be mainly composed of scattered non-binding guidelines, whose implementation is left to the discretion of local consular authorities. Enforcement of applicable rules would not be safeguarded. Cooperation on the ground would remain at current levels, with the specific needs of unrepresented EU citizens not being taken sufficiently into account. The role of the Union delegations would remain unclear and initiatives would depend on the good will of persons involved, rather than on a clear division of responsibilities and adequate burden sharing. Suboptimal use of resources and capacities would continue.

This trend is destined to continue against a background of expected increases in requests for consular protection, as well as an overall rationalization of Member States' capacities in times of austerity. Estimates suggest that the number of unrepresented EU citizens will increase considerably in the next years. On the basis of the latest UNWTO estimate of annual growth in tourist arrivals (7% in 2010)<sup>57</sup> and the average annual change in Eurostat emigration figures in the period 2002-2008<sup>58</sup>, one can predict the changes in the number of unrepresented citizens over a five and ten year period. Assuming that growth rates and the number and location of representations remain constant, the number of unrepresented travellers to third countries is expected to increase from 5.12 million to

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the management of the situation. In response, the Monitoring and Information Centre immediately established an expert team in Larnaca.

<sup>54</sup> See Article 4 of the Council Decision 2007/162/EC, Euratom establishing a Civil Protection Financial Instrument, OJ L 71, 10.3.2007, p. 9.

<sup>55</sup> Stakeholder views as expressed at the Consular Erasmus Seminar (organised by France in Brussels on 11 and 12 April 2011) and the workshop on a concept for common trainings for civil protection and consular experts (organised by DG ECHO in Brussels on 14 February 2011).

<sup>56</sup> Points of discussion include establishing a predefined accessible pool of resources, EU-funded assets to cover the gaps and different levels of EU transport co-funding.

<sup>57</sup> UNWTO (2010), World Tourism Barometer, Interim Update, April 2011.

<sup>58</sup> This period was used due to annual changes being volatile and 2009 data not being complete.

7.18 million in five years, and to 10 million in ten years. For residents the change would be from 1.74 million to 2.4 million and 3.3 million. In addition, the recorded annual number of crises has increased from 78 in 1975 to nearly 400 currently<sup>59</sup> and the frequency and intensity of disasters are likely to continue growing.

Rules regarding financial reimbursement would continue to not being applied in crisis situations. The Lead State concept would not develop its full potential, with the number of designated Lead States stagnating or merely slightly increasing. Member States would request co-financing of the evacuations by the European Civil Protection Mechanism on an ad-hoc basis or ask the Union delegation to provide limited assistance.

If the European Civil Protection Mechanism is modified as envisaged, it will be in a position to better support consular protection in major emergencies due to: 1) quicker mobilisation of transport and other assets given pre-defined resources 2) clearer activation procedures, including at the request of a Lead State, possibly in coordination with the Presidency, 3) improved accessibility due to the higher level of co-financing (increase from 50% to 85 %), 4) better interoperability between crisis experts due to a possibly extended pool of civil protection experts (comprising consular officials and specific trainings). These improvements could in turn enhance the efficiency of protection for unrepresented EU citizens and encourage Member States to act proactively in crises for the benefit of unrepresented EU citizens. An intensified utilisation of the Mechanism to support consular protection will be possible within the limits of existing resources and budgetary means allocated to the Civil Protection Financial Instrument<sup>60</sup>. Better burden-sharing will therefore only be achieved to a limited extent, with EU co-funding focusing on specific operations (i.e. partially co-financed<sup>61</sup> evacuation and medical evacuation, pooling of experts). Further consular support in crises would still be needed, in particular to gather information about unrepresented citizens and provide subsistence and administrative support (issuance of emergency travel documents, representation in relation to the host country).

### **3.5. EU Power to act**

#### *3.5.1. The legal basis*

The EU competence to adopt legislation on consular protection for unrepresented EU citizens is conferred by Article 23(2) of the Treaty on the Functioning of the European Union. Accordingly, the Council may adopt directives establishing the coordination and cooperation measures necessary to facilitate protection for unrepresented EU citizens. The necessity for further facilitation is demonstrated by the existing lack of clarity of scope and procedures. Pursuant to Article 35 TEU the diplomatic and consular missions of the Member States and the Union delegations in third countries shall contribute to the implementation of the right of EU citizens to protection as referred to in Article 20(2)(c) TFEU and of the measures adopted pursuant to Article 23 of that Treaty.

#### *3.5.2. Subsidiarity*

The European Union is better placed than individual Member States to take action given the following factors:

1. Safeguarding equal treatment of EU citizens requires uniform standards on cooperation and coordination procedures. If some Member States do not respect these procedures or show a

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<sup>59</sup> See the recent Commission's Communication "Towards a stronger European disaster response: the role of civil protection and humanitarian assistance" COM(2010) 600 final.

<sup>60</sup> Currently 8 million EUR is available annually for support outside the EU.

<sup>61</sup> The remaining part of financial involvement would be subject to reimbursement.

diverging interpretation of the ambit of this right, this could cause problems for citizens relying on protection by these Member States.

2. Assistance for unrepresented EU citizens by definition entails a cross-border dimension, extending the rights granted by EU citizenship beyond the Union's borders. This right illustrates the concrete benefits connected with the status of EU citizenship. It epitomises the special bond which membership of the Union creates. This right is inherently linked to the concept and competences of the Union.

3. EU action should bring about economies of scale. Streamlined coordination and cooperation procedures and a clearer role of local actors, including of the Union delegations, will reduce the need for ad hoc decisions taken on a case-by-case basis and for individual instructions. EU action under the Lisbon Treaty will also allow for effective monitoring of implementation and facilitate ensuring compliance, as for any proposed EU legal measures the full spectrum of enforcement mechanisms will apply (e.g. the duty to transpose a directive into national law, references for preliminary rulings).

4. Member States have established a partial interpretation of this right in Decision 95/553/EC, whose sui generis character and very succinct content cannot safeguard a sufficiently consistent level of compliance by Member States. In view of the new legal regime created by the Lisbon Treaty, any reform of this Decision can only be undertaken in the form of EU legislation based on Article 23(2) TFEU. Member States are precluded from adopting further substantial intergovernmental measures.

#### 4. OBJECTIVES

<b>OBJECTIVES</b>	
<b>GENERAL</b>	To foster the implementation of EU citizenship as a concrete reality ensuring equal treatment for unrepresented EU citizens; to ensure a high level of protection of citizens' fundamental rights and promote EU values such as non-discrimination and mutual solidarity.
<b>SPECIFIC</b>	<ul style="list-style-type: none"> <li>• To clarify content and operability of this right.</li> <li>• To simplify cooperation and coordination between consular authorities.</li> </ul>
<b>OPERATIONAL</b>	<p>To provide the basis for a stable framework on cooperation and coordination by defining:</p> <ul style="list-style-type: none"> <li>• who is an unrepresented EU citizen;</li> <li>• which of the Member States present in a third country has to assist an unrepresented EU citizen and how assistance is to be coordinated with the citizen's Member State of origin;</li> <li>• how the authorities present in a given third country should cooperate and coordinate amongst each other and what the role of the European Union entails;</li> <li>• how and by whom unrepresented EU citizens should be assisted in</li> </ul>

## 5. POLICY OPTIONS AND THEIR IMPACT

### 5.1. Overview

To address the problems identified in part 3 and in accordance with the objectives established in part 4 the following policy options are being considered:

- **Policy option 1:** Retention of the status quo. No action would be taken at EU level.
- **Policy option 2:** Directive establishing coordination and cooperation measures to further facilitate consular protection for unrepresented EU citizens, clarifying the content of this right and fostering efficient equal treatment, reinforced by targeted awareness-raising measures.
- **Policy option 3:** Measures establishing further and tighter rules on coordination and cooperation, including reimbursement for financial assistance in crisis situations through a reimbursement mechanism and/ or EU funding, expanding the assistance rendered to unrepresented EU citizens.

Whilst retaining the status quo (option 1) would not entail taking action at EU level, the other policy options would further reinforce, albeit to different extents, the protection of unrepresented EU citizens.

### 5.2. Discarded policy options

The adoption of further non-binding guidelines has been discarded as a policy option as under the new legal regime established by the Lisbon Treaty it would no longer be legally feasible for Member States to negotiate and agree such texts<sup>62</sup>. In addition, this would be tantamount to the status quo (see below).

Similarly, making provisions for local EU delegations to directly and exclusively take care of unrepresented EU citizens has been discarded, as it would not be in compliance with the legal framework on the European External Action Service<sup>63</sup>.

### 5.3. Description and analysis of the impacts

There are currently no overall data on the number of cases where inadequate assistance was provided; there is no reporting obligation. Accordingly, the options are evaluated below mostly in qualitative terms as to achieving the objectives set and in view of potential increases in efficiency and cost savings.

The analysis includes the impacts on fundamental rights, pursuant to the Commission's Communication on a Strategy for the implementation of the Charter of Fundamental Rights of the

<sup>62</sup> See also COM(2010) 149 final.

<sup>63</sup> According to the Council Decision establishing the organisation and functioning of the European External Action Service (EEAS), Union delegations shall support Member States in their diplomatic relations and in their role of providing consular protection to EU citizens in third countries on a resource-neutral basis. By mid-2013, the High Representative shall provide a review of the organisation and functioning of the EEAS. The review shall, if necessary, be accompanied by appropriate proposals for the revision of this Decision. In that case the Council shall revise the Decision in the light of the review by the beginning of 2014.

European Union<sup>64</sup>. The options generally (except option 1) are likely to have a beneficial impact on citizens' fundamental rights though to varying degrees.

### 5.3.1. Policy Option 1: Status quo

No action at EU level would be undertaken.

<b>Expected Impacts</b>	
<b>Effectiveness in attaining objectives</b>	This option will not contribute to further facilitating cooperation and coordination for the benefit of EU citizens. The right to equal consular protection will continue to lack clarity, which will hamper the full operability of this right. Cooperation and coordination will continue to depend to a considerable degree on ad hoc initiatives and personalities involved. The current financial reimbursement rules will continue to be generally not applied in crisis situations. The tangible benefits of this EU citizen right will not be further enhanced and the spectrum of enforcement mechanisms, such as the duty to transpose a directive into national legislation and the possibility of infringement proceedings, will not be fully applied.
<b>Social impacts and fundamental rights</b>	No positive social impacts are to be expected. Delivery of assistance to unrepresented EU citizens as efficiently as to own nationals will not be safeguarded. The fundamental right to equal consular protection for unrepresented EU citizens (Article 46 Fundamental Rights Charter) will not gain full effectiveness, as core concepts, responsibilities and procedures are not sufficiently clear and effective implementation and application will not be ensured. This could in turn undermine the credibility and perception of the Fundamental Rights Charter and of a Union based on solidarity and non-discrimination. This appears all the more important as unrepresented EU citizens may be in a psychologically even more difficult situation (given the absence of national authorities and single contact points).
<b>Financial and economic impacts</b>	No direct new financial burdens are induced by this option. However, efficiency losses will continue to occur due to EU citizens who require assistance having disproportionate or unclear expectations. Use of existing resources will not be further optimised and possible efficiency savings will not be realised, despite an expected increase in EU citizens seeking help in the coming years. Keeping the status quo will also have a negative economic impact on unrepresented citizens, who may seek support in suboptimal ways at higher cost due to insufficient clarity about their right. Maintaining the status quo will preserve the current inequalities in financial engagement in consular crises.

<sup>64</sup> COM(2010) 573 final.

### 5.3.2. Policy Option 2: Directive establishing cooperation and coordination measures

**Description:** A Directive establishing coordination and cooperation measures regarding consular protection for unrepresented EU citizens, clarifying content and operability of this right and facilitating cooperation and coordination between consular authorities.

This option will be analysed in view of the four specific parameters described above (point 3.3) and the four operational objectives (point 4).

#### 1. Personal scope (Who is to be regarded as an unrepresented EU citizen?)

The Directive could clarify when an EU citizen is to be considered as unrepresented, namely (in line with the wording of Decision 95/553/EC) when a permanent representation of his/her own Member State is sufficiently "**accessible**". Following consultation with stakeholders, a balanced approach could lead to a permanent consular and diplomatic representation not being considered as "accessible", if the EU citizen cannot reach it and return to his/her place of departure (via means of transport commonly used in the third country) at least the same day. Exceptions would need to be provided for in case the urgency of the matter necessitates even swifter assistance.

The Directive could further specify to what extent also **non-EU family members of EU citizens** would be included in consular protection for EU citizens. Article 23 TFEU provides for non-discriminatory treatment, and in line with Articles 7 and 24 of the Charter of Fundamental Rights of the European Union and established case-law of the European Court of Justice the principal benefits of EU citizens' rights are also extended to their family members to ensure the full effectiveness of those rights. Accordingly, the Directive could specify that protection should be given to non-EU family members of EU citizens to the same extent as Member States give it to the non-EU family members of their own nationals<sup>65</sup>.

These clarifications would in particular address the issues discussed under point 3.3.1 above.

#### 2. Access to consular protection and cooperation/coordination (Which Member State assists the unrepresented EU citizen and how is this assistance coordinated with the citizen's Member State of origin?)

The Directive could stress that EU citizens can turn to "any" other Member State's embassy or consulate; but derogations through arrangements by Member States may be tolerated as long as transparency (through notification and subsequent publication on the Commission's website) and effective treatment of applications are ensured.

The Directive could specify which assistance Member States typically provide in the most frequent situations (i.e. arrest or detention, victim of crime, serious accident or serious illness, death, relief and repatriation in case of distress, and issuance of emergency travel documents), on the basis of common practices of Member States on consular protection<sup>66</sup>, and the applicable procedures for cooperation and coordination between the embassy/consulate of the assisting Member State and the authorities of the citizen's Member State of origin. Whilst Member States' consular laws and

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<sup>65</sup> It should be born in mind that not all consular services offered to nationals/EU citizens can be applied to their third country family members. Notably, emergency travel documents cannot be issued (neither to third country family members of nationals nor to those of EU citizens); detained third country family members can be visited unless the consular authorities of the third country object. Please see Annex V for further details.

<sup>66</sup> As identified in the study of the Instituto Europeo de Derecho and as described in the Council framework under the Spanish Presidency. Please see Annex V for details.



practices differ with some Member States providing further services the existing comparative studies demonstrate similarities regarding the most frequent cases of consular protection<sup>67</sup>. The basis for this simplification would be Decision 95/553/EC and subsequent implementing measures.

These measures address the issues raised above, notably in point 3.3.2.

**3. Local coordination/ EU added value** (How should local coordination take into account the specific needs of unrepresented EU citizens and what should the role of the EU entail?)

The Directive could specify that local cooperation meetings on consular protection should include regular exchange of information on unrepresented EU citizens and that the Chair of these meetings collects the relevant contact details of relevance for assistance to unrepresented EU citizens (e.g. regionally responsible representations of unrepresented Member States).

The Directive could provide that Union delegations can under specific conditions chair - or otherwise support - these meetings. Union delegations could, without prejudice to the Council Decision establishing the EEAS<sup>68</sup>, provide logistic and operational support (including office accommodation and organisational facilities) as well as facilitate the exchange of information between Member States' representations. Delegation staff could raise awareness about EU obligations and pinpoint unrepresented citizens to Member States' representations. This would further optimise the use of resources and capacities in place. It would also guarantee a certain stability and contribute to a more uniform approach: given that Union delegations are present in most third countries, the local Chair currently frequently changes and as they are perceived as a sort of "natural" contact point for unrepresented EU citizens.

These measures would tackle the problems examined above, notably in point 3.3.3.

**4. Assistance in crisis situations/financial reimbursement** (How and by whom should unrepresented EU citizens be assisted in crisis situations and how should financial reimbursement operate?)

The Directive could provide for the following points to further improve protection for unrepresented EU citizens in crises. Local contingency plans should include unrepresented EU citizens. The importance of the Lead State(s) for protecting unrepresented EU citizens should be stressed and their role clarified. The Lead State(s) established should be in charge of coordinating and leading assistance of unrepresented EU citizens. A Lead State could seek additional support from the Civil Protection Mechanism, the crisis management structures of the EEAS or local Union delegations. The role of the latter in crisis situations should be clarified, it should entail assisting Member States regarding evacuations, shelter, deployment of expert teams and temporary housing of Member States' consular staff. Additional support could be provided and synergies fully exploited if the intervention teams, such as those under the Civil Protection Mechanism, could include national consular experts, notably from unrepresented Member States. Joint trainings could be provided for<sup>69</sup>.

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<sup>67</sup> The studies referred to are the ones of the Instituto Europeo de Derecho and the CARE (Citizens Consular Assistance Regulation in Europe) project activities (see above under point 2.2.2). See annex V for details.

<sup>68</sup> OJ L 201, 3.8.2010, p. 30 (Council document 2010/427/EU).

<sup>69</sup> Impact assessment on the 2011 review of the civil protection regulatory framework under preparation by DG ECHO.

Regarding financial burden-sharing a facilitated reimbursement procedure, adjusted to crisis situations, could be introduced<sup>70</sup>. This could be done by: 1) simplifying the procedural exchange involving consular authorities and citizens; 2) adding standard formats for requests; 3) introducing an easier system for tracking the reimbursement costs (on a pro-rata basis<sup>71</sup>, fixed rates - i.e. standardised costs for evacuation, medical evacuation and shelter - in case costs cannot be calculated). This improved reimbursement procedure would complement the support available from the Civil Protection Mechanism and the EEAS crisis management structures.

**The proposed system of fixed sums<sup>72</sup>:**

Type of assistance	Fixed sum
Evacuation - long-haul journey	Cost of the last available commercial economy air ticket: place of evacuation – destination (OR 1.000 EUR)
Internal journey to a safe location	150 EUR
Medical assistance	2.500 EUR
Subsistence (accommodation and food offered)	200 EUR (per day)

These measures are further detailed above (notably under point 3.3.4).

**5. Awareness-raising aimed at providing further guidance for citizens and consular practitioners**

Legal measures (see points 1. to 4.) could be accompanied by an EU-wide information campaign, similar to the one on air passenger rights. The campaign on air passenger rights is currently still ongoing; so far it is estimated that over 100 million citizens heard about the campaign and that it was supported by about 800 partners (plus 160 airports) such as travel agents and tourist offices. On consular protection numbers reached may be fewer given the more specialised subject matter. But the network developed for the air passenger rights campaign could be used as stakeholders frequently coincide (travel agents, airports, etc.).

In cooperation with Member States, travel and expatriate associations, travel guide publishers, employers' associations and international companies<sup>73</sup> citizens could be better informed. Awareness-raising should be targeted to the potential beneficiaries. Drawing from the preliminary experiences of the air passenger rights' campaign online advertisement, inexpensive giveaways (e.g.

<sup>70</sup> The reimbursement system for every-day situations would be build on the current one. Any advances incurred when helping an unrepresented EU citizen by an assisting Member State (e.g. providing a plane ticket and giving indispensable financial funds to a victim of robbery) would be reimbursed from the unrepresented Member State (which could then seek restitution from its national according to national rules, if applicable). The additional costs (e.g. cost of information exchange between an assisting consular authority and a consular authority of an unrepresented Member State) would be the administrative costs, not to be reimbursed (as it is currently the case). See further Annex VI.

<sup>71</sup> Pro-rata reimbursement refers to a proportional reimbursement based on the number of persons assisted (total costs divided by the number of assisted persons).

<sup>72</sup> The proposal for the fixed sums is based on information provided by Member States and available data on recent crises, see further in Annex VI.

<sup>73</sup> As travellers and residents in third countries are frequently there for business purposes.

luggage tags) and audiovisual material where cost-effective (e.g. for viral promotion via social networks and partner websites) could be particularly promising.

Thanks to the campaign citizens could be informed about the content and ambit of this right (do's and don'ts), also to ensure that their expectations correspond to the legal reality. Citizens seeking additional information could be directed to the Commission's dedicated website on consular protection<sup>74</sup>.

For consular officials tailor-made trainings could be further supported in the form of hands-on workshops, ensuring cost-efficiency by using existing training facilities and concepts (notably the training concept of "consular Erasmus" as recently agreed in the Council framework<sup>75</sup>).

<b>Expected Impacts</b>	
<b>Effectiveness in attaining objectives</b>	<p>A Directive could foster the implementation of EU citizenship as a concrete reality by clarifying the content of this right and by streamlining cooperation and cooperation procedures. It would also allow for a wide panoply of enforcement mechanisms (such as the duty to transpose a Directive into national legislation, Commission monitoring and if need be enforcement of compliance and the possibility of preliminary references). Stakeholders consulted generally consider clarity of legal provisions and a good definition of the scope of assistance provided as important to further enhance efficiency of consular protection for unrepresented EU citizens.</p> <p><b>1. Personal scope</b></p> <p>Clarifying when a permanent representation is "accessible" will ensure operability of this right as there will be a sufficiently clear (and common) understanding of when an EU citizen is to be regarded as unrepresented. By establishing a term of reference (travel there and back on the same day) a standard is set, which renders this concept operational while keeping the required degree of flexibility. Most of the Member States consulted (63%)<sup>76</sup> indicate that a travel time of up to 6 hours to reach the consulate would appear reasonable (but frequently pointed out that urgent cases may require swifter treatment). The possibility to reach the consulate, receive consular protection and travel back at least within the same day would accordingly be an appropriate time limit. Including third country family members of unrepresented EU citizens under the same conditions as those of own nationals will ensure equivalent treatment for EU citizens and their family in line with the case-law of the European Court of Justice. The inclusion of third-country family members was flagged as an important issue by civil society representatives.<sup>77</sup> Implementation appears feasible; as regards</p>

<sup>74</sup> <http://ec.europa.eu/consularprotection/>.

<sup>75</sup> See COM(2011) 149 final.

<sup>76</sup> According to the online survey, 37% of MS pointed to other travel time.

<sup>77</sup> As expressed inter alia at the dedicated workshop of 23 June 2011.

equivalent treatment the point of reference is solely the assisting Member State<sup>78</sup>. It should also be kept in mind that cases related to TCN family members of unrepresented EU citizens are relatively few<sup>79</sup> with most reported cases concerning crisis situations.

## **2. Access to consular protection and cooperation/coordination**

Providing which of the Member States present in a third country has to assist an unrepresented EU citizen and how this assistance is to be coordinated with the citizen's Member State of origin will further clarify cooperation and coordination between Member States and safeguard that assistance can be delivered to unrepresented EU citizens as efficiently as to own nationals. The necessary flexibility is ensured by allowing derogations under certain conditions and by restricting cooperation/coordination procedures to the standard situations (e.g. arrest or serious accident). Member States and civil society consulted generally perceive a case for greater transparency as to bilateral and local arrangements on burden-sharing. Civil society representatives stress that citizens need guaranteed access to treatment and that they should not be passed on from one consulate to the next one. Ensuring good communication channels and clear legal provisions are by a wide majority<sup>80</sup> considered as important or very important factors for an even more efficient assistance.

## **3. Local coordination/EU added value**

Specifying local coordination with regard to unrepresented EU citizens and spelling out the role of the Union delegations will safeguard that unrepresented EU citizens are provided with assistance and a point of contact, as efficiently as represented citizens, and it will optimise the use of resources by clarifying respective roles and responsibilities. It would also ensure that the Union delegations, often perceived as "natural" contact points by unrepresented EU citizens, can contribute their share in accordance with citizens' expectations and meet their Treaty obligation under Article 35 TEU. Civil society, the European Parliament<sup>81</sup> and Member States with less extensive consular networks advocate a more substantive supporting role of the Union delegations (all the more when being net contributors, "value for money"), whereas views of Member States with more extensive networks differ

<sup>78</sup> I.e. if the assisting Member State would provide help to TCN family members of own nationals it would also need to do so for TCN family members of EU citizens. The assisted Member State (regardless of whether it generally delivers protection to TCN family members) would need to provide any information necessary to the assisting Member State in view of its duty to sincere cooperation under the Treaties and the right to family life as enshrined in the Fundamental Rights Charter.

<sup>79</sup> Only about 1,2% of EU citizens are estimated to have third country family members (cf. Annex III).

<sup>80</sup> According to the online survey among Member States 68,8% of respondents considered clarity of legal proposals as a very important (50%) or an important (18%) factor for an even more efficient consular assistance; as regards overcoming practical challenges (e.g. ensuring clear communication channels) responses were similar (43% very important, 37% important).

<sup>81</sup> European Parliament resolution of 11 December 2007 on the Green Paper: Diplomatic and consular protection of Union citizens in third countries (see footnote 5).

<sup>82</sup> As expressed in the dedicated workshop of 23 June 2011 and in bilateral consultations.

among them.

#### **4. Assistance in crisis situations/financial reimbursement**

This policy option provides for a clearer division of tasks regarding unrepresented EU citizens in crisis situations and for a simple reimbursement tool without creating an additional administration layer. Due to including unrepresented EU citizens fully in crisis preparation, responsibilities would be clearer from the start in case a crisis hits. Local staff could be supported by consular experts joining the intervention teams, including consuls from unrepresented Member States, to ensure sufficient staff for every citizen. Available resources of Union delegations would be fully used, for instance to temporarily house consular teams. Timely information about available transport capacities would be ensured. Consular officials are generally in favour of a better interrelation between consular and civil protection assets, within the respect of each others competences and powers; the activation of the MIC should be further clarified.

It is reasonable to assume that due to the facilitation of reimbursement, and - as a consequence – the improved coordination, Member States will be in a better position to provide pro-active assistance to unrepresented EU citizens and treat them as if they were their own nationals. The role and the attractiveness of the Lead State concept would be considerably reinforced. The reimbursement system would still provide for a considerable degree of flexibility. Member States would remain free to decide whether or not to claim reimbursement. For instance Member States may refrain from requesting reimbursement in cases where costs are low. Member States would thus be offered a voluntary instrument based on a few basic principles known to all partners. Representatives from Member States strongly support the Lead State concept which should be further enhanced and stress the benefits of comprehensive crisis preparedness<sup>82</sup>.

#### **5. Awareness-raising among citizens and consular practitioners**

Awareness-raising would contribute to achieving full effectiveness of this right for unrepresented EU citizens, as knowing about a right is a prerequisite for using it. A comprehensive information campaign requires a very good common understanding of the content and the ambit of the right, which needs to be established beforehand. Thanks to an awareness-raising campaign citizens' general awareness would increase considerably and possible "psychological barriers" to address other EU consulates would be diminished. Further citizens' knowledge about the content and limits of this right would be considerably enhanced, which would reduce the number of unfounded cases. Member State representatives generally were in favour of awareness-raising initiatives provided they include clear information about the scope and limits of consular services to decrease unjustified requests ("dos and don'ts"). Civil society representatives stress that citizens need to be fully informed about their rights to be able to use them.

<p><b>Social impacts and fundamental rights</b></p>	<p>This option would enhance the fundamental right to equal consular protection, by clarifying the content of this right, by facilitating the cooperation and coordination procedures necessary for its application and by ensuring effective implementation and compliance.</p> <p>The measure under point 1 (inclusion of non-EU family members) would strengthen the right to family life as well as the rights of the child (Articles 7 and 24 Fundamental Rights Charter). The measure under point 3 (added value of EU action) would protect the EU citizens' right to good administration by the institutions and bodies of the Union (Article 41 Fundamental Rights Charter). Clearer responsibilities and improved burden-sharing in crisis situations would ensure non-discrimination also in times of crisis when fundamental rights are a sensitive issue. In addition the principles of non-discrimination, life and integrity of the person and the right of the defence and to a fair trial would be reinforced (Articles 2, 3, 21, 47 and 48 Fundamental Rights Charter).</p>
<p><b>Financial and economic impacts</b></p>	<p>The financial impact (costs and savings) of the legal measures (points 1. to 4.) was estimated on the basis of the assumption that the number of cases concerning unrepresented EU citizens would increase<sup>83</sup>.</p> <p>The cost for the Member States would be about 750,000 EUR per year. Additional cost of monitoring was estimated at 314,400<sup>84</sup> EUR (first year – set-up cost). In the following years monitoring should not induce any important cost (as it would become a part of reporting on consular cases which the Member States' consular representations provide currently). For these reasons, monitoring should not impose an important administrative burden.</p> <p>No additional resources will be needed for the Union delegations<sup>85</sup>. Regarding facilitation of reimbursements the implementation costs can be estimated at 89,610 EUR for all the Member States<sup>86</sup>. The limited additional work incurred by requesting reimbursements would not entail the necessity to create additional posts. The additional financial and administrative burden for unrepresented Member States would be limited and still – due to economies of scale – be more beneficial than organising assistance separately for their own unrepresented citizens<sup>87</sup>.</p> <p>Comprehensive awareness-raising (point 5) would induce costs of approximately 1 million EUR for an EU-wide information campaign (see Annex VI). To be cost-effective awareness-raising would need to</p>

<sup>83</sup> Based on an expected 10% increase of consular protection cases regarding unrepresented EU citizens, following implementation of the several measures of the option, please see Annex VI for further details.

<sup>84</sup> Estimation based on assumption that the preparatory work during the first year could take one day of work of Member States' consular representations, see Annex VI for further details.

<sup>85</sup> The cost for the Union delegations was estimated at the level of 262,000 EUR per year (the figure reflects estimated 10 working days of work for an EU official in all delegations) .

<sup>86</sup> *Idem*.

<sup>87</sup> The savings of the assisting Member States are notably time savings of consular staff and are estimated at 1,438,260 EUR.

be well targeted and tailored to the needs of the beneficiaries. In the long term cost-effectiveness would increase as the exchange of information would partly be self-sustained (due to being taken up by local multipliers and in national training schedules) and savings for Member States due to less unfounded requests could result in savings of 897.360 EUR per year.

This policy option would also have a positive economic impact for unrepresented citizens who might be less inclined to seek support on their own from suboptimal alternative sources and save time<sup>88</sup> (savings would amount to more than 1.809.980 EUR).

The analysis of financial costs and benefits is further specified in the Annex VI on key assumptions on costs and benefits.

### 5.3.3. *Policy Option 3: Further and tighter cooperation and coordination measures (notably regarding scope and types of assistance and financial reimbursement in crisis situations)*

**Description:** This policy option would entail a Directive establishing further and tighter rules on coordination and cooperation, regarding scope and types of assistance and financial reimbursement in crisis situations, accompanied by awareness-raising. As further elements would be added to the factors considered in option 2 only these additional elements will be examined in the following.

#### 1. Personal scope

The Directive could stipulate that a permanent representation is to be regarded as not accessible (and an EU citizen accordingly as unrepresented) in case it is a specific number of kilometres away (e.g. more than 500 km). In addition, refugees and long-term residents should be treated on the same footing as unrepresented EU citizens.

#### 2. Coordination and cooperation

The scope of coordination and cooperation could be widened and also entail simple forms of legalisation of third-country documents and simple notary services for unrepresented EU citizens. This would entail the authentication of third-country documents and confirmation of an unrepresented citizen's signature at his/her request by the consular authorities of another Member State. This would spare the citizen the need to contact and travel to another Member State to have his/her documents certified or signature confirmed. Such activities have a formal character but are very important to facilitate everyday life.

#### 3. Assistance in crisis situations/financial reimbursement

Financial reimbursement in crisis situations could be further reinforced by the following tools.

#### **Sub-option A: Compensation mechanism/Clearing house**

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<sup>88</sup> The benefits to unrepresented EU citizens in everyday situations were estimated using two elements: 1) time saving to previously unassisted citizens or to citizens receiving assistance quicker - this is estimated using average daily wages and estimated to be €60; 2) avoiding an 'inconvenience' cost associated with receiving sub-optimal assistance or having to seek out other forms of assistance. Estimating this cost takes the system of compensation for air passengers as the point of departure, assuming the similarity of situation of a citizen requiring the consular assistance and a stranded air passenger.

A specific reimbursement mechanism could be set up at EU level (Commission or EEAS). A Member State could seek reimbursement from the Union, which would act as a clearing house and in turn ask for reimbursement from the Member State(s) whose citizens have been assisted. The intensive and diplomatically sensitive procedural exchange between Member States would be eliminated. The methods for tracking the costs could be based on pro-rata or on fixed sums systems (like in policy option 2). The reimbursements could be carried out at the end of each calendar year. This option would require additional human and organisational resources; existing structures (European Civil Protection Mechanism; EEAS crisis management structures) could be considered as "clearing house" to exploit synergies.

**Sub-option B: EU Funding**

Consular protection for unrepresented EU citizens could be co-funded under the EU budget. Member States assisting unrepresented citizens during crises could be co-funded above a certain threshold. EU funding specifically for unrepresented EU citizens could be embedded in existing structures (Civil Protection Mechanism, enhanced budget line of Union delegations) or a new financial instrument could be set up. This sub-option could also complement the first sub-option, costs requested by the assisting Member State could be co-funded and necessary funds could be provided at the time of crisis.

<b>Expected Impacts</b>	
<b>Effectiveness in attaining objectives</b>	<p><b>1. Personal scope</b></p> <p>Regulating the concept of "accessibility" by laying down a specific amount of kilometres would enhance clarity and legal certainty for the citizen and the consular authorities involved, as a clear demarcation line would be drawn. However, according to consular practitioners effectiveness would be reduced as local circumstances would not be fully taken into account (as the significance of a specific distance depends to a considerable degree on the state of transport networks in a given country).</p> <p>Treating refugees and long-term residents on an equal footing would foster the implementation of EU citizenship, understood in a wide sense, and promote EU values such as solidarity. Civil society representatives stress that solidarity should also encompass these groups. As Member States generally do not by law grant assistance to recognized refugees and long-term residents, inclusion of these categories of persons would for the time being appear too ambitious in view of the objectives set.</p> <p><b>2. Cooperation and coordination</b></p> <p>Including explicit cooperation and coordination measures on simple forms of legalisation would foster the implementation of EU citizenship as a concrete reality with tangible benefits. Important services for the citizen would need to be provided on the spot by other Member States' embassies/consulates, which would in turn also significantly improve mutual trust between consular authorities (as "notary" activities of consular authorities of other Member States would be recognized like acts of national authorities). However, the</p>



	<p>understanding of Member States' authorities regarding legalization and the applicable procedures still varies considerably; regarding legalisation of documents <u>within</u> the European Union rules are currently expected to be proposed by the Commission in 2013<sup>89</sup>. Member State representatives advocated a further exchange on best practises and most of them considered legislation on the matter as premature.</p> <p><b>3. Assistance in crisis situations/financial reimbursement</b></p> <p><b>Sub-option A: Compensation mechanism/Clearing house</b></p> <p>This policy option could facilitate reimbursement by streamlining procedures and by guaranteeing the reimbursement for the assisting Member State. Under such circumstances, Member States might be more inclined to provide efficient assistance to unrepresented EU citizens as if they were their own nationals. When being consulted Member States were generally not fully convinced about sufficient added value of this sub-option. There is therefore a risk that the specific arrangements at EU level would not be used.</p> <p><b>Sub-option B: EU funding</b></p> <p>Financial support at EU level would furthermore reduce inequalities between Member States which assist during crises (but do not request reimbursement) and those which are not represented. Represented Member States would have secure financing and it is reasonable to consider that they would be more encouraged to assist unrepresented EU citizens. The need to make full use of existing capacities and avoid any duplication of structures was also underlined by stakeholders given the existing EU instruments. Support for this option among Member States differed (notably depending on whether a Member State had significant own crisis capacities and whether it was a net payer to the EU budget or not).</p>
<p><b>Social impacts and fundamental rights</b></p>	<p>The positive impact on social considerations and fundamental rights would generally be high. The right to equal consular protection would be reinforced (e.g. by providing for legalisation services) and the status of EU citizenship considerably enhanced.</p> <p>Facilitating reimbursement through a compensation mechanism/clearing house would better safeguard non-discriminatory treatment of unrepresented EU citizens.</p> <p>Efficient assistance due to stable capacities secured by EU funding would reinforce EU citizens' fundamental right to consular protection and their right to life, non-discrimination and family life.</p>
<p><b>Financial and</b></p>	<p>Given the necessity of additional human and financial resources this</p>

<sup>89</sup> EU Citizenship Report 2010, COM(2010) 603 final.

<b>economic impacts</b>	<p>option would generate considerably higher costs than option 2, both at EU level and for Member States. This policy option would also induce further compliance costs.</p> <p>In addition to the costs of policy option 2 The additional measures of policy option 3 would induce the following costs: protection covering refugees and long term resident would bring about costs of 81.080 EUR and benefits for those citizens of 153.530 EUR. Introducing legalization/simple notary services would induce compliance costs of 810.000 EUR, whilst benefits for citizens are estimated at 192.960 EUR.</p> <p><b>Cost-effectiveness of sub-option A: Compensation mechanism/Clearing house</b></p> <p>The policy option would trigger additional costs at EU level. The estimated annual cost would be at least 112.000 EUR (additional costs include the establishment of electronic files and regular maintenance).</p> <p>The savings on the side of the assisting Member States would depend on the individual case. The additional financial burden on the part of unrepresented Member States would be limited<sup>90</sup> and still – due to economies of scale - more beneficial than organising assistance separately for their unrepresented citizens.</p> <p><b>Cost-effectiveness of sub-option B: EU funding</b></p> <p>Reimbursement costs would amount to around 16-31 million EUR for a funding period of 6-7 years (depending on whether 50% or a higher percentage of the activities would be financed). Additional costs of managing the fund at EU level would be estimated at least at the level of 780.000 EUR. Member States would contribute to the fund according to the general budgetary framework.</p> <p>The analysis of financial costs and benefits is further specified in the Annex VI on key assumptions on costs and benefits.</p>
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## 6. COMPARISON OF POLICY OPTIONS

In the following, the policy options (part 5) are compared in view of the objectives established above (part 4). The policy options are set against the objectives defined in part 4 (+++ indicates the highest mark).

Objectives/Costs:	<b>Effectiveness in meeting objectives</b>	<b>Social impacts and fundamental rights</b>	<b>Financial and economic impacts</b>
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<sup>90</sup> The issue of subsequent repayment from the assisted citizen is not being analysed (as it depends on the legislation or practice of the respective Member State).

<b>Policy Option 1:</b> Status quo	0	0	0
<b>Policy Option 2:</b> EU Directive on cooperation and coordination measures and awareness raising	++	++	low <sup>91</sup>
<b>Policy Option 3:</b> EU measures setting out further rules and further strengthening the rights of EU citizens	++(+/-)	++(+/-)	medium/high <sup>92</sup>
	1. Defining accessibility by a specific amount of kilometres and including refugees and long-term residents:		
	+ <sup>93</sup>	+	low
	2. Including simple forms of legalization/ notary activities:		
	++ <sup>94</sup>	++	low/medium
	3. Compensation mechanism/ clearing house:		
	++(+/-) <sup>95</sup>	++(+/-)	medium
	4. New financial instrument for EU funding:		
++(+) <sup>96</sup>	++(+)	high	

Following a comparison of the policy options, in terms of their costs and effectiveness in attaining the objectives set, **policy option 2** is identified as the best placed variant and therefore constitutes the **preferred option**. A Directive entailing the proposed elements would provide the basis for a stable framework on cooperation and coordination. It would ensure equal protection for all unrepresented EU citizens in need of consular protection, by providing for a right with a clear and reliable content based on simplified coordination and cooperation procedures. This may lead to a

<sup>91</sup> See Annex VI for further details.

<sup>92</sup> See Annex VI for further details.

<sup>93</sup> Regulating the concept of "accessibility" by laying down a specific amount of kilometres may even reduce effectiveness as local circumstances (quality of transport networks) would not be sufficiently taken into account. Including long-term residents and refugees would further enhance effectiveness, but depart too much from the current framework.

<sup>94</sup> Including simple forms of legalization/notary activities could further enhance effectiveness of services but would appear premature at current stage; EU legislation on legalization *within* the EU is foreseen for 2013.

<sup>95</sup> A reimbursement mechanism would not enhance effectiveness if only rarely used by Member States.

<sup>96</sup> Setting up an additional EU-funding instrument could have a beneficial effect as Member States would be more inclined to proactively assist unrepresented EU citizens. But this option would have significant cost impacts and a new EU fund would partially overlap with existing financial instruments (notably with the Civil Protection Mechanism).

limited increase in requests from unrepresented EU citizens. However, in view of the overall costs of assisting nationals, additional costs for assisting unrepresented EU citizens will still be minor; for more costly evacuations an improved reimbursement system will be provided for. In addition, due to raising awareness about the ambit and limits of this right, the number of unjustified requests will decrease and as a result a mere 10% increase in applications of unrepresented EU citizens is to be expected<sup>97</sup>. To maximise effectiveness and to ensure that all unrepresented EU citizens who wish to actually do profit from this renewed framework, awareness-raising measures should be included. In view of the financial impacts a fully fledged awareness-raising campaign should accompany the implementation of the Directive, as a full understanding of the content of this right is a precondition for comprehensive communication measures.

Option 3 is effective in achieving the objectives set, whilst option 2 is only marginally less effective. Including refugees and long-term residents as well as broadening the type of assistance considered to simple legalisation of documents would however depart considerably from the current framework and practices, which is deemed to be premature at this stage<sup>98</sup>. The costs induced by option 3 are disproportionately higher than those likely to be incurred by option 2. Synergies with the European Civil Protection Mechanism would not be fully exploited; introducing a new financial mechanism specifically for unrepresented EU citizens would amount to a partial duplication of the existing framework and generate significant additional costs.

## **7. EU ADDED VALUE AND IMPLEMENTATION**

### **7.1. EU added value and proportionality**

The preferred set of measures would safeguard the implementation of EU citizenship as a concrete reality ensuring equal treatment for unrepresented EU citizens. Content and operability of the right to equal consular protection for unrepresented EU citizens would be clarified and cooperation and coordination between consular authorities facilitated. Equal treatment is a key element in the sphere of freedom, security and justice and the need to assist unrepresented citizens in need – be it in day-to-day or in crisis situations – is a vital part of it.

The right to equal treatment on consular protection is one of the specific rights conferred on the EU citizen by the Treaty. It therefore appears appropriate to include the necessary coordination and cooperation measures to facilitate this right in the legal order of the Union, rather than in sui generis decisions of the Representatives of Governments of Member States. Practicability and coherence of this right will be further enhanced by embedding it in the legal orders of Member States, by the right of national courts to request guidance on interpretation from the European Court of Justice and by the Commission's powers to ensure compliance.

The Directive on cooperation and coordination measures will clarify and facilitate

- who is to be considered as an unrepresented EU citizen;
- which Member State assists the unrepresented EU citizen and how this assistance is to be coordinated with the citizen's Member State of origin;

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<sup>97</sup> See Annex VI.

<sup>98</sup> For further details please see above (analysis of impacts of the specific elements of option 3).

- how and by whom unrepresented EU citizens should be assisted in crisis situations and how the financial burden should be shared between the assisting and the unrepresented Member State;
- how the consular actors present in a given third country should cooperate with each other and coordinate their action (notably how the EU level can provide added value in this respect).

By means of accompanying awareness-raising initiatives the full effectiveness of the legal measure will be secured.

The preferred policy option also complies with the principle of **proportionality**. None of the alternative options reach the objectives in an equally effective way whilst being sensitive to costs incurred. The preferred option will require Member States to introduce a number of changes to their internal legal orders but the general and specific policy objectives cannot be reached equally effectively by other means.

The Directive also takes due account of the principle of proportionality by providing for sufficient flexibility as regards key concepts (e.g. regarding the definition of unrepresented EU citizen). It also restricts itself to laying down cooperation and coordination measures for frequent occurrences (e.g. death, victim of crime) and crisis situations. It further fully builds on and integrates previous legal measures (notably Decision 95/553/EC) as well as recent developments (e.g. the Lead State) with a clear focus on the unrepresented EU citizen.

## **7.2. Transposition, monitoring and evaluation**

The envisaged deadline for transposition of the Directive will be two years following its entry into force. Given that the Directive builds on previous legal measures and at least partially reflects existing practices, two years are deemed sufficient to enable Member States to cater for the necessary modifications of national laws and practices.

To make sure that the provisions of the Directive are adequately complied with, a functional monitoring and evaluation mechanism will be provided for. To remedy the current lack of comprehensive data the Directive will call on Member States to inform the Commission about the implementation of this right, including by a yearly overview of statistics and relevant cases. Data provided by other sources (e.g. Eurostat, expatriate associations or national tourist ministries) will further increase the robustness of data sets for effectively monitoring the implementation of the proposed measures. Additionally, effectiveness could to some extent be assessed through future Eurobarometer surveys.

The Commission is under a Treaty obligation to report every three years on the implementation of the EU citizenship rights, including the right to equal treatment regarding consular protection. The relevant report, coming after 3 to 5 years of the implementation of the Directive, should entail a specific study with emphasis on data collection and examine how well cooperation and coordination arrangements are working.

The analysis should include:

- cases of consular protection rendered/not rendered to unrepresented EU citizens, both in crisis and in day-to-day situations;
- role of the Lead State, including number of Lead States established;

- requests for reimbursement of costs and for co-financing of assistance during crises.

The report would help to evaluate the effectiveness of the proposed measures and further deepen insight with a view to achieving optimal benefits for unrepresented EU citizens in distress.

## ANNEX I: MEMBER STATE REPRESENTATIONS IN THIRD COUNTRIES

Third Country	DE	PT	SI	FR	CZ	SE	ES	BE	HU	PL	DK	CY	IE	LT	EL	IT	LV	LU	NL	SK	MT	UK	EE	BG	AT	RO	FI
Afghanistan	✓			✓	✓	✓	✓	✓	✓	✓	✓					✓			✓			✓	✓	✓			✓
South Africa	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓		✓		✓	✓	✓	✓
Albania	✓		✓	✓	✓	✓	✓		✓	✓	✓				✓	✓			✓			✓		✓	✓	✓	
Algeria	✓	✓		✓	✓	✓	✓	✓	✓	✓					✓	✓			✓			✓		✓	✓	✓	
Andorra		✓		✓			✓																				
Angola	✓	✓		✓	✓	✓	✓	✓		✓						✓			✓			✓		✓		✓	
Antigua and Barbuda																											
Saudi Arabia	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓			✓		✓	✓			✓	✓	✓
Argentina	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓			✓	✓		✓		✓	✓	✓	✓
Armenia	✓			✓						✓				✓	✓	✓						✓		✓		✓	
FYROM	✓		✓	✓	✓	✓	✓		✓	✓					✓	✓			✓	✓		✓		✓	✓	✓	
Australia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Azerbaijan	✓			✓	✓			✓	✓	✓				✓	✓	✓	✓		✓			✓		✓	✓	✓	
Bahamas																											

Bahrain	✓			✓											✓					✓						
Bangladesh	✓			✓		✓	✓				✓				✓			✓			✓					
Barbados																					✓					
Belarus	✓			✓	✓	✓				✓	✓				✓		✓	✓		✓		✓	✓	✓		✓
Belize																										
Benin	✓			✓			✓	✓			✓								✓							
Bhutan																										
Myanmar	✓			✓												✓					✓					
Bolivia	✓			✓		✓	✓			✓					✓			✓		✓	✓			✓		✓
Bosnia & Herzegovina	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓			✓	✓		✓		✓	✓	✓
Botswana	✓			✓																	✓					
Brazil	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓
Brunei Darussalam	✓			✓																						
Burkina Faso	✓			✓		✓		✓			✓								✓							
Burundi	✓			✓				✓													✓					
Cambodia	✓			✓		✓	✓				✓										✓		✓			
Cameroon	✓			✓			✓	✓							✓	✓			✓			✓				



Canada	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Cape Verde		✓		✓			✓																			
Central African Republic	✓	✓		✓			✓	✓			✓							✓			✓				✓	
Chile	✓	✓		✓	✓	✓	✓	✓		✓	✓				✓	✓			✓			✓		✓	✓	✓
China	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Colombia	✓	✓		✓	✓	✓	✓	✓		✓					✓			✓			✓			✓	✓	
Comoros				✓																						
Congo				✓				✓							✓											
Democratic Republic of the Congo	✓	✓		✓	✓	✓	✓	✓						✓	✓			✓			✓					
North Korea	✓				✓	✓				✓											✓				✓	
South Korea	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓			✓	✓		✓		✓	✓	✓
Costa Rica	✓			✓	✓		✓	✓							✓			✓			✓					
Côte d'Ivoire	✓			✓			✓	✓							✓											
Croatia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓			✓	✓		✓		✓	✓	✓
Cuba	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓			✓	✓			✓	✓		✓		✓	✓	✓
Djibouti				✓																						
Dominican Republic	✓			✓			✓								✓			✓			✓					

Dominica																										
Egypt	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
El Salvador	✓			✓			✓								✓											
UAE	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓		✓	✓		✓	✓	✓	
Ecuador	✓			✓			✓								✓			✓			✓					
Eritrea	✓			✓											✓			✓			✓					
United States	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Ethiopia	✓	✓		✓	✓	✓	✓	✓		✓	✓		✓		✓	✓			✓	✓		✓		✓	✓	
Fiji				✓																		✓				
Gabon	✓			✓			✓								✓											
Gambia																										
Georgia	✓			✓	✓	✓	✓		✓	✓				✓	✓	✓	✓		✓			✓	✓	✓	✓	
Ghana	✓			✓	✓		✓				✓					✓			✓			✓		✓		
Grenada																										
Guatemala	✓			✓		✓	✓								✓			✓			✓				✓	
Guinea	✓			✓			✓														✓					
Guinea-Bissau		✓		✓			✓																			

Equatorial Guinea				✓			✓																				
Guyana																					✓						
Haiti	✓			✓	✓	✓	✓	✓		✓	✓					✓	✓		✓				✓				
Honduras	✓			✓			✓									✓											
India	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓
Indonesia	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓				✓	✓			✓	✓		✓		✓	✓	✓	✓
Iraq	✓			✓	✓	✓	✓			✓	✓				✓	✓			✓	✓		✓				✓	
Iran	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓	✓		✓	✓	✓	✓
Iceland	✓			✓		✓				✓	✓											✓					✓
Israel	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Jamaica	✓			✓			✓	✓			✓										✓						
Japan	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Jordan	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓			✓			✓		✓	✓	✓	
Kazakhstan	✓			✓	✓		✓	✓	✓	✓				✓	✓	✓	✓		✓	✓		✓		✓	✓	✓	✓
Kenya	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓			✓	✓		✓			✓	✓	✓
Kyrgyzstan	✓			✓																							
Kiribati																											

Kuwait	✓			✓	✓		✓	✓	✓	✓					✓	✓			✓	✓		✓		✓	✓	✓	
Laos	✓			✓																							
Lesotho	✓											✓								✓							
Lebanon	✓			✓	✓		✓	✓	✓	✓	✓	✓			✓	✓			✓			✓		✓	✓	✓	
Liberia	✓			✓		✓																					
Libya	✓	✓		✓	✓		✓	✓	✓	✓		✓			✓	✓			✓	✓	✓	✓		✓	✓	✓	
Liechtenstein																											
Madagascar	✓			✓																							
Malawi	✓														✓					✓							
Malaysia	✓			✓	✓	✓	✓	✓		✓	✓		✓			✓			✓	✓		✓			✓	✓	✓
Maldives																											
Mali	✓			✓		✓	✓				✓								✓								
Morocco	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓				✓	✓			✓			✓		✓	✓	✓	✓
Marshall Islands																											
Mauritius				✓																		✓					
Mauritania	✓			✓			✓																				
Mexico	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓

Micronesia																										
Moldova	✓			✓	✓	✓			✓	✓				✓		✓					✓		✓	✓	✓	
Monaco																										
Mongolia	✓			✓	✓																✓		✓			
Montenegro	✓		✓	✓	✓	✓			✓	✓				✓	✓				✓		✓		✓	✓	✓	
Mozambique	✓	✓		✓		✓	✓				✓		✓			✓			✓		✓					✓
Namibia	✓			✓			✓														✓					✓
Nauru																										
Nepal	✓			✓							✓										✓					✓
Nicaragua	✓			✓			✓				✓					✓		✓	✓					✓		✓
Niger	✓			✓			✓																			
Nigeria	✓	✓		✓	✓	✓	✓	✓	✓	✓			✓		✓	✓			✓	✓		✓		✓	✓	✓
Norway	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
New Zealand	✓			✓			✓				✓			✓	✓	✓			✓		✓					
Oman																										
Uganda	✓			✓		✓		✓			✓		✓			✓			✓		✓			✓		
Uzbekistan	✓			✓	✓					✓						✓	✓			✓		✓			✓	

Pakistan	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓				✓	✓			✓			✓		✓	✓	✓	✓
Palau																											
Panama																											
Papua New Guinea				✓																	✓						
Paraguay	✓			✓			✓									✓											
Peru	✓	✓		✓	✓		✓	✓		✓					✓	✓		✓			✓				✓	✓	✓
Philippines	✓			✓	✓	✓	✓	✓					✓	✓	✓	✓		✓		✓	✓				✓	✓	✓
Qatar	✓			✓			✓	✓	✓	✓		✓				✓		✓			✓			✓		✓	
Russia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rwanda	✓			✓		✓		✓										✓			✓						
St. Kitts-Nevis																											
San Marino																✓											
Vatican City State																											
St. Vincent and the Grenadines																											
Saint Lucia				✓																			✓				
Samoa																											
São Tomé and Príncipe		✓																✓									

Senegal	✓	✓		✓		✓	✓	✓								✓		✓	✓			✓			✓	✓	
Serbia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓			✓	✓		✓		✓	✓	✓	✓
Seychelles				✓																							
Sierra Leone	✓																					✓					
Singapore	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓			✓	✓	✓
Solomon Islands	✓			✓		✓																✓					
Somalia																											
Sudan	✓			✓		✓	✓								✓	✓			✓			✓				✓	
Sri Lanka	✓			✓												✓			✓			✓				✓	
Switzerland	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓		✓		✓	✓	✓	✓
Suriname				✓															✓								
Swaziland																											
Syria	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓			✓	✓		✓		✓	✓	✓	✓
Tajikistan	✓			✓																		✓					
Tanzania	✓			✓		✓	✓	✓			✓		✓			✓			✓			✓					✓
Chad	✓			✓																							
Thailand	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓				✓	✓		✓	✓	✓		✓		✓	✓	✓	✓





## ANNEX II: REPRESENTATION MAPPING

The table below presents the relation between the level of representations and the possibility to provide protection to unrepresented EU citizens in third countries. The numbers in the cells indicate the total number of third countries where the provider Member State (in rows) can potentially provide consular protection to a recipient from an unrepresented Member State (in columns). As an example, France (read horizontally), due to having a large number of representations in third countries can provide consular protection in a large number of third countries to many Member States. Conversely (read vertically), there are few third countries where French citizens would be required to seek consular protection from representations of other Member States.

	DE	PT	SI	FR	CZ	SE	ES	BE	HU	PL	DK	CY	IE	LT	EL	IT	LV	LU	NL	SK	MT	UK	EE	BG	AT	RO	FI
DE		76	99	4	56	51	33	55	71	56	65	99	91	98	61	31	103	108	37	81	104	18	106	64	62	54	72
PT	5		31	2	10	11	2	8	17	11	18	33	28	35	10	6	38	39	4	21	36	5	38	15	10	7	16
SI	0	3		0	1	0	1	3	0	0	2	10	7	8	0	0	11	13	1	1	12	0	11	1	0	0	4
FR	14	83	109		67	62	39	64	81	67	75	109	102	108	72	40	113	118	46	91	114	28	116	74	72	65	82
CZ	0	25	44	1		12	7	12	18	6	25	44	41	45	12	2	47	55	6	26	50	0	50	11	11	7	26
SE	0	31	48	1	17		11	20	27	18	21	51	41	51	23	8	55	58	8	34	55	3	55	25	20	18	28
ES	4	44	71	0	34	33		31	46	36	41	70	65	73	36	14	77	79	15	55	75	14	78	42	37	34	46
BE	1	25	48	0	14	17	6		24	15	23	45	40	49	18	6	52	55	4	32	51	4	54	22	15	15	26
HU	0	17	28	0	3	7	4	7		1	14	28	28	30	5	0	34	39	3	14	34	0	35	4	4	2	15
PL	0	26	43	1	6	13	9	13	16		24	43	41	43	12	3	47	54	8	25	50	0	50	12	12	5	25
DK	0	24	36	0	16	7	5	12	20	15		37	29	41	19	8	43	44	4	25	42	4	43	20	15	17	15
CY	0	5	10	0	1	3	0	0	0	0	3		9	12	1	0	12	16	0	4	11	0	12	1	1	0	5
IE	0	8	15	1	6	1	3	3	8	6	3	17		15	6	1	18	21	1	8	17	0	18	9	4	5	2

LT	0	8	9	0	3	4	4	5	3	1	8	13	8		2	0	8	16	3	6	14	0	10	3	4	1	6
EL	0	20	38	1	7	13	4	11	15	7	23	39	36	39		1	45	49	3	24	44	0	47	12	9	5	22
IT	2	48	70	1	29	30	14	31	42	30	44	70	63	69	33		74	79	14	52	75	8	77	37	33	28	46
LV	0	6	7	0	0	3	3	3	2	0	5	8	6	3	3	0		12	2	3	10	0	4	1	3	1	5
LU	0	2	4	0	3	1	0	1	2	2	1	7	4	6	2	0	7		0	2	7	1	7	3	0	1	1
NL	2	40	65	1	27	24	9	23	39	29	34	64	57	66	29	8	70	73		49	69	6	72	36	29	26	40
SK	0	10	18	0	1	4	3	5	4	0	9	21	17	22	3	0	24	28	3		27	0	26	4	3	0	9
MT	0	3	7	0	2	2	0	1	1	2	3	6	4	8	1	0	9	11	0	5		0	9	4	0	1	1
UK	6	64	87	6	44	42	31	46	59	44	57	87	79	86	49	25	91	97	29	69	92		94	52	51	42	61
EE	0	3	4	0	0	0	1	2	0	0	2	5	3	2	2	0	1	9	1	1	7	0		0	3	1	2
BG	0	22	36	0	3	12	7	12	11	4	21	36	36	37	9	2	40	47	7	21	44	0	42		10	5	23
AT	0	19	37	0	5	9	4	7	13	6	18	38	33	40	8	0	44	46	2	23	42	1	47	12		5	18
RO	0	24	45	1	9	15	9	15	19	7	28	45	42	45	12	3	50	55	7	28	51	0	53	15	13		28
FI	0	15	31	0	10	7	3	8	14	9	8	32	21	32	11	3	36	37	3	18	33	1	36	15	8	10	

**Source:** Matrix Insight Study on the basis of the General Secretariat of the Council, 17770/2/09 REV 2 PESC 1795 RELEX 1235 COCON 47, EU diplomatic representation in third countries, second half of 2010; EC Consular Protection website; own calculations (order of the Council document follows the order of the rotating Presidencies as of 2007).

### ANNEX III: MAGNITUDE OF THE PROBLEM – METHODOLOGY AND DATA

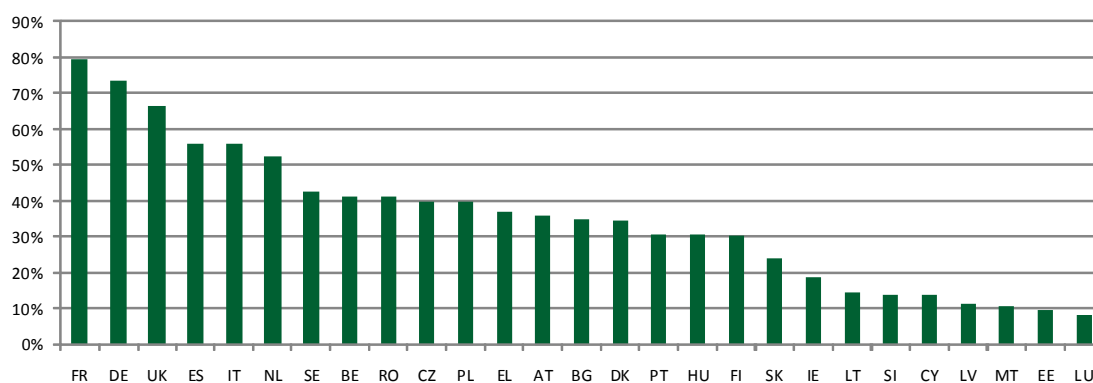
Figures were obtained by relying on a methodological approach involving the following three steps.

1. **Use of official data sources** (e.g. EUROSTAT, UNWTO) as starting points for the analysis. These data sources operate under codes of practice *inter alia* ensuring the accuracy and reliability of the data<sup>1</sup>. Where available also existing survey work was used.
2. **Use of economic modelling** to fill remaining gaps, steps involved are outlined in the following.
3. **Filling of remaining gaps and triangulating results** with information collected as part of this study (e.g. interview, survey) and other existing studies.

#### Represented and Unrepresented EU Citizens in Third Countries

All 27 Member States are represented in only three countries: China, Russia, and the United States<sup>2</sup>. There are several countries, including popular tourist destinations, where no or only very few EU Member States have diplomatic and/or consular representations. A 2010 document from the General Secretariat of the Council<sup>3</sup> provides an overview of the number of Member State representations in third countries. The distribution of the number of representations is shown in the figure below:

**Figure 1: Number of representations in third countries per Member State (as a percentage of total third countries)**



**Source:** General Secretariat of the Council, 17770/2/09 REV 2 PESC 1795 RELEX 1235 COCON 47, EU diplomatic representation in third countries, second half of 2010

#### Methodology for Estimating the Number of Unrepresented Travellers

<sup>1</sup> See for example the EUROSTAT Code of Practice: [http://epp.eurostat.ec.europa.eu/portal/page/portal/quality/code\\_of\\_practice/compliance](http://epp.eurostat.ec.europa.eu/portal/page/portal/quality/code_of_practice/compliance).

<sup>2</sup> SEC(2007) 1601, Commission Staff Working Document.

<sup>3</sup> General Secretariat of the Council, 17770/2/09 REV 2 PESC 1795 RELEX 1235 COCON 47, EU diplomatic representation in third countries, second half of 2010.

To estimate the number of EU citizens travelling to third countries where they are not represented, figures on **relevant travel patterns** and figures on **total trips made by Europeans outside of the EU** were combined with the data on **Member State representations around the world**.

#### *Data on total trips made by Europeans outside of the EU*

EUROSTAT provides information about trips to third countries in 2009 (both for holiday and business). These figures represent individual trips and can be broken down into “travel to all countries of the world” and “travel to EU27”. Hence, the difference between these figures can be used as the total number of trips outside of the EU, which can then be broken down by Member State. Business and leisure trips have been combined and in the few instances where there were data gaps figures older than 2009 were used. Where relevant, national sources as well as information provided by travel associations were used for validation

#### *Data on travel patterns*

In order to establish how many citizens travel to each of the third countries, one needs to establish the “attractiveness” of each third country. This is done using the **UNWTO World Tourism Barometer**<sup>4</sup>, which includes 2010 figures on total international arrivals to most countries in the world. Dividing the number of arrivals to each third country by the total number of arrivals to third countries yields an estimate of the proportion of total travel that would have this country as a destination<sup>5</sup>. Finally, multiplying these proportions by the total number of trips to third countries for each Member State yields an estimate of the total trips made by citizens of each Member State to each third country.

#### *Unrepresented travellers*

Combining the mapping of representations with the figures concerning the number of travellers in specific third countries allows to determine the total number of unrepresented travellers. The resulting total number of unrepresented travellers is 5.12 million. The distribution of the unrepresented trips is shown in the figure below:

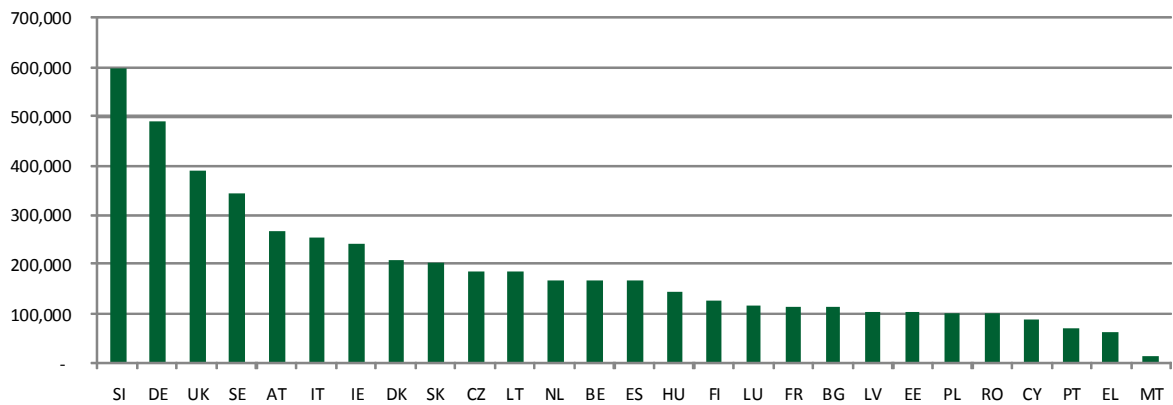
**Figure 2: Estimate of total number of instances when travelling EU citizens are unrepresented in third countries<sup>6</sup>**

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<sup>4</sup> UNWTO (2010), World Tourism Barometer, Vol 8, No. 2, June 2010.

<sup>5</sup> A number of assumptions are made here: Firstly, since the UNWTO data concerns international arrivals rather than arrivals by EU citizens, it was assumed that third countries are as attractive to EU citizens as they are to all international travellers. Secondly, where information for third countries is not available, the proportion was assumed to be zero. Since in many cases these are small countries with a very small number of travellers arriving from the EU each year, this is unlikely to have a substantial effect on the final estimates. Where no data was available for larger countries or ones more likely to have a substantial number of travellers from the EU indicative data was obtained from other sources (Libya - HVS report (2008) Tripoli, Libya – A Prosperous Prospect; Nigeria – UNWTO report (2006) Nigeria Tourism Development Master Plan - Institutional Capacity Strengthening to the Tourism Sector in Nigeria; Belarus - National Statistics Committee of Belarus (2010)).

<sup>6</sup> The estimates above are based on 2009 Eurostat figures regarding trips to third countries.



**Source:** UNWTO World Tourism Barometer (2010), Eurostat (2010) and Matrix calculations

## Methodology for Estimating the Number of Unrepresented Residents

### *Estimating the number of EU citizens residing outside of the EU*

There are some mechanisms through which Member States can collect such information, for instance through documentation that an individual needs to maintain in their home Member State, or for using voters' registries. On the basis of the data available it is estimated that 31.02 million EU citizens are residing outside of the EU. Triangulation with other available data has shown that this is a sufficiently accurate representation of the current situation<sup>7</sup>. In order to establish how this figure is distributed by Member States, Eurostat emigration figures<sup>8</sup> were used, which are broken down by Member State and country of next residence. This allows to isolate intra-EU emigration from emigration to third countries. In addition, dividing the total emigration to third countries for each Member State by the total emigration to third countries for all of the EU yields a fraction representing the "propensity to reside outside of the EU", which, multiplied by the estimate of the total number of EU citizens living outside of the EU, allows to obtain the number of citizens from each EU Member State living outside of the EU.

### *Establishing the number of EU citizens residing in specific third countries*

The final step in establishing the number of unrepresented citizens is to distribute these numbers across third countries. The aforementioned Eurostat emigration data allows to do this, as it covers most of the third countries (and all the ones where substantial number of EU citizens emigrate to). These figures cannot be used directly as numbers of residents, as they are "flow" rather than "stock" figures. Instead the total EU emigration for each third country can be divided by the total EU emigration to third countries, to establish the "attractiveness" of each third country. This, multiplied by the estimated number of citizens from each EU Member State living outside of the EU yields an estimate of the total number of EU citizens living in each third country<sup>9</sup>

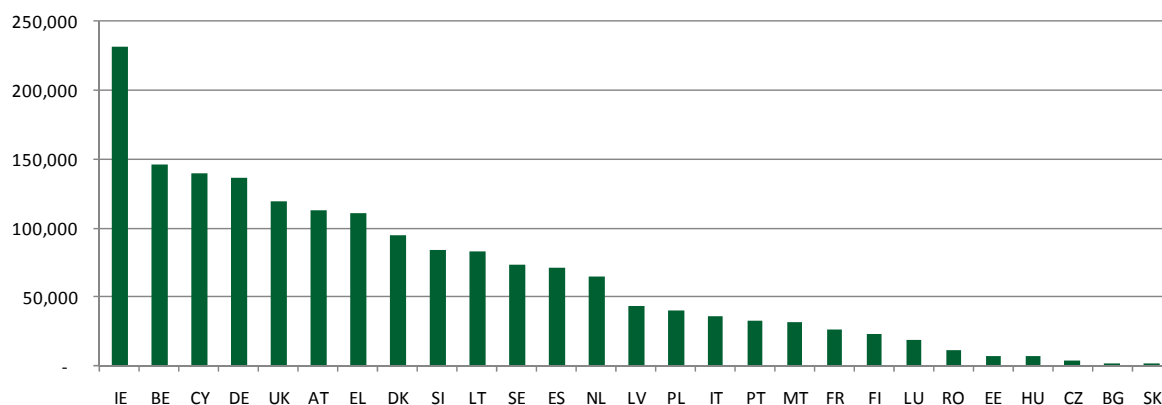
<sup>7</sup> Individual data available was on Hungary and the United Kingdom.

<sup>8</sup> These were 2008 figures, as they provided the most complete picture.

<sup>9</sup> A number of assumptions were made in arriving at the final calculations. Firstly, since 2008 is the year for which the emigration data is most complete for the EU27 and third countries and this year has been used in the calculations, an implicit assumption was made that preferences as to residence in third countries in 2008 reflect the distribution of EU citizens in third countries which has developed over decades. Secondly, since the proportions of total emigration for each third country were obtained using

## Unrepresented residents

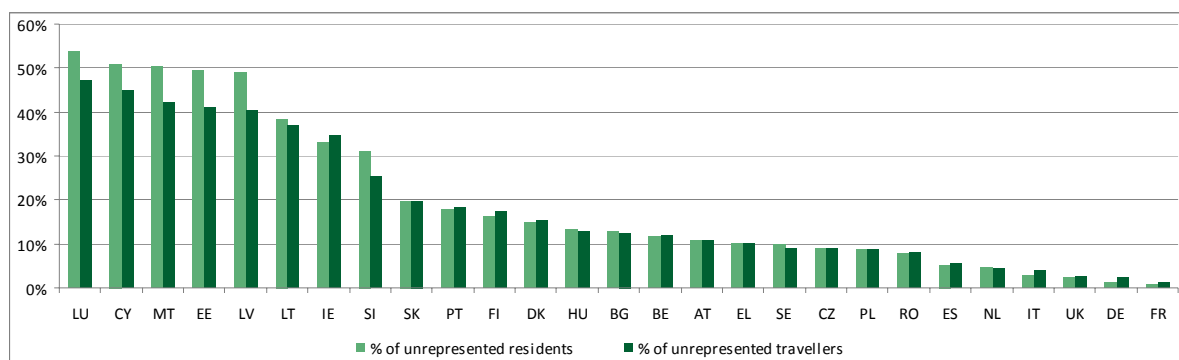
**Figure 3: Combining the representation mapping and the figures on the number of unrepresented residents in third countries results in a total of 1.74 million unrepresented residents.<sup>10</sup>**



## Proportion of unrepresented EU citizens

Finally, the proportion of unrepresented EU citizens (residents/travellers) varies per Member State of origin. These differences are illustrated by the following graph and could be indicative of which Member States are most affected by reimbursement provisions.

**Figure 4: Proportion of unrepresented residents/travellers per Member State of origin**



## Consular cases

It is important to understand what proportion of all EU travellers and residents could have requested consular protection. Based on the assumption that the number of represented EU citizens who receive assistance reflects the number of represented EU citizens that require assistance, it is possible to calculate the likelihood of requiring assistance. Based on the data

data for 16 EU Member States, an assumption is also made that the preferences of the citizens of these 16 Member States reflect those of the EU27 as a whole.

<sup>10</sup> As mentioned earlier, the estimates above are based on 2009 Eurostat figures regarding trips to third countries. Since the Eurostat data reflects trips to third countries in a given year rather than the number of individuals travelling to third countries (i.e. a single individual can make more than one trip), it is also important to keep in mind that results from this analysis should be interpreted as the number of instances when EU citizens travel to third countries and are not represented, rather than unique unrepresented individuals.

from previous European Commission data collection and the online survey, there were an estimated **295.490 consular cases**<sup>11</sup> (10.944 per Member State, both within and outside the EU) involving nationals across the EU27 in 2009, out of more than 300 million EU citizens travelling to or residing outside their home Member State (both within and outside the EU)<sup>12</sup>. Comparing the number of consular cases involving represented citizens and the total number of travellers and residents allows for estimating the likelihood of a represented EU citizen requiring assistance. This average likelihood for the EU27 is estimated to be 0.1274%<sup>13</sup>.

This proportion can be multiplied to the figures concerning unrepresented EU citizens<sup>14</sup>. Accordingly, **approximately 7.324 unrepresented citizens in third countries where other Member States are represented could have asked for and obtained consular assistance in 2009**. This represents 271 cases per Member State on average. Out the total number, 5.311 are estimated to be travellers and 2.013 residents.

**The total number of reported consular cases involving unrepresented EU citizens is, however, much lower.** Extrapolating reported to 27 Member States based on the likelihood of asking for and receiving assistance lead to a total of **1.189 reported cases involving unrepresented citizens** (862 involving travellers and 327 involving residents), which equals to 44 cases per Member State and represents approximately **16%** of the estimated number of unrepresented EU citizens requiring consular assistance. This in turn means that the “assistance shortfall” (number of unrepresented citizens who do not ask for or receive assistance) is 84%. These figures are summarised in the table below.

**Figure 4: Summary of scale of the problem**

Indicator	Total	MS Average
Total number of consular cases involving represented citizens	295.490	10.944
Total number of unrepresented citizens potentially in need of consular protection	7.324	271
Total number of unrepresented citizens asking for or receiving assistance (estimated number of consular cases involving unrepresented citizens)	1.189	44
Total number of unrepresented citizens not asking for or receiving assistance	6.135	227
Divergence	84%	

## Future trends

Having estimated the current situation using the latest available data (for 2009), it is important to also look at how the above figures are likely to develop over time. Using the latest UNWTO estimate of annual growth in tourist arrivals (7% in 2010)<sup>15</sup> and the average annual

<sup>11</sup> Based on information provided by Member States.

<sup>12</sup> 330,67 million EU citizens.

<sup>13</sup> This average likelihood of the EU 27 is calculated on the basis of the mean average regarding the likelihood calculated for each of the 21 Member States for which data on the number of consular cases was available (no sufficient data was available for BG,CY,ES,RO,SI,SK).

<sup>14</sup> For this calculation a total number of 5.75 million citizens was used (consisting of 4.17 million unrepresented EU citizens travelling and 1.58 million residing abroad). This is a conservative figure which solely takes into account third countries where there is a representation of at least one Member State.

<sup>15</sup> UNWTO (2010), World Tourism Barometer, Interim Update, April 2011.

change in Eurostat emigration figures in the period 2002-2008<sup>16</sup>, one can trace the changes in the number of unrepresented citizens within a five and ten year period. The calculations suggest that, assuming the growth rates and the number and location of representations remain constant, number of unrepresented travellers to third countries would increase from 5.12 million to 7.18 million in five years, and to 10 million in ten years. For residents the change would be from 1.74 million to 2.4 million and 3.3 million. This in turn suggests that over time more citizens will be finding themselves in situations where they may be eligible for assistance from a representation of another EU Member State.

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<sup>16</sup> This was done due to annual changes being very volatile, 2009 data was incomplete. The annual change used is approx. 6.5% per annum.



#### ANNEX IV: OVERVIEW ON THE CONSULAR PROTECTION DELIVERED BY MEMBER STATES

Type of protection	Shared practises <sup>1</sup>	Variations <sup>2</sup>
Arrest or detention	<ul style="list-style-type: none"> <li>- Assisting in informing the citizen's family members or other related persons at the citizen's request;</li> <li>- Visiting the citizen and monitoring minimum standards of treatment in prison;</li> <li>- Providing information on the rights of the detained citizen.</li> </ul>	Financial assistance is generally possible as a last resort but modalities may differ (e.g. some Member States provide for a small hardship fund, one Member State foresees financial aid for nationals facing the death penalty).
Victim of crime	<ul style="list-style-type: none"> <li>- Assisting in informing family members or other related persons, if the citizen has given his or her consent;</li> <li>- Providing the citizen with information and/or assistance regarding relevant legal issues and health care.</li> </ul>	Some Member States also bring victims of crime in contact with specialized support institutions (either a specialized national institute or a non-governmental organization).
Serious accident/illness	<ul style="list-style-type: none"> <li>- Assisting in informing family members or other related persons;</li> <li>- Assisting with medical care, non-financial advice and with repatriations.</li> </ul>	
Death	<ul style="list-style-type: none"> <li>- Assisting in informing family members;</li> <li>- Obtaining death certificates, medical certificates and laissez-passers for repatriation where necessary.</li> </ul>	In few Member States via/besides the Foreign Ministry the national police is informed, which in turn informs the relatives of the deceased.
Regarding third country family members	In most Member States consular protection for third country family members of own nationals is not regulated	In one Member State third country family members of nationals (and nationals of Member States that are

<sup>1</sup> As identified in the study of the Instituto Europeo de Derecho and in the Council framework. This overview aims at summarising basic principles.

<sup>2</sup> Based on the study of the Instituto Europeo de Derecho and the CARE study as well as consultation of stakeholders.

	by national law. In practise officials appear to decide on a case-by-case basis, in times of crisis family members tend to be treated in a more comprehensive way.	contracting party of a specific regional Treaty) are entitled to consular assistance under a new law on consular assistance in crisis situations.
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## ANNEX V: CURRENT PROCEDURES OF THE FINANCIAL REIMBURSEMENT FRAMEWORK

Instrument	Characteristics of the Procedure
Decision 95/553/EC Article 6, annexes I and II	<ul style="list-style-type: none"> <li>- the procedure is the same for day-to-day assistance and for crisis situations</li> <li>- the reimbursement should cover all (real) costs of assistance provided to an unrepresented citizen of the other Member State (financial advances, all expenditures incurred and consular fee if applicable)</li> <li>- the assisting Member State needs to comply with the following requirements: 1) in principle it needs to receive an agreement from the Member State of the applicant's nationality to engage financially in assistance, 2) make an applicant sign an undertaking to pay the full value of assistance (finance advanced, all costs, consular fee if applicable) to the Member State of the applicant's nationality, unless this Member State expressly waives this requirement (the formats of these undertakings are provided for in annexes)</li> <li>- in order to receive reimbursement the government of the assisting Member State makes a request to the government of the Member State of the applicant's nationality</li> <li>- the burden to request the possible reimbursement from an applicant is on the Member State of nationality of the applicant</li> </ul>
Lead State guidelines Points 5.2, 5.4	<ul style="list-style-type: none"> <li>- the Lead State submits to the Member States of the applicants' nationality a balance sheet of expenditure incurred by the Lead State (no format or templates are provided by the guidelines)</li> <li>- the Lead State requests the reimbursement of expenses generated by its mission from the Members States of nationality</li> <li>- the Lead State may request the costs to be paid on a pro-rata basis (proportionally to the number of assisted persons)</li> <li>- the contributions shall be determined after deduction, where applicable, of the expenditure covered by the Community Civil Protection Mechanism or logistic support from the local Union delegation</li> <li>- if possible the Lead State collects the undertaking of repayment from the applicants, to enable the Member States of the applicants' nationality to seek reimbursement</li> </ul>
Consular guidelines Points 12.8, 12.10	<ul style="list-style-type: none"> <li>- the procedure provided for in the Decision 95/553/EC shall be followed</li> <li>- Member States will reimburse those Member States (acting on their behalf) for expenses incurred in securing the safety of their nationals in a pragmatic way</li> </ul>

- in case the EU nationals are required to pay for evacuation costs or any related costs the payment arrangements should be made from Member State to Member State, on a pro-rata basis.
- the burden to request the possible reimbursement from an applicant is on the Member State of nationality of the applicant

## ANNEX VI: KEY ASSUMPTIONS ON COSTS AND BENEFITS OF THE POLICY OPTION 2 AND THE POLICY OPTION 3

### 1. OVERVIEW ON METHODOLOGY

1.1. The analysis below describes the financial and economic impacts of core elements of the policy options 2 and 3. It covers estimated financial costs and savings to Member States or EU bodies and EU budget as well as estimated benefits for EU citizens. In the summary the results are compared to illustrate the costs and benefits of both options.

1.2. The following data and general assumptions are applied:

- **Cost of consular cases**

Both in everyday and in crisis situations this cost is assumed to be similar as regards assistance provided to represented and to unrepresented EU citizens.

The **cost of a consular case in an everyday situation** refers to the overall administrative cost of consular support given to citizens requesting consular protection. It does not include financial advances incurred directly on behalf of a citizen (i.e. payments for a ticket to enable repatriation, consular fee for the issuance of ETDs), which are due to be reimbursed to the assisting Member State and then repaid by a citizen. It reflects the cost of the work of a consular official and the actual cost of service. The cost of a consular case in an everyday situation has been estimated on the basis of the interviews with consular officials and the survey at a range of €30 to 543<sup>1</sup>. In the model calculations the mid, average figure of €286.50 per case is used.

The **cost of a consular case in a crisis situation** refers to the overall cost of support given to a citizen in a crisis situation. It reflects the cost of specific services which have to be organised and, due to the emergency situation, may need to be financed in principle by the assisting Member States. This cost is subject to reimbursement by the home Member State of an unrepresented citizen and then, depending on national rules, repaid by the assisted citizen. The average cost of consular support in crises is presented in the table on fixed sums (see point 5.3.2 of the report). The fixed sums are based on information provided by Member States stakeholders regarding the cost of assistance during recent crises<sup>2</sup>.

- **Length of a consular case**

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<sup>1</sup> At the lower end of the scale, interview respondents placed consular cases consisting only on providing information, eventually requiring telephone calls - a third of a day at the lower end of the daily cost range was decided to be a sufficiently accurate reflection of the costs associated with some of the less time-intensive cases. At the higher end of the scale third country interview respondents placed death cases, and estimated the average costs of death cases would be up to €400 for expatriation of remains (figure derives from the maximum estimated cost of doing €4,000 and the fact that consular authorities will bear these costs in around 10% of the cases) and up to €143 in administrative costs of organising certificates, yielding the estimate of €543.

<sup>2</sup> The detailed information was gathered via interviews in the framework of GHK study in 2010 and concerned the cost of Member State assistance in Lebanon (2006), Chad (2008), Haiti (2010) and Kyrgyzstan (2010). The findings were also confirmed by use of other sources (Study 'A cost effective analysis of shipboard telemedicine' P. H. Stoloff, F.E. Garcia, J. E. Thomason and D. S. Shia. Telemedicine Journal. Winter 1998, vol 4(4): 293-304, January 29, 2009).

The interviews conducted as part of the study informed that the length of consular cases can vary substantially, ranging from many everyday cases requiring often no more than a few hours of consular officials' time (e.g. providing EU citizens with information about lawyers or doctors, or simple ETD cases), whilst in other instances a case could last considerably longer (e.g. detention cases, death cases).

It is important to note that the length of a consular case is perceived differently by consular officials and citizens. Whereas for a citizen, a case lasts from the incident in question (e.g. arrest) to its resolution (e.g. release), a consular official would only spend a fraction of that time period engaged in that specific case, so the length of a case will be much shorter from the point of view of a consular official.

- **Cost of the work of a consular officer in a third country, a consular officer in a capital and an EU official in an EU delegation**

The daily cost of the work of a consular officer and the daily cost of an EU Delegation staff member are estimated within a range of €100-300<sup>3</sup>. The daily cost of work of officials working in the Member States' capitals is estimated at €66, following Eurostat data<sup>4</sup>.

- **Financial impact of increase of consular cases regarding unrepresented EU citizens**

In the analysis it is estimated that some of the proposed measures (i.e. active coordination between Member States or awareness-raising, see below point 2) would alone result in 10% more unrepresented eligible citizens receiving the assistance, from the share of those who previously did not ask/receive it. Using the scale of the problem analysis yields an estimate of 614 additional cases<sup>5</sup>. The growth of unrepresented cases has proportional impact both on cost and benefits of a measure.

The 10% growth of unrepresented cases is based on estimation about the change that is expected due to the implementation of the proposed measure. Bearing in mind that currently high number of unrepresented citizens, who are potentially eligible to receive the assistance, do not receive it (due to different reasons analysed in the problem definitions), this assistance would normally be demanded and received, if the factors that impede it are limited by proposed measures (i.e. better awareness of citizens enable them to ask for assistance when they are unrepresented, better awareness of consular official on how to and when issue an ETD). It is therefore very likely that these measures would bring an increase of cases of unrepresented citizens. This increase is not expected by the Member States stakeholders to be significantly higher as the proposed measures do not change the basics as regards the system of assistance<sup>6</sup>.

The possibility of an higher increase of unrepresented cases, following more people travelling or a decreasing number of consular representations would result in higher costs for the assisting Member States. Nevertheless, if the benefits outweigh the costs for 10% growth level of impact, they will

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<sup>3</sup> For consular officers the information on costs is based on the survey. For EU Delegation staff cost would be comparable (based on monthly salary of an AD5 grade official). In both cases, the additional potential elements of salary (i.e.: family allowances, travel allowances were not included).

<sup>4</sup> Based on the average hourly wage of legislators, senior officials and managers (Eurostat).

<sup>5</sup> Calculations based on the scale of the problem modelling, which yielded an average assistance shortfall of 84%. Applying this shortfall to the total number of unrepresented citizens estimated to be in situations where they seek assistance yields and estimate of 6,137 citizens who are not assisted. 614 is thus 10% of this figure.

<sup>6</sup> Replies of the Member States' stakeholders to the survey.

also do proportionally so if the impact is higher (since the additional cost of assisting a single individual is estimated to be lower than the benefit the individual derives from the assistance).

- **Inconvenience and time savings to EU citizen to indicate benefits**

The benefits to EU citizens may range widely depending on the nature of the consular case. For example provision of information regarding money transfers would potentially represent only a modest time saving compared to not receiving the assistance, while facilitating the search for a lawyer could help avoiding a prison sentence and thus would constitute a major impact on citizens' well-being and would help saving a wide range of other substantial costs, such as foregone income.

As case study interviews and the online survey suggest, the majority of consular cases are simple ones and consular assistance would mainly help to avoid inconveniences, as well as to save time and money required for seeking assistance through other channels.

The **benefits to unrepresented EU citizens in everyday situations** were estimated using two elements: 1) time saving to previously unassisted citizens or to citizens receiving assistance quicker - this is estimated using average daily wages and estimated to be €60<sup>7</sup>; 2) avoiding an 'inconvenience' cost associated with receiving sub-optimal assistance or having to seek out other forms of assistance. Estimating this cost takes the system of compensation for air passengers as the point of departure, assuming the similarity of situation of a citizen requiring the consular assistance and a stranded air passenger. The cost is assumed to be between €125 and €600 per case<sup>8</sup>.

In crisis cases the measures such as improved coordination can also result in citizens receiving assistance quicker and avoiding waiting time and inconvenience, but it would not be appropriate to assume that the same timescales and levels of inconvenience would apply in crisis cases, requiring for example rescue or urgent medical assistance, as in "non-crisis" cases. In addition, in some crisis situations, citizens could avoid substantial costs (i.e. flights at higher price due to emergency<sup>9</sup>). On the other hand, also in crisis situation - following internal rules in some Member States - an assisted citizen may be requested to pay back cost of assistance. The variety of situations during crisis and unpredictability of their occurrence makes it impossible to quantify the impact accurately. Therefore, estimating savings and benefits to citizens in crisis cases are necessarily more complex and are addressed qualitatively. **However, one would expect that the benefit to EU citizens from obtaining assistance or obtaining it quicker and more efficient could be substantially higher in crises than in everyday cases.**

### 1.3. Financial framework of an EU Fund<sup>10</sup>

The table below summaries the cost of establishing an EU fund dedicated to consular protection.

**Table 1 – Breakdown of cost for the establishment of a new budget line/fund**

Type of costs	Euro
The costs of exchange of best practice and training for 6 -7 years (duration of the funding)	1,330,000 <sup>11</sup>

<sup>7</sup> Average net daily wage in the EU 27, calculated as the average of 1/260 of the annual net earnings for each Member State weighted by GDP. Based on 2009 Eurostat figures.

<sup>8</sup> See Article 7 of the Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

<sup>9</sup> Information provided by Member States regarding recent crisis in Japan.

<sup>10</sup> Based on methodology provided in the study of GHK.

stream)	
The costs of provision of assistance to unrepresented EU citizens for 6 -7 years (duration of the funding stream)	28,484,750
The costs for technical and administrative support	780,000 <sup>12</sup>
Total	30,594,750

For this calculation the following assumptions have been made:

- There may be, on average, two crisis a year, a smaller one, requiring assistance to around 50 unrepresented EU citizens (crisis 1) and a bigger one, requiring assistance to 2,000 unrepresented EU citizens (crisis 2)<sup>13</sup>.
- The costs linked to the above-mentioned crisis are as follows:
  - Subsistence costs (accommodation and food – 1 day) – 50% of unrepresented citizens
  - Long-haul flight – 100% of unrepresented citizens
  - Assistance for people with special needs – 10% of unrepresented citizens
  - Medical assistance - 25% of unrepresented citizens
  - Repatriation of corpses – 2% of unrepresented citizens
  - If the fixed sums rates are applied, the total costs for the two crises are as follows:

**Table 2 Costs incurred for crisis 1 and 2**

Type of assistance	Crisis 1: Number of unrepresented citizens receiving the assistance	Crisis 1 costs	Crisis 2: Number of unrepresented citizens receiving the assistance	Crisis 2 costs
Subsistence (1 day)	25	5000	1000	200,000
Long-haul flight	50	50,000	2000	2,000,000
Medical assistance	12,5	31,250	500	1,250,000
Other costs (special assistance needed)	5	10,000	200	400,000
Other costs (i.e.: repatriation of corpses)	1	3,000	40	120,000

<sup>11</sup> Two trainings per year.

<sup>12</sup> Technical and administrative support is envisaged at 780,000 euro over the 6-7 year period (at least two posts - the model AD grade 5 level taken as the point of reference).

<sup>13</sup> The estimates are based on magnitude of consular crises which involved EU citizens in recent years in Lebanon (2006), Chad (2008), Haiti (2010), and Kyrgyzstan (2010). However, information on assisted unrepresented EU citizens is not collected systematically, according to the Member States' stakeholders in these crises assistance was given from more than to 2,000 (Lebanon) to 89 (Kyrgyzstan) unrepresented citizens.



<b>TOTAL</b>		<b>99,250</b>		<b>3,970,000</b>
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Therefore, it is estimated that a total of 4,069,250 euro could be incurred annually for assistance provided to unrepresented EU citizens. The costs for 6 -7 years (duration of the funding stream) would therefore amount to 29,324,750 euro.

## 2. COSTS AND BENEFITS OF THE POLICY OPTION 2 – DIRECTIVE ESTABLISHING COOPERATION AND COORDINATION MEASURES

### 2.1. Information on specific measures

Core elements of the option	Financial or economic impact
Active coordination and cooperation between assisting Member States and authorities of the citizen's Member State	<p><b>Financial cost to the Member States</b></p> <p>It is likely that the additional cost for Member States to adapt to the revised coordination and cooperation measures will be relatively low. It will involve additional structured meetings and contacts between consular staff, but this is unlikely to require substantial additional human resources, especially given that some coordination and cooperation already takes place. Hence it is assumed here that there will be no significant cost to the Member States.</p> <p>Costs to the assisting Member State that would arise following the estimated growth of 10 % of unrepresented cases would be of approx. <b>€175,910<sup>14</sup></b>.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>Improved coordination and cooperation measures are likely to mainly have an impact on how the assistance is provided.</p> <p>It is assumed here that for each unrepresented case, the unrepresented citizens will save one to three days<sup>15</sup>, resulting in an average benefit to the citizens of <b>€142,680<sup>16</sup></b>. In addition, assuming that the improved coordination and cooperation would result in 10 % more unrepresented citizens being assisted this additional benefit is estimated to represent an average total saving for EU citizens of approx. <b>€333,095<sup>17</sup></b>.</p> <p><b>Savings to Member States</b></p> <p>Improved cooperation and coordination is also likely to result in saving to consular staff, since cases where contacts need to be made with other Member States (i.e. most cases involving unrepresented citizens) would be resolved quicker. It is assumed here that this efficiency saving could be equal to a total of almost 900 days<sup>18</sup> across all consular cases, which results in a total saving of <b>€180,300<sup>19</sup></b>.</p>

<sup>14</sup> Total costs range from €8,420 to €333,402 depending on the cost of a single case, the figure represents the mid-point of that range.

<sup>15</sup> Based on the interviews, an assumption of 1-3 days is used to represent a wide range of situations, namely a speeding up of a routine case (from a full day, which could be required for some contacts between Member States, to an immediate assistance), and a speeding up of a more complex lengthy case, where a 3 days saving could be possible.

<p>Clarification of personal scope (when a person is unrepresented + protection covers also non-EU family)</p>	<p><b>Financial cost to the Member States</b></p> <p>There are two main elements of clarification of the personal scope:</p> <ul style="list-style-type: none"> <li>• definition of individuals which are far from their own representation more than a 24-hour round trip as “unrepresented”; and</li> <li>• Inclusion of third country family members.</li> </ul> <p>In the first case, there are likely to be no additional costs on aggregate EU level, since the citizens in question would be equally likely to receive assistance, except that it will be provided by a different Member State. Costs are however likely to be passed on from one Member State to another.</p> <p>In the latter case, the key cost is the provision of additional services to third country family members, which should not be significant. Assuming that 1.2% of European citizens have third country family members<sup>20</sup> (i.e. for every 1,000 EU citizens 12 will have third country family members), one can estimate that 88 third country family members of unrepresented EU citizens<sup>21</sup> would receive assistance. The average additional costs would be of <b>€25,120</b><sup>22</sup>.</p> <p><b>Benefits to unrepresented citizens</b></p>
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<sup>16</sup> Obtained by multiplying the number of individuals estimated to be currently assisted (based on current scale of the problem analysis) by 1 to 3 days at €60/day. This yields a range of €71,140 to €14,020 the final figure represents the mid-point of that range.

<sup>17</sup> Obtained by multiplying the number of additional cases by both the lower (€125 plus 1 day at €60/day) and higher end of the compensation (€600 plus 5 days at €60/day). The savings range from €13,590 to €52,600 the final figure represents the mid-point of that range.

<sup>18</sup> Assumption is that half a day is saved per consular case due to better awareness of procedures and relevant contacts, which, multiplied by the number of assisted citizens (based on current scale of the problem analysis and including the additional 10%), yields 901,5 days. This is based on the experiences from case studies, where consular staff noted that more complex cases can be quite consuming, and even for more routine cases (ETDs) unclear procedures can require time. The 4-hour saving thus reflects what an “average” time saving could be for both types of cases. It is lower than the time saving for citizens, since it is assumed that for citizens a case lasts “longer” than for consular staff, since citizens “experience” their case from its start to its resolution, while consular officials only work on a case for a fraction of that time (the remainder of the time represents, for example, waiting for documents or for relevant national authorities to respond).

<sup>19</sup> Estimated to be half of the daily cost of consular staff (€100-€300) multiplied by the number of individuals estimated to be currently assisted (based on current scale of the problem analysis). This yields a range of €0,150.00 to €270,450.00; the final figure represents the mid-point of that range.

<sup>20</sup> Estimate from Impact Assessment on Effective consular assistance in third countries: the contribution of the European Union, Action Plan 2007-2009, COM (2007) 767 final). No accurate recent data exists, but the 2007 figure was used based on the assumption that while the number of bi-national marriages may be on the rise (see for example Lauth Bacas, J. (2002), “Cross-border marriages and the formation of Transnational Families: A case study of Greek-German couples in Athens”, Transnational Communities Programme Working Paper WPTC-02-10), the overall rate of marriages is declining and the rate of divorces is on the rise (see Eurostat demography statistics). This suggests that it is unlikely that the probability of a EU citizen is married to a third country national has changed substantially since 2007.

<sup>21</sup> Estimated by applying the 1.2% likelihood to the total number of unrepresented EU citizens estimated to require assistance.

<sup>22</sup> Estimated by applying the cost of assistance to the number of cases (88). Range of €2,630.25 - €47,607.54, the final figure represents the mid-point of that range.

	<p>In case of defining individuals within a 24-hour travel time and distance as “unrepresented” the key benefit to these individuals could be receiving assistance quicker, either through not having to travel to their Member State’s embassy or consulate or by not having to wait for a consular official to travel to where they are. Even if in some cases the actual procedures could potentially last longer due to time needed to exchange necessary information between the assisting and the home Member State’s consular authorities, the savings are still likely to take place as in most cases the cost of travel and time needed for travel would be important. Moreover the time needed for standard assistance i.e. issuance of an ETD or a national emergency passport is comparable. Savings following the difference between the cost of longer case proceeding time and travel time can vary on case by case.</p> <p>In the case of unrepresented family members, the saving to the 88 family members eligible for assistance would be <b>€17,560<sup>23</sup></b>.</p> <p><b>Savings to Member States</b></p> <p>In the case of the 24-hour travel time and distance, the Member States could be able to save resources by not needing to travel to assist some of the represented citizens in distant parts of countries in question. However, as in the case of the benefits to citizens, some of these savings could be offset by cases involving unrepresented citizens being lengthier.</p> <p>It is assumed that no significant saving to Member States would result from providing assistance to third country family members.</p>
<p>Clarity of tasks of a Lead State as regards unrepresented (local contingency planning, provide contact point for unrepresented MS)</p>	<p><b>Financial costs to the Member States</b></p> <p>Any additional cost is likely to be limited, since to some extent the Lead State will take on some of the tasks to date carried out. It is however likely that, assuming compliance with the Directive, the Lead State will perform additional tasks generally not performed earlier (i.e. contingency planning focusing also on unrepresented EU citizens).</p> <p>The assumption is that this would require 5-10 days of consular staff per Lead State, resulting in additional costs of <b>€19,000<sup>24</sup></b>.</p> <p>The cost of assisting unrepresented citizens will not change for the citizens currently assisted. Although some of the initial costs might shift from one of the represented Member States to the Lead State these costs are subject to the reimbursement at the request of the assisting Member State</p> <p>It is possible that more centralised response in crisis would also result in more unrepresented citizens being assisted, but in that case costs should also be reimbursed resulting in no net change in costs. It is important to note, however, that consular officials may need to spend additional time assisting the unrepresented citizens even if they do not bear the actual costs</p>

<sup>23</sup> Obtained by multiplying the number of additional cases (88) by both the lower (€125 plus 1 day at €60/day) and higher end of the compensation (€600 plus 5 days at €60/day). The savings range from €16,219.88 to €78,907.52, the final figure representing the mid-point of that range.

<sup>24</sup> Estimated to be 5 to 10 days multiplied by the €100-€300 range of daily consular staff cost. This yields a range of €4,000.00 to €34,000.00, the final figure represents the mid-point of that range.

	<p>of provision of assistance (i.e. transport).</p> <p><b>Benefits to unrepresented citizens</b></p> <p>Improved and clearer involvement of Lead States can potentially result in more efficient assistance in crisis cases, resulting both in potential time savings to citizens that would be otherwise assisted, as well as additional assistance to the previously unassisted citizens. Assuming that 10% of unrepresented citizens in third countries who previously did not ask for/receive consular protection with a Lead State would now receive it and given that countries with a Lead State account for only 9.7% of unrepresented citizens, yields approximately 60 additional unrepresented cases<sup>25</sup>.</p> <p>The actual benefits for unrepresented citizens will vary substantially, depending on the situation (see above point 1.2.). One would however expect that overall, the more efficient assistance received in crisis situations would represent a sizable benefit to the unrepresented citizens most likely exceeding the benefit to each citizen of non-crisis assistance (i.e. one could expect it to be higher than avoiding the non-crisis inconvenience cost, valued at up to €600).</p> <p><b>Savings to Member States</b></p> <p>More centralised crisis response is likely to result in savings to Member States, since it can help speed up the delivery to services to unrepresented citizens in crisis situations and thus benefit the citizens, but also result in an efficiency gain for the Member States. The Lead States could additionally benefit from the better reimbursement procedures.</p>
<p>Crisis intervention teams supported by consular experts</p>	<p><b>Financial cost to the EU bodies and budget</b></p> <p>Taking the example of the cooperation under the EU Civil Protection Mechanism, the main cost of inclusion of consular experts in civil protection teams are the daily allowances, travel and hotel and internal transport costs, as well as other costs. Assuming an average daily allowance of €63 and €82 in disaster areas and average hotel costs of €142 and €184 respectively<sup>26</sup>, as well as travel costs of €1,000 per expert<sup>27</sup>, and assuming a length of a mission of 10-14 days, one obtains a total cost per expert of €3,890.</p> <p>Assuming that two consular experts are assigned to civil protection teams and are in turn involved in 5 crises every year yields an estimate of total costs of <b>€38,900</b>.</p> <p><b>Benefits to unrepresented citizens and Member States</b></p> <p>Consular experts can benefit EU citizens mainly through helping Member States on the ground to provide more appropriate and more efficient assistance.</p>

<sup>25</sup> Taken to be 10% of 84% of all unrepresented citizens in third countries with lead states that are estimated to require assistance, which is in turn 9.7% of all unrepresented citizens estimated to require assistance.

<sup>26</sup> Based on data provided by DG ECHO.

<sup>27</sup> Conservative estimate of travel costs to third countries.

<p>Cooperation system for reimbursement of costs</p>	<p><b>Financial cost to the Member States</b></p> <p>Limited administrative costs at national level would be incurred for the preparation of the annual financial compensation overviews. These could correspond to 20 man days per Member State per year; at an estimated rate of €66 per day<sup>28</sup>. The total costs would thus amount to about <b>€9,610</b>.</p> <p>The introduction of the compensation system could also result in more efficient provision of consular assistance and, as a result, in a potential increase in the number of unrepresented EU citizens receiving assistance (more proactive actions by the Member States). However, such costs would be subject to the reimbursement at the request of the assisting Member State, although, as mentioned earlier, consular officials may require more time to deliver the assistance even if they will not bear the costs of the assistance itself.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>The benefits to unrepresented citizens of improved assistance in crisis cases can be important, although, as explained previously, will be difficult to estimate. The benefit to additionally assisted citizens is likely to be at least the same as in non-crisis situations and possibly higher.</p> <p><b>Savings to Member States</b></p> <p>The policy option would imply cost savings for those Member States, which historically incur higher expenses during crises. It is reasonable to assume that the process of managing the reimbursement on the basis of fixed sums will be more cost-effective as it is expected to speed up the provision of consular protection to unrepresented EU citizens. As a model calculation shows<sup>29</sup> in case of the assistance provided to 50 unrepresented citizens during crises a year it may be estimated that an assisting Member State would be reimbursed at the level of about €100,000.</p>
<p>Systematic notification of bilateral agreements to the Council</p>	<p>This measure is likely to result in limited costs and benefits in addition to those generated by the measures above. It is likely to ensure that EU citizens, Member States and the European Commission have better information concerning bilateral agreements, but this information is likely to reinforce and support other coordination and coordination measures rather than generate substantial costs and benefits on its own.</p>
<p>EU delegation tasks  (logistic and operational support to MS  Facilitating and monitoring information exchange between MS' representations</p>	<p><b>Financial cost to the EU</b></p> <p>The key cost to the EU will be the cost of EU Delegation activities. It is important to notice that generally these activities are already performed and some synergies with tasks related to the local Schengen cooperation could be exploited. Assuming that the activities foreseen in this measure could require additional 10 days of EU Delegation staff in each delegation, it would result in total cost of <b>€62,000</b><sup>30</sup>.</p>

<sup>28</sup> Based on the average hourly wage of legislators, senior officials and managers (Eurostat).

<sup>29</sup> See point 1.2 above.

<sup>30</sup> Daily costs of EU Delegation staff, assuming a monthly salary of €4,639.67 (Grade AD5), is estimated to be in the €240-300 range. Since this is within the range of 100-€300 range of daily cost of consular staff, it is assumed that the costs of EU Delegation officials and Member State consular staff are in the same range. It is

<p>Raising awareness of MS authorities and local authorities on the right of unrepresented EU citizens</p> <p>Informing unrepresented UE citizens about their rights and pinpointing them to MS representations</p> <p>Assisting MS in crisis situations regarding evacuation, shelter housing of expert teams</p>	<p><b>Financial costs to the Member States</b></p> <p>The main cost of Member States would be the cost of providing additional assistance as a result of the efforts of EU delegations. Assuming that this would mean the 10% growth of unrepresented cases, the total cost of this assistance would be of approx. <b>€175,910<sup>31</sup></b>.</p> <p>It is however worth noting that in a situation where there already is a Lead State, the additional tasks carried out by the EU Delegation, and specifically in crisis situations, is likely to be lower and this additional assistance is less likely to materialise.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>The benefits to unrepresented citizens will be on one hand the benefits to those who previously did not ask for/receive consular protection (i.e. avoidance of inconvenience and a time saving). These savings would be proportional to the additional assistance provided and are estimated to be <b>€33,095<sup>32</sup></b>.</p> <p>Furthermore, as in the case of Lead States, improved coordination and assistance by EU Delegations could result in more efficient assistance to EU citizens already assisted. It could result in an average benefit to the citizens of <b>€142,680<sup>33</sup></b>.</p> <p><b>Savings to Member States</b></p> <p>Finally, a more centralised approach is likely to result in savings to Member States, since the assistance and facilitation as provided by the EU Delegation is likely to help Member State provide assistance quicker (i.e. by obtaining information from the EU Delegation regarding procedures or</p>
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however important to keep in mind that there are potential additional costs (i.e. family or travel allowances) that apply to both EU Delegation and consular staff. Final cost figure obtained by multiplying the €100-€300 range of daily cost by 10 days and 131 delegations. This yields a cost between €131,000 and €93,000, the final figure representing the mid-point of that range. During the impact assessment process the involvement needed was estimated on average at the level of 10 working days per Union delegation.

<sup>31</sup> Total costs range from €18,420 to €333,402 depending on the cost of a single case, the figure represents the mid-point of that range.

<sup>32</sup> Obtained by multiplying the number of additional cases by both the lower (€125 plus 1 day at €60/day) and higher end of the compensation (€600 plus 5 days at €60/day). The savings range from €13,560 to €52,600, the final figure representing the mid-point of that range.

<sup>33</sup> Obtained by multiplying the number of individuals estimated to be currently assisted (based on current scale of the problem analysis) by 1 to 3 days at €60/day. This yields a range of €71,340 to €14,020 the final figure represents the mid-point of that range.

<sup>34</sup> Assumption is that half a day is saved per consular case due EU Delegation contributing to improved procedures, which, multiplied by the number of assisted citizens (based on current scale of the problem analysis and including the additional 10%), yields 901.5 days. This is based on the experiences from case studies, where consular staff noted that more complex cases can be quite consuming, and even for more routine cases (ETDs) unclear procedures can require time. The 4-hour saving thus reflects what an “average” time saving could be for both types of cases. It is lower than the time saving for citizens, since it is assumed that for citizens a case lasts “longer” than for consular staff, since citizens “experience” their case from its start to its resolution, while consular officials only work on a case for a fraction of that time (the remainder of the time represents, for example, waiting for documents or for relevant national authorities to respond).

<sup>35</sup> Estimated to be half of the €100-€300 range of daily cost of a consular official for the number of individuals estimated to be currently assisted (based on current scale of the problem analysis). This yields a range of €0,150.00 to €270,450.00, the final figure representing the mid-point of that range.

	<p>relevant contacts). It could be assumed here that this efficiency saving will be equal to a total almost 900 days<sup>34</sup> across all consular cases, which results in a total saving between <b>€180,300</b><sup>35</sup>.</p> <p>However the more important additional savings to Member States could result from the additional logistical support provided by the EU Delegations (i.e. providing rooms, for meetings, means of communication, accommodating expert teams).</p>
<p>Monitoring - MS provide yearly statistics on their assistance to unrepresented</p>	<p>The main cost of this measure would be the cost to Member States of collating and transferring the information. Since many Member States already collect such information and generally there are only few 'unrepresented' cases, this cost should be low.</p> <p>It is however important to note that the costs will be dependent on the type of reporting already in place. If effective reporting systems exist, the main cost would be cost relating to making data comparable between Member States. Such cost could be borne by the Member States centrally, or even by the EU, rather than by individual representations.</p> <p>Assuming that collecting and transferring such information would require 1 day of consular staff per embassy/consulate (with a total of 1,572 embassies<sup>36</sup>) for each Member State, the total cost would be <b>€314,400</b><sup>37</sup>. This should however be viewed as the set-up cost that is incurred only in the first year. Once the relevant mechanisms are in place, in consequent years, the costs of monitoring should be considerably lower.</p> <p>There are no direct financial benefits to the Member States or unrepresented citizens, although the information is of course of value in further policy-making process.</p>
<p>Dissemination of information for citizens: EU-wide information campaign including advertisement in media (TV, radio spots) travel magazines, internet travel fora advertisements</p> <p>Cooperation with travel associations, expat associations, international employers on awareness raising</p>	<p><b>Financial cost to the EU bodies and budget</b></p> <p>Financial cost of an EU-wide campaign is estimated to be approximately <b>€1 million</b><sup>38</sup>. It can be assumed that the cost of additional cooperation with relevant stakeholders will be minimal, as awareness-raising materials already developed as part of the campaign can be reused. As in the case of monitoring, it is important to note that this cost is largely a one-off cost incurred in the first year, with the benefits likely to be observed yearly.</p> <p>The Commission consular website is already in place. However, it needs to be updated and maintained. The financial cost to the EU of maintaining the website is estimated at <b>€88,000</b><sup>39</sup>.</p> <p><b>Financial cost to the Member States</b></p> <p>Although the cost of awareness raising campaigns will be shared by both the EU and the Member States, the assumption is that most of the costs would be borne by the EU, and the cost of awareness-raising campaign to</p>

<sup>36</sup> Scale of the problem mapping.

<sup>37</sup> Obtained by multiplying the number of consulates/embassies (1,572) by the €100-€300 range of daily consular staff cost. This yields the range of €157,200 to €471,600, the final figure represents the mid-point of that range.

<sup>38</sup> European Commission estimate based on the budget dedicated to the ongoing Passenger Rights Awareness Campaign launched by the DG Mobility and Transport in June 2010.

<sup>39</sup> European Commission budget committed for maintenance in 2011.

<p>Maintenance and further development of the dedicated Commission consular website</p>	<p>the Member States (dissemination of information materials, adding links on the campaign to the national Ministries or Embassies portals) could be minimal.</p> <p>It is assumed here that a wide-ranging awareness raising campaign will increase the number of unrepresented citizens seeking assistance. The key cost to the Member States would be the cost resulting from additional assistance, following the assumed growth of 10% of unrepresented cases. An average total cost to Member States would be of approx. <b>€175,910<sup>40</sup></b>.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>The assumed additional 10% unrepresented citizens who would now seek and receive consular protection would be the key stakeholder group that would benefit from the policy option. the benefits would consist of avoiding a fixed inconvenience cost as well as a time saving This would then yield an average total saving of approx. <b>€333,095<sup>41</sup></b>.</p> <p><b>Savings to Member States</b></p> <p>A well-designed awareness raising campaign will not only ensure that more individuals would seek assistance, but can also help inform both represented and unrepresented travellers and residents which services consulates and embassies can provide and which they cannot provide. As a consequence, consular staff can save time by not having to deal with requests for assistance that they are not in a position to address.</p> <p>Assuming that for every one “well-founded” request for assistance there are five “unfounded” ones<sup>42</sup> and assuming that an awareness campaign can reduce the number of these cases by 10% generates a reduction of 71,789 cases<sup>43</sup>. Assuming that each such case would otherwise take 0.5 hours<sup>44</sup> of consular staff time (at a cost of between €100 and €300 per day<sup>45</sup>) would result in a saving of <b>€97,360<sup>46</sup></b>.</p>
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<sup>40</sup> Obtained by multiplying the number of additional cases (614) by the cost of each consular case. Total costs range from €18,420 to €333,402 depending on the cost of a single the case, the figure represents the mid-point of that range.

<sup>41</sup> Obtained by multiplying the number of additional cases (614) by both the lower 125 plus 1 day at €60/day) and higher end of the compensation (€600 plus 5 days at €60/day). The savings range from €13,590 to €52,600 the final figure represents the mid-point of that range.

<sup>42</sup> Assumption based on case study interviews where consular staff noted that “unfounded” cases are very common.

<sup>43</sup> Calculated as 90% of approx. 0.64% (five times the likelihood of a citizen being in a situation where they are eligible for assistance, estimated at 0.1274%) of the total number of travellers and residents, which is in turn based on the scale of the problem modelling.

<sup>44</sup> Based on the experience from case studies, where dealing with an “unfounded” case often takes a few minutes (answering a phone call), but can sometime require substantially more time (following up a case to establish that it is ultimately not substantiated). Estimate of 0.5 hours was chosen to reflect this range.

<sup>45</sup> Range of daily cost of consular staff based on the online survey.

<sup>46</sup> Obtained by multiplying the number of cases by half an hour cost of consular staff. Savings range from €48,681.25 to €1,346,043.75 depending on the staff costs, the figure represents the mid-point of that range.



<p>Tailor made trainings for consular officials and development and maintenance of do's and don'ts list</p>	<p><b>Financial cost to the EU bodies and budget</b></p> <p>Financial cost to the EU of conducting a training event is estimated to be <b>€5,000<sup>47</sup></b>. Assuming that either one or two such training sessions will be provided to consular officials, yields an estimate of costs to the EU between <b>€5,000</b> and <b>€90,000</b>. Additional cost of developing “do’s and don’ts” lists is assumed to be minimal.</p>
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<sup>47</sup> European Commission estimate based on experience with budget provided for the trainings organised in 2010 and 2011.

<sup>48</sup> Total costs range from €18,420 to €333,402 depending on the cost of a single the case, the figure represents the mid-point of that range.

<sup>49</sup> Based on the average hourly wage of legislators, senior officials and managers (Eurostat)

<sup>50</sup> Based on a range of 2-5 days at the average daily rate of a civil servant. The final total costs range from €8,960.96 to €22,402.40, the figure represents the mid-point of that range.

<sup>51</sup> Obtained by multiplying the number of additional cases by both the lower and higher end of the compensation (€125 + 1 day at €60/day and €600 + 5 days at €60/day). The savings range from €13,590 to €52,600 the final figure represents the mid-point of that range.

### **Financial cost to the Member States**

Assuming that most costs of training would be borne by the EU, the key cost to the Member States will be the cost resulting from additional assistance following the estimated 10% growth of number of unrepresented cases. A total cost to Member States would be of approx. **€175,910**<sup>48</sup>.

In addition, it is important to take into account the opportunity cost of consular staff taking part in training. This will be largely dependent on the scale of the training, but it is assumed that the training will be targeted to small groups of consular officials (as large-scale training is likely not to be feasible, given the number of EU consular officials working worldwide), potentially as a form of “training the trainers”. It is assumed here that each Member State would dedicate 2-5 man-days at €66 per day<sup>49</sup> for the training resulting in an average total opportunity cost of **€15,680**<sup>50</sup>.

### **Benefits to unrepresented citizens**

As in the case of awareness raising campaigns, the benefit to citizens will be the avoided inconvenience costs and fewer days lost due to receiving assistance. This additional benefit is estimated to represent an average total saving for EU citizens of approx. **€33,095**<sup>51</sup>.

In addition, training of consular staff will mean that consular officials will be more aware of the actions to take in certain situations, resulting in providing assistance faster. Quicker assistance will represent a benefit for unrepresented citizens.

It is assumed here that for each 'unrepresented' case, the unrepresented citizens will save one to three days<sup>52</sup>, resulting in an average benefit to the citizens of **€142,680**<sup>53</sup>.

### **Savings to Member States**

The outcome of training is also likely to be an efficiency saving for the Member States due to in addressing unrepresented consular cases. In particular, with consular officials being more aware of the actions to take in certain situations, they would be able to spend less time per individual case. It is assumed here that this efficiency saving could be equal to a total

<sup>52</sup> There is no inconvenience cost saving, since assistance is provided regardless, but quicker.

<sup>53</sup> Obtained by multiplying the number of individuals estimated to be currently assisted (based on current scale of the problem analysis) by 1 to 3 days at €60/day. This yields a range of €1,340 to €14,020; the final figure represents the mid-point of that range.

<sup>54</sup> Assumption is that half a day is saved per consular case due to better awareness of procedures and relevant contacts, which, multiplied by the number of assisted citizens (based on current scale of the problem analysis and including the additional 10%), yields 892.5 days. This is based on the experiences from case studies, where consular staff noted that more complex cases can be quite time-consuming and even for more routine cases (ETDs) unclear procedures can require time. The 4-hour saving thus reflects what an “average” time saving could be for both types of cases. It is lower than the time saving for citizens, since it is assumed that for citizens a case lasts “longer” than for consular staff, since citizens “experience” their case from its start to its resolution, while consular officials only work on a case for a fraction of that time (the remainder of the time represents, for example, waiting for documents or for relevant national authorities to respond).

<sup>55</sup> Estimated to be half of the daily cost of consular staff (€100-€300) for the number of individuals estimated to be currently assisted (based on current scale of the problem analysis). This yields a range of €0,150.00 to €70,450.00, the final figure represents the mid-point of that range.

almost 900 days<sup>54</sup> across all consular cases, which results in a total saving between **€180,300**<sup>55</sup>.

## 2.2. Summary

Looking at the individual measures of the policy option **where both costs and benefits could be quantified**, yields the following result per year:

Core elements of the option	Financial cost to the EU bodies and budget	Financial cost to the Member States	Benefits to unrepresented citizens	Savings to Member States	Net benefit
Clarifying and extending the scope of consular protection	0.00 €	25,120.00 €	47,560.00 €	0.00 €	22,440.00 €
Introducing additional coordination and cooperation measures	0.00 €	175,910.00 €	475,775.00 €	180,300.00 €	480,165.00 €
Clarifying the role of Union delegations	262,000.00 €	175,910.00 €	475,775.00 €	180,300.00 €	218,165.00 €
Monitoring	0.00 €	314,400.00 € (set-up cost)	0.00 €	0.00 €	-314,400.00 €
Raising awareness - Guidance for citizens	1,088,000.00 € (including cost of the campaign to be incurred in the first year)	175,910.00 €	335,095.00 €	897,360.00 €	-31,455.00 €
Raising awareness – Guidance for practitioners	190,000.00 €	191,590.00 €	475,775.00 €	180,300.00 €	274,485.00 €
<b>Total</b>	<b>1,540,000.00 €</b>	<b>1,058,840.00 €</b>	<b>1,809,980.00 €</b>	<b>1,438,260.00 €</b>	<b>649,400.00 €</b>

Although the impacts of individual measures cannot be aggregated, since their individual impacts will interact with each other, it is nevertheless possible to look at the cost-effectiveness of individual measures. As shown in the above table, four out of six quantified measures appear to be cost effective and the sum of the net benefits across all measures is positive, suggesting that the policy option is in fact cost-effective. **It is important to note that monitoring and awareness-raising measures require investments in first year, however benefits will continue to be important also in following years.**

The cost to the Member States following implementation of policy measures relating to crises was estimated at €138,610 (preparatory task of lead states, administrative cost of exchange of information for reimbursement procedures), however savings to Member States should be important (i.e. in case a Member State provides assistance in crisis to 50 unrepresented EU citizens it could receive reimbursement at €100,000. The cost of supporting civil protection teams by consular officers is 38,900.00 € However benefits were not quantified, improved coordination of task and clearer financial burden-sharing would result in more efficient assistance in crisis cases, resulting both in potential time savings to citizens that would be otherwise assisted, as well as additional assistance to the previously unassisted citizens. The actual benefits for unrepresented citizens will vary substantially and expected benefit to the unrepresented citizens will be most likely exceeding the benefit to each citizen of non-crisis assistance (i.e. one could expect it to be higher than avoiding the non-crisis inconvenience cost, valued at up to €600).

### 3. COSTS AND BENEFITS – POLICY OPTION 3: FURTHER AND TIGHTER COOPERATION AND COORDINATION MEASURES

#### 3.1. Information on specific measures

Core elements of the option	Financial or economic impact
<p>Scope of protection covers also refugees, long term residents on the same footing as EU citizens</p>	<p><b>Financial costs to the Member States</b></p> <p>The key additional cost of this measure will be the cost of assisting refugees and long-term residents.</p> <p>Assuming that 3.9% of EU population consists of third country nationals with a permit to remain in the country for over 12 months<sup>1</sup> and assuming that these proportions also apply to travellers (i.e. for every 1,000 travellers from a particular unrepresented Member State, 39 will be long-term residents), yields a total number of 283 long-term residents and refugees who could potentially benefit from being assisted<sup>2</sup>. Assuming all of them are assisted in turn yields a total cost of <b>€81,080</b><sup>3</sup>.</p> <p>Assuming that just over 7% of long-term residents are refugees or residents in refugee-like situations<sup>4</sup>, just over 7% of the total cost (approx. €5,840) would be the extra cost of assisting refugees and individuals in refugee-like situations.</p> <p><b>Benefits to unrepresented long-term residents and refugees</b></p> <p>The benefit to the assisted long-term residents and refugees now eligible for assistance would be the avoidance of inconvenience and time saving. If we assumed that there would be 283 long-term residents and refugees now eligible for assistance estimated savings could be <b>€153,530</b><sup>5</sup>.</p>

<sup>1</sup> Based on dividing the total number of residence permits of over 12 months issued to third country nationals by the population for each Member State and calculating the average. It is assumed here that this number covers refugees (as it concerns all permits, rather than formally defined 'long-term residents').

<sup>2</sup> Estimated by applying the 3.9% proportion to the total number of unrepresented EU citizens estimated to require assistance. It is assumed here that the long-term residents and refugees can never be assisted by their own country of citizenship.

<sup>3</sup> Estimated by applying the cost of assistance to the number of cases (283). Range of €8,490.00 - €153,669.00, the final figure represents the mid-point of that range.

<sup>4</sup> Based on 2009 UNHCR data on the number of refugees. Calculated by dividing the total number of refugees by the total number of residents (3.9% of EU 27 population).

<sup>5</sup> Obtained by multiplying the number of additional cases (283) by both the lower (€125 plus 1 day at €60/day) and higher end of the compensation (€600 plus 5 days at €60/day). The savings range from €2,355.00 to €254,700.00, the final figure represents the mid-point of that range.

<p>The scope of assistance enlarged to further activities (legalisation/ simple notary activities)</p>	<p><b>Financial costs to the Member States</b></p> <p>The cost to Member States will be the cost of consular staff carrying out the legalisation<sup>6</sup>.</p> <p>The legalisation and notary services are however the activities for which the applicants pay consular fees<sup>7</sup>. These services could generate incomes comparable to costs incurred.</p> <p>There is however an additional cost of revising the national legal framework to allow for legalisation. Assuming this cost of €10,000 to €50,000 per Member State<sup>8</sup> it would result in an average total cost of <b>€10,000<sup>9</sup></b>.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>The key benefit will be the cost saving to unrepresented EU citizens. Assuming that legalisation of documents would entail an average time saving of one day<sup>10</sup> and a low inconvenience cost (€125), yields a benefit to EU citizens of <b>€192,960<sup>11</sup></b>.</p>
<p>Financial burden sharing Sub-option A. Compensation mechanism/clearing house</p>	<p><b>Financial cost to the EU bodies and budget</b></p> <p>Creation of the additional administrative layer at the EU level would generate some costs. Assuming that at least two posts would need to be created (level AD5) the annual cost would amount to at least €12,000<sup>12</sup>. Additionally it would be necessary to keep a reserve budget in order to advance funds which would be reconciled in the end of the budget year. Additional cost would be to establish electronic files and have regular maintenance.</p> <p><b>Financial cost to the Member States</b></p> <p>At national level the additional administrative costs would be</p>

<sup>6</sup> Assuming that residents rather than travellers will use legalisation services, and that there is a total of 818,704 unrepresented EU citizens residing in countries which are not party to the 1961 Hague Convention and, finally, assuming that unrepresented EU citizens residing in third countries are as likely to require legalisation as other forms of assistance yields a total number of unrepresented citizens likely to benefit of 1,043. Assuming that legalisation requires around an hour of consular officials' time, generates a cost of €6.075 (obtained by multiplying the number of additional cases (1,043) by 1 hour at the daily cost of consular staff (€100-€300). The costs range from €3,037.50 to €39,112.50, the final figure represents the mid-point of that range).

<sup>7</sup> On average €10-30 (based on the information from the Member States).

<sup>8</sup> Assumption based on 5 to 25 working days for legal experts per Member State at a daily rate of €2,000, informed by the Impact Assessment on the right to information in criminal proceedings.

<sup>9</sup> Obtained by multiplying the estimated cost range by the number of Member States. Costs range from €70,000 to €1,350,000, the final figure represents the mid-point of that range.

<sup>10</sup> Once again, it is assumed here that the legalisation activities are a formality and not receiving such service or a delay would not result in a substantial loss of time for the citizen.

<sup>11</sup> Obtained by multiplying the number of additional cases (1,043) by an inconvenience cost of €125 and a loss of one day at €50/day.

<sup>12</sup> The average payment including basic allowances (Council Regulation 1239/2010 of 20 December 2010, OJ L 338 p.1, Intracom calculator). This measure would require more posts to be created if it would be complemented by the co-founding.

	<p>comparable to the costs stemming from the option 2 – at the level of <b>€89,610</b>.</p> <p>Although the measure could result in additional cases of providing assistance due to more efficient assistance provided in crisis, the costs of such assistance would be reimbursed by the citizen's Member State of origin, so no additional costs are likely to be incurred by the Member States.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>As in the case of the second policy option, the benefits to citizens in crisis situations will be difficult to estimate, but they are likely to be substantial for previously unassisted EU citizens receiving assistance or and to those receiving more efficient assistance.</p> <p><b>Savings to Member States</b></p> <p>The policy option would imply cost savings for those Member States, which historically incur higher expenses during crises. As a model calculation for EU funding shows (see the table below) in case of the assistance provided to 50 unrepresented citizens during crises a year it may be estimated that an assisting Member State could save about €100,000.</p>
<p>Financial burden sharing Sub-option B. EU funding</p>	<p><b>Financial cost to the EU bodies and budget</b></p> <p>In total a minimum of 16 million (if the activities are co-financed at 50%) to 31 million euro if activities are co-financed at the higher percentage would be necessary for the period of 6-7 years (duration of the funding stream).</p> <p><b>Financial cost to the Member States</b></p> <p>At national level the additional administrative costs would be comparable to the costs stemming from the option 2 – at the level of <b>€89,610</b>.</p> <p>As above, the measures will not result in additional cost of providing assistance, due to reimbursement.</p> <p><b>Benefits to unrepresented citizens</b></p> <p>As is the case for the previous measure, the benefits to EU citizens receiving faster and more efficient assistance are likely be substantial, but are also difficult to estimate, due to, among others, the fact that some of these costs may need to be reimbursed by the citizen.</p> <p><b>Savings to Member States</b></p> <p>The policy option would imply cost savings for those Member States, which historically incur higher expenses during crises.</p> <p>As a model calculation for EU funding shows (see below) in case of the assistance provided to 50 unrepresented citizens during crises a</p>

	year it may be estimated that an assisting Member State could save about €100,000.
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### 3.2. Summary

The additional measures foreseen under this policy option which are quantifiable are presented below:

Core elements of the option	Financial cost to the EU bodies and budget	Financial cost to the Member States	Benefits to unrepresented citizens	Savings to Member States	Net benefit
Scope protection to cover refugees and long term residents on the same footing as EU citizens	0.00 €	81,080.00 €	153,530.00 €	0.00 €	72,450.00 €
The scope of assistance enlarged to further activities (legalisation/ simple notary activities)	0.00 €	810,000.00 € (set up costs)	192,960.00 €	0.00 €	-617,040.00 €
<b>Total</b>	<b>0.00 €</b>	<b>891,080.00 €</b>	<b>346,490.00 €</b>	<b>0.00 €</b>	<b>-544,590.00 €</b>

Looking at the two other measures considered as part of this option, namely measures concerning burden-sharing, the high costs associated with fund-based burden sharing (almost €4m/year, assuming a commitment of €8.5m over 6 years), is likely to also substantially outweigh the savings and make the option less cost effective.

## 4. COMPARISON OF FINANCIAL IMPACTS OF POLICY OPTION 2 AND 3

Comparing the two options, the costs across all measures of policy option 2 are estimated to be €1.54m for the EU and €1.1m for the Member States, compared to benefits to citizens of €1.8m and savings to Member States of €1.43m. Although these figures should not be seen as overall economic impact across the policy option<sup>13</sup> and they do not include benefits for citizens stemming from measures relating to crisis, they do suggest that option 2 is likely to be cost-effective as a whole. The policy option 3 is designed to consist of all the measures of policy option 2 and the additional measures presented above. Costs across all the policy measures of policy option 3 are estimated to be €5.9m to the EU, €2.3m to the Member States, compared to the benefits to EU citizens of €2.15m and savings to Member States of €1.43m. Although these figures do not include the benefits to citizens associated with improved

<sup>13</sup> There is an important distinction in this case between aggregated cost-benefit calculations for all the policy measures and the aggregate impact of each option. In the former case, presented in the table, these are sums of costs and benefits across all proposed measures. In the latter case the calculation of the aggregate cost and benefit of each policy option would need to take into account the fact that the measures can possibly interact with each other. - I.e. where it is assumed that a particular measure would result in additional 10% of previously unassisted unrepresented citizens receiving assistance, this would only be true for the first measure introduced (or first measure to generate any impact). All subsequent measures can, at most lead to 10% of the *remaining* unassisted residents being assisted (i.e. 9% of the initial number). The aggregated cost-benefit calculations for all policy measures would thus yield a higher total costs and benefits than the aggregate cost and benefit calculation for the whole option. However, since both costs and benefits are proportional to the number of additional cases, choosing one method of calculation will not result in changes in cost-benefit ratios and hence the method used in the text can be used to identify the most cost-effective policy option while avoiding the added complexity and additional assumptions introduced by using the latter method.

assistance in crisis situations, they still suggest that due to the high cost of the fund-based mechanism, it is unlikely that the option will be more cost-effective than option 2.