

The EU's role on Consular crisis management

The Covid crisis led to the repatriation under sometimes difficult conditions of hundreds of thousands of Europeans and entitled persons stranded abroad following the gradual cessation of air traffic and border restrictions. The Afghan crisis, of a different nature and intensity, also had a consular dimension which quickly became a top priority for the EU and its Member States.

Whether in regions facing political instability, in cases of increasing extreme weather events, new pandemics or other natural or human-induced disasters, the millions of Europeans who live and travel around the world are still likely to need assistance or even repatriation in the event of a crisis. However, not all EU member states have representation in all third countries¹. Moreover, the fact that a Member State is represented does not necessarily mean that it has sufficient resources on the spot to deal with a major consular crisis. This implies that the *de facto* solidarity that derives from the notion of "European citizenship" makes it advisable to **define practical arrangements and fair compensation for the efforts made by the Member States** that implement them during crisis situations.

Although consular assistance is primarily a competence of the Member States, there are clear legal provisions in European texts (see annex) which provide a basis for European coordination in times of crises. This non-paper seeks to address an **improved consular crisis management at European level** when economies of scale are possible **for the benefit of the Member states and the European citizens** in line with the expectations arising from the notion of "European citizenship".

Through a pragmatic and flexible approach, some short and medium term ideas are proposed to strengthen our common action in this field in a "Team Europe" spirit.

Taking care of our nationals facing acute crises situations outside the Union is also an important element in the strive to **greater EU resilience**. Moreover, an efficient and decisive European response to crises can only **improve citizens' perception of the EU**. This contribution should be seen as part of a broader reflection on building our joint preparedness and resilience capacity.

Concrete proposals for a possible way forward

In the short term:

- **Considering strengthening EEAS capacity to deal with consular crises abroad:** as part of the ongoing reform of the EEAS structures and based on a demand-driven approach, increase the capacity of the Consular Affairs Division by (1) soliciting experts from the Member States with a practical expertise and knowledge of both local circumstances and specific consular needs by Member States and (2) developing gradually its in-house expertise. This effort at central level, combined with the enhancing of the EUDEL capacities in consular matters, should reinforce the "upstream" flow of information (from local situations to EU and Member State crisis mechanisms) and strengthen the unit's capacity to act as an information hub in case of a crisis. This

¹ Only in CHN, IN, RU, UK and US all 27 MS are represented.

team of experts could make an inventory of good practices and improve the articulation of existing mechanisms, possibly by facilitating arrangements between groups of Member States that wish to strengthen their cooperation in certain regions.

- **Enhancing of country risk analysis:** considering the importance not only of adequate information but also of risk analysis in all phases of a crisis life cycle, centralization at the EEAS level of information relating to the risk of consular crises in third countries (e.g. escalation scenarios, "triggers", profile and geographic localization of European diaspora, evacuation routes, etc.) and dispatching of these analyses to the various European delegations and Member States, also in order to feed the "Joint consular crisis preparedness frameworks" (see below).
- **Mapping of commitments and needs:** at the local level, preparation of a list of commitments and needs to be covered (Lead States, presence of European delegations, represented and non-represented Member States, etc.). Agreements with other international organisations or non-EU states could also be included in this mapping. Regular updates of this mapping should help to assess the needs and define the responsibilities of each party. Sufficient resources for the implementation of the commitments should be foreseen.
- **Strengthening consular capacity and coordination by European delegations:**
 - Organization of exercises with the participation of the represented Member states (e.g. obligation of an annual exercise for posts with high hardship), and where possible, involvement of non-represented Member states.
 - Mandatory updating of the "joint consular crisis preparedness framework", a document which gives a general overview of the state of consular crisis preparedness (contact points in the Member States and in key countries (US, UK, CAN, JAP, AUS, etc.) and international organisations, practical arrangements, risk assessment, means of communication, etc.). It is shared between the members in order to reach a common understanding of the situation and to identify the possible impacts for EU citizens, it also provides some guidelines to ensure continuity of activities in terms of assistance to citizens and possible synergies that can be put in place.
- **Work towards greater convergence of travel advice (common core)** and communication to EU citizens. The *Re-open EU website* is an example of a coordinated and user-friendly good practice to inform our citizens. Specific lines of action could include work on shared instant notifications (in case of attacks, crashes, etc.); shared language; etc.
- **Logistical support:** To be able to play a coordinating role, it is essential that EU delegations have and use secure, integrated and autonomous means of communication, and can maintain an operational capacity during the crisis. The constraints on this capacity (dependence on private security companies, internal EEAS rules on staff security, etc.) must be part of the mapping exercise to objectively assess the extent to which delegations can play their role.
- **Incentivize financial compensation:** the human, logistical and material efforts made by Member States that deploy capacities to manage a consular crisis must be objectified and compensated in a fair and equitable manner for the part that is put at the disposal of the community. The procedures and deadlines for reimbursement must be quick and transparent.
- **A more flexible, efficient and broader EUCPM:** the mechanism should be designed in such a way that it serves to respond to collective demand. Every effort should be made to ensure that repatriation flights co-financed under the EUCPM carry a significant proportion of nationals of EUCPM participating States other than the

requesting state. The EUCPM could also be used for further pooling of secure transport and communication facilities and other needs.

- **Launch of a "consular Erasmus"**: expertise is key. The EEAS could take the lead in organizing legal and administrative training in the various Member States on definitions, personal data management, crisis management training, etc. and practical exercises to aim, in the end, at setting up European consular reinforcement teams formed by both EEAS and MS officials who can be immediately activated in the event of a crisis. Linguistic diversity must be preserved in such teams.

In the medium and long term,:

- **Coherence between internal and external dimensions**: adequate structures should be put in place (1) at the strategic level with a specific working party of the Council on crisis management and (2) at the operational level. Networks of national crisis centra could provide an additional tool, according to circumstances, as a clearing house and information hub, without prejudice to the role of formal EU structures.
- **Improve collective situational awareness** : by bringing together the knowledge from all services and all sources, for example in a Joint Situational Awareness Centre. Establishment of an early warning system to prevent the occurrence of consular crises.
- To ensure an effective deployment of both civilian and military means, **Scenario-based advance planning** facilitated by EEAS and resulting in a number of generic contingency plans could help to mitigate critical delays in planning and decision-making. Such contingency plans could be discussed and endorsed beforehand to speed up decision-making when a crisis occurs. Launch a reflection on joint emergency contingency planning and the deployment of civilian and military means available for rescue operations in the framework of the Common Security and Defence Policy (CSDP).
- This could be complemented by **crisis management exercises**, including live exercises that would demonstrate EU's response capacity and foster interoperability.
- **Adaptation of the legal framework**: on the basis of the evaluation of Directive 2015/637 by the Working Party on Consular Affairs (COCON), consider adaptations that would make the text more operational, isolate capability gaps and specific missions that the EEAS could best address, and support solidarity among Member States by strengthening existing mechanisms or developing new instruments.
- **Reflection on the notion of "entitled persons"**: In all recent crises, the early definition of "entitled persons" has proved critical to crisis management and repatriation efforts. A mapping exercise could be done at the European level of the practices and various criteria used by MS in adopting and reviewing this definition. Based on experience, this exercise could lead to a focused effort on the conditions for a common EU framework.

Annex: Legal framework and existing mechanisms

Legal Framework

European citizenship as enshrined in the **Lisbon Treaty** gives rights to **EU nationals** in terms of consular assistance. Article 20(2)(c) TFEU provide that citizens of the Union shall have "*the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State*".

Article 43 TEU provides that the tasks referred to in Article 42 (1) (CSDP missions), in the course of which the Union may use civilian and military means, shall include (...) "*humanitarian and rescue tasks*".

Directive 2015/637 establishing the coordination and cooperation measures necessary to facilitate the consular protection of unrepresented Union citizens in third countries is the legal basis for the current cooperation between Member States. The role of EUDELs in the event of a crisis is defined² as helping with coordination, information exchange and basic logistical support. The consideration of unrepresented European citizens in crisis contingency planning is emphasized in the preamble³ and in the articles on crisis preparedness and cooperation.

The **Lead State** concept is defined in the European Union **guidelines** on the implementation of the consular Lead State concept (Directive 2008/C317/06). It provides that a Member State may volunteer to take responsibility for the management and evacuation of its nationals and those of other Member States.

Existing platforms and mechanisms

At central level, the **EEAS Crisis Response & Operational Coordination Department** is responsible for the activation of an ad hoc EEAS Crisis Response System (Crisis Platform, EU Situation Room, Crisis Management Board) when needed. Part of the EEAS Crisis Response Department, the **Consular Affairs Division** currently has two roles : (1) assisting the Presidency to coordinate consular policies across the EU (e.g. travel advice,

² Art. 11 « *Union 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. Union delegations and the EEAS headquarters shall also facilitate the exchange of information between Member States' embassies and consulates and, if appropriate, with local authorities. Union delegations shall also make general information available about the assistance that unrepresented citizens could be entitled to, particularly about agreed practical arrangements if applicable.* »

³ Preamble 20: (whereas)« *A clear division of responsibilities between represented and unrepresented Member States and the Union delegation is essential to ensure adequate crisis preparedness and crisis management. Crisis contingency planning should therefore be coordinated and fully take unrepresented citizens into account. To this end, in the framework of local crisis response preparedness, Member States which do not have an embassy or consulate established locally should provide all available and relevant information regarding their citizens in the territory. Such information should be updated as appropriate in the event of a crisis. Competent embassies and consulates, and Union delegations should be informed and, wherever appropriate, involved in crisis preparedness arrangements. Information regarding those arrangements should be made available to unrepresented citizens. In the event of a crisis, the Lead State or the Member State(s) coordinating the assistance should coordinate the support provided for unrepresented citizens and the use of available evacuation capacities on the basis of the agreed planning and local developments, on a non-discriminatory basis.* ».

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issuance of consular guidelines) as well as (2) assisting the Presidency and/or Lead States to coordinate action in times of crises.

The **EU Integrated Political Crisis Response Mechanism** (ICPR) is also crucial for the coordination of national responses for major and complex crises, providing concrete tools (ia. Web platform, analytical reports), and allowing to organize joint decision-making at a political level.

The **European Union Civil Protection Mechanism** (EUCPM, EU Member States and 6 Participating States⁴) allows the European Commission to play a key role in coordinating the disaster response worldwide, contributing to at least 75% of the transport and/or operational costs of deployments.

The use of the EUCPM is coordinated through the **Emergency Response Coordination Centre** (ERCC), which falls under the responsibility of the Commissioner for Humanitarian Aid and Crisis Management. The Ministries of Interior of the Member States are the national contact points for the ERCC through the Consular On Line platform (**CoOL 2.0**).

The **EU Movement and Planning Cell** (EUMPC) can be activated to engage Member States to request Military or Strategic Lift to support the ERCC mission. If activated, it can also act as liaison between EU MS, the EU Military Staff (EUMS), and the ERCC. Moreover, the **Military Planning and Command Capability** (MPCC) within the EUMS, is developing a command and conduct capability, including for non-executive EU operations.

In practice

The Afghan crisis showed that joint intelligence and **risk analysis** capabilities were lacking to predict the speed and scale of the emerging crisis, as stated by the President of the European Commission in her "State of the Union" address: *"We have the knowledge, but it is disjointed. Information is fragmented. This is why the EU could consider its own Joint Situational Awareness Centre to fuse all the different pieces of information."* Moreover, the existing structures were lacking protocols for proper consultation, planning, coordination and effective cooperation. The aim should be to go beyond "situational awareness" and to achieve "shared understanding" (SaSu).

An in-depth rationalization of existing structures, achieving better effectiveness and efficiency seems necessary.

At the height of the Covid-19 crisis, the March 2020 European Council mandated the HR/VP to support the coordination and action of the Member States and the EU in organizing the repatriation using the EUCPM. The EEAS set up a **Task Force** (EEAS, Commission and European delegations) in order to, among other things, assist Member States that were not represented in third countries, for example by calling on local authorities to show flexibility in order to facilitate returns (postponement of airport closures, maintenance of overflight authorizations, etc.). This Task Force as well as the greater coordination between the ERCC (crisis centres - Ministries of Interior) and the consular cells (Ministries of Foreign Affairs) to act as a clearing house for requests were, however, only ad **hoc and temporary** solutions.

The **EUCPM** was used during the Covid and Afghan crises to contribute to the financing of collective flights. In practice, it has been observed that the EUCPM can create "windfall effects" by allowing the financing of flights that would have taken place anyway with seats mainly allocated to the nationals of the Member State that makes use of it and a limited number of "European" seats for the other Member States. Administrative procedures are

⁴ Iceland, Montenegro, North Macedonia, Norway, Serbia and Turkey.

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heavy and not flexible enough (imbalance between offering and receiving states, risk of improper use of funding) and ultimately penalize those Member States that do make use of it.

The **Lead State** concept has had mixed success, with those Member States that have the capacity to play this role in some parts of the world favoring more flexible bilateral arrangements. This is partly due to the significant responsibility of such a role and the various costs involved in preparing for and managing a major crisis and possible repatriations.

On the spot, the capacity to have "eyes on the ground" is crucial, also within the context of early warning. The management of a consular crisis is made difficult by the **inadequacy of the lists** available to the Member States concerning their own nationals (a large dark number which is only revealed during actual crises). Although informal consultation often takes place on the spot, **travel advice** remains a strictly national competence and approach. The **definition of entitled persons** also varies from one Member State to another, which can have a negative effect in the absence of pre-crisis agreements.

The use of **military assets** is essential for certain evacuations. However, this deployment is currently carried out on a national basis without any EU coordination through the EUMPC, or without recourse to CSDP means and structures.
