



Study to support the preparation of an impact assessment on a potential EU policy initiative on the coordination & cooperation measures to facilitate the exercise of the EU citizens' right to consular protection

Framework Contract JUST/2020/PR/03/0001 for Evaluation,
Impact Assessment and Related Policy Support Services in the
Justice and Consumers Policy Areas (Lot 1)

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ACRONYMS AND ABBREVIATIONS

CFSP	Common Foreign and Security Policy
CoOL	Consular Online Tool
CSDP	Common Security Defence Policy
DG ECHO	Directorate-General for European Civil Protection and Humanitarian Aid Operations
DG JUST	Directorate-General for Justice and Consumers
DPREUI	Regulation (EU) 2018/1725 the Data Protection Regulation for the EU Institutions
EC	European Commission
EEAS	European External Action Service
ETD	Emergency Travel Document
EU	European Union
FTE	Full Time Equivalent
GDPR	General Data Protection Regulation
JCTS	Joint Consular Team
JFW	Joint frameworks
LCC	Local Cooperation meetings
MS	Member States
PRM	Person with reduced mobility
SO	Strategic Objective
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UCPM	Union Civil Protection Mechanism
UK	United Kingdom

1. INTRODUCTION

This Final Report is the fifth and final deliverable for the **Study to support the preparation of an impact assessment on a potential EU policy initiative on the coordination & cooperation measures to facilitate the exercise of the EU citizens' right to consular protection** (the “assignment” or the “study”).

1.1 LEGAL CONTEXT

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 (Charter), and is an expression of EU solidarity and of the identity of the Union in third countries, as well as of the practical benefits of being an EU citizen.¹

In April 2015 the Directive “on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries” (the Consular Protection Directive) was adopted.² This Directive lays down the coordination and cooperation measures necessary to facilitate the exercise of the right of EU citizens to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, equal consular protection as the nationals of the represented Member State providing assistance. The Member States had three years, until May 2018, to ensure the correct implementation of the Directive in their national legislation³. The Commission is required to prepare a report on the implementation and application of the Directive, in which it evaluates the way in which this Directive has operated and considers the need for additional measures, including, where appropriate, amendments to adapt this Directive with a view to further facilitating the exercise of EU citizens' right to consular protection.⁴

The Consular Protection Directive is an expression of European solidarity in third countries and brings a practical benefit to being an EU citizen. It replaced the ten years' long intergovernmental sui-generis legal framework that used to govern the implementation of the EU citizenship right to equal treatment regarding consular protection.⁵

The Directive does not exist in a vacuum, and the following EU instruments are relevant to its implementation (see also figure with timeline below):

- While the issuance of **Emergency Travel Documents (ETD)** is one of the six situations in which the Consular Protection Directive requires equal consular protection to unrepresented citizens. The regime governing the issue of ETD is set out by the **Directive (EU) 2019/997** (ETD Directive). The concept of EU ETD was first adopted in 1996, through Decision 96/409/CFSP⁶, which aimed to create a common format emergency travel document for issue by Member States to unrepresented EU citizens. Four years after the adoption of the Consular Protection Directive, this Decision was replaced by the new ETD Directive⁷, which provides for a modernised, harmonised and more secure EU ETD format.

¹ See Commission Proposal for a Council Directive on Consular protection for citizens of the European Union abroad, COM(2011)881 final, Explanatory Memorandum

² Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC.

³ Article 17(1) Directive refers to 1st of May 2018 as the deadline for the transposition period

⁴ Article 18 Directive

⁵ See Decision 95/553/EC, regarding protection for citizens of the European Union by diplomatic and consular representations, O.J. 1995, L 314/73

⁶ Decision of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document. OJ L 168, 6.7.1996, p. 4–11

⁷ Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP, ST/8596/2019/INIT.OJ L 163, 20.6.2019, p. 1–12

- Seeing the Consular Protection Directive provides for a specific role for the EU Delegations, it is also relevant to briefly discuss the **EEAS Decision**⁸, which outlines the mandate of the Delegations. According to Article 5(1) of the Decision EU Delegations shall “support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis. *A further discussion of the mandate of the EEAS and its delegations is described in Chapter 3.*
- The Consular Protection Directive refers to the European Union Civil Protection Mechanism (UCPM)⁹ as an instrument to rely on as a subsidiary means at the discretion of Member States. The UCPM builds on previous forms of the civil protection mechanism, which was first adopted in 2001¹⁰. The 2001 Decision was amended in 2007 for the purpose of extending the substantive scope of application of the UCPM to cover consular protection of EU citizens located in third countries affected by disasters¹¹. The UCPM sets out the mechanism for pooling resources with the aim of improving the prevention, preparedness and response to disasters in the EU and abroad. All EU Member States as well as Iceland, Norway, Serbia, North Macedonia, Montenegro, Turkey and the United Kingdom during the transition period participate in it. The UCPM is one of the resources available to Member States when coordinating consular assistance in crisis situations. It has been used numerous times, including during the repatriation of EU citizens during the 2020 coronavirus outbreak. According to Article 13 (4) of the Consular Protection Directive, the Lead State or the Member State(s) coordinating assistance to unrepresented citizens can resort to the UCPM for help in crisis situations. Where the assisting Member State was supported financially by way of assistance from the UCPM, any contribution from the unrepresented citizen's Member State of nationality shall be determined after deduction of the Union's contribution. (

The timeline of the evolution of the legal framework on consular protection is illustrated in the Figure below.

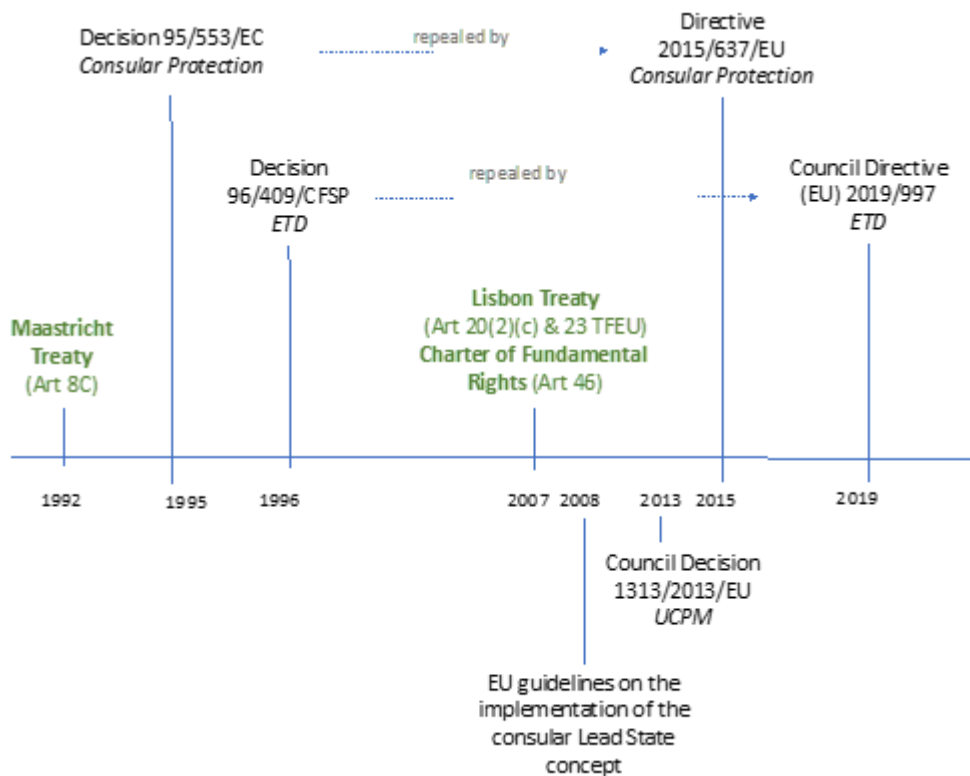
Figure 1: Timeline of adopted EU legislation in the field of consular protection

⁸ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service. OJ L 201, 3.8.2010, p. 30–40

⁹ Council Decision No 1313/2013/EU on the Union Civil Protection Mechanism, as amended on 21 March 2019

¹⁰ Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC, Euratom), [2001] OJ L 297/7 of 15/11/2001

¹¹ Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast) (2007/779/EC, Euratom)



In addition, the EU has adopted **EU guidelines on the implementation of the consular Lead State concept** in 2008, which first established the role and responsibilities of the Lead State. The Consular Protection Directive also makes a direct reference to the guidelines in Recital 23, and foresees the further development of the guidelines in compliance with the Directive.

The full intervention logic of the Consular Protection Directive can be found in Annex II.

1.2 STUDY PURPOSE AND OBJECTIVES

In terms of the **study's purpose**, this study will feed into the Commission report on the implementation and application of Directive 2015/637/EU (hereafter the Directive) in line with Article 19 of the Directive. Therefore, this study has gathered a robust evidence base in order to allow the Commission to assess the way in which this Directive has operated and to consider the need for additional measures, including amendments to adapt the Directive with the purpose of further facilitating the exercise of Union citizens' right to consular protection.

On this basis, and in line with the ToR, **the objectives of this study** are two-fold:

Objective 1: to gather evidence to assess the functioning of Directive 2015/637/EU, especially in times of crises and identify shortcomings and lessons learnt,

Objective 2: to carry out an impact assessment for a possible future initiative aimed at addressing the shortcomings identified, in particular to enhance the protection of all EU citizens in times of crisis.

1.3 CONTENT AND STRUCTURE OF THIS REPORT

This Final report has been structured as follows:

- **Section 1 - Introduction:** presents the legal context of this Impact assessment, the study objectives and the content and structure of this report.

- **Section 2: Problem definition:** Based on the analysis on the implementation of the Directive, this chapter focuses on the shortcomings identified and provides an analysis of what the problems are and their drivers, who is affected and how, the magnitude of the problem and a discussion on how the problem is likely to evolve.
- **Section 3 - Why should the EU act?:** presents the assessment of whether the EU has the competence to act (i.e. the legal basis), and secondly whether Member States alone could resolve the problems identified sufficiently or whether the EU is best placed to act (assessment of subsidiarity).
- **Section 4 - Policy objectives: what is to be achieved?** presents the policy objectives which should be achieved to address the problems identified
- **Section 5 – What are the available Policy options:** presents the four policy options for the possible future initiative.
- **Section 6 – What are the impacts of the policy options?** presents the assessment of the effectiveness, feasibility and coherence of each policy option
- **Chapter 7 – How do the policy options compare?** Presents the comparison of the four options proposed
- **Chapter 8 – Preferred policy option,** presents the preferred policy option.
- **Chapter 9 – Monitoring and evaluation,** presents the proposed indicators for the new initiative.

The Report contains the following Annexes (in a separate document):

- Annex I: Methodology: describes the study methodology
- Annex II: The functioning of Directive 2015/637
- Annex III: Mapping of the EU consular network and assets (Task 6)
- Annex IV: Mapping of Member States' consular network and assets (Task 5.2)
- Annex V: Analysis of EU Delegations survey (Task 7.1)
- Annex VI: Methodological and findings of the quantitative analysis (output Task 5.3)
- Annex VII: Overview of documents reviewed (Task 6)
- Annex VIII: Findings of the document review on EU citizens feedback (Task 6)
- Annex IX: Description of soft measures
- Annex X: Cost assessment of the policy options
- Annex XI: Detailed problem trees by specific objective

2. PROBLEM DEFINITION

This section aims to answer the question “What is the problem and why is it a problem”, by verifying the existence of a problem (section 2.1), providing a picture of the magnitude of the problem (section 2.2), and providing a projection of how the problem might evolve in the future (section 2.3). The problem definition is based on the findings on the implementation of the Directive (further described in Annex II), as well as the mapping of Member States’ consular network (Annex IV) and the quantitative analysis (Annex VI).

2.1 WHAT ARE THE PROBLEMS AND THEIR DRIVERS?

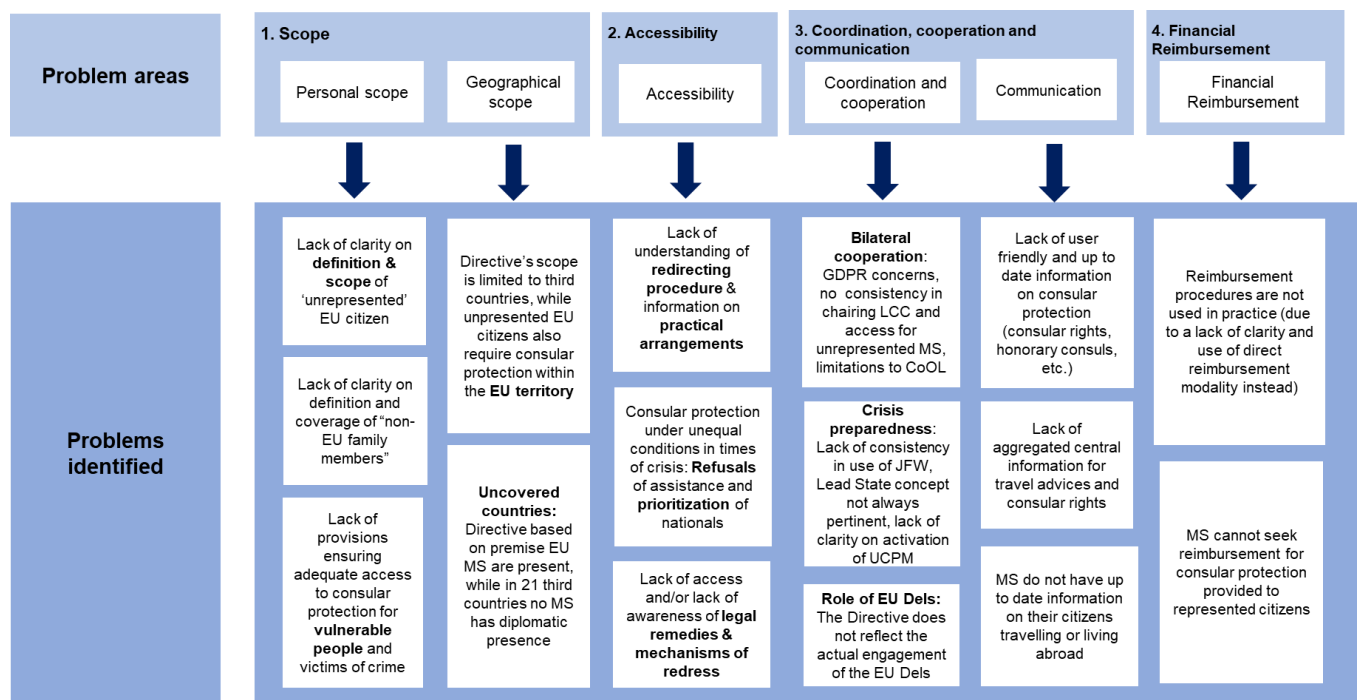
The evidence collected as part of this study identified a number of gaps and challenges in the implementation of the Directive, which can be grouped into the following four problem areas:

- 1) **Problem area 1: Scope** (section 2.1.1): problems related to the personal scope (clarity around the definitions used and the beneficiaries of the right to consular protection) and the geographical scope of the Directive.
- 2) **Problem area 2: Accessibility** (section 2.1.2): problems related to the accessibility of the EU citizens’ right to consular protection, focussing on (i) Lack of understanding of redirecting procedure & lack of information on practical arrangements, (ii) refusals and provision of consular protection under unequal conditions, and (iii) lack of access and/or awareness on EU citizens right to a legal remedy and redress.
- 3) **Problem area 3: Coordination, cooperation and communication** (section 2.1.3): problems related to the clarity of roles and responsibilities in the cooperation between Member States and EU Delegations and problems relating to the communication to EU citizens (relating to Article 10-13 of the Directive).
- 4) **Problem area 4: Financial reimbursement** (section 2.1.4): problems related to the financial reimbursement procedures as foreseen in Article 14 and 15 of the Directive

The figure below presents the key problems¹² identified under each problem area.

¹² Please note that an additional set of problems were investigated as part of the study. The rationale for not taking these forward for the impact assessment is presented in Annex I and II.

Figure 2: Overview of problems identified by problem area.



2.1.1. Problem area 1: Scope

2.1.1.1 Personal scope

This section summarises the problems arising from the implementation of the Directive in practice, related to the question of who is entitled to receive consular protection under the Directive (i.e. the beneficiaries), focussing on the extent to which the Directive applies to represented citizens and their non-EU family members and vulnerable groups.

(i) Lack of clarity on the scope and definition of "unrepresented" EU citizens

Driver: In its scope, the Directive is focussed on unrepresented EU citizens. The Directive's recital is explicit that it does not affect Member States' competence to determine the scope of the protection to be provided to their own nationals (i.e. represented citizens). However, the Directive leaves a door open to cover "*de facto*" unrepresented citizens, through its definition of "unrepresented" in Article 4 in connection with Article 6 of the Directive, in which the determining factor is whether a representation is considered to be "effectively in a position to provide consular protection in a given case".¹³

Problem: Theoretically, the current scope and definition could give Member States the possibility of narrowing down the application of the Directive leading to citizens being deprived of the necessary consular protection. Moreover, twelve Member States assessed that the requests for assistance from represented citizens constitute less than 10% of all consular protection provided to EU citizens of other Member States during non-crisis situations, though in the experience of four Member States the number of requests escalates during crisis situations, notably the recent COVID-19 pandemic when Member States evacuated each other's citizens even if they were represented. In these types of cases, Member States confirmed they would provide assistance outside of the framework of the Directive, under the principle of solidarity.

¹³ Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC

Thus, the above mentioned situations mean that a represented EU citizen, especially in non-crisis situations, could find themselves in a position where they are considered represented (as their Member State of nationality is represented in the third country in question), even though de facto they are not (e.g. due to remoteness or temporary closure), and therefore not able to access the consular protection they need.

Conclusion: The definition of who can rely on the consular protection under the Directive is crucial to ensure legal certainty and its effective application. The scope and definition should therefore be understood and interpreted uniformly across the Member States. While most stakeholders are content with the current wording and do not see the need to change the definition, there appears to be agreement that further clarification on what types of scenario's would amount to a representation being considered not to be "effectively in a position to provide consular protection in a given case" would be helpful. In particular, it would be beneficial to provide clarity on the treatment of represented EU citizens in need of consular assistance in extraordinary circumstances (such as crisis or refusal of assistance from own national representation).

ii) Lack of definition of non-EU family members

Driver: Article 5 of the Directive requires Member States to provide the same level of protection as they would to the non-EU family members of their own nationals. This means that if a certain Member State's domestic law does not foresee for the provision of consular protection to non-EU family members of its own nationals, or to a more limited extent (e.g. only covering certain types of family members), it does not require to provide this protection to the family members of the unrepresented EU citizens either. This is likely also the reason that the Directive does not define the terms "family member" or "accompanying", as further defining these could contradict the national legal traditions of the Member States.

Problem: Most Member States welcome a flexible definition of the terms "family member" and "accompanying" allowing Member States to align the provisions with their national law. However, varying definitions and practices between Member States lead to insecurities in assessing how the family members of unrepresented individuals may rely on consular protection from one representing Member State to another. Depending on the Member State, the interpretation of family member can be restricted to the immediate family (e.g. parents, children, spouses) but also may refer to a much wider group of extended family (e.g. sister, brother, uncle, aunt, cousin), perhaps even including any person living in the EU unrepresented citizen's household. Although the recital of the Directive calls upon Member States to transpose the Directive in a non-discriminatory fashion with regard to sexual orientation, this might not bear on national law or practice with regard to the recognition of such forms of cohabitation in the national law or practice of Member States. While the study did not generate any concrete examples on such problems faced by non-EU family members of unrepresented EU citizens, it can be presumed that further complications could arise from the lack of a precise definition of "family member". Difficulties could especially arise in cases involving family status not recognised in each Member State, such as same-sex marriages which are only official in two-thirds of EU Member States. This may widen the inequality gap in the way non-EU family members are treated, as it would exclude certain groups of individuals from the application of the Directive from one Member State to another.

Likewise, the lack of precision in Article 5 on when a family member is considered "accompanying" the unrepresented citizen can instil further confusion in practice, as interpretations vary across EU Member States. The Directive does not provide guidance on how this term should be interpreted, hence "accompanying" can be construed as being part of the same household, regularly dependent of the citizen or just being with the EU national at the time of the circumstances leading to the request for consular assistance. The Directive does not provide guidance for unrepresented citizens of a third country not considered as accompanying family members, thus leaving their treatment up to each Member State's discretion.

Conclusion: While the study has not found concrete evidence of harm to non-EU family members of unrepresented EU citizens, the lack of a precise definition of "family member" in the Directive may leave certain types of non-EU family members unable to access consular protection depending on which Member State is represented in a given third country. However, as mentioned before, the different definitions and practises are inherent to the different consular protection regimes that currently exist in the Member States, which are out of the Directive's scope.

iii) Lack of provisions ensuring adequate access to consular protection for vulnerable people and victims of crime

Driver: As per Article 18 TFEU and the Charter, the principle of non-discrimination must be complied with by the Member States when they are implementing Union law, including the Consular Protection Directive. While Recital 33 of the Directive highlights the need for the Directive to be implemented in accordance with the rights and principles recognised in the Charter, and Recital 34 mentions the principle of non-discrimination between the beneficiaries of consular protection in the context of its implementation, the Directive itself is silent on the accessibility of consular protection for certain vulnerable groups. This may include, *inter alia*, demands for consular protection by women, pregnant women, unaccompanied minors, persons with reduced mobility (PRM), persons with disabilities, or individuals subject to discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, or people sitting at any intersectionality of these categories. Moreover, the Directive does not outline a specific regime for the consular assistance of victims of crime (though such assistance is included in the types of assistance which can be provided as per Article 9 Directive).

Problem: For practical and cultural reasons, access to consular protection and the type of assistance needed, especially in times of crisis, may be significantly more complicated for individuals from vulnerable groups, such as women, pregnant women, unaccompanied minors, PRM and persons with disabilities, as well as victims of certain types of violent crime (e.g. sexual assault, rape of trafficking in human beings).

The review of the transposition of Article 9 of the Directive showed that the legislation of three Member States include situations in which consular protection is provided to specific groups, such as minors and the elderly. However, the absence of explicit provisions in the Directive ensuring adequate access to consular protection for vulnerable unrepresented EU citizens may exclude them from the specific assistance they require, which would constitute unequal treatment in violation of the Charter and hamper the achievement of the Directive's specific objective 1. However, the study found no evidence that such groups were discriminated against in practice. Instead, several interviews with EU officials confirmed that such groups are already being prioritised in practice, for example lists of vulnerable groups were put in place at local coordination meetings, which were used to prioritise vulnerable passengers on repatriation flights during the COVID-19 pandemic.

Conclusion: Although the vulnerability of an unrepresented citizen or their non-EU family members seems to have been taken into account by Member States when providing consular protection, it may be beneficial for the purpose of legal certainty and coherence with the Charter, for the Directive to clarify the need for the consular protection provided to vulnerable unrepresented citizens to be provided in line with the requirements of the Charter. The revision of the Directive does provide an opportunity to strengthen the international dimension on victims' rights in line with the priorities of the EU Victims' Rights Strategy adopted in June 2021. Reinforcing such support and protection is particularly valid for unrepresented EU citizens who were victimised in the territory of a third country, as well as in times of crisis

2.1.1.2 Geographical scope

(i) Directive's scope is limited to third countries, while unrepresented EU citizens also require consular protection within the EU

Driver: As per Article 1(1), the Directive only applies "in the territory of a third country", and thus does not apply within the EU. This means that when a citizen finds him/herself in need of consular protection when travelling or residing abroad to another EU Member State, and its country of nationality has no representation in this country, the EU citizen cannot turn to another EU Member State for assistance on the basis of the Directive.

Problem: Overall, 82% of EU Member States are present in 20 or more other EU Member States. Despite the fact that the Directive does not apply in EU territory, 18 Member States confirmed that in practice, they do provide consular assistance to unrepresented EU citizens within the EU in the same way as they do within third countries. Among these 18 Member States, eight are represented in the territories of all other EU Member States. The seven Member

States that answered negatively stated this was because they limit their assistance to unrepresented EU citizens to issuing ETDs or they merely referred to the fact that the Directive did not apply.

In terms of intra EU mobility, this study estimates that 32.8 million EU citizens were found to live abroad in 2019, of which half in other EU Member States (i.e. 16.7 million). Moreover, EU citizens made 363 million trips in 2019, most of them (238 million or 65%) within the EU (see section 2.3 for more information). This data shows a similar number of EU expats living in third countries and EU countries but a significantly higher level of intra-EU tourism. This suggest that it is more likely that EU citizens would be in need of consular protection within the EU than in third countries. Overall, 25,000 unrepresented EU citizens are estimated to live in another EU country where their Member State is not represented, and 2.6 million unrepresented EU citizens are estimated to travel (annually) to another EU country where their Member State of nationality is not represented.

However despite the significant number of unrepresented EU citizens within the EU, the majority of Member States do not consider this(or only to a small extent) to be a problem. Only about a quarter of Member States believe that the lack of the Directive’s application within the EU could lead to insecurities in the handling of cases from one representation to another, or to varying levels of experiences in consular protection by EU citizens and their non-EU family members to a moderate or large extent (see table below).

Table 1: Level of agreement with Statement 1 “Statement 1: Representations of Member States continue to exist within the EU but are not covered by the Directive. This may lead to insecurities in the handling of cases from one representation to another and varying levels of experiences in consular protection by EU citizens and their non-EU family members” (N=24)

	Number	Share of total
Not at all	5	21%
To a small extent	11	46%
To some extent	1	4%
To a moderate extent	5	21%
To a great extent	2	8%

Source: Task 5 questionnaire completed by Member States’ national authorities

Conclusion: Thus, although the study is unable to conclude whether the lack of application within the EU constitutes a problem in practice or not, it could be argued that for the sake of legal certainty, it would be beneficial for the Directive to extend the application of the Directive to the EU territory especially given the high volume of intra-EU mobility and tourism.

(ii) Uncovered countries: The Directive is based on the premise that other EU Member States are present, while in 21 third countries no Member States have a diplomatic and/or consular presence

Driver: According to the Member States’ consular mapping carried out for this study, there are currently 21 third countries in which no EU Member States have diplomatic and/or consular representation (or also referred to as “uncovered” countries). In 2019, an estimated 12,200 EU citizens lived in these uncovered third countries and 332,600 EU citizens travelled there. Six of these countries were previously covered by the UK but are now uncovered since Brexit (Barbados, Belize, Grenada, Guyana, Solomon Islands and the Bahamas). In 2019 2,590 EU citizens lived in these six countries and 200,625 EU citizens travelled there. When compared to the consular network of EU Delegations, among the 21 third countries uncovered by the EU Member States, four of these third countries are covered through EU Delegations (Barbados, Eswatini, Guyana, Lesotho). See for further information Annex IV.

Although the Directive technically covers all third countries, it does not make provisions for consular protection in these “**uncovered third countries**”. For instance, Article 10 of the Directive is based on the premise that at least one Member State is represented in the third country where the EU citizen is requesting assistance.

Problem: In total four EU Delegations that are based in an “uncovered country” completed the online survey. Of these four, all confirmed that they occasionally receive requests from unrepresented EU citizens in need of assistance. A few Member States highlighted that the Directive’s lack of provisions regarding uncovered third countries may pose particular problems regarding the issuance of emergency travel documents. The limited feedback on this problem could indicate that this is not considered as an important problem in practice. For example one

Member State noted during the interview that in such cases the unrepresented EU citizen often contacts their Ministry of Foreign Affairs in the capital who will either redirect the citizen to the nearest accredited embassy. However, the impact of Brexit has yet to become apparent, as until the end of 2020 (i.e. the end of the transition period) the UK was still implementing the Directive, and since mid-2020 international travel has been limited due to COVID-19 restrictions. However, the impact could be significant, as the uncovered countries previously covered by the UK now account for 60% of travellers in uncovered countries which in the event of a future crisis would significantly increase the number of stranded EU citizens in need of assistance.

It should be noted however that, as described in Annex IV, our mapping only considered embassies and consular posts. If Honorary Consuls, accredited embassies and accredited consular posts are taken into consideration, there are no uncovered third countries. For instance, while Bhutan may be uncovered, 16 Member States have accredited embassies and consular post in neighbouring countries. Similarly, while Lesotho and Eswatini may be uncovered, these two countries are located within South Africa from where 20 Member States have accredited embassies and/or consular post providing consular protection to EU citizens in Lesotho and 18 accredited embassies and/or consular post providing consular protection to EU citizens in Eswatini. However, remote operations carried out by accredited representations are not always possible or do not allow for the swift/effective provision of consular assistance, especially in crisis situations where border crossings or transport hubs (e.g. key airports and harbours) are closed. Additionally, while third countries may be uncovered, their proximity to EU Member States territory should not be overlooked. For instance, many of the uncovered third countries are pacific islands in close proximity with other islands which have representation or which are an overseas territory of EU Member States. For instance, no Member State has diplomatic presence in Dominica, but it is situated less than 50km away from the French territories Guadeloupe and Martinique. Similarly, Antigua and Barbuda are situated less than 100km from Guadeloupe. Finally, some Member States highlighted that they intend to increase the use of digital tools which would allow their unrepresented nationals to receive remote consular protection. However, the provision of consular protection through online services also has its own challenges (see further described in section 2.7 in Annex II).

Conclusion: While the Directive's lack of provisions for "uncovered countries" was not highlighted by many Member States as a problem (as alternative solutions have been found through the use of accredited embassies, honorary consuls or online/remote provision of protection), the fact remains that currently 21 uncovered countries exist, in which EU citizens could potentially get stranded without adequate to benefit from their fundamental right to equal consular protection under the Directive.

2.1.2 Problem area 2: Accessibility

(i) Lack of understanding of the procedure on redirecting and lack of information on practical arrangements

Driver: Although Article 7(1) of the Directive is clear in stating that "unrepresented citizens shall be entitled to seek protection from the embassy or consulate of any Member State", the Directive allows Member States to redirect the citizen in two types of cases:

- 1) If, as per Article 3 Directive, the Member State of nationality of the unrepresented citizen requests to take back the case to provide consular protection itself;
- 2) If, as per Article 7(3) of the Directive a permanent or practical arrangement is in place between the Member State of nationality and another EU Member State. However, redirecting in such situations is not allowed if consular protection would thereby be compromised, in particular if the urgency of the matter requires immediate action by the requested embassy or consulate.

Moreover, Article 7(2) of the Directive requires the EU and the Member States to publicise the bilateral agreements and practical arrangements concluded for the purpose of transparency to unrepresented citizens. However, the Directive does not specify which body within the EU should publicise the information, where and how frequently this should be done, nor does it specify that this information should also be made available to the national authorities of the Member States (not just for the benefit of citizens).

Problem: A few Member States have reported that there have been cases where unrepresented citizens were turned away on the basis of the existence of practical arrangements, and redirected, which caused delays for unrepresented citizens. In addition, the study found evidence of a few cases where the Directive has not been applied appropriately: two Member States reported instances where other Member States had requested for bilateral agreements to be put in place before assistance could be provided to their unrepresented citizens. Although the Directive allows for bilateral agreements to be put in place between Member States, this should not be a precondition for providing assistance. The cases, although reported by a limited number of Member States, suggest there is confusion on this among some of the Member States. Moreover, one Member State noted the need to clarify whether Article 7(1) or Article 3 would take precedence, as currently the articles were contradictory.

In order for the Member States to know when they are “not designated as competent according to the specific arrangement in place” (Article 7(3) Directive), they need access to up to date information on the arrangements in place. However, a number of Member States noted the lack of up to date and centrally available information on the practical and local arrangements in place, both for Member States and EU citizens. (information provision to EU citizens is further addressed in Problem area 3 – Cooperation and Coordination). This lack of information hampers the correct application of Article 7(3), and has a potential to cause delays, as there is a risk that the Member States start providing assistance only to be told later down the line this should have been done by another EU Member State.

Conclusion: There is a lack of clarity among Member States on procedures of redirecting under Article 3 and Article 7 of the Directive. The lack of up to date and centrally and publicly available information on the practical and local arrangements in place also risks to further hamper the implementation of the procedure of redirecting under Article 7 of the Directive, therefore negatively impacting on the effective provision of consular protection, as citizens are redirected when there is no need for it.

(ii) Consular protection under unequal conditions in times of crisis: Refusals of assistance and prioritization of nationals

Driver: Articles 1(1) and 2(1) of the Directive states that citizens can enjoy the consular protection of the diplomatic and consular authorities of any Member State **on the same conditions as the nationals of that Member State**. Recitals 8, 18, 20 and 33 also call on Member States to provide consular protection in a non-discriminatory way.

Problem: Some Member States and EU officials have confirmed during interviews, that during the COVID-19 crisis, in particular in countries with a low level of representation¹⁴ and/or where representations present have a small number of staff, some of the represented Member States were under unprecedented pressure and therefore unable to respond to all the requests for assistance by unrepresented EU citizens in an appropriate way. As a result, there were a few third countries where Member States redirected cases back to the Member State of nationality (e.g. to the accredited or nearby embassy of nationality, in a neighbouring third country), which is not in line with the Directive as it could be considered to be refusals of assistance (if not in response to a request on the basis of Article 3). Moreover, a few interviewees confirmed that national authorities prioritised their own citizens over other EU nationals, including unrepresented EU citizens, when organising repatriation flights. Interviewees confirmed this was mainly due to the high volume of the demand for repatriation flights from their own nationals and other EU citizens, which meant Member States had to prioritise passengers. However, one interviewee with an EU official confirmed that this prioritisation meant that the other EU nationals would be put on the next available flight organised by the Member States, and did not result in any unrepresented citizens being left behind or stranded in a third country. The interviewee also noted the EEAS when made aware of this prioritisation practise efforts were made to ensure vulnerable unrepresented EU citizens were taken into account in the prioritisation too.

It should be noted that beyond the context of repatriation flights during the COVID-19 pandemic, the study has found no evidence of other cases of discriminatory practises. Some of the Member States also complained about the way that other Member State’s consular services handle their citizens’ cases. However, only one Member State mentioned that it had received complaints from EU citizens related to the consular assistance provided. Moreover,

¹⁴ Meaning third countries in which seven Member States or less have a diplomatic representation. Based on the mapping of the Member State consular networks, this study considers that around 41% of third countries (71) are countries with low levels of representation.

five Member States knew of requests for consular assistance of unrepresented EU citizens that were declined. However, it is unclear whether these rejections were justified, e.g. because the requests were out of scope.

Conclusion: Although technically, the practice of deferring requests back to the Member State of nationality, and prioritization of nationals could be considered to be discriminatory, it seems to have been limited to extraordinary circumstances (the COVID-19 pandemic) and does not seem to have resulted in citizens being deprived from receiving consular protection. Member States consulted for this study did not consider the prioritisation of own nationals to be problematic.

(iii) Lack of access and/or awareness on EU citizens right to an effective legal remedy and redress

Driver: The Directive does not explicitly require Member States to provide access under equal conditions to mechanisms of redress (e.g. allowing for complaints before the Ministry of Foreign Affairs or Ombudsman), or to provide access to an effective legal remedy (as per Article 47 Charter) for unrepresented EU citizens whose right to consular protection was violated by an assisting Member States (e.g. due to a refusal to provide protection or provision of services under unequal conditions compared to nationals).

Problem: Even though, as highlighted in the sections above, anecdotal evidence is available that unrepresented EU citizens were refused assistance, or were provided assistance under unequal conditions (prioritisation of nationals), none of the stakeholders consulted were aware of any official complaints, court cases or judicial procedures launched by unrepresented EU citizens against (assisting) Member States in relation to a breach of their right to consular protection since the Directive came into force. The lack of official complaints and court cases could indicate that such problems are not frequent. Alternatively, this could be an indication that unrepresented EU citizens face barriers in accessing the national redress mechanisms in place. Moreover, EU citizens may not be sufficiently aware of the avenues available to them to complain to the assisting Member State (they may instead choose to turn to another Member State). EU citizens might also not be aware of the details around the consular protection services they are entitled to from a specific Member State, as the level of services vary depending on the national law of each Member State – hence they may not be quick to complain unless a breach is obvious.

Conclusion: Although this study did not identify many cases in which EU citizens were refused assistance or treated in a discriminatory manner, such cases do exist. In this context, it remains important that adequate redress mechanisms are in place for unrepresented EU citizens and that citizens are sufficiently aware of these.

2.1.3 Problem area 3: Coordination and cooperation

Diplomatic and consular work, including the coordination and cooperation between Member States, is highly dependent on coordination and cooperation between the Member States among each other and with EU Delegations present in third countries, local cooperation networks, and the individual circumstances present in the respective third country. As described in further detail in Annex II, the provisions of the Directive on how Member States should coordinate and cooperate with each other leave for a wide margin of interpretation. In preparing for crisis situations, the Directive makes reference to different existing concepts (e.g. Lead State and UCPM) without clarifying their interaction in practice. Provisions outlining the role of EU Delegations do not currently reflect their role in practice.

This section summarises the problems arising in the coordination and cooperation envisioned by the Directive in practice in four sub-sections:

- Problems in the cooperation between Member States, related to the implementation of Article 10 and 12 Directive (section 2.1.3.1)
- Problems related to the crisis preparedness and measures applied in times of crisis, related to the implementation of Article 13 Directive (section 2.1.3.2)
- Problems related to the role of the EU and EU Delegations related to the implementation of Article 11 of the Directive and Article 5(10) of the Council Decision establishing the EEAS (section 2.1.3.3)
- Problems relating to the information provided to EU citizens, related to the implementation of Article 2, 7 and 11 of the Directive (section 2.1.3.4)

2.1.3.1 Problems in the bilateral cooperation between Member States

This section will cover the problems related to cooperation between Member States required under Article 10 and 12 of the Directive, namely (1) Exchange of personal information in line with the GDPR and DPREUI, (2) local consular cooperation meetings and the EEAS Consular Online Tool (CoOL).

i) Exchange of personal information in line with the GDPR and DPREUI

Please note any problems related to the implementation of Article 10 in relation to the redirecting of unrepresented EU citizens has been described in problem area 2 (accessibility),

Driver: Article 10 requires the exchange of information on the unrepresented EU citizen and their non-EU family members between the Member State of nationality, and the assisting Member State, without making a reference to the GDPR or the DPREUI.

Problem: Some Member States refused to provide information on unrepresented EU citizens due to GDPR concerns.

Conclusion: Although bilateral cooperation between Member States was assessed to be good among national authorities, some problems remain due to the lack of clarity among some Member States how personal information should be shared in line with the GDPR and the DPREUI...

ii) Local consular cooperation meetings

Driver: Local cooperation meetings (LCC meetings) should, in accordance with Article 12 of the Directive, include a regular exchange of information on matters relevant to unrepresented EU citizens. It also lays out that the chair shall be a representative of a Member State unless otherwise agreed, in close cooperation with the EU Delegation. As per Recital 18, competences and respective roles of all relevant actors should be clarified.

Problem: Collecting and regularly updating information on unrepresented citizens proves difficult in practice. Communication channels relied on by Member States may vary. As opposed to the text of the Directive, there does not seem to exist a clear hierarchy or designation of who chairs these meetings in practice. Where local arrangements are structured in such a way that the EU Delegations chair and host EU coordination meetings, EU Delegations are often also chairing LCC meetings over a rotating chair of individual Member States. Even though COVID has largely led to a development of remote access/videoconference format for these meetings (allowing unrepresented Member States to join LCC meetings when relevant) stakeholders consulted noted that it is difficult for lightly staffed representations to participate in all discussions, let alone chair meetings, and access is particularly difficult for unrepresented Member States.

Conclusion: Even though the LCC meetings are considered to be a useful tool in coordinating the provision of consular protection to unrepresented EU citizens at the local level, some improvements could be made to address the challenges faced by unrepresented Member States to participate in such meetings. Moreover, although EU Delegations seem to be well placed to chair the LCC meetings, the wording of the Directive does not reflect this, which could discourage some EU Delegations to take up this role.

iii) The EEAS Consular Online Tool (CoOL)

Driver: Article 10(4) and Recital 16 of the Directive require Member States to provide and continuously update information on relevant contact points in the Member States through CoOL, in order to ensure swift and efficient cooperation. However it does not provide any timeframes for these notifications (e.g. annually or continuously).

Problem: While Member States should be incentivized to use CoOL and to provide information to the EEAS on the presence of representations, this is not happening systematically across all Member States. Mixed feedback was received on the user friendliness of CoOL as an online information repository and as a communication platform. Where CoOL is not updated, information may be outdated and could cause delays in the provision of consular protection to unrepresented EU citizens. The extent to which the tool is used systematically varies between third countries. Efficient informal networks may disincentivise the use of CoOL.

Conclusion: Although CoOL has been a very important tool for Member States and the EU Delegations, especially in times of crises, it is only as good as the information that feeds into it. There is scope to improve this tool to further increase its usefulness.

2.1.3.2. Problems related to crisis preparedness and measures applied in times of crisis

Two thirds of Member States consulted agreed to a moderate or to some extent that there are inefficiencies in the way the provision of consular protection to unrepresented citizens is coordinated, especially in crisis situations. This section covers the problems related to (1) joint frameworks (JFW), (2) the Lead State concept, and (3) the UCPM.

i) Lack of consistency in the use of Joint Frameworks (JFW)

Driver: JFW are only mentioned in passing within the Directive when discussing crisis preparedness arrangements in Article 13 and Recital 20. Article 13(1) requires JFW to take unrepresented citizens into account, but does not provide further clarification on how this should be done. The Directive does not require the JFW to be put in place, nor sets a timeline for the updating of the JFW.

Problem: Although JFW have been put in place in about 90 third countries, JFW do not exist for all third countries or in the same level of quality. They may not be up-to-date or may not have been subject to exercises to prove their effectiveness in practice. The general inefficiencies in the coordination and cooperation between EU Member States will only be exacerbated in crisis situations. For instance, none of the reviewed JFWs outlined measures to assist victims in the context of contingency planning. Practical challenges in the coordination between Member States and between Member States and the EU arise when providing consular assistance in large crisis situations (such as the Covid-19 pandemic). Member States generally agreed that JFW do not sufficiently take into account the possibility of a global crisis and the special circumstances of a regional or global public health crisis. Some Member States highlighted the need for the organisation of practical exercises to be held on a regular basis (due to the rotation of diplomatic personnel).

Conclusion: The Directive in its current form is not prescriptive enough on the development and use of JFW (e.g. how often should it be updated). As a result, these frameworks do not exist across all third countries or in the same level of quality, even though these have been proven to be useful. Moreover, most JFW have not set up to with global crisis in mind such as the COVID-19 crisis. Finally, the wording of the Directive does not reflect the current leading role that EU Delegations often has in developing the JFW, which could be considered as discouraging some Member States and EU Delegations to take a more active role in this regard. Regular (global) consular exercises are needed to enhance consular crisis preparedness.

ii) Pertinence of Lead State concept

Driver: The Directive makes reference to the Lead State concept, without making it mandatory (i.e. the role is taken up voluntarily by Member States). Recital 23 of the Directive states: “The concept of Lead State, as established in the relevant Union guidelines, could be further developed in compliance with Union law and, in particular, with this Directive.” However, the concept has not been further developed in the context of the Directive so far and its interrelation with JFWs is not considered. The baseline for the concept are still the 2008 Guidelines.¹⁵

Problem: Almost half of the Member States consulted found the concept of Lead State no longer pertinent or redundant for the provision of consular assistance. Organising consular protection for unrepresented EU citizens through coordination led by an appointed Lead State is one of several other possible arrangements, however these other options are not addressed in the Directive. Since the interrelation between JFW and Lead State is not considered, overreliance on the Lead State might lead to an overall lower level of preparedness. In addition, Member States that are the only ones with representation in a given third country (such as France in the Seychelles, for

¹⁵ “European Union guidelines on the implementation of the consular Lead State concept” (2008/C 317/06).

example), may still decide not to assume the role of Lead State therefore leaving a gap. Some Member States also questioned the overall feasibility of the concept, in particular in crisis situations, when the Lead State may be overburdened. However, others insisted that the Lead State is still an operational concept but stressed the need for fairer burden sharing among Member States. Moreover, the question remains whether the division of responsibilities under the JFW would not reach the same conclusion and put an even stronger burden on one particular Member State.

Conclusion: While the Directive encourages further development of the Lead State concept, this has not happened so far. Member States have expressed willingness to discuss the concept of the Lead State, in particular its complementarity with JFW.

iii) Lack of clarity on activation and use of UCPM in consular crisis

Driver: According to Article 13 (4) Directive, Lead States or the Member State(s) coordinating assistance for unrepresented EU citizens may seek support from instruments such as the UCPM and the crisis management structures of the EEAS. However, the relationship between the UCPM and the Directive is left open. The recitals of the Directive only specify that the UCPM may be relied on as a subsidiary means at the discretion of Member States.

Problem: While the UCPM is considered important during crisis situations, there are several challenges in its application in the view of Member States, including the lack of clarity of the support provided and how to activate it, difficulty in triggering it in third countries with a low density of representations (particularly where there is no Lead State or coordinating Member States), the high administrative burden when applying for funding under the mechanism and the inflexible nature of the UCPM to the changing situation. It should be borne in mind that actioning the UCPM is a prerogative of the Member States to offer support to their citizens, as a last resort when all national action has failed or when the operational response or financial support needed is too significant. As such, it is not a mechanism to be triggered casually.

Some Member States also suggested for the EEAS or EU Delegations to take a leading role in its activation, though DG ECHO disagrees with this position as they believe it would alter the essence of the mechanism which was created to support the Member States. DG ECHO did see a more extensive role for EU Delegations to support the Lead State closely when activating the UCPM.

Conclusion: There is a need to clarify the situations in which the UCPM can be activated and how the Mechanism can be triggered. The study also highlights the clear need to ensure coherence between the Directive and the UCPM, so that the interaction of both instruments is articulated to serve the Directive's objectives.

2.1.3.3. Problems related to the role of the EU and EU Delegations

This section presents the problems related to the coordination role played by the EU Delegations, distinguishing between crisis and non-crisis situations.

Driver:

Non-crisis situation: The Directive accords EU Delegations a cooperation and coordinating role only. It does not allocate responsibilities or assign them specific duties to support Member States (upon their request) in their role of providing consular protection to EU citizens (as it is foreseen under Article 5(10) of the Council Decision establishing the EEAS). In particular, the Directive does not foresee for EU Delegations to assist EU citizens directly, even though this can be occasionally the case¹⁶. Most Member States are of the opinion that the Directive does not properly reflect the actual role played by the EU Delegations in practise: Only three Member States stated that the role the EU Delegations had in practice, in supporting Member States in the provision of consular protection to (unrepresented) EU citizens, was reflected to a great extent in the Directive. Around two thirds shared the more sceptical view that this was either only the case to a moderate, some, or small extent.

¹⁶ See Written Questions E-008016/12 and 007842/12

Crisis-situation: Article 11 of the Directive lays out that EU Delegations shall closely cooperate and coordinate with Member States' embassies and consulates to contribute to local and crisis cooperation and coordination, in particular by providing available logistical support, including office accommodation and organisational facilities, such as temporary accommodation for consular staff and for intervention teams. However, it does not specify a proactive role for EU Delegations in crisis situations.

Problem:

Non crisis-situations: The role played by EU Delegations depends in many situations, on their capacity to provide direct assistance to EU citizens upon request from Member States. As the Directive does not (unlike the EEAS Decision) foresee this possibility, it creates legal uncertainty and might lead to inaction. In addition, the level and consistency of local consular cooperation and coordination in third countries varies widely depending on the entity responsible for such coordination. For example, in some third countries, EU Delegations may be in charge of chairing the LCC meetings, while in other third countries this role is fulfilled by the Lead State. Each EU Delegation has appointed a consular correspondent plus backup. A number of Member States highlighted the need to strengthen the overall role of EU Delegations. There was also general agreement that the current political momentum, brought about mainly by the COVID-19 pandemic and Brexit, is conducive to the reinforcement of the role played by EU Delegations in consular affairs. In addition, the latest Eurobarometer¹⁷ showed that EU citizens are also in favour of support from EU Delegation directly: respondents stated that if they were in a country outside the EU where their Member State of nationality was not represented, they would like to seek support from an EU Delegation instead.

Crisis-situation: The Directive does not reflect the actual engagement of EU Delegations in crisis situations where they have exercised a more substantial role than the cooperation and coordinating role generally accorded to it. At the same time, lack of specification of the role of EU Delegations creates legal uncertainty and incentives for inaction. For example, the EU Delegations may be reluctant to directly provide assistance to EU citizens in case no Member State is present in a third country, also in view of their lack of human and financial resources. In practice, Member States proved slow at times in providing relevant information. It might occur that third countries do not recognise the competence of EU Delegations to provide consular protection to citizens of Member States without prior notification or arrangements in place. For example, EU Delegations may come into the position of needing to request third country authorities for landing permits for repatriation flights.

Conclusion: The Directive does not reflect the actual engagement of the EU Delegations which creates legal uncertainty and might lead to inaction. Any change in the role of EU Delegations should be shared with third country authorities.

2.1.3.4 Problems related to communication with EU citizens

Driver: The Directive covers communication aspects with EU citizens in a limited manner:

- Article 2(2) of the Directive requires Member States to ensure that unrepresented citizens are duly informed about their decision to apply the Directive to honorary consuls and the extent to which honorary consuls are competent to provide protection in a given case.
- Article 7 (2) of the Directive states the EU's and Member States' obligation to publicize existing practical arrangements between Member States
- Article 11 of the Directive places an obligation on the EU Delegations to make general information available about the assistance that unrepresented citizens could be entitled to, particularly about agreed practical arrangements if applicable.

Problem relevant to all types of situations (crisis and non-crisis situations):

Information on Honorary Consuls (as per Article 2(2) Directive): EU citizens do not have access to up to date information on the extent to which Honorary Consuls are competent to provide consular protection in spite of the

¹⁷ Flash Eurobarometer 485: EU Citizenship and Democracy; February/March 2020; https://data.europa.eu/data/datasets/s2260_485_eng?locale=en.

obligation for EU Member States to provide that information. For those Member States that apply the Directive to Honorary Consuls, it remains unclear whether any specific steps are taken to inform other Member States and EU citizens about the extent to which Honorary Consuls are competent to provide protection. Replies from two Member States suggest that the provision of information to (unrepresented) EU citizens on this particular aspect is not done systematically as consular protection by Honorary Consuls is only provided in exceptional circumstances. Some Member States stated it would be helpful to have further information regarding the assistance provided by each Member State's Honorary Consuls. One Member State highlighted this might also help avoid the unnecessary referral of "unrepresented citizens" where an Honorary Consul would, in fact, exist.

Problems related to the information provision to EU citizens on bilateral agreements in place have been discussed in problem area 2 above.

General information on the assistance that unrepresented EU citizens could be entitled to as per Article 11: The European Commission has a Europa website on consular protection (which is mobile device friendly) that provides information on citizens' rights, links to Member States' websites, and location of embassies and consulates (see Annex IV). However, the study identified several limitations to the website which reduce its added value.

- The website does not include information on existing practical arrangements between Member States. In addition the website is not as user friendly: it provides list of links to Member States Ministry of Foreign Affairs websites, instead of summarizing the information contained on the websites.
- The information is not provided in a clear and transparent manner. For instance, the website provides the possibility to search for the Member States' embassies and consulates by third countries and by type of diplomatic representations (e.g. a distinction is made between embassies/consulates and diplomatic representations). However honorary consuls and accredited embassies/consulates are not distinguished from embassies and consulates, and their limitations and the extent to which these consuls can provide consular assistance is not made clear.
- The information is not provided in a user-friendly or easily accessible manner. For instance, multiple in-text links do not work either because the page has moved or because it no longer exists. However, the Commission's website on the right to consular protection¹⁸ is undergoing changes at the time of writing. Namely links are being fixed, entries are being sanitized with updated information of addresses and phone numbers and maps with proximity and geolocation capabilities are being introduced to enable EU citizens to locate the nearest consulate/embassy based on their location.
- Member States' information on consular presence in third countries and Member States' travel advice is collected and aggregated in CoOL. However, this information is not available to EU citizens (i.e. only to Member States) and does not feed into or inform the websites of the Commission, EEAS or the EU Delegations.

Additionally, while both the EU and the Member States have websites and other platforms providing varying information, there is currently no control or coordination on the provision of travel advice per country, emergency/crisis communication, or information on the provision of information on consular protection by Member States. As a result, an EU citizen looking for such information and/or communication will be faced with an array of different sources of information which may not be aligned with one another and/or provide up to date relevant information to the same extent. This can be problematic in times of crisis where the situation can evolve rapidly, and especially for EU citizens who are unrepresented. For instance, an unrepresented EU citizen wishing to be repatriated may not be aware of repatriation being organised by other Member States. This may lead to discriminatory situations where represented citizens have better access to consular protection (as they have access to relevant information, such as on repatriations organized, on their Member States' websites) compared to unrepresented EU citizens.

Problems in crisis situation:

¹⁸ Europa, Consular Protection outside the EU, Available at: [Consular protection | European Commission \(europa.eu\)](https://european-commission.europa.eu), Last accessed 04/11/2021

The difficulty in providing effective consular services in crisis situations is related to the lack of reliable information on EU citizens living or traveling abroad. The recent Afghanistan crisis has also shown that the Member States' knowledge on their dual citizens is limited. According to Member States, only a minority of travelers register their trips (10-20%). The figure is higher regarding the nationals living abroad: for instance France estimates that 60-70% of people living abroad register. As a result, during crisis, Member States are not aware of the number of their citizens requiring assistance and thus cannot provide this information to the Lead State or the Member State(s) coordinating assistance, nor can they effectively reach these citizens through targeted communication (emergency SMS, phone calls, etc.). The lack of registration may be due to a lack of willingness and/or a lack of awareness compounded with the lack of an obligation for citizens to register as it is voluntary to do so. The majority of the surveyed Member States were of the view that the increasing number of expats and travelers creates new difficulties in reaching out to stranded citizens (see Table 5) in particular due to the lack of knowledge of how many and where EU citizens are both in the world and within a third country. They concurred that the COVID-19 pandemic demonstrated the difficulties in reaching unrepresented EU citizens and their non-EU family members as well as the inadequacies in providing reliable and up-to-date travel advice and efficient crisis communication. Nonetheless, Member States highlighted limited willingness to further coordinate their travel advice. They did, however, positively assess the cooperation and exchange of information that took place during the COVID-19 crisis and highlighted their willingness for more support and coordination during crisis. For instance, EU Delegations, such as the one in Russia, coordinated the exchange of information between Member States on EU citizens wishing to be repatriated which greatly facilitated the organisation of repatriation flights with commercial airlines. Business organisations in Russia also welcomed the information that was passed on to them from the Member States during the COVID-19 crisis, which they then passed on to their members. They highlighted their willingness to play a bigger role in disseminating information in the future both in crisis and non-crisis times.

Table 5: Level of agreement with “Statement 6: With the increasing number of expats and travellers, it is becoming increasingly challenging to reach out to stranded citizens in case of an emergency/crisis situation and to provide them with travel advice before departure.” (N=25)

	Number	Share of total
Not at all	3	12%
To a small extent	4	16%
To some extent	8	32%
To a moderate extent	4	16%
To a great extent	6	24%

Conclusion: There is a lack of centrally available, user-friendly, accessible, and up-to-date information available to (unrepresented) EU citizens (including on their consular rights, honorary consuls, permanent arrangements, travel advice). In addition, the level of registration of EU citizens prior to living or travelling abroad varies from country to country and is generally limited, resulting in Member States having an incomplete picture of the whereabouts of their (unrepresented) citizens.

2.1.4 Problem area 4: Financial reimbursement

This section discusses two types of issues that are related to the reimbursement procedure: frequency of its use and the clarity around the procedures, as well as problems related to the financial reimbursement related to assistance provided to represented citizens.

i) Lack of use and clarity of the reimbursement procedure

Driver: The Directive is not explicit about the possibility for the assisting Member State to seek reimbursement from unrepresented EU citizens directly. The Directive does provide two standard forms in the Annexes, one to be used

by citizens and one to be used by the assisting Member States. However the procedures are otherwise not accompanied by any kind of guidance on how to operationalise the procedure.

Problem: The financial reimbursement procedures are only applied in a very limited manner across the Member States. In those cases where reimbursement was sought, this was not done in a similar way across the Member States: while some Member State follow the procedure outlined in the Directive (using the standard forms presented in the Annexes and requesting reimbursement from the Member State of nationality), other Member States seek direct reimbursement from the unrepresented citizens assisted, or have a hybrid approach of first seeking reimbursement from the citizen before seeking reimbursement from the Member State of nationality. There is also some evidence to suggest that the standard form in Annex I is not used systematically in the regular procedure of Article 14, and that the lack of use of the Annex I form under the facilitated procedure (Article 15) may mean citizens are not always clear about the need to reimburse the costs of assistance once they have been repatriated.

The Member States limited experience with the reimbursement could on the one hand be explained by the relatively short duration of the implementation of the Directive, the low number of assistance provided to unrepresented EU citizens, and the practice of some Member States to seek reimbursement from citizens directly instead. There also seems a perception among certain Member States that seeking for reimbursement may be perceived as (diplomatically) sensitive. However, the lack of implementation of the procedure may also indicate deficiencies in understanding how the reimbursement procedure works. There also seems to be a perception among some Member States that the procedure entails a disproportionate administrative burden when compared to the relatively low cost of providing consular assistance to a low number of unrepresented citizens.

Conclusion: The financial reimbursement rules are important, as they ensure that the Member States that do have a presence on the ground and are providing the consular protection to unrepresented EU citizens are not penalized by also having to carry the financial burden of taking care of the citizens of those Member States that are not present. However as the rules are currently not being used much in practice, beyond the use of the UCPM and direct reimbursement by citizens, the financial burden sharing as foreseen under the Directive has been limited to date.

ii) Reimbursement procedure for represented EU citizens

Driver: The scope of the Directive is limited to unrepresented EU citizens, which means that the reimbursement forms in the Annex of the Directive also only cover unrepresented EU citizens,.

Problem: As explained under problem area 1 (personal scope), the current scope of the Directive does cover the provision of consular protection to *de facto* unrepresented citizens (i.e. represented citizens who have an embassy that is not effectively in a position to provide consular protection in a given case – as per Article 6 of the Directive). Moreover, some Member States reported having provided consular protection to represented citizens in times of crisis, due to the difficulty of distinguishing between represented and unrepresented citizens, for example when organising large repatriation efforts in times of crisis. Moreover, assistance to represented citizens is also possible under the UCPM, which is referenced in Article 15 of the Directive. However, as a result of the Directive's current scope, Member States cannot seek reimbursement for consular protection provided to represented citizens.

Conclusion: Although in practice, Member States have been providing consular protection to represented EU citizens, the current scope and reimbursement procedure and forms under the Directive do not allow Member States to seek reimbursement for the provision of this type of assistance..

2.2 MAGNITUDE OF THE PROBLEM

Now the problems and their drivers have been identified and described, this section will aim to outline the magnitude of the problem, which can be best quantified by:

- **The number of unrepresented EU citizens:** this number represents the total number of EU citizens that have a right to consular protection under the Directive and that could potentially be impacted by the problems described above.¹⁹
- **The number of unrepresented EU citizens assisted between 2018-2020:** this case number is a good indication of the additional workload of the Member States in implementing the Directive. The number also provides a good indication of the annual number of unrepresented EU citizens that may actually require consular protection from another Member State.

The methodology is presented in Annex VI, which also provides more detailed analysis on these two figures, including reported data on case number by type of protection, the number of refusals and the proportion of unrepresented EU citizens assisted. The Annex also compares the estimates against the estimates presented in the 2011 Impact Assessment²⁰.

2.2.1 Estimated number of unrepresented EU citizens

As can be seen in the table below, the study estimates that of the 125 million trips that EU citizens had made to third countries in 2019, **14.2 million trips were to countries where the EU citizens were not represented**. In addition, the study estimates that **225,000 EU citizens live in third countries where their Member State is not represented (i.e. unrepresented EU expatriates excluding dual nationals, who hold an EU passport but were born in the relevant third country)**. This thus shows that the number of unrepresented EU citizens that are potentially impacted by the problems outlined above is significant, and this estimate does not even take into account the non-EU family members of unrepresented EU citizens that also have a right under the Directive.

Table 2: Summary table on estimated number of unrepresented citizens

	Number of EU citizens living abroad 2019	Estimated number of unrepresented EU citizens living abroad	Number of EU citizens trips abroad (2019)	Estimated number of unrepresented EU citizens trips abroad
Within the EU	16.7 million	25,000	238 million	2.6 million
Outside the EU /third countries	16.1 million	225,000	125 million	14.2 million
TOTAL	36.2 million	250,000	363 million	16.8 million

Although the current Directive does not apply within the EU, the study estimates that EU citizens are taking 2.6 million trips annually to other EU countries in which their Member State has no representation. A relatively small number of EU citizens are estimated to live in countries where their Member State is not represented (25,000).

2.2.2. Estimated number of cases of assistance to unrepresented EU citizens

Member States do not collect statistics on the number of represented and/or unrepresented EU citizens assisted in a systematic or comparable way. Some Member States do not collect this data at all, while others collect it only for some types of protection (e.g. ETD or repatriations). On the basis of the data reported, this study cannot provide an exact figure on the case load that Member States have in providing consular assistance to unrepresented EU citizens and non-EU family members. A more detailed overview of the limitation of the data collected is provided in Annex VI, section 6.3.

However, based on the limited data reported by Member States on the number of unrepresented EU citizens the following two estimates have been made:

¹⁹ We say “could” as not all unrepresented EU citizens will be needing consular protection.

²⁰ European Commission, 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, SEC(2011)1556.

- **Low end estimate:** An estimate based on the average number of total cases reported for 2018-2020 by 17-22 Member States, extrapolated for those Member States that did not report any data. As mentioned in Annex VI, as some Member States do not include certain types of assistance, this number is likely to be lower than the actual number of cases.²¹
- **High end estimate:** An estimate based on the highest case number reported by a given Member State for each type of assistance, which could be taken as a “worst-case scenario”.

The estimated number of unrepresented EU citizens in non-crisis situations is based on reported figures for 2018 and 2019), while the estimate for crisis situations is based on reported figures for 2020 (during the COVID-19 crisis). The detailed methodology used for both estimates is further outlined in Annex VI.

In a year where a global crisis occurs, like COVID-19, the average case number is over four times higher (222) and could go up to over 6,500 per Member State. The study further found that the number of unrepresented citizens assisted is similar for Member States with medium to large consular networks, while it is much lower for Member States with lower levels of representation.

Table 3: Estimations on the number of unrepresented EU citizens assisted

	Low end estimate	Average per MS	High end estimate	Average per MS
Normal situation/average year ²² (2018/2019)	1300	48	40,000	1,574
Global/large scale crisis situation ²³ (2020)	6000	222	177,500	6,574

However, the perception of the Member States is that overall the number of unrepresented citizens assisted by EU Member States on an annual basis across the world is quite low. The data shows that the number of unrepresented citizens assisted is only a fraction when compared to consular assistance provided to Member States’ own citizens: Member States reported between 1%-3% of cases relating to unrepresented EU citizens in 2018 and 2019. The share of unrepresented citizens assisted significantly increased in 2020 for two out of the three Member States that provided data across all 3 years. This could suggest that in a crisis, unrepresented citizens place a higher burden on Member States

However, even if the number of cases was estimated in the most accurate way, this would still not provide the entire picture of the magnitude of the problem, as it excludes:

- **unrepresented citizens that are in need of protection but do not seek assistance from another Member State** (e.g. prefer to contact the accredited embassies in neighbouring countries of their own nationality or the MFA in their capitals). For example, the 2011 Impact Assessment which estimated that 84% of unrepresented citizens potentially in need of consular protection do not ask for assistance.

- **unrepresented EU citizens that are refused assistance:** However, based on the consultations carried out for this study this seems to be a rare occurrence.

²¹ For example, France only considers repatriation to take place when the (un)represented citizen is taken care of throughout the whole process by the French consular authorities, from the booking of the flight (and payment for the ticket) to the reception at the accommodation centre upon arrival in France. As most repatriation flights were not carried out in this manner (but with citizens buying their own tickets), the data reported by France on the number of repatriations should be taken with caution.

²² Refers to an average year without a global pandemic. The data collected in 2018 and 2019 was used for the estimation.

²³ This refers to situations that fall out of the norm in terms of scale, frequency, or duration. The year 2020 was used for the estimation due to the large scale and impact of the Covid-19 pandemic

- **represented citizens assisted by another Member States:** Qualitative data collected suggest that Member States often assist represented citizens in crisis situations, as they do not distinguish between represented or unrepresented citizens.

2.3 EVOLUTION OF THE PROBLEM

Although we do not know the extent to which the EU Member State will increase their network, in which countries (i.e. countries with low or high levels of EU representation) and in which level of capacity, our study shows that the number of EU travelers and expatriates is likely to increase as well as the number of crisis which may lead EU citizens to seek consular protection. While the number of unrepresented EU expatriates is currently estimated to be relatively low (225,000), it is expected to increase by 40% by 2050 (315,000). Please see Annex II, section 2.7 for a detailed overview of the estimated evolution of the number of unrepresented EU citizens (and non-EU family members) needing consular protection under the Directive over the next ten to 30 years and their impact on the four problem areas described above.

- **Problem area 1 – scope:** Uncertainties in the personal scope of the Directive (in terms of who can be the beneficiaries of consular protection under the Directive) will become more important as the number of people having a right under the Directive, as well as the number of requests for assistance, is likely to increase. Moreover, intra-EU travel is also expected to increase, making the Directive's focus on third countries less relevant.
- **Problem area 2 – accessibility:** Between 2018 and 2019 the number of unrepresented citizens that were refused assistance and/or discriminated against was low (see Annex II). However, in 2020, in the face of the COVID-19 pandemic, the number of these occurrences increased as Member States were under pressure. As the number of unrepresented citizens increase together with the number of (global) crisis, these issues may become more prominent in the future.
- **Problem area 3 - Coordination and cooperation:** The increasing number of unrepresented citizens and expected increases in crises will increase the pressure on Member States, making efficient and effective cooperation and coordination among Member States and with the EU even more important. Moreover, communication with EU citizens will need to be carried out at a larger scale, as the number of EU travellers and expatriates increases.
- **Problem area 4 - Financial reimbursement:** The increase in the number of requests for consular protection by unrepresented EU citizens will result in additional expenses for assisting Member States. If not amended, the reimbursement procedures will continue to be used in a limited way which will exacerbate the unequal sharing of burden among Member State – placing disproportionate burden on those Member State with the most extensive consular network.

3. WHY SHOULD THE EU ACT?

3.1 LEGAL BASIS - DOES THE EU HAVE COMPETENCE TO ACT?

This section aims to outline the extent to which there is a legal basis for the EU to address the problems identified in the problem definition through the various policy options.

3.1.2 EU competence in the field of the EU citizen's right to consular protection

The protection of the EU citizens around the world has been an express objective of the EU since the entry into force of the Lisbon Treaty in 2009 (Article 3(5) TEU). Moreover, the Charter recognises a fundamental right to consular and diplomatic protection in Article 46 which corresponds to Article 23(1) TFEU. To achieve this objective, the EU can support the Member States in the provision of equal consular protection with the help of the EEAS and the EU Delegations' network. However, it should be noted that Article 4(1) and Article 216(1) TFEU only provide a shared competence with regards to consular protection to unrepresented EU citizens located in third countries:

Article 20 paragraph 2 TFEU contains a declaratory list of citizenship rights that find an equivalence in Articles 21 through 24 TFEU which also place the corresponding obligations upon Member States. **Article 20(2)(c)** TFEU confers a right to all EU citizens who are located in a third country where their Member State of nationality is not represented, for "the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State".

Article 23 TFEU provides that "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". The right to consular protection as reflected in the TFEU is currently thus limited to unrepresented EU citizens.²⁴ The predecessor of Article 23 TFEU (Article 8(c) of the Maastricht Treaty) was interpreted by the drafters as applying only where a Member State is not present. However, the Directive clarified the meaning of 'unrepresented' as meaning an impossibility to effectively receive consular protection. Recital 8 of the Directive refers to the following non-exhaustive list of circumstances: the embassy, consulate or honorary consul "is unable for any reason" to provide equal consular protection; or these are inaccessible due to lack of geographical proximity, local circumstances or lack of resources of the EU citizen. Since these circumstances could impede the citizen in safely reaching or being reached in a way that allows them effectively to receive consular protection, they should be considered to be "unrepresented". The Directive itself clearly echoes this view by covering represented EU citizens that are *de facto* unrepresented through Article 6 of the Directive.

Article 23 TFEU also requires Member States to "adopt the necessary provisions and start the international negotiations required to secure this protection" and allows the Council, "acting in accordance with a special legislative procedure and after consulting the European Parliament" to "**adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection**". Direct provision of consular protection by the EU as proposed by Spain and the Commission during the negotiations on the Treaty of Maastricht were excluded in the final version of the draft²⁵. Paragraph 2 of Article 23 TFEU added through the Treaty of Lisbon clarifies the competence of the Union and decision-making procedure for the adoption of Directives which are meant to ensure

²⁴ At the time of the Maastricht treaty when the right was introduced the term unrepresented referred to lack of external representation, and not *de facto*. This seems to be the conclusion resulting from Point 2.6. of the Report of the ad hoc Committee on a People's Europe to the European Council in Milan, 28 and 29 June 1985, which reads as follows: 'The citizen as traveller outside the Community - A Community citizen in need of assistance during a temporary stay in a third country where his own country is not represented by an embassy or a consulate should be able to obtain assistance from the local consular representation of another Member State. The Committee recommends that the European Council invite Member States to intensify work for such consular cooperation in third countries and to formulate more precise guidelines.'

See also: Etats membres examineront la possibilité de prêter aide et assistance dans les pays tiers aux ressortissants des Etats membres qui n'y ont pas de représentations' Decision of 28 February 1986 of the Ministers of Foreign Affairs meeting within the European Political Cooperation; see more details in F. Poirat, 'Comment on Art 46 of the EU Charter', in Laurence Burgogne-Larsen, AN. Levade, F. Picod (eds.), *Traité établissant une Constitution pour l'Europe*, Commentaire article par article, Tome 2, Bruylant (2005), 578-585.

²⁵ Madalina Moraru, An Analysis Of The Consular Protection Directive: Are EU Citizens Now Better Protected In The World? (2019) 56 *Common Market Law Review*, 417-461; Protecting (unrepresented) EU citizens in third countries—The intertwining roles of the EU and its Member States open access available at: <https://cadmus.eui.eu/handle/1814/36996> chapter 1

coordination and cooperation among the Member States and among the Member States and the EU on effectively ensuring the right to consular protection.

Article 25 TFEU contains an evolutive clause providing a simplified procedure for expanding citizenship rights, thereby effectively changing primary EU law. According to Article 25(2) TFEU the European Commission's reports evaluating the implementation of EU citizenship rights listed in Articles 20(2) TFEU can be used as justification for an amendment of EU secondary legislation for the objective of 'strengthening or adding to the rights' listed therein. The legislative amendment will take place according to a special legislative procedure, whereby the Council, acting unanimously and after obtaining the consent of the European Parliament, adopts provisions to strengthen or to add to the rights of Union citizens.²⁶ These provisions shall enter into force after their approval by the Member States "in accordance with their respective constitutional requirements".²⁷ According to Article 19(2) of the Consular Protection Directive, the report which the European Commission is required to adopt on the implementation of the Directive, shall "consider the need for additional measures, including, where appropriate, amendments to adapt this Directive with a view to further facilitating the exercise of Union citizens' right to consular protection."²⁸ The insights from this report can thus be used as proposal for the amendment of the Consular Protection Directive aiming to enhancing the right to consular protection enshrined in Article 20(2)(c) TFEU. It should be noted that if the legal basis of Article 25(2) TFEU is proposed for one policy proposal, then all other sub-options proposed under that policy option would have to follow the procedure of Article 25 TFEU.²⁸

3.1.1 Mandate of the EEAS and function of EU Delegations

The EEAS was established to assist the High Representative of the Union for Foreign Affairs and Security Policy in **Article 27(3) TEU**, which states that "[t]his service shall work in cooperation with the diplomatic services of the Member States". Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (EEAS Decision) was passed in accordance with Article 27(3) TEU to regulate the organisation and functioning of the EEAS.

The EU Delegations are required, according to Articles 4(3) and 35 TEU, to cooperate with the Member States for the purpose of ensuring the Union's objective of protecting the Union citizens in the world. **Article 35 TEU** holds that "[t]he diplomatic and consular missions of the Member States and the Union Delegations [...] shall:

- cooperate in ensuring that decisions defining Union positions and actions adopted [...] are complied with and implemented.
- shall step up cooperation by exchanging information and carrying out joint assessments.
- shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the TFEU and of the measures adopted pursuant to Article 23 of that Treaty.

The mandate of the EU Delegations in the field of consular protection appears to be one of "supporting" and "cooperation", as per following provisions:

- **Article 221 TFEU** provides that EU Delegations "shall act in **close cooperation** with Member States' diplomatic and consular missions".
- **Article 3(1) of the EEAS Decision** states that "[t]he EEAS shall **support, and work in cooperation** with, the diplomatic services of the Member States".
- **Article 5(10) EEAS Decision** provides that: "The Union Delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, **support the Member States** in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis."

²⁶ Hilpold P. (2021) Article 25 [Monitoring and Further Development of Union Citizenship]. In: Blanke HJ., Mangiameli S. (eds) Treaty on the Functioning of the European Union - A Commentary. Springer Commentaries on International and European Law. Springer, Cham.

²⁷ K Lenaerts, EU Citizenship and Democracy, New Journal of European Criminal Law, Vol. 7, Issue 2, 2016, 164-175.

²⁸ See also CJEU judgment: Case C-300/89, Titanium Dioxide; and Case C-130/10 Parliament v Council [2012] ECR I-0000

3.1.3 EU competence in crisis situations

Beyond the explicit conferral of competences in the area of consular protection, the EU has various other legal bases which empower it to adopt acts that could facilitate the implementation of the EU citizenship right to equal consular protection, such as:

- Civil protection (Article 196 TFEU): For instance, Article 196 TFEU can be used as legal basis for the adoption of Union decisions ensuring the use of the Union Civil Protection Mechanism to address the consequences of disasters from both within and outside the Union, and to protect both the population of affected third countries and the Union citizens (See Decision Council Decision 1313/2013 of the European Parliament and Council on a Union Civil Protection Mechanism, [2013] OJ L 347/924 of 17.12.2013). Furthermore, assets, personnel, logistics, mechanisms of cooperation that have been used under instruments adopted under the above-mentioned legal bases can be used when necessary for the purpose of ensuring effective consular protection of unrepresented EU citizens in distress in third countries.²⁹
- Humanitarian aid (Article 218 TFEU): humanitarian aid policies, which address short-term relief, have also been used for the purpose of securing consular protection to the EU citizens located in third countries. The example of the 2010 Arab spring revolution is reflective of this. Humanitarian aid capabilities were used together with the UCPM for the purpose of securing, inter alia, the relief and safe evacuation of the EU citizens in situ. The EU seems to have developed an integrated crisis management toolkit including several different policies, such as: humanitarian aid, civil protection and development cooperation for ensuring the effective implementation of consular protection of unrepresented EU citizens in distress abroad. Unlike the UCPM which is triggered by the Member States, the use of humanitarian aid capabilities are decided by the Union itself. Thus the two policies are complementary.
- The Common Security and Defence Policy (CSDP) missions, which can carry out humanitarian and rescue tasks (Article 43 TEU). However, military assets can only be used in cases of emergencies, and only for the purpose of evacuating EU citizens.³⁰
- Furthermore, the EU can resort to the use of Art 352 TFEU (residual competence) to adopt additional appropriate measures to attain the objective of “contributing to the protection of its citizens” (Article 3(5) TEU).

3.2 SUBSIDIARITY: WOULD THE EU BE BEST PLACED TO ACT?

A general subsidiary check whether the EU is best placed to act in the field of coordination and cooperation of consular protection to unrepresented citizens was already carried out at the time of the adoption of the Directive. According to the proposal for the Directive, consular protection for unrepresented EU citizens by definition entails an external dimension, extending the rights granted by EU citizenship beyond the EU borders. It also stated that “this initiative is on a specific right granted to the EU citizen, a right to consular protection by the consular and diplomatic authorities of another Member State under the same conditions as for its nationals which is inherently linked to the concept of EU citizenship and the competences of the Union under the Treaty on the Functioning of the European Union. It therefore appears appropriate to include the necessary coordination and cooperation measures to facilitate this right in the legal order of the Union”.

²⁹ Military assets can fill in critical capacity gaps in areas such as transportation, logistics support, engineering, or medical support, such as during the earthquake and tsunamis in the Indian Ocean in December 2004 and the 2010 Pakistan floods. See more in Commission Communication ‘Towards a stronger European disaster response: the role of civil protection and humanitarian assistance’, COM/2010/0 600 final. See also, See the European Commission, ‘Towards a stronger European disaster response: The role of civil protection and humanitarian assistance’ (Brussels, 26 October 2010).

³⁰ Interestingly, the first Decision adopted on the basis of former Article 17 TEU concerned the evacuation of EU nationals whenever they are in danger in third countries. It was adopted as a sui generis Decision that was not published in the Official Journal. See Doc. 8386/96, Decision du Conseil du 27 juin 1996, relative aux opérations d’évacuations de ressortissants des Etats membres lorsque leur sécurité est en danger dans un pays tiers – see more in Madalina Moraru, Protecting (unrepresented) EU citizens in third countries : the intertwining roles of the EU and its Member States (PhD Thesis 2015), available online.

This initiative, under policy options 2A and B and option 3, foresees for an extension of the scope of the Directive, and therefore an additional subsidiarity check is called for in relation to the new elements under the different policy options:

- **Subsidiarity check of the adoption of EU additional soft measures/amending the Directive:** This initiative seeks to improve the effectiveness of EU citizens' right to consular protection, by clarifying certain definitions and procedures currently laid down in the Directive. The Directive requires equal treatment in the provision of consular protection to unrepresented EU citizens (i.e. equal the provision of consular protection to their own nationals). This means the provision of consular protection remains inherently linked to the national laws of Member States in the way they provide consular protection. Nonetheless, the provision of consular protection to unrepresented EU citizens will always require cooperation and coordination with the national authorities of the unrepresented EU citizen, and at times with the local authorities. To ensure the effectiveness of EU citizens' right to consular protection, this coordination and cooperation should be as efficient as possible. With a central role in the implementation of the Directive, the EU would be best placed to further streamline the procedures so these are uniformly implemented across the 27 Member States.
- **Subsidiarity check of coordination and cooperation measures to facilitate consular protection to represented citizens:** Although the provision of consular protection to own nationals is inherently a national competence, the COVID-19 crisis in 2020 has shown that in times of crisis the distinction between represented and unrepresented citizens becomes irrelevant. In this context of crisis situations, the EU would be well placed to play a coordination role, especially with regards to organising the provision of relief and repatriation for both represented and unrepresented EU citizens.
- **Subsidiarity check of additional role in direct provision of assistance to unrepresented citizens:** In countries where no other EU Member State embassy or consulate is present (uncovered countries), the EU Delegations would be well placed to fill this gap. However, in countries where one or more EU Member State is present, the added value of such an additional role is less clear and will depend on the capacity of the diplomatic presence in each third country.
- **Subsidiarity check of additional coordination role in crisis situations:** Fostering EU cooperation to support all EU citizens in need abroad can only be achieved by a coordinated EU intervention. The EU, and in particular the EEAS with its network of EU Delegations around the world and DG ECHO, are well placed to take on such a coordinating role.

4. POLICY OBJECTIVES: WHAT IS TO BE ACHIEVED?

The objectives of an EU policy initiative in this area should be linked to the problem definition set out in section 3. These shortcomings in the functioning of the Directive, identified in section 3.1 as problem areas, relate to:

- **Problem area 1 - Scope:** problems related to the personal and geographical scope of the Directive;
- **Problem area 2 - Accessibility:** problems related to the process of redirecting of citizens, refusals and provision of consular protection under unequal conditions and limited awareness and/or access on legal remedies and redress;
- **Problem area 3 – Coordination, cooperation and communication:** Problems related to the coordination and cooperation between Member States, and between Member States and the EU Delegation (i.e. relating to the role of EU Delegations), as well as information and communication to EU citizens;
- **Problem area 4 - Financial reimbursement:** Problems related to the current reimbursement procedure laid down under Articles 14 and 15 of the Directive.

As such, the overarching General Objective of the policy initiative in this area is to **improve the right to equal consular protection for EU citizens and their family members.**

This General Objective can be broken down into six specific objectives:

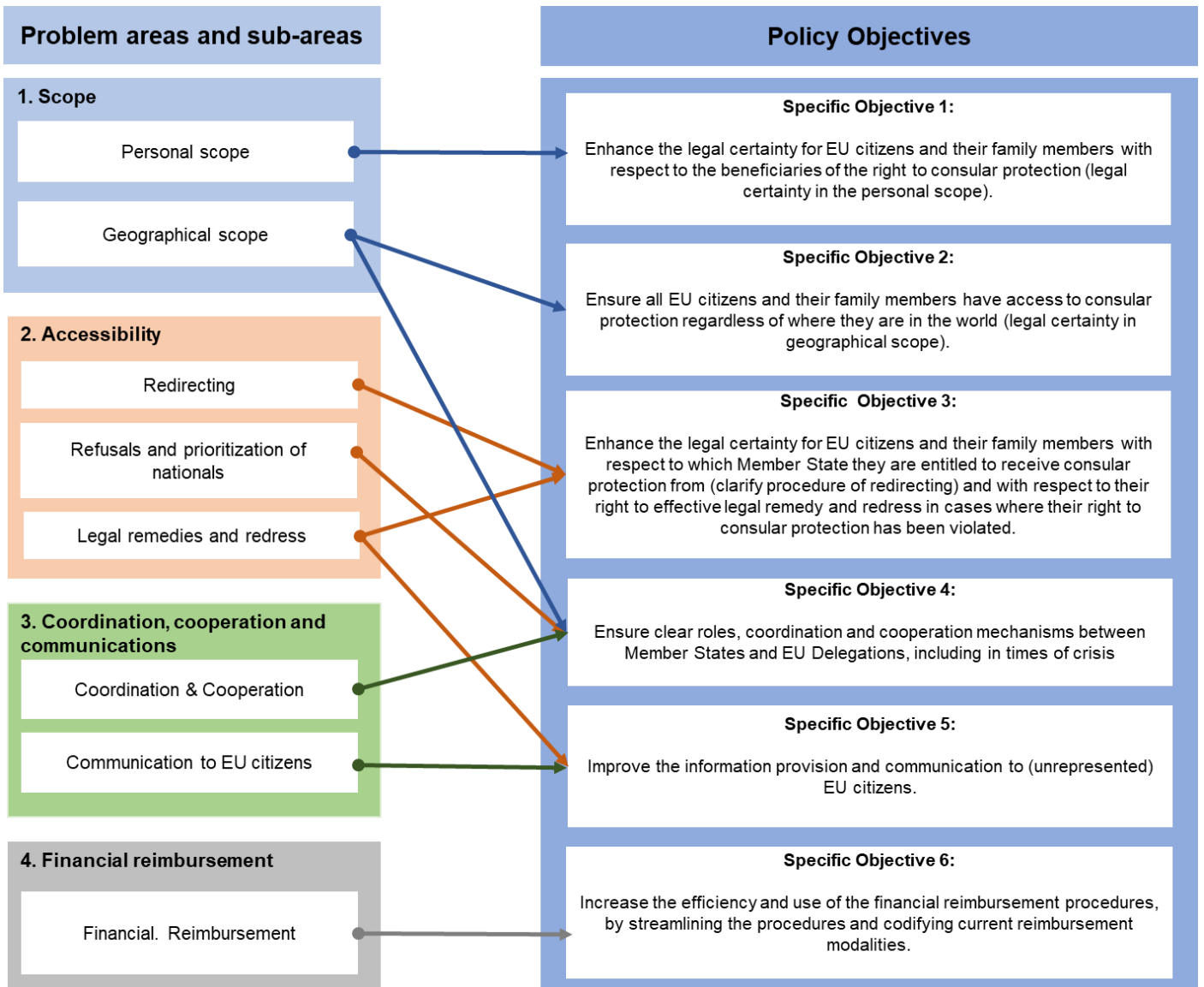
- **Specific Objective 1:** Enhance the legal certainty for EU citizens and their family members with respect to the beneficiaries of the right to consular protection (legal certainty in the personal scope).
- **Specific Objective 2:** Ensure all EU citizens and their family members have access to consular protection regardless of where they are in the world (legal certainty in geographical scope).
- **Specific Objective 3:** Enhance the legal certainty for EU citizens and their family members with respect to which Member State they are entitled to receive consular protection from (clarify procedure of redirecting) and with respect to their right to effective legal remedy and redress in cases where their right to consular protection has been violated.
- **Specific Objective 4:** Ensure clear roles, coordination and cooperation mechanisms between Member States and EU Delegations, including in times of crisis.
- **Specific Objective 5:** Improve the information provision and communication with (unrepresented) EU citizens.
- **Specific Objective 6:** Increase the efficiency and use of the financial reimbursement procedures by streamlining the procedures and codifying current reimbursement modalities.

The figure below shows how each of the objectives follows from one of the problem areas and sub-areas. As can be seen some of the problems are addressed by two different objectives (see also problem trees in Annex XI):

- The problems on the geographical scope described within problem area 1 are addressed by SO 2 and SO 4: the problem that the Directive's scope is limited to third countries, while unrepresented EU citizens also require consular protection within the EU territory calls for the need to ensure that all EU citizens and their family members have access to consular protection regardless of where they are in the world (as per SO 2). While the problem that the Directive is based on the premise that EU Member States are present, while in 21 third countries no Member State has diplomatic presence" is addressed by ensuring clear roles, coordination and cooperation mechanisms between Member States and EU Delegations (as per SO4) in those uncovered countries.
- The problem area on legal remedies and redress is addressed by SO 3 and SO 4, as the problem requires more legal clarity with respect to their right to effective legal remedy and redress in cases where their right to consular protection has been violated (as per SO 3), which is also addressed through improved information provision and communication with (unrepresented) EU citizens (as per SO 4).
- Finally, the problem of "refusals and prioritisation of nationals" is driven by the strained capacity of Member States to provide consular protection in times of crisis (see section 2.1 and problem tree in Annex XI), which

addressed through SO4 by ensuring clear roles, coordination and cooperation mechanisms between Member States and EU Delegations in times of crisis.

Figure 3: Logic of problem definition and policy objectives



5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

This section presents the policy options proposed to address the issues identified in the problem definition.

5.1 OVERVIEW OF OPTIONS AND SUB OPTIONS

This impact assessment considers the following three options:

- **Policy option 1** – soft measures not requiring legal changes to the Directive.
- **Policy option 2A** – legal amendments to the Directive under Articles 20 and 23 TFEU, clarifying the scope, existing procedures for redirecting and access to legal remedies and redress, cooperation, coordination, communication and financial reimbursement, which include both mandatory and **voluntary (opt-in) amendments**. The legal amendments would be supported by a range of soft measures, similar to those proposed under policy option 1.
- **Policy option 2B** – all legal amendments and soft measures foreseen under policy option 2A, with the additional legal amendment to Article 11 of the Directive allowing for the direct provision of consular protection by EU Delegations to unrepresented EU citizens, to be proposed under Article 25 TFEU, as well as limited additional resources for EU Delegations.
- **Policy option 3** - legal amendments to the Directive under Articles 20 and 23 TFEU, and article 25(2) TFEU, clarifying the scope and existing procedures for redirecting, cooperation, coordination, communication and financial reimbursement, mostly on a **mandatory basis**.

These options have been based on the three options presented in the inception impact assessment³¹, and refined in discussion with DG JUST and the EEAS on the basis of the findings in the problem definition and the related policy objectives. A more detailed description of the options can be found in the sub-sections below, showing a breakdown of the measures proposed to address each of the six specific objectives.

5.2 DESCRIPTION POLICY OPTION 1

Policy option 1 include a range of soft measures aiming to achieve the policy objectives, namely:

- The development of guidance documents,
- The sharing of best practises,
- The provision of training, including the organisation of global joint coordination exercises
- Other types of soft measures including:
 - List of existing agreements and arrangements
 - Further exchange of information during LCC meetings
 - Prioritisation of resources to increase the capacity of EU Delegations to provide consular support
 - Updating and strengthening Commission/EEAS communication channels
 - Awareness raising campaign on the right to consular protection for (unrepresented) EU citizens

These measures are proposed to address each of the specific objectives, with the exception of specific objective 2 on the geographical scope which cannot be adequately addressed through soft measures:

- SO1 (personal scope): To address problem area 1.1 on personal scope, the EEAS would develop and share guidance and best practice on the definitions and personal scope of the Directive. Training on the definitions and personal scope of the Directive would also be provided to EU Delegations and national consular staff. Lastly, discussions on unrepresented citizens would be conducted during LCC meetings.
- SO 2 (geographical scope): No measures foreseen under policy option 1.

³¹ European Commission, Inception Impact assessment on Consular Protection – review of EU rules, Ref. Ares(2021)282291 – 13/01/2021

- SO 3 (accessibility): To address problem area 2 on accessibility, DG JUST/ EEAS would make available a **list of all existing bilateral agreements and other practical arrangements** to Member States (MFA and consular staff in third countries) to operationalise Article 7(2) and 7(3) of the Directive. Moreover, the provision of **guidance and training** clarifying the rules on when unrepresented EU citizens can be redirected and how this should be done, would be developed.
- SO 4 (cooperation and coordination): To address problem area 3.1 on cooperation and coordination, the EEAS would develop guidelines and best practices for consular staff and organise global joint coordination exercises. In addition, information sharing would increase through the development of digital tools or the enhancement of functionalities of CoOL. Lastly, through a reprioritisation of resources for EU Delegations, the time spent on consular affairs would increase (offset by a reduction in other activities).
- SO 5 (communication): To address problem area 3.2 on communication, guidelines would be developed on how to contact and inform citizens on their consular rights. In addition, existing communication channels both at the Member States and European level would be updated and strengthened to provide travel advice and information to EU citizens more effectively. Lastly, an EU-wide campaign would be conducted to raise awareness on consular rights and the importance of registering prior to traveling and/or living abroad.
- SO 6 (financial reimbursement): To address problem area 4 on financial reimbursement, soft measures would be introduced in the form of guidelines and training to clarify the process of financial reimbursement.

Annex IX provides a detailed description of the soft measures proposed to address the policy objectives, by type of measures (i.e. guidance, sharing of best practises, training and other type of measure) and by objective.

5.3 DESCRIPTION POLICY OPTION 2A

Policy option 2A involves a range of legal amendments to the Directive under Articles 20 and 23 TFEU, clarifying the scope and existing procedures for redirecting, cooperation, coordination, communication and financial reimbursement, both on a **voluntary (opt-in) and mandatory basis**.

This policy option would be complemented by **soft measures** similar to those presented as part of Option 1 but targeted at supporting the introduction of the legislative measures introduced under option 2A.

(i) Measures proposed under policy option 2 A to address specific objective 1 (personal scope)

- (a) a clarification in the Directive on the personal scope of the Directive explicitly stating that Member States may provide a broader level of protection by applying the Directive to represented citizens. The application of the Directive to represented EU citizens would be voluntary, meaning that Member States could choose to apply this provision with the Directive, similar to the voluntary provision on Honorary Consuls in Article 2 Directive.
- (b) legal amendment to clarify the definition of what it means for an EU citizen to be unrepresented (currently reflected in Article 4 and 6 of the Directive), and in particular the types of situations in which a representation should not be considered “effectively in a position to provide consular protection”. In addition, a “presumption of “unrepresentedness” could be introduced in times of crisis, linked to the urgency of the request for assistance (where it is difficult, or impossible for a Member State to confirm whether a citizen is unrepresented in a timely manner). Finally, the definition could also include a reference to vulnerable citizens in need of consular protection.

These two measures are mutually exclusive to a certain extent: If the Directive covers all represented citizens in crisis situations (as per measure (a)), there is no need for a presumption of “unrepresentedness” in such situations. However measure (a) is voluntary such clarification could still be relevant for those countries not applying the Directive to represented citizens or in situations outside of a crisis.

This policy option would be complemented by **soft measures** similar to those presented as part of Option 1 but targeted at supporting the introduction of the legislative measures introduced under option 2A.

(ii) Measures proposed under policy option 2A to address specific objective 2 (geographical scope)

Policy option 2A would involve a clarification in the Directive on the geographical scope of the Directive spelling out that Member States can provide a higher level of protection, by applying the Directive within the EU territory. The application of the Directive within the EU territory would be voluntary, meaning that Member States could choose to apply this provision with the Directive (opt-in), which would mean their embassies and/or consulates in other EU Member States could provide consular protection to unrepresented citizens (similarly to the voluntary provision on Honorary Consuls). No additional soft measures are foreseen.

(iii) Measures proposed under policy option 2A to address specific objective 3 (accessibility)

- **Legal amendments to the wording of Article 3 and Article 7** to clarify the hierarchy of the provisions to enhance the legal certainty for EU citizens and their family members with respect to which Member State they are entitled to receive consular protection from, which would clarify the procedure of redirecting citizens in respect of bilateral arrangements between Member States). The amendment would ensure that that citizens who are initially redirected but are not provided with the requested assistance from the appointed Member States in the bilateral agreement, are still provided with assistance by the Member State from which assistance was sought initially. This could also include a recital clarifying the new article, which would make more explicit that bilateral agreements are not a precondition for providing assistance.
- **Legal amendments to the wording of Article 7 (2) Directive:**
 - Strengthen the obligation for Member States to notify bilateral and practical arrangements to the Commission and local EU Delegation (in case of local arrangements), including a timeframe in which the notification needs to be made
 - Assign the EEAS or DG JUST with the specific task of disseminating the information on the practical arrangements in place to all EU Member States on the basis of notifications received (as stated in Annex II, currently the Directive does not specify the need for Member States to also have access to this information, nor does it assign this role to a specific EU body). The article could also include a specific timeframe in which the information should be made available by the EU to the other Member States.
- Amendment to the Directive, requiring Member States to provide access under equal conditions **an effective legal remedy and redress** to unrepresented citizens, to ensure unrepresented EU citizens have an avenue to complain and seek legal remedy and redress when their right to consular protection has been violated. Concretely, this would mean adding a provision (similar to Article 31 in the Free Movement Directive³²).
- **Soft measures** similar as those proposed under policy option 1, to complement the legal amendments proposed above, including a list of bilateral agreements and practical arrangements which can be accessed by all EU Member States, and guidance and training for Member States on rules of redirecting under Article 3 and 7 Directive. Information provision to EU citizens on bilateral agreements and redress mechanisms are further described below (section on measures proposed to address SO 5 on communication).

(iv) Measures proposed under policy option 2A to address specific objective 4 (cooperation and coordination)

- **Amendment to Article 11 Directive**, relating to the role of EU Delegations. In detail, it would recognise the **supporting role of EU Delegations** and align it with the Council Decisions setting up the EEAS. Member States would be able to request support from the EU Delegations, in accordance with the third paragraph of Article 35 TEU and Article 5(10) of Council Decision of 26 July 2010, to support them in their role of providing

³² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) - such as "Should an unrepresented citizen be refused assistance by the Member State from whom he or she seeks consular protection, he or she shall be entitled to legal remedies on the same terms as the legislation of the Member State concerned prescribes for its own nationals seeking consular protection".

consular protection to citizens of the Union in third countries (*The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis*). In practice, the Member State of nationality could make a request to the EU Delegation, and the EU Delegation would act in coordination with the Member State in providing consular protection to the unrepresented EU citizen. However, EU Delegations would still not be competent to provide direct assistance to unrepresented EU citizens

- **Amendment to Article 12 Directive:** Local coordination meetings would be chaired or co-chaired by the EU Delegations and another Member State (e.g. where available the Presidency); the provision would also require for unrepresented Member States to be invited to such meetings. Where online meetings are not possible, the co-chairs would ensure up-to-date information is shared with the unrepresented Member States.
- **Amendment to Article 13 Directive:** changing of Lead State concept with division of tasks under Joint Frameworks (JFW). The JFW would see the concept of Lead State in countries covered by Lead States evolve to be covered by concrete tasks defined in JFW among represented Member States and EU Delegations. Specific tasks for EU Delegations could include the making up of the lists of (unrepresented) EU citizens to be repatriated, by collecting this information from unrepresented Member States centrally, and being the key point of contact for the Member States not present on the ground. The Directive would require that JFW would be prepared jointly by EU Delegations and Member States and updated at least annually; the risk assessment would be regularly updated including health risks. It would define the provision of consular protection services to unrepresented EU citizens in both crisis and non-crisis situations. For crisis situations, the Directive would make a specific reference to the global crisis preparedness training exercises. In crisis situations, Member States would be asked to share contact details of registered EU citizens with the EU Delegations to enable crisis communication. The JFW would ensure a single point of contact for unrepresented Member States is put into place and a single point of contact for communication with unrepresented citizens in times of crisis.
- **Amendment of Article 13(2) Directive to include an explicit reference to the possibility to set up Joint Consular Teams**, supported by the Consular Crisis Coordination Centre at EU level. The joint paper developed by the EEAS and the German presidency on the joint EU consular crisis response teams (JCTs)³³, could be taken as a starting point to further develop the concept, taking into account the best practices of the instances where such have been set up on an ad-hoc basis in the past (see Annex II for further information). These could be co-hosted by EU Delegations in unrepresented / low level of representation third countries and will need to be equipped to do so.
- Amendment to the Directive to include an **explicit reference to the applicable personal data protection rules** (e.g. GDPR and Regulation (EU) 2018/1725 the Data Protection Regulation for the EU Institutions hereinafter DPREUI) and set out the conditions for the processing of personal data of unrepresented EU citizens and their non-EU family members seeking consular protection, which is required for the cooperation between Member States and EU Delegations in the implementation of the Directive. This amendment would need to set out an appropriate legal basis, the purposes of the processing of personal data, the categories of data concerned, data retention period, appropriate safeguards, etc. in line with the data protection rules.

In addition, **soft measures** similar to those presented in option 1 would be introduced, in particular information sharing, guidelines and best practices and a global joint coordination exercises, as well as the reprioritisation of resources).

(v) Measures proposed under policy option 2A to address specific objective 5 (communication)

³³ presented to COCON in December 2020

- **Legal amendment of Article 2(2), Article 7(2) and Article 10(4) Directive: to include a requirement for Member States to provide the Commission and the EEAS with information in a certain timeframe and in machine readable format, namely:**
 - a. up-to-date lists of contacts for their consular networks, including honorary consuls if the Member State has chosen to apply Article 2(2) Directive;
 - b. up to date lists of the bilateral and other practical arrangements in place;
 - c. information on the extent to which honorary consuls are competent to provide assistance);
 - d. public up-to-date travel advice;

The Directive would thus make sure that the Commission and EU Delegations responsible for making this data available to EU citizens (as per article 11 of the Directive) receive the relevant information in an aggregated and user-friendly way.

- **Legal amendment to Article 12 of the Directive**, which would require the LCC (including unrepresented Member States) to agree on a **central source of information** which would serve as the primary tool of communication with unrepresented EU citizens in crisis situations in each third country. The channel(s) could either managed by EU Delegations or by a Member State appointed to this role in the JFW.
- **Legal amendment:** Member States would be encouraged to ensure that their citizens have the **possibility to register when travelling or living in countries where they are unrepresented**. Member States would be required that the data provided by the EU citizens can be easily shared (in line with GDPR requirements) with other Member States, EU Delegations and potentially other actors for the purpose of communication and protection to be provided in times of crisis.
- **Soft measures:** Policy option 2A also includes soft measures on communication similar to option 1, namely (i) the sharing of guidelines on how to best communicate information to EU citizens, (ii) the updating of existing communication channels to increase the availability of information in a transparent and accessible manner, and (iii) the implementation of awareness-raising campaigns. In addition, guidance will be provided to Member States on how to best provide access to national mechanisms of redress to unrepresented citizens, to ensure unrepresented EU citizens have an avenue to raise complaints when their right to consular protection has been violated. Guidance would also be provided directly to EU citizens on how to access mechanisms to complain, legal remedies and redress.

(vi) Measures proposed under policy option 2A to address specific objective 6 (financial reimbursement)

- **Legal amendment of Article 14 Directive**, adding the option for unrepresented citizens to pay the assisting Member State directly **either before or after the consular assistance has been provided**.
- **Introduce a revised Standard Form in the Annex** to cover reimbursement both for unrepresented and represented EU citizens alike on the condition that the voluntary extension of the personal scope to represented citizens (as foreseen under option 2A) is adopted. This would be achieved by amending the already existing form in the Annexes of the current Directive.
- **Soft measures** Policy option 2A also includes soft measures on financial reimbursement similar to option 1, including guidelines and training to clarify the process of financial reimbursement.

5.4 DESCRIPTION POLICY OPTION 2B

Option 2B contains the same measures proposed under policy option 2A, with the exception of two elements:

- **Legal amendment to Article 11 Directive:** Article 11 would be amended (under Art 25 TFEU) to empower EU Delegations to provide **direct consular protection** to unrepresented EU citizens upon request by Member States. The primary obligation for providing consular protection on a day-to-day basis would remain with the Member States but EU Delegations would have the power to interact with EU citizens to provide them direct assistance as per Member States requests (e.g. assistance with repatriation notably by issuing travel

emergency documents). The provision of direct consular protection by EU Delegations in crisis situations (e.g. assistance with evacuation of unrepresented EU citizens) could be based either on ad hoc requests of Member States or could be decided in advance by EU and Member States notably as part of their contingency planning (JFW and LCC meetings) and would depend on local needs and resources. In such cases, the type of assistance would be clearly established and communicated ahead of crisis situations. The amendment is accompanied by **limited additional resources** for the EU Delegations, namely an increase in EU Delegation resources of between 0.2 and 0.4 FTE in 76 EU Delegations. More information is provided in Annex X – cost assessment for specific objective 4.

- Soft measures: As limited additional resources are already foreseen under option 2B, the prioritisation of the resources of EU Delegations (as foreseen under option 1 and 2A) is not included in option 2B.

5.5 DESCRIPTION POLICY OPTION 3

Policy option 3 contains **legal amendments to the Directive under Articles 20 and 23 TFEU, and article 25(2) TFEU**, clarifying the scope and existing procedures for redirecting, cooperation, coordination, communication and financial reimbursement, mostly **on a mandatory basis**.

(i) Measures proposed under option 3 to address specific objective 1 (personal scope)

Policy option 3 (personal scope) would extend the personal scope of the Directive, making it **mandatory** for Member States to also provide consular protection to **represented EU citizen in crisis situations**.

(ii) Measures proposed under option 3 to address specific objective 2 (geographical scope)

Policy option 3 would involve the **mandatory extension** of the geographical scope of the Directive to the **EU territory** – through an explicit reference in the Directive requiring Member States to apply the Directive within the EU.

(iii) Measures proposed under option 3 to address specific objective 3 (accessibility)

No measures foreseen.

(iv) Measures proposed under option 3 to address specific objective 4 (cooperation and coordination)

Policy option 3 would involve an amendment to Article 11 Directive to extend the role of EU Delegations: EU Delegations would be able to provide direct consular protection to unrepresented EU citizens without the need for prior Member State request.

It would involve an amendment to Article 12 Directive to the chairing of the local consular cooperation (LCC) meeting. The EU Delegation would chair the local LCC meetings in all countries in crisis and non-crisis situations.

Policy option 3 would involve an amendment to Article 13 Directive to clarify and extend the role and responsibilities of EU Delegations in crisis situations:

Similar to policy option 2A and 2B, under policy option 3, the Lead State concept disappears, and its responsibilities are replaced by concrete tasks defined in JFW among represented Member States and EU Delegations. The JFW also includes a regularly updated risk and health risk assessment and is followed up by a global crisis preparedness training exercise. The key difference with policy option 2A and 2B is that the EU Delegation leads on the drafting of the JFW (with input from with Member States), which is updated at least annually.

In addition, this option would involve an amendment to Article 13(2) Directive, adding an explicit reference to Joint consular teams, supported by the Consular Crisis Coordination Centre at EU level which would mean that the JCTs would be systematically considered in consular crises. The exact scale of the crisis in which this tool would be

activated and which Member States would need to be involved (e.g. what the threshold would be in terms of number of unrepresented citizens living and travelling to a third country) would need to be agreed upon.

The policy option would involve the amendment of Article 13 (4) Directive allowing the UCPM to be activated directly by the EU for crisis situations. However, the feasibility of this option largely depends on whether this would be allowed in the UCPM instrument itself (see further explained under legal feasibility and coherence in section 6.3).

(v) Measures proposed under option 3 to address specific objective 5 (communication)

Under Policy Option 3 the following would be introduced:

-a **common European travel advice** and a system for voluntary prior registration of travellers and expatriates would be provided by EEAS and the Commission at the central level in close coordination with Member States. EU Delegations could take the role of relaying the information to (unrepresented) EU citizens in the relevant countries.

-In crisis situations, there would be a **common EU channel for crisis communication**. Unlike under policy options 2A and 2B where the crisis communication channel is managed either by EU Delegations or by a Member State appointed to this role in the JFW, under policy option 3, the EU at the central level (European Commission and/or EEAS) would be responsible for the crisis communication channel(s).

(vi) Measures proposed under option 3 to address specific objective 6 (financial reimbursement)

An “**EU Consular Protection Fund**” would be set up for EU Delegations and Member States to pay for the costs incurred to provide consular protection to unrepresented EU citizens. The Fund could be financed from the EU budget, and reimbursements would be made directly into the fund by either the assisted citizen or the Member State of nationality, depending on how the reimbursement procedures are revised.

A common IT system linked to the EU Consular Protection Fund would be set up to digitalise the reimbursement procedures.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This section presents the assessment of the policy options by problem area and specific objective.

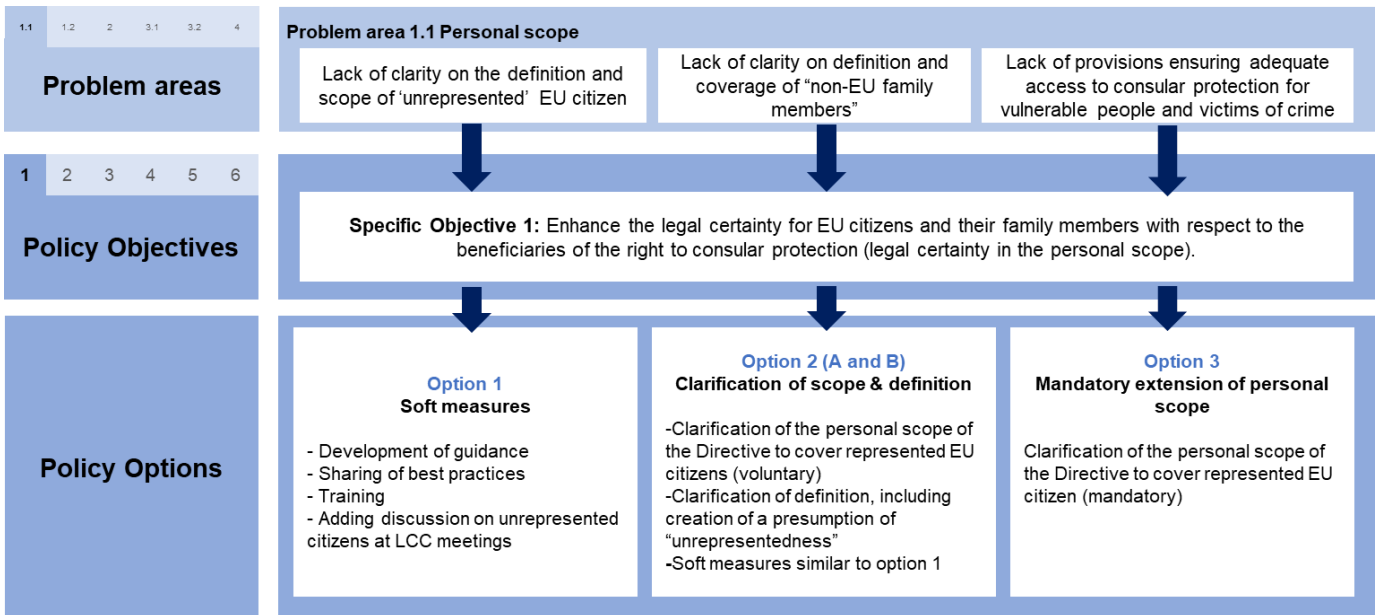
6.1 POLICY OPTION ASSESSMENT - SCOPE (PROBLEM AREA 1/SO 1 AND 2)

This section presents the assessment of the measures proposed which aim to tackle the problems identified under problem area 1 (scope), by first discussing the measures proposed to achieve specific objective 1 (SO1) on the personal scope, following by the assessment of the measures proposed to address specific objective 2 (SO2) on the geographical scope.

Assessment of measures proposed to address SO1 - Personal scope

The figure below provides a summary of the measures proposed under policy option 1, option 2A and 2B and option 3 to address SO 1 and its underlying problems.

Figure 4 Overview of policy options aiming to address specific objective 1 (personal scope)



Policy option 1 – measures addressing personal scope

Effectiveness

Policy option 1 would have a somewhat positive impact (+) on achieving specific objective 1 (see figure above) by fostering a gradual better understanding of the way in which Member States define and interpret the scope of the Directive, in terms of the definition of “unrepresented” and how to best offer protection to vulnerable citizens and victims of crime as well as which non-EU family members are covered in practice. It would further help clarify the situation as regards the types of situations in which a representation is not “effectively in a position to provide consular protection in a given case”, whether this is due to a honorary consul who is not authorised to undertake certain action, a remoteness issue, or because of a temporary closure (due to a bomb/natural disaster). This would support the development of a clearer definition in practice of what is considered an unrepresented EU citizen.

Unrepresented EU citizens would benefit to some extent (+) by the clarification of the existing rules through soft measures. Member States’ authorities (mainly the consular staff) would benefit to some extent through the broadening of their understanding of the issues and the way in which other Member States consider the personal

scope of the Directive, the sharing of best practices and training. However, clarifying rules through soft measures would not fully achieve specific objective 1, as there would still be no legal certainty as to the specific situations in which represented citizens or the types of EU family members that can fall under the Directive.

Feasibility

The option is **technically feasible** (++) given it would not require any additional development beyond the creation and sharing of the best practices, guidelines and training material as it will be integrated into existing Member State training.

Member States consulted during the study were generally of the opinion that the current situation suffices to address the issues identified. The European Parliament is also likely to look favourably upon this option, as the Parliament already proposed in 2012 to include a new recital 22 encouraging the organisation of training courses for consular staff to improve their awareness of the EU citizens right to consular protection³⁴. As such, there would be some support in the introduction of policy option 1 (++) from a **political** point of view.

Given option 1 would not require any changes to the existing Directive, the **legal feasibility** is given a high score (+++)

Costs

The costs of this option would primarily comprise the resources necessary to develop and update the guidelines and best practices, as well as training for consular staff. As such, the costs would be either limited (-) or non-existent (0). A detailed assessment of the costs can be found in the Annex X.

Coherence

Under this option, the main elements of coherence relate to the effective application of the EU Charter of Fundamental Rights. According to recital 33 of the Directive, the Directive should be implemented in accordance with the rights and principles enshrined in the Charter, in particular the principle of non-discrimination, the right to life and integrity of the person, the right to respect for private and family life, the rights of the child, the right of defence and the right to a fair trial. The soft measures foreseen under this option raise awareness of how to provide consular assistance to vulnerable people and victims of crime, and therefore promote an increased adherence to some of these principles. As such, this option is somewhat coherent with other EU instruments. (+)

Policy option 2A (and 2B) – measures addressing personal scope

Effectiveness

The amendment allowing Member States to apply the Directive to represented citizens, as foreseen under option 2A would help achieve specific objective 1 in different ways:

- In crisis situations, the distinction between represented and unrepresented EU citizens can appear artificial, as the immediate need is to provide protection or assistance to citizens at risk. By allowing Member States to provide consular protection to all EU citizens (including represented ones) in crisis situations, Member States will no longer be required to make the additional step of verifying whether the citizens are represented, making the process less time-consuming.
- In non-crisis situations, citizens would have greater certainty to be covered in case of need for protection.

³⁴ Opinion of the Committee on Legal Affairs (12.7.2012) for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS))

- The option codifies existing practise, thereby improving legal certainty. The majority of Member States (16) also confirmed to already provide consular protection to represented citizens in times of crisis with some level of frequency.
- The option would also allow Member States to seek financial reimbursement for the represented EU citizens repatriated in times of crisis, which is currently not possible under the current Directive.

However the following challenges and limitations could be foreseen to the implementation of the option, which could impact negatively to the achievement of specific objective 1:

- The voluntary nature of the provision could lead to an asymmetric personal scope (where in some cases represented citizens are covered and in others not), which could arguably further increase legal uncertainty, rather than providing the legal clarification that ought to be achieved under the objective. The voluntary nature of the proposed provision would mean that theoretically a Member State not opting into the provision could be asked to reimburse the cost of the repatriation of its (represented) citizens. The assisting Member State could be faced with opposition from the Member State of nationality, especially if the type of protection would otherwise not have been provided by the Member State of nationality.
- Time gained in not having to check whether the citizen seeking assistance is in fact unrepresented, may be lost again by having to liaise with the Member State of nationality under Article 3 Directive.

This option would also help achieve specific objective 1 by amending Article 4 and 6 to clarify the definition of what it means for an EU citizen to be unrepresented, and in particular the types of situations in which a representation should not be considered “effectively in a position to provide consular protection”. legal certainty would increase for EU citizens. In addition, by creating a presumption of “unrepresentedness”, this option would codify existing practises reported by Member States during crisis situations, thus improving legal certainty and the provision of consular protection to de facto unrepresented EU citizens.

However the following challenges and limitations could be foreseen to the implementation of the option, which could impact negatively to the achievement of specific objective 1:

- As per recital 8 of the current Directive “The notion of absence of representation should be interpreted with a view to ensuring the effectiveness of the right of unrepresented citizens to be protected by another Member State's embassy or consulate in a non-discriminatory way, taking into account the circumstances of each particular case. It is unlikely that the text of the definition itself would be able to cover every possible situation and room for manoeuvre to assess each situation on a case by case basis will remain important. It is therefore important to complement the legislative measures introduced with soft measures such as guidance, training and best practises).
- If a presumption of “unrepresentedness” would be implemented, it is likely that situations will arise where it is established later on that the EU citizen that was provided with consular assistance during the crisis, was in fact not entitled to protection because he/she is considered represented. This could lead to problematic situations when the assisting Member State requests financial reimbursement, depending on the nature of the presumption of “unrepresentedness”.

Finally, this option addresses the need to streamline assistance to vulnerable people and victims of crime through the proposed soft measures foreseen under option 2A (similar to those proposed under option 1).

On this basis, option 2A would have a positive impact on the achievement of specific objective 1 (+).

Feasibility

Policy option 2A would be **technically feasible**. Experience has proven that the distinction between represented and unrepresented citizens does not appear to be of much importance for Member States when providing consular protection in crisis situations. The majority of Member States (16) also confirmed to already provide consular protection to represented citizens in times of crisis with some level of frequency. However, at least 8 Member States

have never provided consular assistance to represented citizens and it is unclear whether they would have the capacity to take on these additional cases. Moreover, Member States with a developed consular network, or those perceived to provide a better level of service could run the risk of having to deal with a much larger number of requests from unrepresented EU citizens. This risk is mitigated by the fact that the number of requests is currently very low³⁵ and that due to the voluntary nature of the extension of the scope those Member States could choose to opt out of the provision. As such the overall technical feasibility of these measures of option 2A is (+). The soft measures supporting Option 2(A and B) would be feasible (++).

In terms of the **political feasibility** of this package of measures proposed under policy option **2A** a small majority of Member States (13 in favour and 9 against, the latter including mostly countries with a large consular network) expressed themselves in favour of a change in the Directive allowing for the provision of consular protection to represented citizens. However, those in favour only mentioned specific crisis situations, including:

- Large scale crisis situations - the COVID-19 repatriation exercise showed that there was a need for Member States to coordinate the provision of consular protection to represented citizens as the distinction was not made. For example, repatriation flights arranged by Member States accepted all EU citizens, not only unrepresented ones.
- Crisis situations where some Member States' diplomatic presence was affected: This appears to have happened in the aftermath of the Beirut port explosion in 2020 which damaged a number of Member States' embassies.

At the same time, those against extending the scope to cover the provision of consular protection to represented citizens in crisis situations argued that the COVID-19 repatriation exercises showed that the current legal framework works well as it is and that there is no need to extend the scope of the Directive. Another important reason mentioned, especially for Member States with a large consular presence, is that consular protection is a national competence, questioning the legal basis for such an extension of the personal scope of the Directive.

Moreover, while most stakeholders are content with the current wording of the definition in Article 4 and 6 of the Directive, there appears to be agreement that further clarification would be helpful. However, there is uncertainty at the level of support for the codification of a "presumption of unrepresentedness". Similar to option 1, no issues are foreseen in terms of the political feasibility of the soft measures proposed under option 2A.

Due to the lack of or limited political support of some Member States for some of the legal amendments proposed under this option, the **political feasibility** of this package of measures proposed under option 2A is assessed as slightly negative (-)

In terms of **legal feasibility**, the first element of Option 2A would open the possibility for the Commission to propose this option within the Directive's current legal basis of Article 23(2) TFEU. The ETD Directive, which has been adopted under Article 23(2) TFEU, also includes such an optional provision: Recital 9³⁶ and Article 7(1)(c) of the ETD Directive states that Member States can decide to provide ETDs to represented citizens "where arrangements between the relevant Member States exist to that effect".

³⁵Of the 15 Member States that confirmed that they had provided consular protection to represented citizens in crisis situations since 2018, 10 Member States stated that such requests were rare, accounting to less than 10% of all consular protection provided to EU citizens of other Member States in crisis. In addition, one Member State confirmed that, although it was not possible to calculate how many represented EU citizens have benefited from such flights, it had occurred at least three times during the first half of 2020 (Wuhan, Diamond Princess cruise ship and Uruguay). Only 4 Member States stated they have received a moderate amount of requests from represented EU citizens, amounting to 10-25% of all consular protection provided to EU citizens of other Member States. Six Member States confirmed to have never provided consular protection to represented citizens in crisis situation. The remaining Member State provided no answer to this question.

³⁶ Recital 9 states that " In addition to issuing EU ETDs to unrepresented citizens in third countries, this Directive should not preclude Member States from issuing EU ETDs in other situations, taking into account national law and practice. Member States should also be able to issue EU ETDs [...] to citizens of another Member State which is represented in the country where they seek to obtain an EU ETD. When doing so, Member States should take the necessary measures in order to prevent abuse and fraud. However, Member States might also decide not to issue EU ETDs in such situations.

Clarifying the definition of what constitutes an unrepresented EU citizen, could also be made within the Directive's current legal basis of Article 23(2) TFEU, as similar clarification is already provided in recital 9 of the Directive. This package of measures proposed under option 2A is therefore assessed to be legally feasible (++).

Costs

The costs applicable to the legislative elements of policy option 2A are negligible. While Member States perceived to provide a better level of service could run the risk of having to deal with a much larger number of requests from EU citizens, this is already the case in the current situation and as part of the baseline scenario. The research undertaken as part of this study has highlighted how in crisis situations, the distinction between represented and unrepresented citizens does not appear to make a difference. Member States did not provide specific data on the number of represented citizens provided with consular protection in crisis situations, however the frequency generally appears to be low (see footnote 38 above). The cost related to the potential additional number of *de facto* unrepresented citizens to be assisted due to the clarified definition and presumption of "unrepresentedness" is also expected to be low. As such, we expect the extension of the scope of the Directive to all EU citizens not to have a significant cost, even when considering the cost of the soft measures which will be similar to those of proposed under policy option 1(-).

Coherence

Under option 2A the Directive would be more aligned with Article 7(1)(c) of the ETD Directive which already allows Member States to provide this type of protection to represented citizens of another Member State "where arrangements between the relevant Member States exist to that effect". In addition, the soft measures foreseen under option 2A also have a positive impact on coherence (see explanation under option 1). As such, it would have a somewhat positive impact on coherence (+).

Policy option 3 – measures addressing personal scope

Effectiveness

The measures proposed under policy option 3 would have a positive impact on achieving specific objective 1 (++) . By making the extension of the personal scope of the Directive to represented citizens in crisis situations mandatory, it would provide an increased level of legal certainty and effectiveness of protection as all EU citizens would be able to access consular protection in crisis situations. However as the option would have no impact in non-crisis situations, and does not provide clarity on the definition, and the issue of non-EU family members and vulnerable citizens, this option is not considered to have a very positive impact on achieving specific objective 1.

Feasibility

Similar to policy option 2, the option's **technical feasibility** is high (+), as the majority of Member States (16) confirmed to already provide consular protection to represented citizens in times of crisis in some level of frequency. However, at least 8 Member States have never provided consular assistance to represented citizens and it is unclear whether they would have the capacity to take on these additional cases. Although the number of requests of represented citizens seems to have been low since the Directive came into force³⁷. This could change as citizens become aware that they are entitled to go to any Member State of their choosing, even if represented. As a result, Member States with a developed consular network, or those perceived to provide a better level of service could run

³⁷ 10 Member States that confirmed that they had provided consular protection to represented citizens since 2018, stated that such requests were rare, accounting to 0% of all consular protection provided to EU citizens of other Member States in crisis. Only 4 Member States stated they have received a moderate amount of requests from represented EU citizens in times of crisis, amounting to 10-25% of all consular protection provided to EU citizens of other Member States.

the risk of having to deal with a much larger number of requests from represented EU citizens. This risk is mitigated by the fact that the number of requests is still expected to be relatively low.

In terms of **political feasibility**, the mandatory application of the policy option was met with opposition by Member States' representatives consulted. Some Member States highlighted that the option would clash with national competences in terms of consular protection. As such the political feasibility of the option is very low (---).

In terms of **legal feasibility** - The boilerplate extension of the scope of the Directive to represented EU citizens (as proposed under this option) would clearly go beyond the provisions set out in Art 20(2)(c) TFEU (see further explained in section 4.1)). The right to consular protection as reflected in the TFEU is currently limited to unrepresented citizens.³⁸ Article 23 TFEU is viewed to apply only where a Member State is not present. According to the wording of the Directive, lack of presence should be interpreted as a *de facto* impossibility to provide for consular assistance, due to, for instance, one of the circumstances enumerated in recital 8 (the list is non-exhaustive), which related to lack of geographical proximity. Taking into account the wording of the Directive, commentary has considered factual impossibilities such as geography, inexistence of a functioning representation, timely access, or technological deficiencies as equivalent with being unrepresented. However, mere factual or supposed deficiencies in the provision of consular protection are, generally, not considered sufficient. The Directive itself clearly echoes this view by covering represented EU citizens that are *de facto* unrepresented through Article 6 of the Directive.

As this policy option cannot be proposed under the existing legal basis of Article 23(2) TFEU, the option would need to be proposed using the passerelle clause under Article 25 TFEU to strengthen or add to the existing right of consular protection. This would require a unanimity decision by the Member States. It would therefore not be possible to address this issue simultaneously with other proposed legal amendments under this revision. On this basis, the **legal feasibility** of option 3 is considered to be very low (---).

Costs

The costs applicable to the measures proposed under policy option 3 are negligible. For the same reasons as for policy option 2A the extension of the scope of the Directive to all EU citizens would not have a significant cost for Member States, even though it is difficult to quantify it (-). This would only change marginally given the mandatory nature of this option.

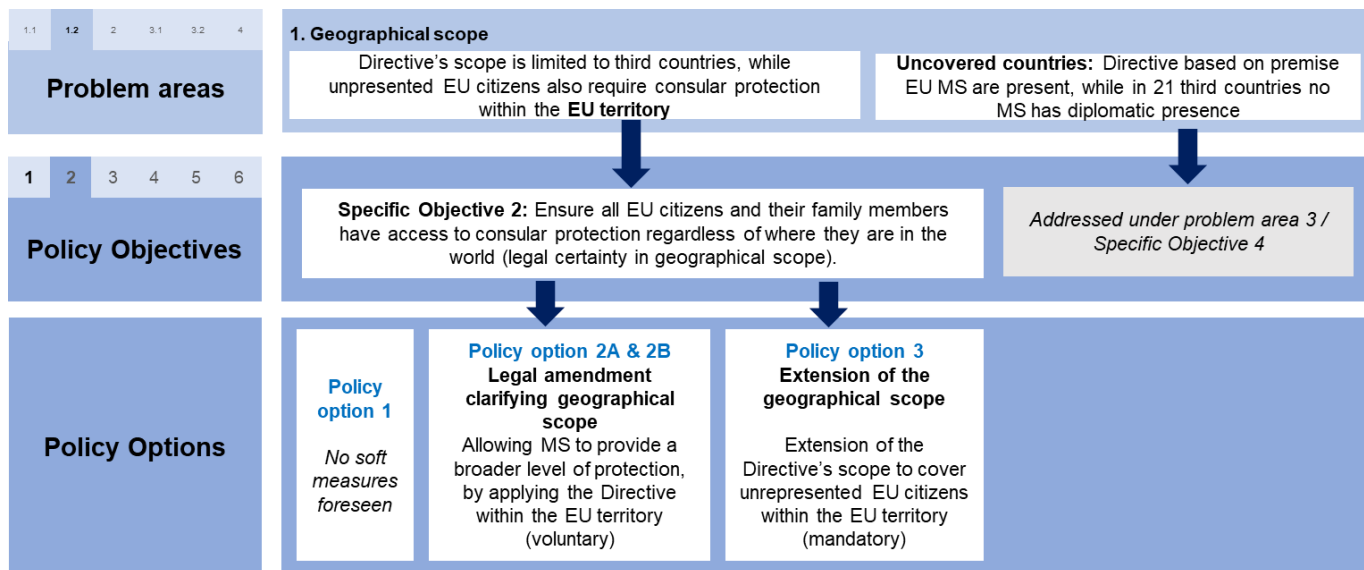
Coherence

Similar to option 2A and B, Option 3 would have a somewhat positive impact on coherence (+).

Policy options for specific objective 2 (geographical scope)

As can be seen in the table below, there are no options put forward to address specific objective 2 under policy option 1, hence the section only includes the measures proposed under policy option 2A and 2B and option 3.

Figure 5: Overview of policy options aiming to address specific objective 2 (geographical scope)



The problems listed under problem area 1 (geographical scope) on “uncovered countries” are addressed through policy objective 4. The policy options corresponding to policy objective 4 are discussed in section 5.4 (coordination and cooperation). These include the legal amendments to Article 11 on the role of EU Delegations to provide consular protection to unrepresented EU citizens.

Policy option 2A & 2B (legal amendments to geographical scope)

Effectiveness

Policy option 2A and B would help achieve specific objective 2 as follows: by allowing for the voluntary extension of the Directive to the EU territory (in crisis and non-crisis situations), the Directive would provide an avenue for the estimated 25,000 unrepresented EU-27 citizens residing in other EU countries and 2.6 million EU-27 unrepresented travellers to other EU countries to request consular protection. However the option does still allow Member States to not to opt-into providing assistance to unrepresented EU citizens living and travelling within the EU. Therefore, the option is considered to have a somewhat positive impact to the achievement of specific objective 2 (+).

Feasibility

The **technical feasibility** of policy option 2A and B depends on the capacity of the EU Member States’ representations (embassies and consulates) within the EU territory to provide consular assistance to an additional group of 2.6 million unrepresented EU citizens that travel to other EU countries annually. The majority of Member States (18 out of 26 who provided an answer) confirmed that they already provide consular protection to unrepresented citizens within the EU on the basis of solidarity, in the same way they do in third countries. This means that although most Member States’ representations are already well equipped to provide consular protection, some Member States may need additional resources to deal with the additional cases. However, these Member States could decide not to opt-in to this provision. In addition, if the entire Directive were to be updated to reflect the extension in scope, this would also mean the Commission representations would need to take up a consular coordination role similar to that of the EU Delegations in third countries under Article 11 Directive, which it currently has no experience with. Therefore, this option is considered to be somewhat feasible (+).

In terms of the **political feasibility**, a minority of Member States (9 in favour, 13 against, 1 maybe and 3 N/A) see the need for the extension of the Directive’s scope to the EU territory, allowing them to provide consular protection to unrepresented citizens within the EU, therefore being in favour of policy option 2A and 2B. Those in favour mentioned that it was probably already happening in practice and would therefore not be a big change and that it

would be a positive step; especially for delivering ETDs. On the other hand, Member States opposed to extending the geographical scope argued that the freedom of movement in the EU rendered such a change unnecessary. They stated that such assistance was already being provided on the basis of solidarity under EU law. Some Member States argued that it was the role of the host Member State to provide assistance, also noting the political sensitivity of getting EU Member State 1 intervene “against” EU Member State 2, on behalf of a citizen of another EU Member State 3. A few Member States also highlighted that additional resources would be needed if the geographical scope were extended. A few Member States also added that as they were represented in every Member State, this option would not benefit them. Some Member States, regardless of their opinion pointed out that nothing prevents Member States from providing consular protection to unrepresented citizens within the EU under the current legal framework. Examples include cooperation between the Baltic states as well as the Belgian consular office providing assistance to citizens of Luxembourg where they are unrepresented in the EU. Given most Member States expressed opposition to the option, or to a more limited extent (allowing for provision of ETD’s only), this option’s **political feasibility** is assessed as somewhat low (-).

An extension of the scope of the Directive to the EU territory, would clearly go beyond the provisions set out in Art 20(2)(c) TFEU, as the article confers a right to all EU citizens who are located in a third country where their Member State of nationality is not represented. However adding a provision in the Directive allowing Member States to opt to apply the Directive more extensively within the EU territory on a voluntary basis, could open the possibility for the Commission to propose this option in accordance with Art. 23 TFEU. For example, the ETD Directive also includes such an optional provision allowing Member States to provide this type of consular assistance within the EU territory (see Article 7(1)(b) ETD Directive), Therefore, we assess the **legal feasibility** of this option as somewhat feasible (+).

Costs

The costs under this option are considered to be somewhat high (-):

Coherence

Option 2A and 2B would have a somewhat positive impact on coherence (+), as the Directive would be more aligned with Article 7(1)(b) of the ETD Directive which already allows Member States to provide this type of optional protection to unrepresented citizens within the EU territory.

Policy option 3. (Legal amendment for mandatory extension to geographical scope)

Effectiveness

Policy option 3 would help achieve specific objective 2, in that it ensures EU citizens are also entitled to consular protection when travelling or living in other EU countries. Moreover, this option increases legal certainty to a larger extent than policy option 2, as the provision of consular protection to unrepresented EU citizens within the EU is mandatory. Therefore the option is considered to have a positive impact on achieving the specific objective (++).

Feasibility

Similarly to policy option 2A and 2B, the **technical feasibility** of policy option 3 depends on the capacity of the EU Member States’ representations within the EU territory and the Commission representations. However, in contrast to option 2, Member States who currently do not provide consular protection to unrepresented citizens within the EU and do not have additional capacity to do so will not have the possibility to opt out of this new provision. Therefore, the feasibility of this option is considered to be somewhat low (-).

In a similar line to policy option 2A and 2B, the **political feasibility** of option 3 is assessed as very low (--), given most Member States opposed to the option. Nine Member States opposed the mandatory extension of the Directive to the EU territory, 5 Member States were positive, 2 Member States saw benefits and 10 Member States did not provide an answer. Of these 10 Member States, 5 opposed to the voluntary extension of the scope under policy

option 2, so it can be assumed these Member States would also oppose to a mandatory extension of the Directive. Reasons for opposing the policy option varied from limited capacity, a lack of legal basis in the treaties, to not seeing the need for it.

The mandatory extension of the scope of the Directive to the EU territory would clearly go beyond the provisions set out in Art 20(2)(c) TFEU, as the article confers a right to all EU citizens in third countries only. The Commission could try to propose this option under Art. 25(2) TFEU. However, this would require a change to the legal basis of the Directive, making the **legal feasibility** moderately negative (--).

Costs

Similarly to policy option 2, the cost of option 3 to Member States is considered to be somewhat high (-).

Coherence

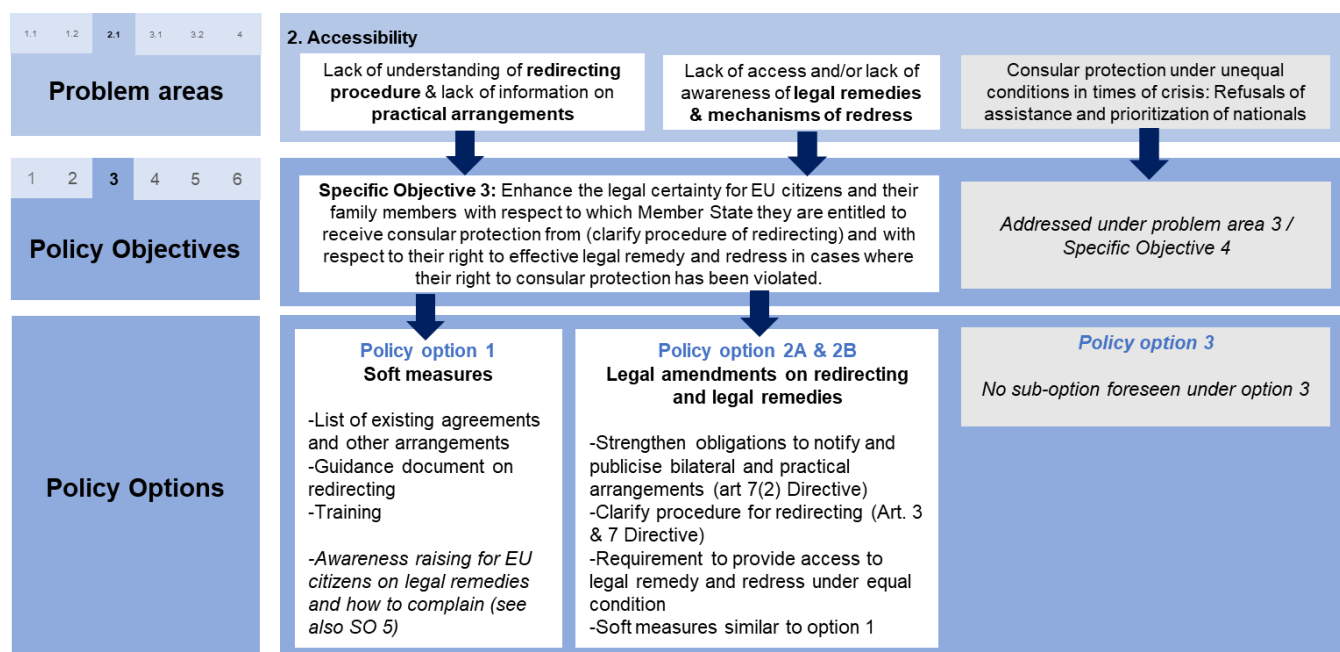
Option 3 would have a somewhat positive impact on coherence (+), as the Directive would be more aligned with Article 7(1)(b) of the ETD Directive which already allows Member States to provide this type of optional protection to unrepresented citizens within the EU territory

6.2 POLICY OPTION ASSESSMENT - ACCESSIBILITY (PROBLEM AREA 2/ SO 3)

This section presents the findings of the assessment of the measures proposed under policy option 1, 2A, 2B and option 3 addressing specific objective 3 (SO3) on accessibility.

The figure below provides a summary of the measures proposed under policy option 1, option 2A and 2B and option 3 to address SO 3 and its underlying problems.

Figure 6: Overview of policy options aiming to address policy objective 3 (accessibility)



Policy option 1 (Soft measures on redirecting)

Effectiveness

Policy option 1 would help to achieve specific objective 3 to a large extent (+++) by fostering a common understanding among Member States on when and how they are allowed to redirect EU citizens to other EU Member States in practice. Measures on information provision to EU citizens directly, including on bilateral agreements and how to access mechanisms of redress, is also proposed under policy option 1, and this is covered under the policy options proposed to address policy objective 5, in section 5.4 on communication.

Feasibility

The option's **technical feasibility** is high (++) given it would only require the creation of guidelines and the organisation of training activities, and the sharing of a list of current bilateral agreements and practical arrangements. Some effort might also be needed to ensure that the Member States share an up-to-date picture of the agreements they have in place (especially since some Member States already highlighted this information is not available centrally at the level of the capitals).

Seeing the original policy options did not include specific measures in the field of redirecting, Member States were not consulted about this policy sub-option. However, seeing overall Member States were generally in favour of receiving further guidance and training on the application of the Directive, we expect that there would be support in the introduction of this option 1 from a **political** point of view (++).

Given Option 1 would not require any changes to the Directive, the **legal feasibility** of the option can be rated as highly feasible (+++).

Costs

The cost of the proposed soft measures on redirecting are considered to be limited (0), see for further details section 9.2.3 in Annex X.

Coherence

The guidance and training foreseen under this option do not need to be aligned to any already existing guidance or training materials, as these do not exist for the Consular Protection Directive (0).

Policy option 2A and 2B (Legal amendment to Article 3 and 7)

Effectiveness

Policy option 2A & B would have a positive impact on achieving specific objective 3 to a large extent (+++), as it would improve legal certainty for EU citizens and Member States by clarifying the procedures for redirecting, including on the hierarchy between Article 3 and Article 7, and would address the misconception among some Member States that bilateral agreements are a precondition to providing assistance to unrepresented citizens. Moreover the option will ensure up to date information on what bilateral agreements and other arrangements in place are available for Member States (and EU citizens). Finally, the option will require the assisting Member States to provide access to unrepresented citizens to redress mechanisms in cases where their right to consular protection has been violated. This legal amendment, in combination with the soft measures foreseen on communication (information provision and awareness raising to EU citizens on the available redress mechanisms) should increase legal certainty for unrepresented EU citizens in accessing their right to redress (see further described under section 5.4).

Feasibility

The option's **technical feasibility** is high (++) as the proposed policy option does not foresee any additional responsibilities or actions beyond the linguistic changes in the provisions of the Directive, as the provision of information on bilateral agreements and practical arrangements was already required by the existing Directive. Moreover, this option does not add any new requirements to EU Member States as this option merely reinforces the right of EU citizens to a legal remedy and redress under the Charter, by explicitly adding it to the text of the Directive.

Seeing the original policy options did not include a specific measure in the field of redirecting, Member States were not consulted about this policy sub-option. However, seeing the legal amendments foreseen under this option do not

change the meaning of the existing Consular Protection Directive significantly, the **political feasibility** of this option is considered to be high (++).

Given the amendments to the Directive foreseen under Option 2A and B would not change the meaning of the Directive significantly but merely seek to clarify existing provisions based on existent EU primary a law provisions (Art 47 EU Charter), the option can be proposed under the existing legal basis of Article 23 (2) TFEU. The legal feasibility of the option can therefore be rated as “feasible” (++)

Costs

No significant costs are made in implementing this option (0).

Coherence

The legal amendments foreseen under this option do not change the meaning of the existing Consular Protection Directive, and therefore do not bear an impact on the Directive’s coherence (0).

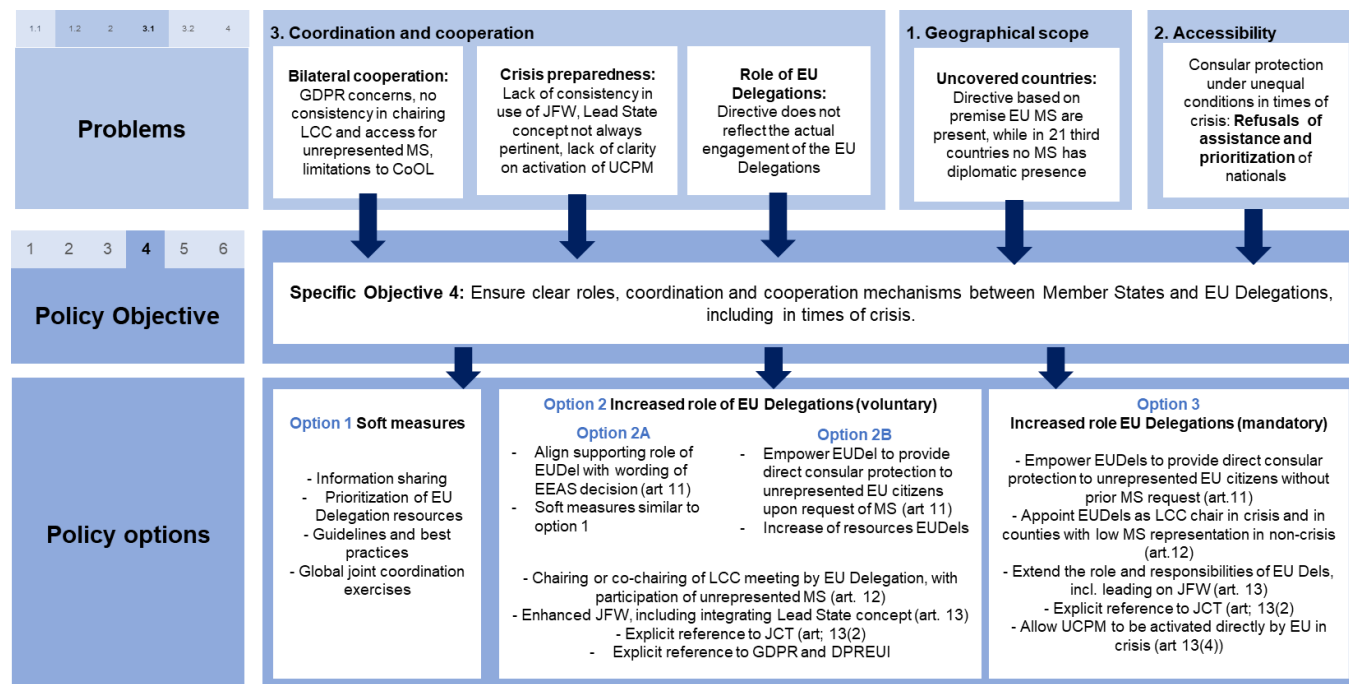
6.3 POLICY OPTION ASSESSMENT - COORDINATION, COOPERATION AND COMMUNICATION (PROBLEM AREA 3/ SO 4 AND 5))

This section presents the assessment of the measures proposed which aim to tackle the problems identified under problem area 3 (coordination, cooperation and communication), by first discussing the measures proposed to achieve **specific objective 4 (SO4) on cooperation and coordination**, following by the assessment of the measures proposed to address **specific objective 5 (SO5) on communication**.

Assessment of measures proposed to address SO4 (cooperation and coordination)

The figure below provides a summary of the measures proposed under policy option 1, option 2A, option 2B and option 3 to address SO 4 and its underlying problems.

Figure 7: Overview of policy options overview addressing policy objective 4 (cooperation)



Policy option 1 – measures addressing coordination and cooperation

Effectiveness

The information sharing would have a somewhat positive impact (+) on achieving specific objective 4 (see figure above) by developing a better sharing of up-to-date information about the presence and extent of the consular presence of Member States and EU Delegations. Furthermore, the development of online collaboration mechanisms (or improvement of the current one – CoOL) would also be beneficial in fostering effective cooperation amongst Member States' consular networks providing consular protection to unrepresented citizens.

The reprioritisation of EU Delegations resources towards consular activities would have a positive impact on achieving specific objective 4 (++). The increase in EU Delegations' capacity to provide consular support and the gradual development of the skills of EU Delegations would strengthen their ability to support Member States and provide consular protection. The strengthening of the position of consular correspondents, ensuring the role is accompanied in practice with a number of key tasks and activities would increase the EU Delegations' capacity to support Member States'.

The guidelines and best practices would have a somewhat positive impact on achieving specific objective 4 (+) by developing **guidelines and best practice guides** for consular staff on the cooperation required for the provision of consular protection to unrepresented EU citizens based on the practical experience of the COVID-19. These guidelines would continue to be developed and shared on a regular basis and would achieve the same positive effect as the large scale 'lessons learnt' process which took place in COCON as a result of the COVID pandemic. This option would ensure that all relevant experiences are shared and help iron out some of the difficulties experienced during the COVID-19 crisis in 2020.

Formalising the existence of Global Joint Coordination Exercise would be effective in ensuring all actors involved in a real-life crisis are aware of their role and have a clear understanding of the challenges they may face in coordinating with other entities and organisations and how to address them. These exercises allow for the training and preparation of consular staff, and EU Delegations for crisis situations in a very practical way. It would also have the benefit of involving Member States' representatives who are not present in the country (either other regional embassies and consular offices or centrally). This would allow for the early identification of any issues and help ensure all stakeholders are aware of the problems that may arise in crisis situations. However the option does not go as far as codifying the requirement for such exercises in the Directive. As such this option would have a somewhat positive impact on achieving specific objective 4 (+).

Feasibility

The **technical feasibility** of most of the soft measures proposed is high (++) given it would not require any additional development beyond the creation and sharing of the best practices, guidelines, and the development of the joint coordination exercises. Tools in place such as CoOL could be used to and would therefore not be difficult to implement from a technical point of view. The technical feasibility for the proposed reprioritised resources for the EU Delegations is rated as somewhat feasible; although the prioritisation of consular affairs over other activities undertaken on the EU Delegations can be difficult, the actual amount of time this would require in practice is not excessive (i.e. it would only require some effort on the part of the EEAS) (+).

Member States consulted during the study were generally of the opinion that the current situation suffices to address the issues identified. Moreover, the European Parliament is also expected to consider Option 1 SO4 (article 12)

particularly favourably: In its opinion of 2012³⁹ it made a reference to Article 5(1) of the EEAS Decision⁴⁰ which states that “EU delegations shall, upon request by Member States, support them in their role of providing protection to EU citizens in third countries on a funding-neutral basis”, pointing to the need to take a close look at “the financial arrangements needed for allowing the EU delegations to play their full role in the mechanisms put in place to ensure consular protection to unrepresented EU citizens., and proposing for the Directive to serve as a legal basis for the line 19-06-06 (consular protection) of the EU budget, in order to provide the Union with the necessary financial means for fulfilling these tasks through its delegations. As such, there would be support in the introduction of Option 1 SO4 (article 11) (++) from a **political** point of view for all policy options presented above.

The policy options would not require any changes to the existing Directive, hence the **legal feasibility** of the option is very high (+++).

Costs

The costs relating to the measures proposed under option 1 are limited (-) or non existent (0). These are detailed in the annex.

Coherence

Option 1 would not have an impact on coherence (0).

Policy option 2A – measures addressing coordination and cooperation

Effectiveness

Policy Option 2A (amendment to art. 11) would have the benefit of increasing, to some extent, legal certainty for EU Delegations and unrepresented EU citizens by aligning the role of the EU Delegations as defined in the Directive to their mandate of the Delegations in the EEAS Decision. This option would be effective to help with any problems of capacity on the side of the EU Member States which are usually faced in times of crisis, as the EU Delegations could alleviate some of the pressures faced by the Member States, especially in countries with a low level of representation. The soft measure proposed under option 2A, of prioritising EU Delegations resources would only strengthen the effectiveness of this option. In addition, and according to the latest Eurobarometer⁴¹, the respondents agreed that, if they were in a country outside the EU where their Member State of nationality was not represented, they would like to seek support from an EU Delegation instead. However, EU Delegations would still not be competent to provide direct assistance to unrepresented EU citizens. As such, it would only have a somewhat positive impact on achieving specific objective 4 (+).

Policy option 2A (amendment to art. 12) on the LCCs would have a somewhat positive impact on achieving specific objective 4 (+). Having EU Delegations co-chair local coordination meetings would increase the consistency of the meetings and their continuity. It would also ensure that the EU Delegations can increase and strengthen their coordination role. Moreover, better integration of unrepresented Member States into the meetings and sharing information about these meetings will foster further cooperation.

Policy option 2A (Amendment to art. 13) would be effective to some extent (++). In many third countries, EU Delegations are already taken a lead role in the development of the JFW in practice, especially in the wake of the COVID-19 crisis. Furthermore, by taking this role, and having it overseen by the EEAS, the regular updating of the JFW would be streamlined. The integration of the duties and concepts of Lead States into the JFW would be effective

³⁹ European Parliament, opinion of the Committee on Foreign Affairs (4.9.2012) for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS))

⁴⁰ Council Decision establishing the organisation and functioning of the European External Action Service (EEAS)

⁴¹ Flash Eurobarometer 485: EU Citizenship and Democracy; February/March 2020; https://data.europa.eu/data/datasets/s2260_485_eng?locale=en.

in providing some level of coherence across the different territories. Currently some Member States are of the opinion that some Lead States have too many responsibilities looking after their own citizens during a crisis to effectively play the role of Lead State. In other cases, one Member State felt that they have to play this role in crisis situations in practice due to the size of their consular presence. Finally, given the concept of Lead State varies between countries and regions in terms of what the role entails in practice, and there is little consistency in practice, its replacement would go some way towards achieving specific objective 4. In addition, the codification of regular global consular crisis preparedness exercises as foreseen under this policy option will ensure such exercises are carried out systematically.

Policy option 2A (amendment to art. 13(2)) would maximise guarantees for efficient crisis management in the field particularly in complex crises or in situations where the consular footprint of a Member State is limited or absent. Additionally, the JCTs concept brings valuable synergies for optimising Member States' consular response in crises. The example of the COVID-19 Task force demonstrated the advantage of using JCTs to identify common issues and third countries of concern which in turn would also encourage bilateral communication. Issues for consideration when developing the concept of JCTs include the division of responsibilities of team members, the chain of command, and human resources constraints that some Member States may face when appointing staff to the Consular Response Teams. Overall however, the voluntary setting up of JCTs would be effective to some extent (++) in achieving specific objective 4.

Policy option 2A (explicit reference to GDPR and DPREUI) would be a necessary pre-condition to allow for the exchange of information on unrepresented EU citizens which is foreseen under the Directive, by setting clear conditions for the processing of personal data. For example, the provisions would provide a legal basis and appropriate safeguards for the processing, clarify the type of data to be processed, the purposes of the processing and the specification of data controllers, co-controllers and processors. For instance, the framework for the exchange of information required for large scale repatriation exercises (including names, passport numbers, contact details etc) would be more robust under this option. As such, it would have a positive impact on the achievement of specific objective 4 (++).

Feasibility

Policy option 2A (amendment to art. 11) would be technically feasible (+) as the support provided by EU Delegations would not require additional resources on the side of the EU Delegations, but would be based on a prioritisation of resources, which is in line with the requirement of the EEAS Decision that the support is to be provided on a "resource neutral basis". However in the long term, if such support is to be provided on a more intensive and regular basis (which could be the case in countries where Member State representation is low), the feasibility would go down, as concerns have been raised by both Member States and EU Delegations themselves that EU Delegations are currently lacking the consular staff, capacity/budget and technical expertise to be able to actively support the Member States in providing consular protection to EU citizens directly.

Policy option 2A (amendment to art. 12 and 13(2)) would be **technically feasible** (++) given there are no barriers envisaged in their application. According to an interview at EU level, the setting up of JCTs foreseen would not require additional resources at the Member State level, as these would consist of existing consular staff (either based within the capitals within the EU or in an embassy or consulate in a neighbouring country) that would be sent over in specific crisis situations.

Policy option 2A (amendment to art. 13) would be somewhat **technically feasible** (+) as there would be additional work required to ensure the collaboration and coordination from the EEAS and EU Delegations as well as additional instruments to ensure this collaboration.

Policy option 2A (data protection elements) would be technically feasible, as it would simply further specify the requirements under the GDPR and the DPREUI with regard to the processing of the personal data of unrepresented citizens. EU Delegations are already expected to have a Data Processing Officer (DPO) in place, however the options would require a certain level of effort in that frameworks (e.g. data protection impact assessments) for the exchange

of information required for large scale repatriation exercises (including names, passport numbers, contact details etc) would need to be set up. Therefore, this option has been assessed as technically feasible (++)

Overall, the measures proposed under option 2A are somewhat **politically feasible (+)**:

The political feasibility of the measures under policy option 2A (amendment of article 11) would be somewhat feasible (+) as the majority of Member States consulted were in favour of allowing EU Delegations to provide some form of consular protection to unrepresented citizen directly, especially if it was on an ad-hoc and voluntary basis, upon request of the Member States.

Seeing that Member States and EU Delegations already host LCC meetings alternately on a voluntary basis, the **political feasibility of option 2A** (amendment to art. 12) is considered to be feasible (+).

Political feasibility of option 2A (amendment to art. 13) is assessed to be politically feasible, based on the positive feedback received from the Member State (see table below). Member States were supportive of seeing EU Delegations play a greater role in the preparation and implementation of the JFW, stating this was already the case in practice, especially in the wake of the COVID-19 crisis. The concept of JFW has already been approved by COCON as well. Therefore the option is assessed as somewhat politically feasible (+).

Table 4 Member States' opinions on the replacement of the Lead State concept under policy option 2 (n=26)

	Yes	No	Maybe	N/A
Do you see the need to replace the concept of lead State with a system where responsibilities are shared among the represented MS and EU Delegations, which are agreed upon and defined in the JFW?	12	7	-	7
Do you see the need for the EU Delegations to take a greater role to support the Member States in the preparation and implementation of joint contingency plans (JFW)? If so, what specifically could be improved? Are there any barriers to an increased role for EU Delegation?	14	4	-	8
Do you see the need for the JFW to also cover the provision of consular protection services in non-crisis situations?	3	13	-	10

Source: Questionnaire with Member States national authorities

In terms of the political feasibility of option 2A (amendment to art. 13(2)) the large majority of the 22 Member States that replied to the COVID-19 lessons learned were open to consider a concept for a future model of Joint Consular Teams (JCTs). However a few Member States raised reservations with regards to an institutionalised concept of Joint Consular Teams. Therefore, the option is assessed as somewhat politically feasible (+).

Political feasibility of option 2A (explicit reference to GDPR and DPREUI) is considered to be very feasible (+++), as Member States and EU Delegations are already required to abide by the requirements under the GDPR and the DPREUI.

Similar to option 1, the political feasibility of the soft measures foreseen under option 2A are considered to be very feasible as well (++).

The **legal feasibility** of the options under 2A (coordination), which focuses on reinforcing the role of EU Delegations in supporting Member States and helping with the coordination of their activities, which can all be proposed under the existing legal bases of Article 23(2) TFEU and Article 35 TEU, are as follows:

- Legal feasibility of policy option 2A (article 11) is very feasible (++) .The option would require an amendment to the Directive, to align it with the Council Decision establishing the EEAS. However, as the option would not go beyond the scope of Article 5(10) EEAS Decision, and could therefore be achieved under the existent legal basis of Article 23 TFEU.
- Under option 2A (amendment to art. 12), the EU Delegation exercising the role of chair or co-chair of the local cooperation meetings is to be decided locally. Under the current Directive, Member States can already agree at local level to nominate the EU Delegation as Chair. This option foresaw that EU Delegations can have a co-Chair position at the minimum as the default rule. However, this would still be possible on the basis of Article 23(2) TFEU, as it aligns well with the supporting role of EU Delegations foreseen in Article 35 TEU. This option is therefore rated as legally feasible (++) .
- Legal feasibility of policy option 2A (amendment to art. 13):in order to amend the Directive to evolve the concept of Lead State into a set of tasks and responsibilities under Joint Frameworks, the procedure in Article 23(2) TFEU should be followed. This option is rated as legally feasible (++) .
- Legal feasibility of policy option 2A (amendment to art. 13(2)) on JCTs is rated as legally feasible (++) . Although Article 13 (2) Directive provides that “Upon their request, Member States may be supported by existing intervention teams at Union level, including consular experts, in particular from unrepresented Member States”, the Article does not explicitly refer to Joint Consular Teams made up of staff from Member States co-hosted by EU Delegations. However adding in a reference to JCTs which could be set up on a voluntary basis is not expected to be legally challenging.
- The legal feasibility of policy option 2A (explicit reference to GDPR and DPREUI) on the processing of personal data is rated as legally feasible (++) . EU Delegations, embassies consulates and other relevant administrations deal with personal data on a regular basis and are thus already in line with GDPR and the DPREUI requirements, establishing the conditions for the processing of personal data. Further specifying those acts in the Directive would therefore not pose a legal issue.
- Similar to option 1, as the soft measures foreseen under option 2A would not require any changes to the existing Directive, hence the legal feasibility of the option is very high (+++).

Costs and savings

The option to have the EU Delegation support Member States in providing consular protection (under policy option 2A (article 13) would also alleviate the cost of providing consular assistance which would have otherwise been solely carried by the Member States. Overall, the costs of policy option 2A would be limited since it would rely on the reprioritisation of EU Delegations (-).

Coherence

The legal amendments to article 12 and 13, as well as the soft measures as foreseen under Option 2A would not have an impact on coherence. (0). The amendment to article 11 would have a positive impact on coherence given the aligned wording with the EEAS decision (+). The reference to data protection would have a positive impact on coherence, due to the alignment of the Directive and its conditions for data processing with the GDPR and the DPREUI(+).

Policy option 2B (cooperation and coordination)

Effectiveness

The effectiveness of Option 2B would be even higher than that of option 2A as the amendment would explicitly empower EU Delegations to provide consular protection to unrepresented EU citizens directly, and would therefore be more effective in providing legal certainty to EU Delegations and EU citizens. Similar to option 2A, the option would alleviate some of the pressures faced by the Member States in times of crisis, especially in countries with a no or a low level of representation. Allowing EU Delegations to be able to provide direct consular protection would

contribute to increased burden sharing and overall pool of available Union resources in third countries. In uncovered third countries where only EU Delegations are present this provision would be especially beneficial in securing EU citizen's right to consular protection. In other third countries, with Member State presence, the flexibility would allow EU Delegations to step in and provide consular protection if they have sufficient capacity to do so and if for whatever reason this is necessary or considered more advantageous for EU citizens. In both crisis and non-crisis situations EU Delegations would be able to act with a clear legal mandate which would bolster legal certainty. As mentioned before, the latest Eurobarometer⁴² also showed that citizens, if they were in a country outside the EU where their Member State of nationality was not represented, would like to seek support from an EU Delegation instead. As such, the measure proposed under option 2B would have a very positive impact on achieving specific objective 4 (+++).

Feasibility

The **technical feasibility** of policy option 2B (article 11) is considered slightly lower than Option 2A (0) as:

- Concerns have been raised by both Member States and EU Delegations themselves that EU Delegations are lacking the consular staff, capacity/budget and technical expertise to be able to provide consular protection to EU citizens directly. However option 2B also foresees an (albeit limited) increase in resources for EU Delegations, and specifies that the assistance provided by EU Delegations is dependent on the available local resources.
- Another important barrier that was highlighted by a number of stakeholders consulted was the issue around “which type of consular protection” the EU Delegation would provide. If EU Delegations are asked to provide the same level of protection as the Member State of nationality, this would mean the EU Delegation would need to apply different types of consular law, which would require clear instructions of the Member States of nationality. An alternative would be to put in place a minimum level of services to be offered by the EU Delegation, which could be added to Article 9 of the Directive. However reaching consensus on what this minimum should look like (considering the diverse consular laws amongst Member States) would likely be very challenging.
- In addition, the EU Delegations currently only cover four out of the 21 countries without any consular presence by Member States (Barbados, Eswatini, Guyana, Lesotho), meaning that EU citizens could still remain stranded without adequate avenues to consular protection in the majority of these countries.
- Finally, some stakeholders noted that that some third country governments would not allow an EU Delegation to provide consular protection, as they don't have the same status as a State. However, this could potentially be negotiated separately or added to standard consular clauses the EU negotiates as part of its agreements with third countries.

The **political feasibility of policy option 2B** is considered to be somewhat feasible (+), similarly to Option 2A, as the majority of Member States consulted were in favour of amending the Directive to allow EU Delegations to provide some form of consular protection to unrepresented EU citizens directly in uncovered countries (with some variations as to what this entails), and even in countries with a high level of representation in times of crisis. Moreover, some Member States looked more favourable at such a role for EU Delegations, when it was carried out upon request by a Member State, which is the case under option 2B. The table below reflects the views of Member States consulted with regards to the **provision of consular assistance** by EU Delegations.

Table 5: Member States' opinions on the provision of consular assistance by EU Delegations under policy option 2 (n=26)

	Yes	Yes - in specific situations	No	Maybe	N/A
In countries where no Member State is present, do you think that the Directive should foresee a	14	3	4	2	3

⁴² Flash Eurobarometer 485: EU Citizenship and Democracy; February/March 2020; https://data.europa.eu/data/datasets/s2260_485_eng?locale=en.

	Yes	Yes - in specific situations	No	Maybe	N/A
role for the EU Delegation to provide consular protection to unrepresented EU citizens directly					
Should such a role for EU Delegations also be foreseen for countries with a low MS consular presence?	9	6	5		6
In crisis situations, do you think that the Directive should also foresee a role for the EU Delegation to support MS to provide consular protection to EU citizens in countries with a high MS presence?	16	-	3	1	6

Source: Questionnaire with Member States national authorities

Member States identified a number of difficulties linked to the provision of consular assistance by EU Delegations, including that having this role played by a Member State present (where possible) would be preferable, due to legal and constitutional difficulties as consular matters should be the responsibility of national governments. Practical issues mentioned include the lack of consular provision experience of EU Delegations as well as questions around the level of service which would be provided. The European Parliament has historically been positive about an increased role for EU Delegations.⁴³ Prior to the adoption of the Directive, the Committee on Foreign Affairs of the European Parliament expressed the view that the Commission proposal could have been much more ambitious and that it does not make use of all the possibilities offered by the Lisbon Treaty and especially the role of the EU delegations highlighted in Art. 35 TEU. The Parliament further noted the need for the Directive to pave the way for an increased role of the extensive network of EU Delegations in the exercise of the consular protection, and that in the long term, EU delegations should have a leading coordination role and “in well-defined circumstances, even be entrusted with consular tasks”.

The EU Delegations which responded to the study survey had strong views about the difficulties that would result from an enhanced role for the Delegations in the provision of consular services under policy option 2B. The main elements highlighted include the lack of human resources and of relevant skills to undertake these tasks. EU Delegations also pointed to the confusion the option might cause among EU citizens vis-a-vis the limited benefits it could bring. Beyond this, some EU Delegations interviewed argued that the role they currently play is diplomatic and political rather than consular, and that providing consular assistance is a specific task that would require training.

In terms of the political feasibility of the soft measure to increase EU delegation resources, the European Parliament already made a reference in its opinion of 2012⁴⁴ for the need to take a close look at “the financial arrangements needed for allowing the EU Delegations to play their full role in the mechanisms put in place to ensure consular protection to unrepresented EU citizens. In this context it proposed for the Directive to serve as a legal basis for the budget line 19-06-06 (consular protection) of the EU budget, in order to provide the EU with the necessary financial means for fulfilling these tasks through its Delegations.

The **legal feasibility** of option 2B which amends Article 11 Directive to allow for the direct provision of consular protection by EU Delegations with the approval of the Member State of nationality is assessed to be lower than policy option 2A (0) The provision of consular assistance to unrepresented EU citizens directly by EU Delegations with such prior consent from the Member State in question would require:

⁴³ European Parliament, opinion of the Committee on Foreign Affairs (4.9.2012) for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a Council directive on consular protection for citizens of the Union abroad

⁴⁴ European Parliament, opinion of the Committee on Foreign Affairs (4.9.2012) for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS))

(1) an amendment of the Directive as such a role is not currently foreseen in the Directive. The introduction of such an express provision would go beyond the scope of the existent legal basis of Article 23 TFEU, and will therefore need to be proposed under Article 25 TFEU.

(2) As presently EU Delegations do not have the power to issue ETDs, enabling them to do that would also require amending the ETD Directive⁴⁵. Such amendment could be included in the Commission proposal revising the Consular Protection Directive as both Directives share the same legal basis (Art. 23 of the TFEU). The limited increase in resources for EU Delegations foreseen under option 2B would also entail a revision of Article 5(10) of the Council Decision establishing the EEAS, as it currently requires support by EU Delegations to Member States' in providing consular assistance to be carried out on a resource-neutral basis. The legal feasibility of this measure proposed under option 2B is assessed as neutral as well (0).

Costs and savings

An estimation of the costs (mostly for the EU and its Delegations) of the measures proposed under option 2B are presented in Annex X.

However it should be noted that cost savings could be expected on the side of the EU Member States, through efficiency gains realised through the improved coordination with EU Delegations and improved cooperation with other EU Member States. Moreover, the option to have the EU Delegation provide consular protection to unrepresented EU citizens directly, (under policy option 2B (article 13) would also alleviate the cost of providing consular assistance which would have otherwise been carried by the Member States. Overall, the costs of policy option 2B would be high (--).

Coherence

As EU Delegations increase their capacity and acquire their own competences to provide direct assistance to unrepresented citizen, they will be able to engage more easily and regularly with EU citizens (in response to Member State requests). The coherence of Option 2B with other policy initiatives would better reflect present engagement of EU Delegations and would better allow them to support Member States in providing direct assistance to EU citizens as foreseen in Art. 5(10) of the EEAS Decision. As such, the coherence on Option 2A is assessed positively (++)

Policy option 3 (cooperation and coordination)

Effectiveness

Policy option 3 (article 11) would be effective in achieving specific objective 4 (++++). Allowing EU Delegations to provide consular protection directly, especially in countries with no or low consular representation, would ensure there are fewer areas globally where protection is not provided and ensure a minimum level of service. As discussed below, this would require a significant stepping up of the capabilities of EU Delegations in the provision of consular protection.

Policy option 3 (article 12) would be effective to a small extent in achieving specific objective 4 (+). Having EU Delegations co-chair local coordination meetings would increase the continuity of the meetings. It would also ensure they can increase and strengthen their coordination role.

⁴⁵ Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP ST/8596/2019/INIT

Policy option 3 (article 13) would be effective to some extent (++) . The reasoning is similar to that of option 3 (article 12). While there would be some gains in the EU Delegations coordinating the response to a crisis situation, Member States' consular networks are best placed to provide immediate and emergency support in practice. As an example, one Member State highlighted how the role of EU Delegations and embassies was different and often, embassy staff are the last ones to be repatriated in times of crisis. Furthermore, Member States often have privileged communication channels with airlines (in particular national flagship carriers) either because of historical reasons or through part ownership of the companies. This allows for better and more effective management of crisis situations.

Policy option 3 (Article 13(3)) would be effective to some extent (++) . It would help increase the robustness of the Directive and ensure the positive impact of these exercises is ensured in the future and, by making them mandatory, would also ensure Member States are required to commit an appropriate amount of resources to ensure their success. As such, this option would have the same benefits as option 2A and B, would bear a greater effectiveness.

Policy option 3 (Article 13(4)) would maximise guarantees for efficient crisis management in the field particularly in complex crises or in situations where the consular footprint of Member States is limited or absent. Additionally, the JCTs concept brings valuable synergies for optimising Member States' consular response in crises. Overall, the systematic setting up of JCTs would be effective to a large extent (+++) in achieving specific objective 4.

Feasibility

Policy option 3 (article 11 and 13) would have a low **technical feasibility** (--). EU Delegations consulted as part of the study had strong views about the difficulties that would result from an enhanced role for the Delegations in the provision of consular services. The main elements highlighted include the current lack of human resources and of relevant skills to undertake these tasks. Beyond this, some EU Delegations interviewed argued that the role they currently play is diplomatic and political rather than consular, and that providing consular assistance is a specific task. As such, this option would require the development (through training or recruitment) of a specific body of staff in charge of consular affairs, as well as additional resources. While this would be possible, securing additional resources would be technically difficult to achieve.

The other elements of Policy option 3 would be **technically feasible** (++) given there are no barriers envisaged in their application. According to an interview at EU level, the setting up of JCTs foreseen under option 3 would not require additional resources at the Member State level, as these would consist of existing consular staff (either based within the capitals within the EU or in an embassy or consulate in a neighbouring country) that would be sent over in specific crisis situations.

Policy option 3 (article 11) would have a very low **political feasibility** (--). The majority of Member States consulted were in favour of amending the Directive to allow EU Delegations to provide consular protection to unrepresented EU citizens directly in uncovered countries and to a less extent in countries with a low Member State representation, and even less so in countries with a high representation. However the option foresees such a role whether representation is high or low, and while this is the same under policy option 2A and B, under the latter options provision of support or direct provision is dependent on a request by a Member State. Direct provision of service to unrepresented citizens without such explicit request from a Member State, as is foreseen under option 3, is expected to have limited support from Member States.

The other elements of policy option 3 would have a fairly high level of political feasibility (+). The majority of Member States consulted during this study saw an added value in EU Delegations playing a larger coordination role in the LCC meetings, in implementing JFW, in setting up JCTS and in the activation of the UCPM.

The **legal feasibility** of policy option 3 (article 11) would be low (--) as empowering EU Delegations to provide consular protection to unrepresented EU citizens directly would clearly go beyond the provisions set out in Art 20(2)(c) TFEU if this extension was not based on a mandate from Member States. If EU Delegations are to be entrusted with direct provision of consular assistance to unrepresented EU citizens without having to ask for the consent of the Member State of nationality, this would require substantial amendment of the Directive on the basis of Article 35 TEU

and 25(2) TFEU, implying additional text across the Directive. For a similar proposal see Opinion of the Committee of Foreign Affairs on the proposal for a Council Directive on consular protection, (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS)). Therefore, this option is rated with a low feasibility (--).

According to Article 12 of the Directive, Member States can agree to nominate the EU Delegation as Chair. Therefore option 3 (article 12) is assessed as legal feasible (++).

The legal feasibility of policy option 3 (article 13) would be assessed as somewhat low (-) as the new role foreseen for EU Delegation in being responsible for the main tasks under JFW may go beyond their current mandate. This rating is provided on the assumption that the 'main responsibilities' provided for under are wide reaching. Explicitly reducing the scope of the responsibilities may change the rating.

The legal feasibility of policy option 3 (Article 13(3)) would be legal feasibility (++) as what is proposed is already possible under the current legal framework.

The legal feasibility of policy option 3 (Article 13(4)) would be rated as somewhat low (-) given the need to update the UCPM framework to allow for direct activation by the EU. Currently only EU Member States can activate the instrument. A revision of the UCPM instrument would amend this rating.

Costs

The overall cost of policy option 3 would be high, especially linked to the cost to provide consular protection on a regular basis and independently from Member States solicitations. Detailed calculations are presented in the Annexes.

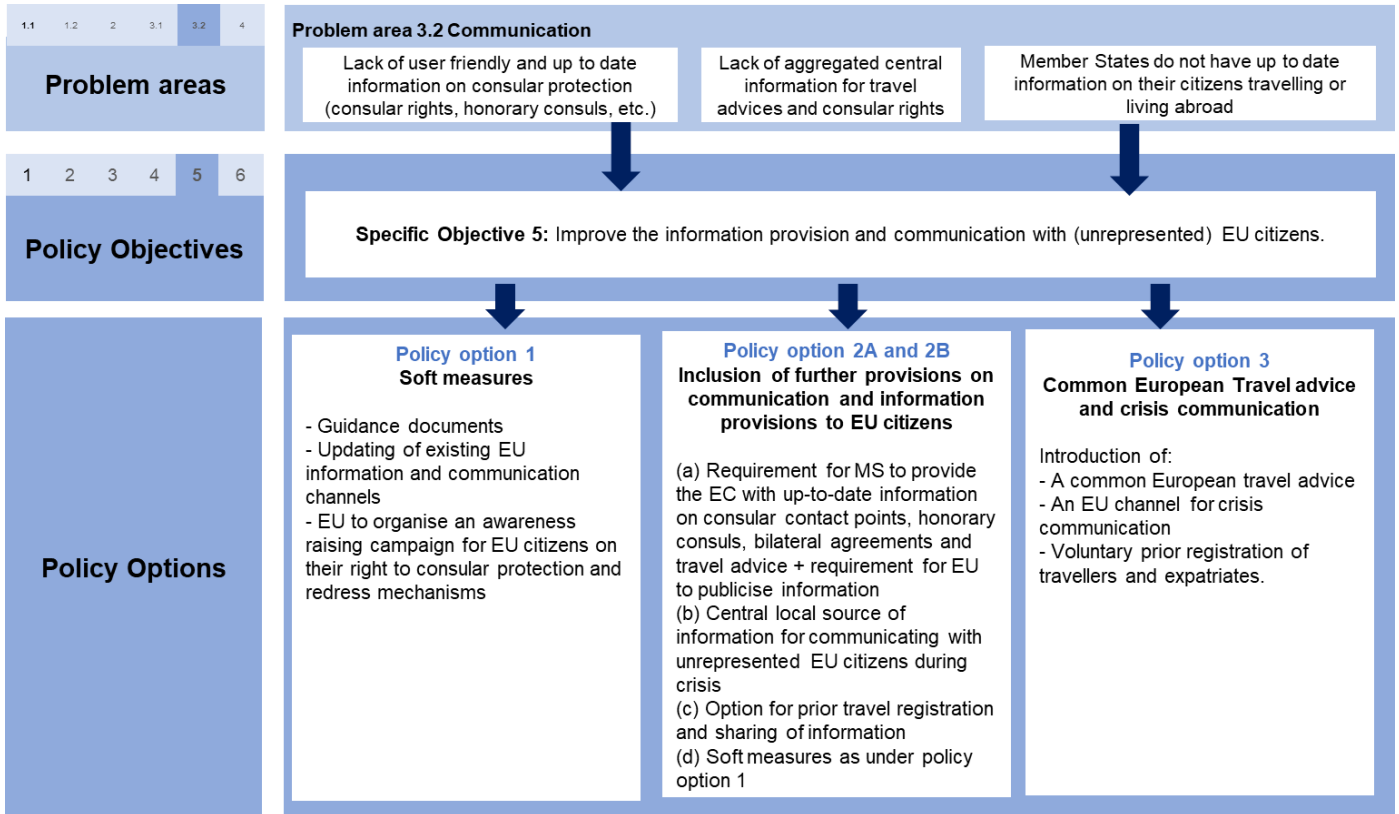
Coherence

Option 3 would not have an impact on coherence. (0).

Assessment of measures proposed to address SO5 (communication)

The figure below provides a summary of the measures proposed under policy option 1, option 2A and 2B and option 3 to address SO 5 and its underlying problems.

Figure 8 Overview of policy options aiming to achieve policy objective 5 (Communication)



Policy option 1 – measures addressing - communication

Effectiveness

The development of soft measures under policy option 1 such as the sharing of guidelines on how best to communicate information to EU citizens, the updating of existing communication channels to increase the availability of information in a transparent and accessible manner, and the implementation of awareness-raising campaigns on citizens rights to consular protection and redress mechanisms would have a positive impact by strengthening the provision of information through the improvement of existing communication channels. The information will allow citizens to make more informed decisions with regard to where and how they can receive consular assistance (i.e. existing permanent arrangements, limitations of honorary consuls and accredited embassies/consulates, etc.). In addition, this policy option would cater more closely to the specific needs of vulnerable groups by ensuring that information relevant to their specific needs is included in the EU and Member States communication channels.

Raising awareness of registration tools and their importance would increase the number of citizens registering when traveling or living abroad, which is important to allow Member States' to have a better picture of the (un)represented citizens living or/and travelling in a given third country

Therefore, the option is considered to have a positive impact for the achievement of specific objective 5 (++).

Feasibility:

Policy option 1 is **technically feasible (++)** as it would not require any additional development beyond the creation and sharing of best practices and guidelines, and the updating, maintenance, and operationalisation of already existing communication channels. Similarly, an EU awareness campaign would not raise any technical challenges beyond the necessary fund and coordination required for an EU wide campaign.

Member States were generally in favour of receiving further guidance on the application of the Directive. We thus expect that there would be support in the introduction of policy option 1. Therefore, the option is considered very feasible (+++) from a **political** point of view.

Given that policy option 1 would not require any changes to the existing Directive, the option is **legally very feasible** (+++).

Cost and savings:

The costs of this option would comprise the resources necessary to: 1) develop and update the guidelines and best practices; 2) update and strengthen the information on the Member States' websites; 3) improve the information provided and functionalities of the Europa and EU Delegations' websites; and 4) develop and roll-out of an awareness-raising campaign targeted at (unrepresented) EU citizens. As such, the costs would be limited (-). A detailed assessment of the costs can be found in the Annex X.

Coherence:

The soft measures foreseen under this option do not have any impact on coherence (0).

Policy option 2A and 2B – measures addressing communication

Effectiveness

Policy option 2A and 2B would help achieve specific objective 5 (improve the information provision and communication with (unrepresented) EU citizens) by requiring Member States to provide the relevant information in a machine-readable format so that the Commission, EEAS and/or EU Delegations can make this data available to EU citizens in a user-friendly way to facilitate the effective exercise of their right to consular protection.

The provision of crisis communication through a central local source of information whether it is through an EU Delegation or a Member State appointed to this role as part of the JFW would ensure greater consistency and uniformity in the information communicated to unrepresented citizens and, should the scope of the Directive be extended, to represented citizens as well. It would effectively streamline the provision of information for all EU citizens. However, citizens living and traveling abroad do not systematically register with their Member States which would limit the effectiveness and outreach of the communication channels.

Policy option 2A and 2B would also ensure that unrepresented EU citizens have the means to register when living and/or traveling abroad and would thus ensure that these citizens would receive relevant information in times of crisis. This policy option would reduce the number of unregistered EU citizens and thus improve the provision of information to EU citizens and ensure the effective exercise of their rights to consular protection.

Policy option 2A and B would also include the soft measures outlined in policy option 1. These would strengthen the provision of information (both in terms of content and access) to EU citizens as examined under policy option 1, and further reinforce the measures foreseen under policy option 2.

Therefore, policy option 2A and B are considered to have a positive impact to the achievement of specific objective 5 (++)

Feasibility:

Technical feasibility – Member States currently provide consular network details and travel advices in CoOL but to a limited extent (for instance, not all consulates are visible). Under policy option 2A and B, Member States would be responsible for providing up to date information in a comparable and machine-readable format, including travel advice and the consular network contacts. This would require streamlining how Member States collect information and could prove technically challenging especially for smaller Member States with smaller budgets and existing capabilities.

However, as this information is already collected and made available in CoOL, difficulties at the Member States level are expected to be limited. In addition, the information provided by the Member States would have to be aggregated at the central level and made available through EEAS and the Commission communication channels together with information already provided there. The aggregated information would then have to be transmitted in a similar format to all EU Delegations and made available on their websites. The technical challenges at the Commission and EEAS level are also expected to be limited as the framework and channels are exist, Strengthening the information available on the Commission, EEAS and EU Delegations' communication channels through this measure is thus assessed as technically feasible (++).

For EU Delegations to serve as the primary source of emergency information unrepresented EU citizens, the Delegations would need to develop the appropriate tools and communication channels beyond the websites. While technically feasible, its operationalisation and maintenance would require added expertise/competency and capacity which the EU Delegations do not currently have (-).

Additionally, to be able to communicate the information to the EU citizens, Member States would need to share the contact details of registered EU citizens with the EU Delegations. This data would have to be provided in line with GDPR requirements, however it is assumed that GDPR and DPREUI requirements are already being met by Member States and EU Delegations and would therefore not pose any technical difficulties. This measure would also require greater interoperability between Member States' tools for prior registration of citizens living and traveling abroad. This is expected to be technically challenging due to the pre-existing national systems which may not be compatible with one another and would thus need to be modified. Therefore, this measure is considered to have low technical feasibility (--).

The soft measures foreseen under policy option 2A and 2B are technically feasible (++) as they would not require any additional development beyond the creation and sharing of best practices and guidelines, and the updating, maintenance, and operationalisation of already existing communication channels. Similarly, an EU awareness campaign would not raise any technical challenges beyond the necessary fund and coordination required for an EU wide campaign.

The **political feasibility** of Member States providing up to date information in a comparable and machine-readable format to be shared by the EU can be assumed to be high (++) as Member States would not object to EU Delegations sharing information which is already publicly available on their website regarding their consular presence, the bilateral and other arrangements in place or travel advice.

Similarly, the political feasibility of developing a central local source of information for communicating with unrepresented citizens is considered as somewhat feasible (+). Member States saw the benefits in the EU Delegations providing emergency information to (unpresented) EU citizens in crisis situations. Several countries recognised the experience of the COVID-19 crisis and repatriation exercise as a positive example of such a solution. The main challenge identified was the language barrier and the difficulty for the EU Delegations to provide the relevant information in all EU languages in an emergency situation.

However, the political feasibility of Member States sharing contact details of their citizens with EU Delegations for the purpose of registration is assessed as low (--) as most of the Member States did not believe there was a need to encourage better interoperability for tools such as prior registration of travellers, registered expats and dual nationals. In their view, this option would be difficult to implement when all Member States have their own system, and it would have limited added value. Member States may also be opposed to EU Delegations reaching out to individual citizens/travellers as some Member States might perceived is as their sovereign competence.

Member States were generally in favour of receiving further guidance on the application of the Directive. We thus consider that the soft measures foreseen under policy option 2A and 2B are very feasible (+++) from a **political** point of view.

In terms of the **legal feasibility**, policy option 2A and 2B on the sharing of information in a machine-readable format would add obligations on the Member States to provide the Commission with relevant information on their travel advice, and change its requirements for information provision on honorary consuls, bilateral agreements and consular contacts. The Directive would thus need to reflect these added obligations. Similarly, policy Option 2A and 2B would require for the Directive to be amended to reflect the role of the EU Delegations as a potential source of communication with unrepresented citizens. Lastly, the option would require amending the Directive to enable the EU Delegations to access data on unrepresented citizens (in line with GDPR and DPREUI requirements) and to contact unrepresented citizens directly. As the proposed amendments are mostly clarifications on existing provisions, options 2 could be proposed under the existing legal basis of Article 23(2) TFEU. These three measures are thus considered to be somewhat legal feasible (+). In addition, given that soft measures would not require any changes to the existing Directive, this measure is legally very feasible (+++).

Cost and savings:

The costs of this option would comprise the resources necessary to: 1) update the Commission, the EEAS and EU Delegation' information and communication channels; 2) develop and maintain additional EU communication channels; 3) collect and share additional information with the Commission (cost for the Member State); and 4) develop the development of soft measures. These costs would be limited (-) for both the EU and the Member States. A detailed assessment of the costs can be found in Annex X.

Coherence:

The measures foreseen under this option do not have an impact on coherence (0).

Policy option 3 – measures addressing communication

Effectiveness

Policy option 3 would help achieve specific objective 5 (Improve the information provision and communication with (unrepresented) EU citizens.) by centralising the provision of information (travel advice), the registration of travellers and expats, and crisis communication to EU citizens. It would ensure greater consistency and uniformity in the information being communicated and effectively streamline the provision of information for all EU citizens.. However, even if a common travel advice was agreed upon, it is also likely that some Member States would continue issuing their own travel advice, creating confusion. Additionally, Member States already struggle to get their nationals to register prior to travelling abroad, it is unlikely that the EU would fare any better. Both these challenges would limit the effectiveness of policy option 3. Overall, the option is considered to have a somewhat positive impact to the achievement of specific objective 5 (+).

Feasibility:

Technical feasibility is low (--) as policy option 3 would require the EU to develop, maintain and operationalise an extensive array of tools and communication channels in order to produce and communicate common European travel advices, channels for crisis communication, and register citizens traveling or living abroad. This would require significant resources, time and capacity.

Political Feasibility: Coordinated communication relating to information during crisis situations was favourably received. In particular, Member States consulted were interested in coordinated information on repatriation flights, available places, conditions, priority groups etc. However, while a small majority of Member States were in favour of seeing EU Delegations provide information to EU citizens and in particular in countries where they are not represented, some national authorities argued that Member States do not always provide similar travel information and that the information provided by EU Delegations might be different than the information the Member States would provide. In their view, creating a second layer of advice could be confusing and counterproductive for travellers. Political feasibility for policy option 3 is thus assessed as very low (---).

Policy option 3 would require an amendment of the Directive to provide a legal basis for the Commission and the EEAS to be able to provide a common European travel advice and to set up a common EU channel for crisis communication. Policy option 3 therefore has a low **legal feasibility** (--).

Cost and savings:

The costs of policy option 3 for the EU would be high (--) due to the necessary development, maintenance and operationalisation of new and existing communication channels for all EU citizens as well as the development of an EU registration tools for citizens traveling and traveling abroad. A detailed assessment of the costs can be found in Annex X.

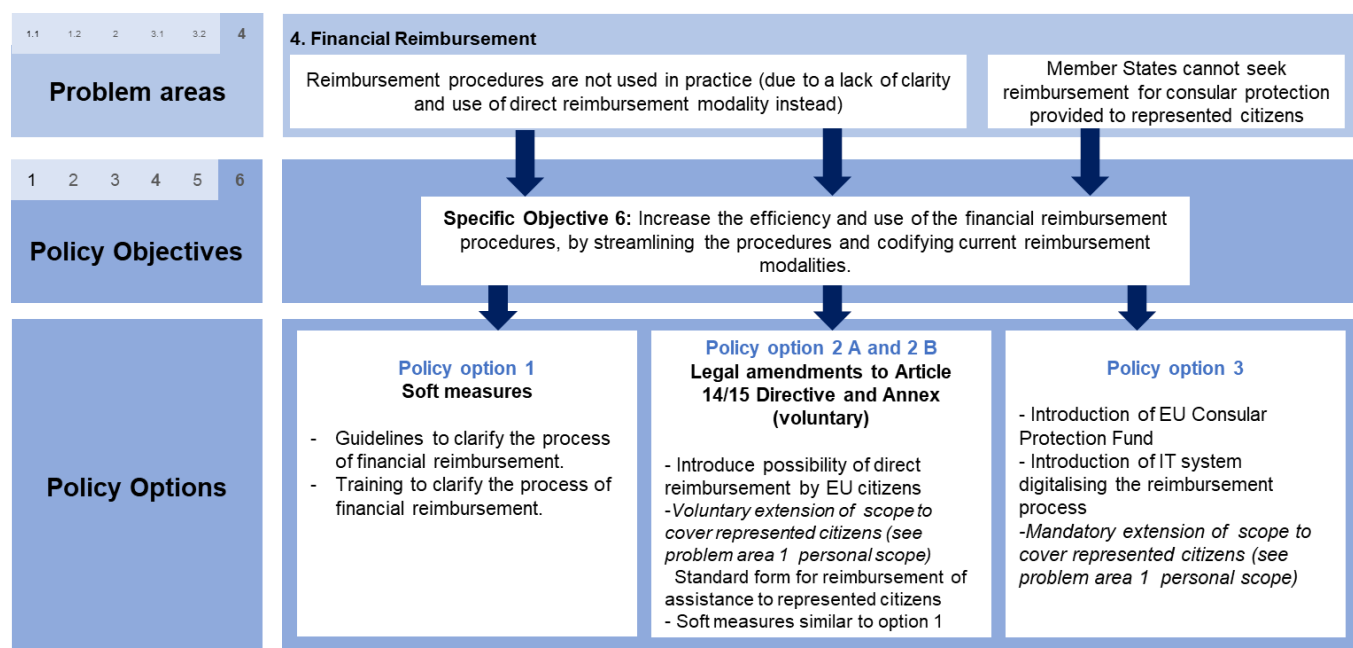
Coherence:

The measures foreseen under this option does not impact coherence (0).

6.4 POLICY OPTION ASSESSMENT - FINANCIAL REIMBURSEMENT (PROBLEM AREA 4/ SPECIFIC OBJECTIVE 6)

The figure below provides a summary of the measures proposed under policy option 1, option 2A and 2B and option 3 to address SO 6 and its underlying problems.

Figure 9: Overview of policy options aiming to address policy objective 6 (financial reimbursement)



Policy option 1 – measures addressing financial reimbursement

Effectiveness

The development of soft measures under policy option 1 such as guidance documents and training on how reimbursement procedures should be operationalised would help achieve specific objective 6 to a large extent by providing greater clarity on the procedures in place and greater awareness thus promoting their use and ensuring uniformity in their application.

However, this impact is limited as soft measures alone cannot address the issue concerning the lack of reimbursement procedures for consular protection provided to represented citizens in times of crisis as it is beyond the scope of the Directive which is limited to unrepresented citizens. Addressing this issue would require a revision to the Directive to broaden its scope to include represented citizens, which is covered in section 6.1 -scope. Similarly,

soft measures are not sufficient to address the lack of clarity (and dedicated forms) regarding the possibility for the assisting Member State to request reimbursements directly from the unrepresented citizens.

Policy option 1 would thus have a somewhat **positive impact (+)** in achieving specific objective 6.

Feasibility:

The option is **technically feasible (++)** given it would not require any additional development beyond the creation of guidelines and the development of training materials/organisations of trainings.

While some Member States confirmed that the financial reimbursement mechanisms worked relatively well, most saw the value in developing guidelines on timelines and to set out the role and responsibilities of the different parties. As such, there would be a strong political support in the introduction of policy option 1 (+++). This option is **politically very feasible (+++)**

Given that policy option 1 would not require any changes to the existing Directive, this option is **legally very feasible (+++)**

Cost and savings:

The costs and benefits would be minimal (-). A detailed assessment of the costs can be found in Annex X.

Coherence:

Option 1 would not have any impact on the coherence (0)

Policy option 2A and 2B – measures addressing financial reimbursement

Effectiveness to achieve relevant objective

Policy option 2A and B would **enable assisted EU citizens to pay the assisting Member State directly** for the consular assistance provided, which would avoid Member States needing to use the reimbursement procedures. It would thus reduce the administrative burden for both the assisting Member State and for the Member State of nationality. This would increase the efficiency and use of the financial reimbursement procedures, as per the aim of specific objective 6. This measure would therefore have a very positive impact (+++).

The clarification of the definition and voluntary extension of the Directive's scope to represented EU citizens (as foreseen under option 2A and 2B, see section on scope), together with the introduction of a revised **Standard Form to cover reimbursement both for unrepresented and represented EU citizens foreseen under option 2A and 2B** would streamline procedures for all EU citizens (represented and unrepresented alike) and increase the use of the financial reimbursement mechanisms as per the aim of specific objective 6. This measure would therefore have a very positive impact (+++).

Lastly, similarly to policy option 1, policy option 2A and 2B would include soft measures and/or alternative measures to address the reported **lack of clarity** in regard to the way in which Member States (i) can seek reimbursement from each other, (ii) on the timeliness of the facilitated procedures under Article 15, (iii) on the types of costs that can be reimbursed and on (iv) when and how to use the standard forms. This measure would therefore have a positive impact (++).

Feasibility

Technical feasibility - The introduction of the possibility for citizens to pay the assisting Member States directly is not expected to raise technical challenges as twelve EU Member States already have the option to recover their expenses directly from the assisted unrepresented citizens and five Member States already directly seek reimbursement from the unrepresented citizens (++).

The introduction of a revised standard form would not carry any technical difficulty (provided the scope of the Directive is extended to represented EU citizens under policy option 2A and B of personal scope) as it would build on the already existing forms in the Annexes of the current Directive and merely adds the provisions for represented EU citizens (++).

Similarly, the soft measures foreseen under policy option 2A and 2B are technically feasible given they would not require any additional development beyond the creation of guidelines and the development of training materials and the organisations of training (++).

Political feasibility – The majority of Member States were in favour of allowing EU citizens to pay for consular assistance directly, as it would reduce the administrative burden relating to the reimbursement requests. A dozen Member States have already followed this approach with their own citizens and with unrepresented EU citizens to whom they have provided consular assistance. However, two Member States have national laws in place which prevent them from seeking reimbursement directly from the citizen. In addition, one Member State noted it was better left for the Member States to organise the reimbursement between themselves rather than involving individuals. Lastly, one Member State highlighted its concerns regarding the types of costs which would be reimbursed under this mechanism.⁴⁶ As a result, we assessed the political feasibility for a legal amendment to Article 14 and 15 introducing the possibility of direct reimbursement by EU citizens as somewhat low (-).

Member States consulted also responded positively to the proposed possibility to request reimbursement for assistance provided to represented EU citizens, as it would contribute to the streamlining of the reimbursement procedures and align it with the UCPM. As such, there would be a strong political support for the development of a standard form for reimbursement of assistance to represented EU citizens (+++).

Member States noted the need for clarification of the rules on reimbursement and highlighted the coexistence of different procedures to request reimbursement as contributing to the confusion among some Member States. Most Member States saw the value in developing guidelines on timelines and to set out the role and responsibilities of the different parties. As such, there would be a strong political support in the introduction of the proposed soft measures (++).

Legal feasibility: Policy options 2A and 2B would require an amendment to Article 14 and 15 of the Directive, which is possible under the Directive's current legal basis of Article 23 (2) TFEU. As a result policy option 2A and B are considered legally feasible (++) . The legal feasibility of the voluntary extension of the Directive's scope to include represented EU citizens, which is a precondition to extending the reimbursement procedure to represented EU citizens, is already discussed under section 6.1 (personal scope).

Cost and savings

Overall, the cost and savings under policy option 2A and 2B are estimated to cancel each other out resulting in a no cost assessment (0). A detailed assessment of the costs can be found in Annex X.

Coherence

Assuming the voluntary extension of the Directive's scope to include represented EU citizens as foreseen under policy option 2A and 2B are adopted (see section 6.1 on personal scope), the amendments foreseen on the financial reimbursement procedure would allow Member States to seek reimbursement for consular protection provided to represented EU citizens in times of crisis thus aligning the Directive with the UCPM. Policy option 2A and 2B would thus increase coherence (+)

Policy option 3 – measures addressing financial reimbursement

Effectiveness

Policy option 3 would centralise the procedures for the reimbursement of the costs of consular protection for all Member States and EU Delegations for unrepresented citizens through the use of a **common Consular Protection Fund**. This would effectively streamline the financial reimbursement procedures by ensuring the consistent and uniform application of reimbursement procedures for all actors involved, reduce administrative burden and therefore efficiency and would ensure that Member States don't have to advance the funds themselves (contributing to increased burden sharing). It would also effectively complement the UCPM and its role in responding to natural and

⁴⁶An example mentioned in this regard was that the respective Member State did not cover medical repatriation as it was considered too costly. However some Member States did cover this type of assistance for their nationals and thus for unrepresented citizens. Therefore in theory these costs could be sought to be reimbursed if their nationals received such assistance

man-made disaster. Additionally, the introduction of a **common IT system** to digitalise this reimbursement procedures would further ensure the homogenisation of reimbursement across the EU and lead to a greater use of the reimbursement procedures by the Member States, in line with the aim of specific objective 6.,. Policy option 3 would have a very positive impact on specific objective 6 (+++)

Feasibility

Establishing a common Consular Protection Fund to be used by both Member States and EU Delegations and setting up a common IT system would be technically challenging as it would require the modification of existing national infrastructures and systems, and the development of new ones. Policy option 3 therefore carries a **low technical feasibility (--)**.

In terms of **political feasibility**, Member States were generally opposed to the creation of a Consular Protection Fund, arguing that it would create a layer of administrative burden, while the possibility of getting citizens to pay directly (as proposed under option 2A and B) would reduce it. Furthermore, the UCPM was seen as adequate, making the need for another fund questionable.

Member State opinions were less aligned with regards to the digitalisation of reimbursement procedures. While some Member States were in favour of the idea, others stated that the rules on reimbursement should be clarified first. A few Member States also expressed concerns that the costs of such a solution would be disproportionate to the benefits given the small number of cases.

Overall the **political feasibility** for policy option 3 is very low (---).

Policy option 3 would require a change in the Directive to provide the legal basis for the Fund and the accompanying IT system. However, this could be done under the existing legal basis of Article 23(2) TFEU. As a result, policy option 3 is considered as very **legally feasible (++)**.

Cost and savings

The costs of policy option 3 would be very high as they require a complete change of the current infrastructure both at the EU level and at the Member State level as discussed under technical feasibility. (---) A detailed assessment of the costs can be found in Annex X.

Coherence

Assuming the measures proposed under policy option 2A and B on personal scope are adopted, policy option 3 would allow Member States to seek reimbursement for consular protection provided to represented citizens in times of crisis thus aligning the Directive with the UCPM. Policy Option 3 would thus increase coherence (+).

7. HOW DO THE POLICY OPTIONS COMPARE?

In this section, we present the aggregated and weighted ratings of policy options 1, option 2A, option 2B and option 3, using the methodology described in Annex II and compare these across the 6 criteria assessed in the previous chapter.

7.1 OVERALL RATINGS OF OPTIONS

Based on the ratings presented in chapter 6 for each individual measure within the option by the specific objective it aims to achieve, this section presents the ratings for each of the policy options overall. On the basis of the detailed ratings provided in the section above, no measures within the four policy options have been discarded. Therefore, all measures discussed in Chapter 5 and 6 have been included in this assessment.

Overall rating for Policy Option 1

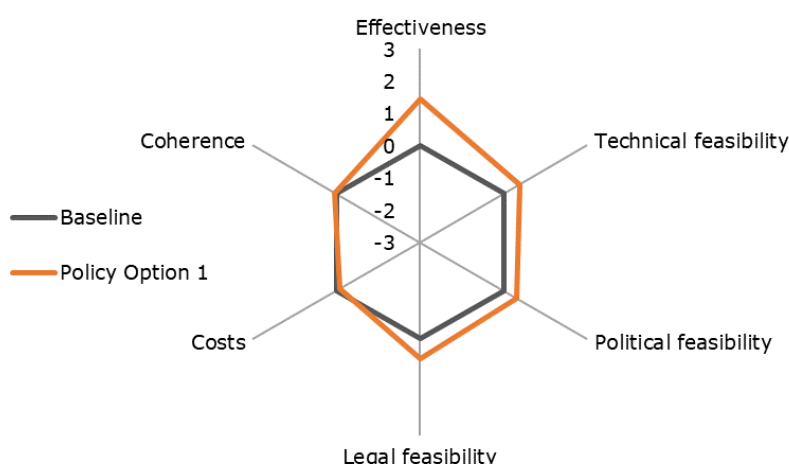
The table below provides the aggregated⁴⁷ weighted ratings for policy option 1 by criteria, showing a total score of 3.01.

Table 6: Policy option 1 – final weighted ratings

option	Effectiveness	Feasibility			Costs	Coherence	TOTAL SCORE
		Technical	Political	Legal			
Policy Option 1	1.43	0.58	0.47	0.60	-0.13	0.06	3.01

As can be seen, the option scores highest on its effectiveness in addressing the policy objectives, followed by the legal feasibility and technical feasibility. The figure below provides a graphical representation of how policy option 1 (in orange) compares to the status quo (grey line). The wider the hexagon the greater the positiveness of the impact, showing how policy option 1 is preferable to the status quo across all the criteria bar costs. This is due to the costs of the activities to be undertaken (training, sharing of best practices, improvement of communication channels and awareness campaign etc) which although limited still account for additional costs and burdens to Member States, EU Delegations and the EEAS, as well as those measures considered to be costly, in particular the additional resources.

Figure 10: Policy option 1 - visual comparison with status quo



Overall rating for Policy Option 2A

The table below provides the aggregated weighted ratings for policy option 2A., showing a total score of 4.05.

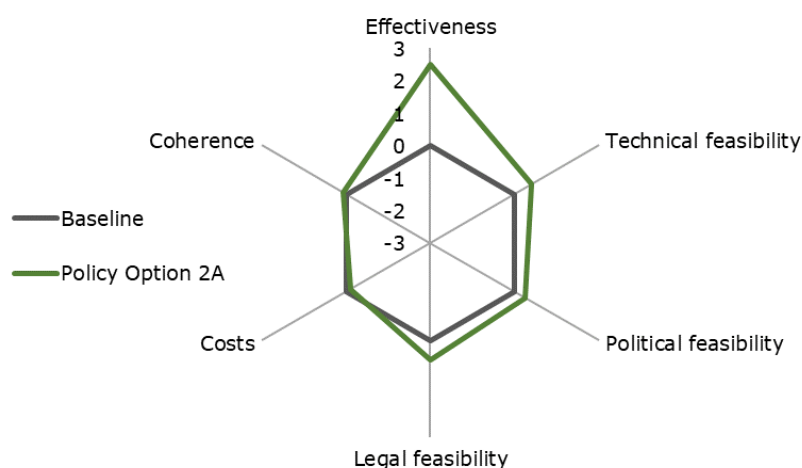
⁴⁷ As explained in the methodology section in Annex xx, all measures within the policy options have been rated individually (see also section 5.2 to 5.5.). This section presents the aggregated rating, i.e. the average rating of all the measures included in the policy option combined.

Table 7: Policy option 2A – final weighted ratings

Option	Effectiveness	Feasibility			Costs	Coherence	TOTAL SCORE
		Technical	Political	Legal			
Policy option 2A	2.5	0.61	0.38	0.61	-0.15	0.10	4.05

The option scores highest on its effectiveness in addressing the policy objectives. The figure below provides a graphical representation of how policy option 2A (in green) compares to the status quo (grey line). The wider the areas of the hexagon, the greater the positiveness of the impact, showing how policy option 2A is preferable to the status quo in all the criterion bar costs. This is due to the costs relating to the additional tasks taken on by EU Delegations as well as of the activities to be undertaken (joint exercises, JCT etc, additional resources).

Figure 11: Policy option 2A - visual comparison with status quo



Overall rating for Policy Option 2B

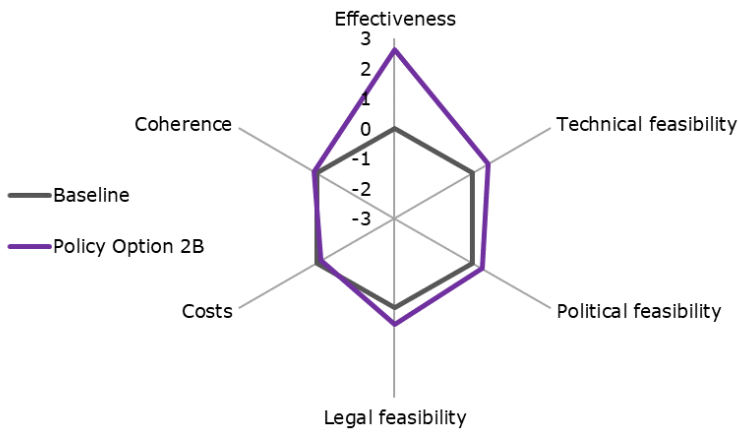
The aggregated weighted rating of policy option 2B by criteria is presented in the table below, showing a total score of 4.10.

Table 8: Policy option 2B – final weighted ratings

option	Effectiveness	Feasibility			Costs	Coherence	TOTAL SCORE
		Technical	Political	Legal			
Policy option 2B	2.62	0.60	0.38	0.54	-0.16	0.12	4.10

The option scores highest on its effectiveness in addressing the policy objectives. The figure below provides a graphical representation of how policy option 2B (in purple) compares to the status quo (grey line). The wider the areas of the hexagon, the greater the positiveness of the impact, showing how policy option 2B is preferable to the status quo in all the criterion bar costs. Similar to option 2A, this is due to the costs relating to the additional tasks taken on by EU Delegations as well as of the activities to be undertaken (joint exercises, JCT etc).

Figure 12: Policy option 2B visual comparison with status quo



Overall rating option 3

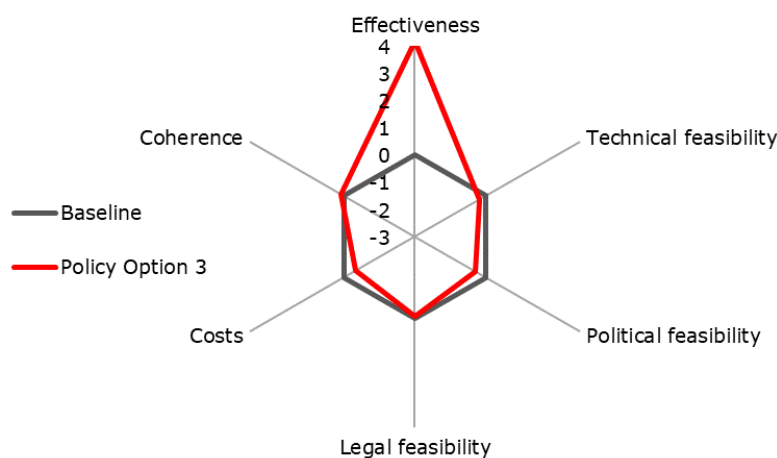
The table below provides the aggregated weighted ratings for policy option 3, by criteria, showing a total score of 3.09.

Table 9: Policy option 3 – final weighted ratings

option	Effectiveness	Feasibility			Costs	Coherence	TOTAL SCORE
		Technical	Political	Legal			
Policy option 3	4.20	-0.27	-0.42	-0.06	-0.50	0.14	3.09

The option scores highest on its effectiveness in addressing the policy objectives. The figure below provides a graphical representation of how policy option 3 (in red) compares to the status quo (grey line). The wider the area of the hexagon, the greater the positiveness of the impact, showing how policy option 3 is only preferable to the status quo in its effectiveness and to a lesser extent coherence. This is due to the mandatory nature of the option, which on the one hand increases legal certainty (and therefore scoring high on effectiveness), but at the same time causes barriers to the introduction of the option in terms of its legal and political feasibility. In addition, some of the measures included in option 3 are costly, such as the setting up of a common European travel advice and EU crisis communication channel proposed, as well as the setting up of a “EU Consular Protection Fund”.

Figure 13: Policy option 3 - visual comparison with status quo



7.2 COMPARISON OF OPTIONS BY CRITERIA

When comparing the options by criteria (see table below), it is clear that:

- **Effectiveness:** Overall, option 3 is considered the most effective in addressing the policy objectives due to the mandatory nature of the option, which increases legal certainty for unrepresented EU citizens. However when assessing the effectiveness across the specific objectives, policy option 3 falls short in addressing specific objective 3 on accessibility, while option 1 and 2A and B effectively address all specific objectives. When comparing option 2A and 2B, option 2B is considered slightly more effective due to increased effectiveness of EU Delegation being given the possibility to provide direct assistance to unrepresented EU citizens.
- **Technical feasibility:** On this criteria, the scores of option 1 and 2A and 2B are very close, as they are all considered feasible, with some effort required. Policy option 3 scores the lowest on this criteria, mainly due to the more wide-ranging and ambitious options which require further technical inputs.
- **Political Feasibility:** Policy option 1 scores the highest in terms of political feasibility, as the soft measures foreseen are likely to be welcomed by Member States. Similarly, the legal amendments proposed under 2A and 2B are unlikely to face opposition politically due to their voluntary nature. However as some of the legal amendments proposed under policy option 3 are more far reaching and are of a mandatory nature, the option scores the lowest on political feasibility.
- **Legal feasibility:** Again policy option 3 scores the lowest: given the wider ambition of this option, the measures would in their majority require the use of the passerelle clause under Article 25 TFEU to strengthen or add to the existing right of consular protection and would require an unanimity decision by the Member States in the Council. On the other hand, as the measures proposed under policy option 1 do not require a legal change, this option has been scored most positively.
- **Cost:** the most costly measures are proposed under option 3 such as the setting up of a common European travel advice and EU crisis communication channel, as well as the setting up of a “EU Consular Protection Fund”, while the measures foreseen under option 1 and option 2A and 2B would be cost neutral or only involve limited costs.
- **Coherence:** Overall, the option’s impact on coherence is limited. Nevertheless, option 3 scores the highest on coherence (in particular relating to communication), followed by option 2B, and 2A.

Table 10: Summary rating of the policy options

Option	Effectiveness	Technical feasibility	Political feasibility	Legal feasibility	Costs	Coherence	TOTAL SCORE
Policy Option 1	1.43	0.58	0.47	0.60	-0.13	0.06	3.01
Policy Option 2A	2.50	0.61	0.38	0.61	-0.15	0.10	4.05
Policy Option 2B	2.62	0.60	0.38	0.54	-0.16	0.12	4.10
Policy Option 3	4.20	-0.27	-0.42	-0.06	-0.50	0.14	3.09

8. PREFERRED POLICY OPTION

The policy options presented above have been ranked to identify the preferred policy packages, which would address the problem definition and achieve the policy objectives in the most effective way while considering the feasibility, costs and coherence of the options. The options presented above are ranked as follows.

Table 11: Ranking of the policy options

Option	Effectiveness	Technical feasibility	Political feasibility	Legal feasibility	Costs	Coherence	TOTAL SCORE
Policy Option 2B	2.62	0.60	0.38	0.54	-0.16	0.12	4.10
Policy Option 2A	2.50	0.61	0.38	0.61	-0.15	0.10	4.05
Policy Option 3	4.20	-0.27	-0.42	-0.06	-0.50	0.14	3.09
Policy Option 1	1.43	0.58	0.47	0.60	-0.13	0.06	3.01

According to the rating, weighting and ranking undertaken as described in section 1.5 of Annex I (methodology), the overall preferred policy option is option 2B. Importantly, and unsurprisingly given the high weighting given to the effectiveness criterion option 2A and 2B's overall score is strongly led by its effectiveness in achieving the policy objectives. Option 3's high effectiveness rating is hampered by the low feasibility scores as well as higher costs of the option.

The preferred policy package is therefore option 2B.

The preferred policy package is comprised of measures which would either not require any legislative changes, or require changes within the scope of the EU's competence. Most of the measures proposed under policy option 2B would be in line with the existing right to consular protection for unrepresented EU citizens in accordance with article 23(2) TFEU. As such, these measures could be proposed as part of a wide-ranging proposal from the Commission. However one key element (the direct provision of services to unrepresented EU citizen by EU Delegations) would require the need to use the *passerelle clause* of Article 25 TFEU.

The options forming part of the preferred policy package are proportional to the general objective and six specific objectives to be achieved. In most cases, they codify existing practices, ensuring a more secure concept of consular protection for unrepresented EU citizens and their non-EU family members and building on the experiences of the COVID-19 repatriation exercise. The financial and administrative burden and costs of the package are limited, especially for Member States, with the bulk of the limited impact to be borne by EU Delegations and the EEAS.

Additional benefits

Additional benefits would stem from the introduction of all the measures proposed under option 2B, as the ratings presented in Chapter 6 and in aggregated form in Chapter 7 stem from looking at each measure individually. The additional benefits include in particular:

- **Effectiveness synergies.** Taken together, all the elements of the policy option would develop synergies and potentially increase their effectiveness in achieving the objectives. The voluntary expansion of the role of the EU Delegations across the different components of the option would significantly increase the effectiveness of the option in addressing the problems and the different policy objectives.
- **Cost savings** are also expected to take place under option 2B: The increased workload for EU Delegations would reach a lower cost than the sum of its parts as the synergies discussed above would also result in efficiency. In addition, the overall costs of the soft measures foreseen would be expected to be smaller too. For example, the different types of guidance and training could be joined together with an overall expected reduction of their costs. As a result of these synergies, the overall cost of implementing the options together would be lower, and the overall score for costs is expected to be higher.
- The internal **coherence** of the policy package would also be enhanced if all measures under each option 2B were to be adopted. For example, extending the scope of the Directive to unrepresented citizens in the measures

addressing problem area 1, and the change to the form for reimbursement to also cover represented citizens in measures addressing problem area 4 would increase coherence.

9. MONITORING AND EVALUATION

The preferred policy package would have to be monitored and evaluated against the objectives it seeks to achieve in order to assess the effectiveness of the policy package. Suggested indicators are presented in the table below.

Periodic reviews of the implementation of the option by the Commission should be carried out to collect relevant information and to analyse implementation by each Member State and in each territory. Although relevant information is already being collected through an annual questionnaire distributed by DG JUST (e.g. data on number of requests of consular protection by unrepresented EU citizens), the data collected so far has been incomplete and not always comparable, and could therefore provide limited insights for this impact assessment. In order to improve the data collected, the questionnaire should be accompanied by a guide explaining how each question should be understood, to coherent interpretation of the request which would result in greater comparability. In addition, Member States need to step up their efforts to record and collect this information from their representations abroad to ensure the data is complete.

The indicators should be collectable from Member States, on the extent to which the instrument is used and be part of a regular Eurobarometer survey (level of awareness by citizens, benefits of EU citizenship and benefits from the Directive). In addition, if possible, a survey of unrepresented citizen would be useful in identifying the issues they face and the effectiveness of the Directive.

Monitoring will result in an implementation report produced and submitted by the Commission to other EU institutions five years after the entry into application of the legislative measure. This report will review the indicators listed in the table below.

In addition, the Commission should undertake an evaluation of the policy every 5 to 10 years to assess the extent to which the situation is evolving and the (potential) need for further action. Issues emerging between evaluations could be identified by the experience shared by Member States and the EEAS.

Table 12: Monitoring and evaluation indicators

Specific Objective	Indicator	Sources of information
PO 1- Enhance the legal certainty for EU citizens and their family members with respect to the beneficiaries of the right to consular protection (legal certainty in the personal scope).	Number of requests for consular protection by represented Member State	DG JUST Member State questionnaire
	Number of requests for consular protection by non-EU family members, by type of family member	
	Number of complaints received and court cases launched by represented EU citizens, non-EU family members and vulnerable groups with respect to violations of their right to consular protection	Complaints received by EU Delegations (collected from EU Delegations directly)
PO 2: Ensure all EU citizens and their family members have access to consular protection regardless of where they are in the world (legal	Number of countries where no Member State is represented	Data on Member State consular network.
	Number of countries in which a low number (below 7) of Member States are represented	
	Number of requests for consular protection by unrepresented EU citizens within the EU territory	DG JUST Member State questionnaire

Specific Objective	Indicator	Sources of information
certainty in geographical scope).		
PO 3- Enhance the legal certainty for EU citizens and their family members with respect to which Member State they are entitled to receive consular protection from (clarify procedure of redirecting and bilateral agreements)	<p>Number of requests for consular protection by unrepresented EU citizens and non-EU family members in third countries (by third country and by type of assistance requested, and Member State of nationality)</p> <p>Number of complaints received by EU Delegations (incl. reason for complaints)</p> <p>Number of complaints received by Member States and court cases launched by unrepresented EU citizens</p> <p>Number of court cases launched at the CJEU in relation to the right to consular protection</p> <p>Frequency of updated information sent by Member States to the EEAS on bilateral agreements in place</p> <p>Awareness of unrepresented EU citizens about their right to consular protection and right to legal remedy</p>	<p>DG JUST Member State questionnaire</p> <p>Information collected from EU Delegations</p> <p>DG JUST Member State questionnaire</p> <p>CJEU website</p> <p>Number of notifications of bilateral agreements by Member States</p> <p>Eurobarometer</p> <p>Opinion polls</p>
PO 4- Ensure clear roles, coordination and cooperation mechanisms between Member States and EU Delegations, including in times of crisis	<p>Number of third countries in which a JFW is put in place</p> <p>Number of JFW which include an explicit reference to unrepresented EU citizens</p> <p>Number of third countries in which a Global Joint coordination exercise was organised</p> <p>Number of third countries in which EU Delegation is appointed and acting as chair of the LCC meetings</p> <p>Number of meetings to which unrepresented EU Member States are invited to attend, and have attended.</p> <p>Number and type of requests from Member State authorities to EU Delegations for support/direct provision of consular protection</p>	<p>DG JUST Member State questionnaire</p> <p>Data collected from EU Delegations</p>
PO 5 - Improve the information provision and communication to (unrepresented) EU citizens.	<p>Number of Member States providing information to the Commission in a machine-readable format on:</p> <ul style="list-style-type: none"> - Consulates contacts - Permanent agreements - Travel advice <p>Increase in the number of citizens registering prior to living and/or traveling abroad</p> <p>Number of awareness-raising campaigns organised at the EU level and at the national level</p>	<p>DG JUST Member State questionnaire</p>

Specific Objective	Indicator	Sources of information
	Awareness of unrepresented EU citizens about their right to consular protection (incl. legal remedies and redress).	Opinion polls
PO 6- Increase the efficiency and use of the financial reimbursement procedures, by streamlining the procedures and codifying current reimbursement modalities.	<p>Number of reimbursement requests submitted and received by Member States</p> <p>Average time from submission of request to pay out</p> <p>Number of cases where reimbursement is not completed</p>	DG JUST Member State questionnaire

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