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CONSULAR PROTECTION OF EU CITIZENS IN THIRD STATES: VARIETY IS DELIGHTING?

The Case of the Emergency Travel Document¹

Abstract

Consular protection of European Union (EU) citizens in Third States is a right inherent to the citizenship status. Since the entry into force of the Maastricht Treaty, Member States are required to guarantee the same level of protection to non-national, unrepresented EU citizens as they would do to their own nationals in certain qualified situations although the measures are not harmonised. It is due to the domestic nature of consular protection regulation, although a simple common format without any details was established to replace travel documents to facilitate thus the effective protection. Meanwhile, during its practice of 20 years, it has been proven that an additional harmonisation is needed with detailed rules on cooperation of authorities and exact provisions on an EU type of travels document. Therefore, a Council directive proposal was submitted on 31 May 2018 to achieve this aim which, in case of adoption, may be a step forward a unified concept of EU citizenship towards third States and strengthen the same level of serving the interests of citizens and it would also be milestone in administrative cooperation to ensure good administration of consular protection.

I. Introduction

Although every citizen of the European Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, is entitled to protection by the diplomatic or consular authorities of any Member State, on the same

¹ This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled *Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy*. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

conditions as the nationals of that Member State,² the EU has no aim and competence to unify the consular protection. EU law does not confer them a right to uniform protection abroad. The Maastricht Treaty, which introduced the EU citizenship and the inherent rights so as the current Treaty in force, provide for a mere prohibition of discrimination based on nationality,³ and until 2015, only modest tools were used to facilitate the necessary measures in favour of citizens.⁴ So, the Member States still enjoy a great scope for action. According to domestic laws of Member States, there is a variety of benefitting the holders of the right in case of death, serious accident or serious illness, arrest, or detention, falling victim of violent crime, loss or theft of identity documents, and situations requiring repatriation or relief especially in armed conflicts, and in case of natural disasters; namely in qualified situations enlisted first by Council Decision 95/553/EC.⁵ Apart from settling those situations which definitely require the Member States to provide consular help and protection, the Member States also agreed upon the usage of a common format as an emergency travel document which can be issued to temporarily replace the missing travel document of a non-national EU citizen, and a basic scenario was also fixed for the repayment of costs of the consular service.⁶ All these provisions were settled with full respect of the domestic provisions and the external relations of the Member States.

However, variety has been proven to be unsatisfactory. In 2015, upon Article 23 of the Treaty on the Functioning of the European Union (TFEU), the Council adopted a new directive on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the EU in third countries (Consular Protection Directive). In addition, on 31st May 2018 a Council directive proposal (Proposal) was submitted to reduce diversity and impose detailed provisions for the scenario for cooperation when the consular authority issue emergency travel document for a non-national EU citizen and a common, renewed form to that end.⁷

² Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012. 391–407. [EU Charter] Article 46.; Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. 47–390. [TFEU] Article 23.

³ On generalising the principle of non-discrimination *ratione personae* and its limits see: WOLLENSCHLAGER, Ferdinand: *The Europeanization of Citizenship. National and Union Citizenships as Complementary Affiliations in a Multi-Level Polity*. Paper presented at the EUSA Tenth Biennial International Conference Montreal, Canada, May 17 – May 19, 2007. <http://aei.pitt.edu/8025/1/wollenschlager-f-03h.pdf> (20.12.2018.) 8–12.

⁴ Being strictly attached to the foreign policy area, basically, the EU's consular policy used to be under the scope of the intergovernmental regime of the former second pillar which was the widest area for national sovereignty and the least power for EU. CSATLÓS, Erzsébet: *Consular Protection Policy of the EU in the View of Good Administration*. In: Csatlós, Erzsébet (ed.): *Recent Challenges of Public Administration. Papers Presented at the conference of 'Contemporary Issues of Public Administration'*, 26th April, 2017. Iurisperitus, Szeged, 2017. 85–86.

⁵ 95/553/EC Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations OJ L 314, 28.12.1995. 73–76. [No longer in force] Article 5. 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 OJ L 106, 24.4.2015. 1–13. Article 9.

⁶ Directive 2015/637, Article 9.; 14–15. Decision 95/553/EC Article 5; 6.

⁷ Proposal for a Council directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP Brussels, 31.5.2018. COM(2018) 358 final [Proposal]

The paper aims to explore and examine how the content of the new proposal while it reveals how it expands the EU's influence on foreign relation and develops European administration of a legal area under the cover of coordination and cooperation measures.

II. The emergency travel document

II.1. Connection between travelling, documents and consular protection

Before World War I, document-free international travel was the general rule for individuals, and the restriction of the free movement by official documents was the product of the 20th century.⁸ The right to leave any country, including one's own, and to return home (right to leave and return) is now recognized under international and European human rights law,⁹ although travel document is necessary for travel and the conditions of issue varies from State to State, and restrictions on the right to return is recognized only in special cases,¹⁰ but as Liu says, the “*right to return is accepted so widely that its existence as a rule of law is virtually beyond dispute*”¹¹ and it is respected as a general principle.¹² However, in order for the right to be effective, the State must provide the individual with a travel document, in particular a passport, which is a certificate of identification and an evidence that the bearer is the national of the issuing State¹³ enjoys its protective power¹⁴ and has an incontestable right to enter the territory controlled by its issuing State.¹⁵ It is an authentic document normally issued by the State of nationality of the individual as an inseparable aspect of citizenship policy, therefore it is a core element of State sovereignty.¹⁶ The passport, as a summary name of travel documents which are the issued to reflect the above-mentioned status, is therefore an important element in border-crossing thus administration in case of the passport is lost, stolen or destroyed during one's staying abroad, is an important function

⁸ BAUMAN, Robert E: *The Passport Book. The Complete Guide to Offshore Residency, Dual Citizenship and Second Passports*, The Sovereign Society, Delray, 2009. 18–20.

⁹ UDHR, Universal Declaration of Human Rights, 10 December 1948, Paris, UN GA Res 217A, Article 13(2); International Covenant on Civil and Political Rights, New York, 16 December 1966, 999 UNTS 171 [ICCPR] Article 12(2); (4); Protocol n°4 of the ECHR, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 16.11.1963, Strasbourg, ETS 46, Article 2(2); LIU, Guofu: *The Right to Leave and Return and Chinese Migration Law*. Brill, Leiden, 2007. 2932.

¹⁰ ICCPR Article 12.3; GUILD, Elspeth: *The right to leave a country*. Issue Paper by the Council of Europe Commissioner for Human Rights, 2013. <https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/07/31/Ayrim.pdf> 13

¹¹ LIU, 2007. 84.

¹² LEE, Luke T.: *Consular Law and Practice*. Frederick A. Praeger, New York, 1961. 175.

¹³ LEE, 1961. 175.

¹⁴ HARGITAI, József: Az útlevel és a külföldre utazáshoz való jog nemzetközi jogi alapjai. *Magyar jog*, 42 (1995) 12, 715.

¹⁵ LIU, 2007. 53.; TORPEY, John: *The Invention of the Passport, Surveillance, Citizenship and the State*. Cambridge University Press, Cambridge, 2000. 163.

¹⁶ HARGITAI, 1995. 710.; ZIECK, Marjoleine: Refugees and the Right to Freedom of Movement: From Flight to Return. *Michigan Journal of International Law*, 39 (2018) 1. 106.

of consular authorities¹⁷ and now also an entitled situation when Member States are obliged to ensure service under the consular protection policy of the EU. Consular protection is, in fact, the collection of services and acts performed by the external administrative authorities of the States on the territory of another State and being a prerogative of the State and based on bilateral treaties between the State of nationality and the state where the national needs administrative help, is not a legal area that falls under the legislative competence of the EU.¹⁸ The substance of law is not regulated by EU law, and administrative law issues are also marginally regulated by the EU. The EU and its Member States do not offer common consular administrative and legal services abroad, only certain situations are enlisted when the citizens might need help: arrest or detention; being a victim of crime; a serious accident or serious illness; death; relief and repatriation in case of an emergency and the replacement of lost, stolen or damaged travel documents that entitles the citizen to return home.¹⁹ The level and quality of measures depend on the domestic regulation of Member States, so the essence of consular protection and the procedural rules of this administrative service varies from Member State to Member State. However, the Council decision of 96/409/CSFP²⁰ wanted to provide a genuine help to the proceeding authorities by establishing a quick solution for the most commonly occurring problem of travellers: the issuing of a travel document to help the EU citizen return home. It does not replace the passport. The passport is, nevertheless, the expression of the State's territorial sovereignty thus decisions concerning the modalities of issuance and acceptance of passports depends on the State's discretionary power.²¹ The legislation in the form of CFSP was considered a simplified form of international agreement,²² that is all the signatories accepted that, the application of the *emergency travel document* (ETD) seemed to face no burden for serving citizens.

¹⁷ Vienna Convention on Consular Relations, Vienna, 24 April 1963, 596 UNTS 261 [VCCR] Article 5 d).

¹⁸ TFEU, Article 23(1) appears to use the adjectives 'diplomatic' and 'consular' as synonyms, although diplomatic protection and consular protection are two completely different legal concepts. Given the fact that consular function can also be practiced by both diplomatic and consular agents and considering the content of secondary sources it is obvious that Article 23 TFEU refers only to consular protection. SCHIFFNER, Imola: A diplomáciai védelem gyakorlásának eszközei, avagy a fogalom-meghatározás és az elhatárolás problémái. *Acta Universitatis Szegediensis de Attila József Nominatae Sectio Juridica Politica*, 72 (2009) 18. 535–543.; VIGNI, Patricia: The Protection of EU Citizens: The Perspective of International Law. In: Larik, Joris – Moraru, Madalena (eds.): *Ever-Closer in Brussels – Ever-Closer in the World? EU External Action after the Lisbon Treaty*. EUI Working Papers, Law 2011/10, 100. BATTINI, Stefano: The Impact of EU Law and Globalization on Consular Assistance and Diplomatic Protection. In: Chiti, Edoardo –Matarella, Bernardo Giorgio (eds.): *Global Administrative Law and EU Administrative Law*. Springer-Verlag, Berlin – Heidelberg, 2011. 177–178.; BECÁNIC, Adrienn: Konzuli védelem és segítségnyújtás az Európai Unió perspektívájából. In: Karlovitz, János Tibor (ed.): *Fejlődő jogrendszer és gazdasági környezet a változó társadalomban*. International Research Institute s.r.o., Komárno, 2015. <http://www.irisro.org/tarstud2015aprilis/index.html> (18.12.2018.) 25–26. Diplomatic protection is still considered an exclusive prerogative of the State of nationality which does not have any duty to exercise such protection vis-à-vis its nationals. Cf. VIGNY, 2010. 17. and *Odigitria AAE v Council of the European Union and Commission of the European Communities* [1996] ECJ, 28 November 1996, Case 293/95, ECR II-02025.point 43–45.

¹⁹ Directive 2015/637, Article 9.; Council Decision of 1995, Article 5.

²⁰ 96/409/CSFP 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.

²¹ HAGEDORN, Cornelia: Passport. In: *Max Planck Encyclopaedia of Public International Law*. Oxford Public International Law, January 2008. <http://opil.ouplaw.com> (24.12.2018.) point 7.

²² CARE Final Report. Consular and Diplomatic Protection. Legal Framework in the EU Member States. 2010. <http://www.careproject.eu/images/stories/ConsularAndDiplomaticProtection.pdf> [CARE report] 571–573; 579.

II.2. Emergency travel document and Member State obligations under the consular protection policy of the EU

The ETD is a single-journey document, allowing the bearer to return home, or, exceptionally, to another destination, if they do not have access to their regular travel documents.²³ Issuing temporary travel document is a typical a consular protection measure via an administrative procedure; actually, it is the only one which was uniformly regulated by the 96/409/CSFP decision soon after 1992 when the Maastricht Treaty declared the right to consular help in third countries as a clear demonstration of the practical benefits of being a citizen of the Union.²⁴

According to its provisions, it is a piece of security paper, with a photo and important personal information on the holder including name, date of birth, place of birth, height, nationality and the signature of the holder.²⁵ It can be issued for a maximum period of time to return home. An ETD should be made valid for barely longer than the minimum period required for completion of the journey for returning home with the necessary overnight stops and for making travel connections.²⁶ The recipient may only be a national of a Member State whose passport or travel documents are lost, stolen damaged or temporarily not available and has no accessible diplomatic or consular representation with the capacity to issue a travel document. In such cases, after being successfully identified as an EU citizen, or in case of extreme emergency without that, the consular authority of the Member State represented at site may issue the necessary document. Decision 96/409/CSFP also empowers Member State to extend the application of ETD rules to other persons.²⁷

However, it shall be emphasized that neither the TFEU, nor Directive 2015/637 establishes obligation for Member States to issue ETD or gives the right to any circle of recipients to get such document from any Member States consular authority in a third State. EU consular policy establishes obligation to assist but Member States' consular law gives

²³ Proposal, preamble (2).

²⁴ 96/409/CSFP 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, Official Journal L 168, 06/07/1996. 4 –11, preamble al 3.

²⁵ ETDs shall be printed on security paper. It is 18x13 cm when it is open and 9 × 13 cm in folded format. The security paper is free of optical brighteners (approximately 90 g/m²), use a standard 'chain wires' watermark legally protected for the manufacturer of the document, with two invisible fibres (blue and yellow, SSI/05) fluorescent under ultraviolet light and reagents against chemical erasure. Each Member State shall provide the documents with a centralized numbering system, combined with the initials of the issuing Member State. The photograph of the bearer shall be laminated in accordance with national practice, it being understood that Member States shall take the necessary steps to ensure an appropriate level of security for the document. The bearer's personal details on the ETD form shall be consistently entered in either handwritten or typewritten form and shall be covered with a laminate. When an ETD is issued, the seal of the issuing authority shall be affixed partly on the document and partly on the bearer's photograph. ETDs shall have a guilloche protective background with indirect letterpress printing in four colours on the pages where data is to be entered with due consideration to iridescent printing. The decision also provides for the printing technology that shall be used. The inks used shall be copy-resistant and any attempt to make a colour copy shall result in clearly recognizable colour deviations. Moreover, at least one colour shall contain fluorescent agents. The inks shall also contain reagents against chemical erasure. The blank ETD forms shall be ensured a theft-proof storage. 96/409/CSFP Annex III.

²⁶ 96/409/CSFP, Annex II. 4.

²⁷ 96/409/CSFP, Annex II. 6.

the substance for the provisions and if a Member State's consular law does not provide for the possibility to issue travel document, then that State's consular authority will be responsible *to ensure assistance* when there is a need for emergency travel document,²⁸ and the Provision should not affect more favourable national provisions either in so far as they are compatible with its provisions.²⁹ In fact, "*the right to leave includes the positive obligation to issue travel documents, so that the right to leave can actually be exercised*"³⁰, but its circumstances rests in domestic competence domain, that is why it is important to emphasize the EU norms' role in enhancing the task as *assistance* in the case of emergency travel document issue and not referring to it as a consular protection measure to be ensured for citizens.

The first and outmost obligation of the requested consular authority at site is, namely, to contact the Ministry of Foreign Affairs of the Member State of which the person claims to be a national or, where appropriate, the competent embassy or consulate of that Member State, and provide it with all the relevant information at its disposal, including regarding the identity of the person concerned, possible costs of consular protection, and regarding any family members to whom consular protection may also need to be provided.³¹ Except for extreme urgency, the checking of the identity of the person comes first, and then, the Member State of nationality has the chance to provide consular protection in accordance with its national law or practice and the requested Member State and its consular authority relinquish the case as soon as the Member State of nationality confirms that it is providing consular protection to the unrepresented citizen.³² The right to issue a passport is still the prerogative of the nation State, to provide for its types and if they are willing to ensure short term, temporary travels document. The Member States' practice is colourful concerning temporary travel documents if there is any,³³ the establishment of a standard model by Decision 96/409/CSFP aimed to provide genuine help to the citizens of the Union in distress, as it might have been a clear demonstration of the practical benefits of being a citizen of the EU.³⁴

According to data from 2017, the issuance of emergency travel document is the most frequent form of assistance given to unrepresented EU citizens (more than 60 % of all cases) but in absolute terms, the number of EU ETDs issued is relatively small. The annual numbers have been estimated at around 320 outside the EU and another 250 within the EU, and another 400–500 unrepresented citizens annually are issued national ETDs rather than the EU ETD format. However, the figures for EU ETDs are fragmentary and probably underestimated, as currently not all Member States collect precise statistical data on EU

²⁸ Directive 2015/637, Article 9 (f).

²⁹ EU ETD Proposal, (9).

³⁰ ZIECK, 2018. 88.

³¹ Directive 2015/637, Article 10.

³² Directive 2015/637, Article 3.

³³ Eight Member States issue more than one type of emergency travel document. Emergency travel document as a paper is used by 9 Member States, as a booklet by 3 Member States, laissez passer in paper format is used by 3 Member States, in booklet format by one; under the term provisional/temporary passport 7 Member States uses booklet form and as emergency passport 2 Member States use paper format and 6 Member States use booklet format. ETD Presidency reflection paper, 9.

³⁴ Decision 96/409/CSFP, preamble.

ETDs.³⁵ So, the picture is still colourful meanwhile there is no evidence of any distressed citizens that was left without travel document, so in that point of view, no right has been violated relating to consular protection policy of the EU. However, bearing in mind equal treatment, the pure application of the provisions may also lead to diversity in practice as States consular law is different and it also have effect on individuals and the evaluation of their substantial rights as the level of service is different even in the same third State.

III. The Council directive proposal for a new type of ETD

III.1. The need of updated rules on ETD

The application of the Council decision 96/409/CSFP has approximately two decades of experience and meantime, the right to consular help in third States was definitely recognized among the fundamental rights of EU citizens and by the Lisbon Treaty, the Council got expanded competence to act in accordance with a special legislative procedure and after consulting the European Parliament and adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.³⁶ On 18 January 2011, the Council invited the European Commission to make a proposal for the production of a new EU ETD format containing security features in line with the current practices. As a first step, on 14 December 2011, the Commission presented a proposal which led to the adoption of a comprehensible Consular Protection Directive in 2015 to update and clarify coordination and cooperation measures to facilitate consular protection of EU citizens in third States. Rules to implement its new measures had to be done until the 1st May 2018. The concept of harmonisation of consular protection has not changed, it is still a domestic competence, and the situations when Member States are required to help each other's citizens are the same, although this time, the focus of provisions is on the cooperation and coordination of acts of authorities involved in the procedure.³⁷ Among the situations, it clarified an express reference to the issue *emergency travel documents* as one of the forms of assistance within the scope of consular protection. It is a major difference compared to the former regime as Decision 95/553/EC does not mention the issue of emergency travel document among the situations when assistance is required.

The Commission reported in 2017 that in more than 60% of the cases when EU citizens needed help outside the EU, they needed travel documents. It is also recognized that the emergency travel document established by 96/409/CSFP was not used by all the Member States (*Germany, Ireland, Greece, France, Croatia and the United Kingdom*)³⁸ due to the insufficient and unsatisfactory security nature of the common format. As it is a serious

³⁵ Proposal, 1. footnote 4; EU Citizenship Report 2017, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Strengthening Citizens' Rights in a Union of Democratic Change Brussels, EU Citizenship Report 2017, 31.1.2017, COM(2017) 30 final/2. 18.

³⁶ TFEU, Article 23 al. 2.

³⁷ CSATLÓS, Erzsébet: Consular Cooperation in Third States: Some Aspects Concerning Europeanisation of Foreign Service for EU Citizens. *Bratislava Law Review*, 1 (2017) 1. 77–78.

³⁸ Emergency Travel Document (ETD) – Presidency reflection paper. COCON 14, CFSP/PESC 523, COTRA 13, 11955/15, Brussels, 17 September 2015. [ETD Presidency reflection paper] 3.

obstacle for the effective protection of citizens abroad, recognizing the need for better security measures and further upgrade of the ETD procedure, the reform of 96/409/CSFP was put on the agenda.

A public consultation was launched from 12 September 2017 until 5 December 2017 to see views and concerns of EU citizens, businesses, organisations as well as public authorities on how the EU legislation on the Emergency Travel Document worked and on possible options to modernise them to make sure that EU citizens who find themselves without a passport outside the EU, and with no embassy or consulate of their own to help them, can get effective help to travel home.³⁹ Following requests from some Members States' Authorities and to encourage greater response rates, the survey deadline was extended to 8th December 2017. In addition to the survey to the authorities, over 50 companies, a mix of airline companies, tour operators and insurance companies, were contacted by the external contractor to gather their views on the EU ETD and potential options for improvement.

A total of 95 responses were received to the *stakeholder consultation*, and there was a good coverage of Member States responded to the targeted consultation, with all EU Member State represented by at least one stakeholder (insurance company incl. associations, airline company incl. associations, tour operator incl. associations, citizens, border control) and insurance company. The responses emphasized the need for security development of the ETD and the option of developing further guidelines as a soft measure is questionable.⁴⁰ In contrast, the *open public consultation* got little interest: a very limited number of replies were received. 23 EU citizens, 5 administrations and 3 organisations from 14 Member States responded to the questionnaire. Respondents were very mobile, with over 65% travelling outside the EU at least once a year or more and 84% of the respondents agreed that EU citizens living or travelling in a country within the Union should also be able to receive an EU ETD both inside and outside the EU, if their home country has no embassy or consulate there and their travel document is lost, stolen, destroyed or unavailable.⁴¹

A Council directive proposal was submitted with new rules on the now called *European Union emergency travel document* (EU ETD) on 31st May 2018. This proposal is based on the same competency rules as the Consular Protection Directive of 2015, so the future directive is a coordination and cooperation measure necessary to facilitate consular protection of EU citizens in third States.⁴²

³⁹ Public consultation on the EU Emergency Travel Document (EU ETD) https://ec.europa.eu/info/consultations/public-consultation-eu-emergency-travel-document-eu-etd_en (20.12.2018.)

⁴⁰ The online survey to Member States' competent authorities was answered by all Member States, with the exception of Germany, Cyprus and Greece. However, all three countries responded to our request for telephone interviews and information. Cyprus and Greece confirmed that they had not issued any EU ETDs to date; thus, their input to the survey was considered by them to be of limited added value. Commission Staff Working Document Impact Assessment Accompanying the document 'Proposal for a Council Directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP, Brussels, 31.05.2018. SWD(2018) 273. [Impact Assessment] 55. See the results in charts and numbers on page 56–64.

⁴¹ Impact Assessment, 65–66.

⁴² Proposal, 3.

III.2. Security features of the document

The Proposal puts a great emphasis on detailed rules on the security and reliability of the format of the EU ETD. Given the fact that it is a travel document issued to enable its holder to cross borders and enter the EU, it is an important element of border management and increasing the similarity of the common format to a passport may increase its acceptance by third countries.⁴³ Given the fact that cost-efficiency⁴⁴ and proportional measures are preferred, thus in addition to a uniform form a sticker would be used instead of biometrics⁴⁵, just like in the case of visas.⁴⁶ The sticker shall contain information on the holder,⁴⁷ shall be in consistent with ICAO document 9303, Part 2,⁴⁸ and shall be printed. No manual changes shall be made to a printed EU ETD sticker except for the case of *technical force majeure*.⁴⁹ If the sticker shows error, it shall be invalidated and if it is affixed to the EU ETD form, both shall be destroyed and new ones shall be produced.⁵⁰ The facial image of the applicant

⁴³ Proposal, 3.

⁴⁴ Opportunity costs of EUR 93/day in saved time per case. The time savings based on 1000 annual cases per year can be valued at EUR 93,000 across all citizen. Based on the annual issuance of 1000 EU ETDs a year at 8 euro per piece estimated production cost. Additional benefits are not quantifiable but reduce costs: quicker and more reliable processing of citizens travelling on EU ETDs at the EU borders reduces administration and extra costs for both citizens and Member States by handling and compensation payments for authorities and airlines and reduced denial-of-boarding costs (lost sale) for airlines. Impact Assessment, 68–69.

⁴⁵ The cost of equipment needed for personalisation per issuing post is estimated between 10 000 and 15 000 euros. Currently, only a minority of EU Member States' consulates have such equipment available and many Member States treat the requests for passports either domestically or at several regional centres in the world. Their service involves a waiting period of several days to several weeks and does not correspond to the needs of an emergency travel document, which should be readily available. Therefore, equipping all consulates with the required equipment on the other hand would be prohibitively expensive in proportion to the number of cases of EU ETDs issued every year and sharing common equipment would not reduce the costs as much as it would slow down the issuance process. In addition, the new EU ETD booklet also have an estimated cost in the range of 60–100 euros per printed copy, based on the example of the EU laissez-passer biometric passport printed in relatively low quantities. Impact Assessment, 38.

⁴⁶ Proposal, Article 8.1. Annexes I and II; Commission Implementing Decision C(2018) 674 of 9 March 2018 as regards further technical specifications for the uniform format for visas and repealing Commission Decision C(2010) 31–91.

⁴⁷ Annexes to the Proposal for a Council Directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP. 9643/18, COCON 9, VISA 134, FREMP 90, Brussels, 1 June 2018. 3–4.

⁴⁸ Proposal, Article 8.2. The International Civil Aviation Organization (ICAO) is a UN specialized agency, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation (Chicago Convention). Strictly attached to aviation safety, it has a broad global agenda of traveller identification management and aims to provide the States the necessary mechanism to identify individuals by their travel document with the highest possible degree of certainty, security and efficiency. To that end formulates standards and recommendations. See more about this program: Traveller Identification Program: ID Management Solutions for More Secure Travel Documents. <https://www.icao.int/Security/FAL/TRIP/Pages/default.aspx> (20.12.2018.) The European Union (EU) is an ad-hoc observer in many ICAO bodies (Assembly and other technical bodies). The Proposal refers to its document about Machine Readable Travel Documents (MRTD). The MRTD, and its method of issuance, shall be designed to incorporate safeguards to protect the document against fraudulent attack during its validity period. ICAO Doc 9303 Machine Readable Travel Documents (MRTD). Part 2: Specifications for the Security of the Design, Manufacture and Issuance of MRTDs https://www.icao.int/publications/Documents/9303_p2_cons_en.pdf (20.12.2018.) 1.

⁴⁹ Proposal, Article 8.45.

⁵⁰ Proposal, Article 8.6.

used for the EU ETD should be taken live at the embassy or consulate by digital camera or equivalent means.⁵¹ Compared to the ETD, the EU ETD should contain blank pages so that transit visas, if required, can be affixed directly to the form.⁵² Other formats may only be used in case of crisis situation.⁵³

III.3. Vertical cooperation: provisions for procedural actions including deadlines

While Council decision 96/409/CSFP only provides for the format of ETD and the conditions of issuance, the Proposal also contains exact description of consecutive procedural steps including deadlines for each action in case of a demand for ETD. In case of receiving an application for an EU ETD, the consular authority has 24 hours to contact the alleged MS of nationality to check the identity. Requests for protection should be processed if applicants present a valid passport or identity card. However, unrepresented citizens in need of consular protection might no longer be in possession of their identity documents. To identify the person, the consular authority shall share the data on the applicant to be included on the EU ETD sticker including the facial image of the applicant, save in exceptional circumstances, which is taken by the authorities of the assisting Member State on the day of the application.⁵⁴ According to the Impact Assessment prepared for the Proposal, the Member States will be obliged to exchange data through formal and secure channels, such as the *CoOL website*.⁵⁵ The data is exchanged between Member States for the purpose of confirming the identity of a citizen without other valid travel documents and is justified on those grounds. At all times, during data collection, storage and transmission, the Member States are obliged to follow the EU's acquis and fundamental rights, particularly in relation to data protection.⁵⁶

The Member State's competent authority of the alleged nationality shall confirm or deny the nationality within 36 hours. The assisting consular authority shall provide the applicant with the EU ETD no later than the working day following the response from the Member State of nationality is received. These deadlines are strict, except for duly justified exceptional cases.⁵⁷ In crisis situations, the assisting Member State may issue

⁵¹ Proposal, Article 4.2. (b).

⁵² Proposal, preamble (13).

⁵³ Proposal, Article 8.8.

⁵⁴ Proposal, Article 4.2.

⁵⁵ Impact Assessment, 37. Member States' authorities should closely cooperate and coordinate with one another and with the Union, in particular the Commission and the EEAS, in a spirit of mutual respect and solidarity. To ensure swift and efficient cooperation, Member States should provide and continuously update information on relevant contact points in the Member States through the secure website of the EEAS. The EEAS manages the CoOL (Consular Online) website, which connects Member States' consular departments and crisis centres as well as the EU Delegations for purposes of information sharing (mainly in crisis situations) and contingency planning. Directive 2015/637, preamble (16). EU SITCEN should provide consular offices in third countries access to the CoOL website. The website could be used both as an instrument for informing missions about new agreements and key documents relevant to their consular work; as well as serve as an archive for consular EU-documents, lessons learned from exercises and/or information shared by Member States. All Member States have a role to play in making CoOL an efficient working instrument. Guidelines on Consular Protection of EU Citizens in Third Countries. 10109/2/06 REV 2 PESC 534 COCON 14. Brussels, 5 November 2010. 13.

⁵⁶ Impact Assessment, 38.

⁵⁷ Proposal, Article 4.34.

an EU ETD without prior consultation of the Member State of nationality. The assisting Member State shall notify the Member State of nationality, as soon as possible, of the fact that an EU ETD has been issued and of the identity of the person to whom the EU ETD was issued. That notification shall include the name of the person and all data which are readable on the EU ETD.⁵⁸

The authority of the Member State issuing the EU ETD shall store one copy of each EU ETD issued and shall send another to the applicant's Member State of nationality and the recipient is also obliged to return the EU ETD; these copies shall be destroyed within 60 days after the expiry of the EU ETD unless they are necessary for the issuance of a new passport or travel document.⁵⁹ An EU ETD shall be valid for the period required for completion of the journey for which it is issued. In calculating that period, allowance shall be made for necessary overnight stops and for making travel connections. The period of validity shall include an additional '*period of grace*' of two days, but it shall not exceed 15 calendar days, unless exceptional circumstances occur.⁶⁰

III.4. Connecting vertical issues to horizontal cooperation

For the effective application of the provisions on issuing the EU ETD, the Proposal pays particular attention on the cooperation and coordination among the actors taking part in any process. It refers not only to the actions of Member States authorities but empowers and involves EU organs and institutions into the process. The Proposal establishes an information management network between the competent Member States' authorities and the Commission as the central administrative institution of the EU. Each Member State shall designate one body having responsibility for printing EU ETDs and shall communicate the name of that body to the Commission and the other Member States. The same body may be designated by two or more Member States and if there is any change in the designation, the facts shall be communicated the same way.⁶¹ By no later than 21 months after the entry into force of the Directive, the Member State holding the Presidency of the Council will have the duty to provide generic specimens of the uniform EU ETD form and sticker to the Commission and the *European External Action Service* (EEAS). This latter is an autonomous, sui generis body, separate from the Commission and Council. "*Whereas the EEAS can be marked a 'Brussels-based machinery', its external part, the Union delegations, operate as a diplomatic service to the Union.*"⁶² The EEAS shall transmit the generic specimens of the form and sticker to its delegations in third countries and these external diplomatic services of the EU are obliged to notify the relevant authorities in the third countries of the uniform EU ETD format as well as its main security features, including by providing generic specimens of the form and sticker for reference purposes. The Union delegations in third countries shall make generic specimens of the uniform EU ETD form

⁵⁸ Proposal, Article 4.5.

⁵⁹ Proposal, Article 4.6.

⁶⁰ Proposal, Article 4.

⁶¹ Proposal, Article 10.

⁶² WOUTERS, Jan – DUQUET, Sanderijn: The EU, EEAS and Union Delegations and International Diplomatic Law: New Horizons. Leuven Centre for Global Governance Studies, *Working Paper* No. 62. Leuven, 2011. https://ghum.kuleuven.be/ggs/publications/working_papers/2011/62WoutersDuquet (20.12.2018.) 7.

and sticker available to the diplomatic and consular missions of the Member States for training or reference purposes.⁶³ Therefore, by sharing of task and empowering EU organs with new competences, the consular protection administration is organically linked with its administration by Member States, creating a unique administrative structure.

Apart from being the centre of information management, the Commission is entitled to adopt implementing acts containing additional technical specifications for EU ETDs relating to the design, size and colours of the uniform EU ETD form and sticker; and additional security features and requirements including enhanced anti-forgery, counterfeiting and falsification standards; and other rules to be observed for the filling in and issuing of the EU ETD. It may decide that these specifications shall be secret and not be published. In that case they shall be made available only to the bodies designated by the Member States as responsible for the printing of EU ETDs and to persons duly authorised by a Member State or the Commission.⁶⁴

IV. The evaluation of the Proposal's achievements

All in all, the Proposal englobes significant achievements that contribute to a more successful and effective consular protection for citizens in third States with certain harmonisation to avoid *fragmentation*. The Proposal itself englobes more than it suggests at first sight and expresses all that the development of EU policies is about: the successful application of EU policies induces developments and expands the EU *acquis* on related policies.

IV.1. Less fragmentation towards integrated EU diplomacy via a more coherent administration of a service

EU law obliges Member States and it is *pacta tertiis* for third States.⁶⁵ Third States are not required to neither accept nor tolerate that a consular authority is providing a foreign person travel documents or just giving this person any kind of administrative service. Issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State is a classical consular function recognized by international law.⁶⁶ The consular protection policy of the EU is based on the concept that a State may exercise consular functions on behalf of another State upon appropriate notification to the third State and only if this third State does not make any objection against the practice.⁶⁷ In the previous regime, negotiation with the third State was the duty of the Member State represented there and even the recently adopted Consular Protection Directive calls the Member States to undertake the necessary measures in relation to third countries to ensure that consular protection can be

⁶³ Proposal, Article 12.

⁶⁴ Proposal, Article 9.

⁶⁵ *Pacta tertiis nec nocent nec prosunt* is a general principle of international law, that is: a treaty binds the parties and only the parties; it does not create obligations for a Third State without its expressed consent. Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 U.N.T.S. 331. Article 34.

⁶⁶ VCCR Article 5 (d).

⁶⁷ VCCR Article 8.

provided on behalf of other Member States in any given case.⁶⁸ In case of the EU ETD, the Proposal aims to unite this task and empowers the delegations to communicate with the third States and send the specimen with them to enhance its successful usage when the EU citizen wishes to use it at the border to leave the territory of the third State and return home. Although the acceptance of the EU ETD cannot be enforced, the new security measures and the conformity with international standards of travel documents increase its possibility as the main argumentation against the ETD was its poor security feature and the high risk of abuse. The improvement of security features was the main motif for the support of proportionality of the measure of adopting new rules on ETD.

It shall be noted that the EU as an international organisation does not issue EU passport, not even diplomatic one for its diplomats of delegations sent to third States.⁶⁹ The EU uses a *laissez-passer* as an alternative to the diplomatic passport.⁷⁰ It is the Commission – and as *Wouters* and *Duquet* points out, not the *High Representative of the Union for Foreign Affairs and Security Policy (HR/VP)*⁷¹ – who is responsible for negotiating and concluding with third States agreements for the recognition of the EU *laissez-passer*.⁷² In the case of the EU ETD, according to the Proposal, the Commission is also empowered to settle additional security features for the common format,⁷³ and in the name of the EU, the EEAS transmits the generic specimens of the form and sticker to Union delegations in third countries while this latter is responsible with notification of the specimens. The issue of EU ETD is based on the personal data checked and verified by the alleged State of nationality, therefore, its usage does not require the company of a police report or protocol as a certificate on the theft or loss of original travel documents.⁷⁴ The improved security features thus aim to eliminate the fear of accepting it at the borders and increase its recognition as a valid travel document.

Lisbon has transformed delegations from mere information offices in the 1950s to “*prototype embassies for Europe*”.⁷⁵ The centralisation of emergency travel document

⁶⁸ Directive 2015/637, preamble (6).

⁶⁹ Consolidated version of the Treaty on European Union. OJ C 326, 26.10.2012, 13–390. [TEU] Article 32 al 3.; Article 35.

⁷⁰ WOUTERS – DUQUET, 2011.16. *Laissez-passer* in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. Protocol (No 7) on the privileges and immunities of the European Union. Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. 266–272. Article 6. al 1.

⁷¹ With regard to the establishment of diplomatic relations, the High Representative (HR/VP), in agreement with the Council and the Commission, decides to open or close a delegation. The HR/VP negotiate an establish agreement with the Third country or international organisation that will grant the delegation diplomatic privileges and immunities referred in Vienna Convention of Diplomatic Relations (VCDR) as the EU itself is not empowered to accord them with such status. 2010/427/EU: Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service. OJ L 201, 3.8.2010. 30–40. [EEAS Decision] Article 5 (1); (6). KULPER, Pieter Jan – WOUTERS, Jan – HOFFMEISTER, Frank – BAERE, Geert De – REMOPOULOS, Thomas: *The Law of EU External Relations. Cases, Materials and Commentary on the EU as an International Legal Actor*. Oxford University Press, Oxford, 2015. 40–41.

⁷² WOUTERS – DUQUET, 2011. 16.

⁷³ Proposal, Article 9.

⁷⁴ Cf. ETD Presidency reflection paper, 9–11.

⁷⁵ AUSTERMANN, Frauke: *European Union Delegations in EU Foreign Policy. A Diplomatic Service of Different Speeds*. Palgrave Macmillan, New York, 2014. 39.; 175.

management towards third States and empowering the delegations with this task notifying the EU ETD uniform format to third countries and providing them with EU ETD specimens⁷⁶ also contributes to only to a comprehensible EU diplomacy concerning unity and uniform protection of EU citizens but a better administration of consular protection policy and completing indirect level of administration with an effective and proactive direct level. The increasing involvement of delegation's service,⁷⁷ in the future, it may also lead to the reception of certain simple neutral, non-state specific consular functions,⁷⁸ like the issue of EU ETD. Given the fact, that proportionality and subsidiarity reasons supported the Proposal on a uniform and binding format and a detailed regulation on the procedure of cooperation of the authorities involved in the process of issue of the emergency travel document to guarantee a better protection of citizens while referring to its compulsory nature,⁷⁹ rationality may lead to further developments in the future.⁸⁰ As in recent years, budgetary or other reasons many consulates were closed and their tasks were entrusted to consular services in a neighbouring region. The presidency reflection paper of 17 September 2015 called the attention to the fact that if this trend continues, it will have medium- or long-term consequences for the issuing of emergency travel documents to unrepresented citizens as in fact, there is a need for assistance, it was a major motif for the adoption of the Consular Protection Directive in 2015⁸¹ Therefore, the Luxemburg Presidency has already suggested that the Member States consider the future role that the European delegations could possibly play as regards the issuing of the ETD.⁸²

IV.2. Avoiding fragmentation of the administrative service for a better administration of consular protection

Beyond the probability of increasing recognition by third countries, the improved security features would also contribute to ending fragmentation among the EU Member States in the

⁷⁶ Proposal, Article 12.2–3.

⁷⁷ See also, Directive 2015/637, Article 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. See also Article 12–13.

⁷⁸ Practicing consular functions are originally the extensions of State sovereignty on nationals abroad within the consent of the receiving State and in respect of its laws and regulations, but according to the relevant domestic norms of the State of the national. Cf. VCCR Article 5.; See also par. ex.: MAFFEI, Jana: The Normative Interaction between International and National in the Consular Law. *Acta Universitatis Danubius Juridica*, 12 (2016) 1, 68.

⁷⁹ Proposal, 3–4.

⁸⁰ See, LEQUESNE, Christian: At the Centre of Coordination: Staff, Resources and Procedures in the European External Action Service and in the Delegations. In: Balfour, Rosa – Carta, Caterina and Raik, Kristi (eds.): *The European External Action Service and National Foreign Ministries. Convergence or Divergence?* Ashgate, Burlington, 2015. 48–49.

⁸¹ Impact Assessment, 21.

⁸² ETD Presidency reflection paper, 4.

issuance of the EU ETD and such objectives cannot be achieved by Member States alone, so the proportional measures serve the legal basis of the acceptance of the proposal.⁸³ The Consular Protection Directive intends for a frame of cooperation, a scheme for Member State authorities in case of consular protection of unrepresented EU citizens, although it does not go into procedural details and it does not go beyond the equal treatment clause with harmonisation efforts of the substance of consular protection.⁸⁴ It does not make any layout for territorial competency limit among the represented Member States in third States, it creates parallel jurisdiction by stating that “[u]nrepresented citizens shall be entitled to seek protection from the embassy or consulate of *any* Member State.”⁸⁵ As regards the different consular protection service ensured by different Member States, even in case of emergency travel documents as the practice of issue is also different, it gives the possibility of *forum shopping*.

It shall be noted that the application of the ETD under the regime established by 96/409/CSFP could not establish a common practice: for emergency cases Member States uses various types of documents and some countries even issue more than one type emergency travel document.⁸⁶ The costs of issue of emergency travels documents is not harmonised, Member States use the same charges and fees as they normally charge for issuing an emergency passport and it varies from one Member State to another, ranging from EUR 1,55 to EUR 150.⁸⁷

The EU ETD issued according to the provisions of the Proposal would also contribute to the reduction of the risk of fragmentation in practice and prevent forum shopping. The impact assessment prepared for the Proposal clearly pointed out on the tendency of citizens seeking for emergency travel documents from one Member State and not another because the documents of certain Member States are more widely recognised, cheaper or easier to obtain than those of other Member States.⁸⁸ In addition, the current regime requires Member States to provide the documents with a centralized numbering system, combined with the initials of the issuing Member State, but it is a domestic issuing system and not a European one. The Proposal envisages active communication between the State of nationality and the State that issues the EU ETD including strict obligation for asking to return and destruction of the EU ETDs prevent the risk of abuse of documents and frauds and the visa-like nature of the identifier sticker would also contribute to that aim.⁸⁹

⁸³ Impact assessment, 14.

⁸⁴ Article 23 TFEU is based on the equal treatment of non-nationals and obliges Member States to treat them as they would treat their own nationals. CARE report, 7. cf. POPTCHEVA, Eva-Maria: *Multilevel Citizenship. The Right to Consular Protection of EU Citizens Abroad*. PIE Peter Lang, Brussels, 2014. 71–74. On generalising the principle of non-discrimination *ratione personae* and its limits see: WOLLENSCHLÄGER, 2007. 8–12.

⁸⁵ Directive 2015/637, Article 7.1. Emphasis added by Author.

⁸⁶ Eight Member States issue more than one type of ETD. Emergency travel document as a paper is used by 9 Member States, as a booklet by 3 Member States, *laissez passer* in paper format is used by 3 Member States, in booklet format by one; under the term provisional/temporary passport 7 Member States uses booklet form and as emergency passport 2 Member States use paper format and 6 Member States use booklet format. ETD Presidency reflection paper, 9.

⁸⁷ ETD Presidency reflection paper, 9.

⁸⁸ Proposal, 4.

⁸⁹ Proposal, Article 4.

Non-binding guidelines⁹⁰ on consular protection of EU citizens in third countries were issued by the Council in to implement Article 20 of the Treaty establishing the European Community (current Article 23 TFEU)⁹¹ and the former decision of 95/553/EC with a view to strengthening European solidarity.⁹² These soft, non-binding measures fitted the ancient non-governmental regime, but are now considered as unsatisfactory.⁹³ The detailed provisions on cooperation including strict deadlines for each procedural action from the reception of the claim for EU ETD until its issue shows an improvement even compared to the cooperation and coordination measure provisions of the Consular Protection Directive. Predefined, uniform procedural rules instead of guidance and various national administrative procedural rules are strengthening the European administrative procedure of a piece of European consular protection while reducing the variety and possible deliberate or unintentional discrimination of EU citizens which is due to the different national rules on administration of this consular protection measure. The provisions on the interaction of competent authorities of different Member States is a further step towards the good administration of consular protection and they are contributions to the guarantee of the *right to good administration*.⁹⁴ Meanwhile, in the view of procedural rights in the case of a non-national on the territory of a third State may require further clarification for example the first and most obvious is the potential language barriers between the client and the authority which would challenge the deadlines of action but regarding the horizontal administrative cooperation, it is a definitive development.

⁹⁰ Guidelines on Consular Protection of EU Citizens in Third Countries. PESC 534 COCON 14 10109/2/06 REV 2 Brussels, 16 June 2006; Guidelines for further implementing a number of provisions under Decision 95/553/EC. PESC 833 COCOM 10 11113/08, Brussels, 24 June 2008; Guidelines on Consular Protection of EU Citizens in Third Countries. COCON 40 PESC 1371 15613/10 Brussels, 5 November 2010. See also CARE Report, 39–40.

⁹¹ European Union – Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community. OJ C 321E, 29.12.2006. 1–331. Article 20 Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

⁹² Guidelines for further implementing a number of provisions under Decision 95/553/EC. PESC 833 COCOM 10 11113/08, Brussels, 24 June 2008. 2.

⁹³ Impact assessment, 59.; Proposal, 5.

⁹⁴ EU Charter, Article 41 Right to good administration 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. 2. This right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language. CSATLÓS, 2017. 91–92.

IV.3. With less fragmentation towards more open questions of rights

The right to get consular help in third States illustrates the concrete benefits connected with the status of EU citizenship: assistance for unrepresented EU citizens extends the rights granted by EU citizenship beyond the EU's borders.⁹⁵ In a general sense, this right aims to treat the people of Europe equally given the fact that they arrive from the EU as a unit, “*an ever closer union among the peoples of Europe*”⁹⁶ so every one of them shall be ensured the same help and assistance not just the lucky ones whose nation States have widely expanded external relations and representations around the world.⁹⁷ It does not mean that the EU citizens have the right to get emergency travel document. The obligation deriving from EU consular policy require Member States to ensure equal protection for all unrepresented EU citizens, the same treatment for nationals and non-national EU citizens who submit claim for consular protection. The scope of service depends on the domestic consular law of the requested Member State, the EU law refers only to equal treatment which “*may include assistance, inter alia, in the following situations*”⁹⁸ The ETD Decision 96/409/CSFP facilitates the service by the promotion of a common format although there are Member States which does not regulate the issue of temporary travel documents,⁹⁹ and the decision does not create obligation for them either to do so. Thus, the practice of consular protection may vary from consular office to consular office in the same third State, depending on the consular law of their own States’ consular law.

The other factor that makes the EU consular protection policy execution colourful is the circle of beneficiaries. According to the TFEU, and consequently the EU Charter, the right to get consular protection in third State is inherent to the *EU citizens*.¹⁰⁰ This citizenship status is a derivative of the nationality of Member States.¹⁰¹ meanwhile, the personal scope

⁹⁵ Impact assessment, 14.

⁹⁶ Treaty on European Union. OJ C 191, 29.7.1992. 1–112. [Maastricht Treaty] preamble.

⁹⁷ According to statistics prepared in 2010 and cited in the Impact Assessment to the Directive 2015/637, France has the largest number of representations, followed by Germany and the UK after Italy and the Netherlands. Less than one third of the Member States are relatively well represented with 50–80 representations, one third has around Two thirds of the Member States (at that time) have 30–40 representation and one third has around or even below 10 representations in Third States. 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’. COCON 11 PESC 1686 COTRA 19 18821/11 ADD2. Brussels, 19 December 2011. 8.; detailed information on the existence of representations in third States: 39–48.

⁹⁸ Directive 2015/637, Article 9. The former regime framed by Decision 95/553/EC provided that “[t]he protection referred to in Article 1 shall comprise (...)” in Article 5 but this list did not include the issue of emergency travel document.

⁹⁹ ETD Presidency reflection paper, 9.

¹⁰⁰ See, TFEU 20; 23.; EU Charter, Article 46.

¹⁰¹ TFEU, Article 20. *Mario Vicente Micheletti and others v. Delegación del Gobierno en Cantabria* [1992] ECJ, 7 July 1992, Case 369/90, ECR I-4239. point 10.; *Belgian State v. Fatna Mesbah* [1999] ECJ, 11 November 1999, Case 179/98, ECR I-7955. point 29.; *Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department* [2004] ECJ, 19 October 2004, Case 200/02, ECR I-9925. point 37.; *Rottmann v. Bayern* [2010] ECJ, 2 March 2010, Case 135/08, ECR. I-1467. point 39. Meantime, recently, the jurisprudence of the CJEU in mainly the Rottmann and Zambrano cases is approaching to a sort of harmonisation to avoid the negative effects of the variety of legislation. Cf. *Rottmann v. Bayern*, 2010. point 41; 48.; *Gerardo Ruiz Zambrano v. Office national de l’emploi* [2011] ECJ, 8 March 2011, Case 34/09, ECR I-01177. point 42;

of protection was expanded by the Directive 2015/637 that entered into force this year, the 1st of May 2018. Under its innovative provision, consular protection shall be provided to family members, who are not themselves citizens of the Union, accompanying unrepresented citizens in a third country, to the same extent and on the same conditions as it would be provided to the family members of the citizens of the assisting Member State, who are not themselves citizens of the Union, in accordance with its national law or practice.¹⁰² It is a logical consequence of Article 7 and 24 of the EU Charter and the relevant case-law of the European Court of Justice on extending the principal benefits of EU citizens' rights to their third country national family members to ensure the full effectiveness of those rights. The *Consular Protection Directive* was adopted within this spirit.¹⁰³ However, it does not establish right to non-EU citizen family members *in general* but obliges Member States to ensure equal treatment if their domestic consular law allows the consular protection of non-national family members of their nationals. In addition, the '*family member*' is not defined by consular policy rules of the EU. Directive 2004/38/EC establishes derivative rights for *family members* (spouse, partner, direct descendants and dependent ascendants, all under different conditions),¹⁰⁴ of EU citizens whose precise scope has repeatedly been controversial,¹⁰⁵ it covers a narrower category than the Strasbourg practice,¹⁰⁶ and individual State practice might also be different on the notion,¹⁰⁷ so, the fragmented picture of practice is inevitable. Meanwhile, there is a tendency to expand different aspects of citizenship rights

GYENEI, Laura: Uniós polgárság: a piacorientált szemlélettől való elszakadás görögnyös útja, A Rottmann-, a Zambrano-, a Mccarthy- és a Dereci-Ügyek Analízise. *Iustum Aequum Salutare*, 8 (2012) 2, 142–144.

¹⁰² Directive 2015/637, Article 5.

¹⁰³ Impact Assessment to Directive 2015/637, 24.

¹⁰⁴ Directive 2004/38/EC on the right of EU citizens and their families to move and reside freely within the EU OJ L 158, 30.4.2004. 77–123, Article 2 point 2. ; cf. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003. 12–18. Article 4. conflicts may also occur from the EU norms of family reunificatio, see: Article 4. 4.: „*In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.*”

¹⁰⁵ BOGDANDY, Armin von – ARNDT, Felix: European Citizenship. Max Planck Encyclopedia of Public International Law [MPEPIL] Article last updated: January 2011. Accessed via the database of the Hague Peace Palace Library, <http://opil.ouplaw.com/peacepalace.idm.oclc.org/view/10.1093/law:epil/9780199231690/law-9780199231690-e615?print=pdf> (17.20.2018). 2 (b) 6., see also: STAVERA, Anne: Free Movement and the Fragmentation of Family Reunification Rights. *European Journal of Migration and Law*, 15 (2013) 1, 7275; see also the comparative chart of page 77.

¹⁰⁶ SCHIFFNER, Imola: Az uniós polgár és családtagjainak jogi helyzete az Európai Bíróság esetjogában. *Acta Universitatis Szegediensis : forum : acta juridica et politica*, 4 (2014) 1, 222.; Compared to the EU definition, the ECHR practice rather relies on the term 'family life' to draw the line around family members, however, it does not include only social, moral or cultural relations; it also comprises interests of a material kind (similarly as in the EU), as is shown by, among other things, like maintenance obligations or positions according to the domestic legal systems (inheritor). *Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence*. Council of Europe, European Court of Human Rights, Starsbourg, 2018. https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf (17.20.2018.) 62.

¹⁰⁷ In Hungary, for example, the 'family member' has a narrow and an extended meaning, ie. 'close relative' shall mean spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings; and the 'relative' shall mean close relatives, domestic partners, spouses of the next of kin, spouse's next of kin and siblings, and spouses of siblings. Act V of 2013 on the Civil Code, Section 8:1, point 1–2. nevertheless, the Hungarian Act on consular protection provides for help only to EU citizens. See, Act XLVI of 2001 on consular protection, Article 3 (4)–(5).

on non-EU citizens; already there are rights enjoyed as own and not as derivative ones,¹⁰⁸ so, in a wider context, following the line of legal development shown by *Schiffner*,¹⁰⁹ along with the Strasbourg – conform interpretation of the *right to family life*,¹¹⁰ a sort of pressure towards a harmonised practice can also be estimated in this issue of consular protection of family members.

Anyway, States ensure consular protection for non-nationals, and there are Member States that declares that their residents and even their registered asylum seekers are entitled to enjoy their consular service abroad and now, the EU consular protection policy institutionalize this practice and enrolls it under the equal treatment clause to protect the accompanying family member of the non-national EU citizen. Meanwhile, the *right to respect for family life*¹¹¹ is interpreted in a positive manner to enjoy rights guaranteed by EU law itself.¹¹² In fact, the protection of the family unity has a strong motif on EU law interpretation¹¹³ an even if a situation is not covered by EU law, it should be analysed in the light of the same provisions of the *European Convention on Human Rights*.¹¹⁴

It is to be noted that the right to consular protection in third States is strictly attached to EU citizens and their third-country national family members but ordinary third State nationals who hold a residence permit are not entitled to these rights. From the moment, he/she holds a residence permit valid for at least one year and has reasonable prospects of obtaining the right to permanent residence, he/she may also submit an application for family reunification,¹¹⁵ but it does not mean that his/her rights are the same as that of EU citizens. They have certain rights¹¹⁶ but different from EU citizens' rights and despite some

¹⁰⁸ SCHIFFNER, Imola: A harmadik államok állampolgárainak jogi helyzete az Európai Unióban, avagy az uniós denizenship jogállása. *Miskolci Jogi Szemle*, 10 (2015) 1, 74–77., see also: WIESBROCK, Anja: Granting Citizenship-related Rights to Third-Country Nationals: An Alternative to the Full Extension of European Union Citizenship? *European Journal of Migration and Law*, 14 (2012) 1, 68.

¹⁰⁹ See, SCHIFFNER, 2014. 222–232.

¹¹⁰ Even if a situation is not covered by EU law, „[a]ll the Member States are, after all, parties to the ECHR which enshrines the right to respect for private and family life in Article 8,” which treats the issue of right to family life more excessively than the EU norms. See, C-256/11, *Murat Dereci and Others v Bundesministerium für Inneres*, ECLI:EU:C:2011:734. point 73.; SCHIFFNER, Imola: Az uniós polgár családtagjainak jogi helyzete az Európai Bíróság legújabb jogeseteiben, különös tekintettel a Zambrano-doktrína alkalmazására. *Jogelméleti Szemle*, 2018/1, 150.

¹¹¹ EU Charter, Article 7; Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification OJ L 251, 3.10.2003. 12–18. preamble (2).

¹¹² Pierluigi, Simone: Nationality and Regional Integration: the Case of the European Union. In: Forlati, Serena – Annoni, Alexandra (eds): *The Changing Role of Nationality in International Law*. Routledge, London, 2013. 182.; Together with the right to private life, the right to family rights as interpreted by the ECtHR is also a strong pressure on States. See, Thym, Daniel: Respect for Private And Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay? *International and Comparative Law Quarterly* (2008) 57, 87–112.

¹¹³ GYENÉI, 2012. 164.

¹¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 Nov. 1950, 213 U.N.T.S. 222 [ECHR] Article 8. Pierluigi, 2013.182.

¹¹⁵ Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification. Brussels, 3.4.2014. COM(2014) 210 final. 3–4

¹¹⁶ See, ECRE Note. Information Note on Family Reunification for Beneficiaries of International Protection in Europe, ECRE, June 2016. <http://www.ecre.org/wp-content/uploads/2016/07/ECRE-ELENA-Information-Note->

standardizing EU rules, Member States have broad discretion in regulating this field.¹¹⁷ However, the 2010 Guidelines on consular protection of EU citizens in third countries expanded the protection of the EU on these third country nationals if their nation State and one of the EU Member States have bilateral consular agreement, but only if evacuation is needed.¹¹⁸ In addition, the guideline are not legally binding documents and the *Consular Protection Directive* does not contain provision on such cases.

In strict sense, if EU law is the obstacle for equal treatment, then what else should be needed what else can be required under non-discrimination and equal treatment? Are Member States' and their consular authorities obliged to act to search for help for non-EU citizen family members? Even if the answer would be positive, it is to be noted that fundamental rights related to private life and family requires equal treatment, but they oblige the Member State not the third States and acting in protection of a non-national can be denied or may lead political conflicts. The question leads us back to the basic problem of CFSP policies: further negotiations are needed not just among member States but with the third States as the EU is not entitled to act as a foreign policy actor in a single voice to conclude arrangements with third States. In addition, in CFSP areas, the Council is the legislator and can adopt non-legislative acts but only unanimously.¹¹⁹ So, is it better and more efficient than the former regime especially in the view of fundamental rights protection? May the flexibility clause extend the competences to this foreign policy area to serve better the execution of an EU policy, in fact, the protection of EU citizens in third States? The expansion of EU influence on domestic competences to serve fundamental right is dynamic and now, EU citizen rights are also invoked in purely domestic affairs.¹²⁰ The whole history of the European integration is, in fact, a series of expanding EU competences for better implementation of common objectives. So, perhaps it is only the question of time that *ERTA doctrine* will be allowed to help to eliminate certain deficiencies of consular protection: once the Union exercises its internal competences, its parallel external competences become exclusive.¹²¹

The Proposal provides for EU citizens as beneficiaries of the EU ETD but allows Member States to introduce and use the EU ETD format to other, different categories of possible claimants. It recognizes the advantage and utility of using the same format for own citizens, thus the EU ETD may be issued to (a) its own nationals or residents; (b) to family members of unrepresented citizens, who are not themselves citizens of the Union, accompanying unrepresented citizens, in accordance with Article 5 of Directive (EU) 2015/637; (c) to nationals of another Member State which is represented in the country where those nationals seek to obtain the EU ETD (d) to EU citizens and their family members within the territory of the Union; and also (e) to other persons connected with it and whom it is willing to admit.¹²² So, there is no exact, *expressis verbis* obligation towards

on-Family-Reunification-for-Beneficiaries-of-International-Protection-in-Europe_June-2016.pdf (21.12.2018.) 9–12.

¹¹⁷SCHIFFNER, Imola: Az uniós polgárság hatása a tagállami állampolgársági politikákra. *De iurisprudentia et iure publico*, 9 (2015) 2, 14.

¹¹⁸Guideline, 2010. 2.; POPTCHEVA, 2014. 167–168.

¹¹⁹TEU, Article 24.

¹²⁰SCHIFFNER, 2015. 4.

¹²¹SCHÜTZE, Robert: The ERTA Doctrine and Cooperative Federalism. In: Schütze, Robert: *Foreign Affairs and the EU Constitution. Selected Essays*. Cambridge University Press, Cambridge, 2014. 287.

¹²²Proposal, Article 7.

ensuring emergency travel document for all. At present, the majority of the Member States do not issue the common format ETD to family members who are not citizens of the Union or to refugees or stateless persons, either because the national legislation does not allow it or because there is no specific legal framework for it, and Germany, Ireland, Greece, France, Croatia and the United Kingdom do not issue emergency travel document simply because they do not issue emergency travel documents at all.¹²³ However, certain Member States acknowledge that they issue national emergency documents (*laissez-passer*, passport or foreign travel certificate) with limited validity to persons who are married a national, or are permanent residents, or hold a travel document issued by the national authorities (passport for foreigners, stateless persons or refugees). National emergency documents may exceptionally be issued in crisis situations or as part of the provision of humanitarian aid under the auspices of the *Red Cross* and/or the *International Organisation for Migration*. When the proposal of the ETD reform was formulated, hardly any Member States said that those who do not hold EU citizenship must apply to their own authorities, i.e. consulates, to obtain a travel document, and State does not see any problem in issuing this type of travel document within the EU as well in cases where citizens are in distress and are unable to access their consulate.¹²⁴ These circumstances suggest that the Member States are not in general against the idea of expanding the personal scope of this consular protection measure, although it does not define ‘family member’ in this view and the widely expanded usage of the common EU format for that end inside and outside the borders of the EU. The acceptance and recognition of such practice would be supported by the Proposal’s way of negotiating and communicating the specimens by the delegations of the EU instead of the single Member States.¹²⁵

Member States have wide margins, and it may contribute to significant inequality and disparity if there is no further negotiation among them and this may reveal discriminative situations. The Proposal wish no effect on the *more favourable national provisions* in so far as they are compatible with the Directive 2015/637 and it wish not to preclude Member States from issuing EU ETDs in other situations, considering national law and practice. In fact, there are certain EU Member states that offer consular protection for not only their own citizens,¹²⁶ while others do not even have domestic law on the issue.¹²⁷ However, since the EU law expands on consular protection in third States and regulates it as a fundamental right, all Member States shall ensure the full benefit of this right including the rights related to good administration thus for that end Member States need to undertake positive action to benefit the individuals.¹²⁸ Fundamental right constitutes

¹²³ETD Presidency reflection paper, 3.

¹²⁴ETD Presidency reflection paper, 5.

¹²⁵See Proposal, Article 12. cf. Directive 2015/637, 2015, preamble (19); Art. 7. and preamble (6).

¹²⁶Danish consular law, for example, offers consular protection to aliens permanently residing in Denmark, to unrepresented Nordic nationals and aliens permanently residing in the other Nordic countries, namely Finland, Iceland, Norway and Sweden and vica versa. CARE Report 149. The Netherlands’ consular protection is available *ratione personae* to Dutch Nationals and tot he first grade relatives of Dutch nationals: spouses, parents and chirdren according to Dutch Law. CARE Report 512.

¹²⁷Belgium, Cyprus, Luxemburg, UK and Austria. CARE Report, 852–585.

¹²⁸POPTICHEVA, 2014. 79.

general principles of the EU,¹²⁹ therefore their influence on interpretation of obligations is crucial.

Differences of domestic provisions on the substantive law of consular protection may devalue those efforts which were achieved by the procedural uniformization, and as there is a tendency of acknowledging more and more equal rights for non-EU citizens within the EU, such problems will arise soon. It leads back to the uniformized procedural issues and a very important element of the procedure: the legal remedy options in the procedure.¹³⁰

V. Concluding remarks

The legal background for adoption a council directive on the EU ETD is the same as it was for the 2015 directive: the Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection. While the 2015 directive only outlined a cooperation pattern, it is clearly seen that the Proposal contains exact procedural provisions including deadlines for the cooperation of authorities and for the issue of the ETD; it is a notable step towards administrative procedural harmonisation as the Proposal practically and optimistically opens the road toward the establishment of a sort of EU passport with the expansion of the group of recipients. By establishing task and competences which links the Member States, the Commission and the and delegations, the proposal keeps on strengthening the existence of the European administrative system of consular protection; the European administration of a legal area which is outside the scope of EU legislation but is continuously been Europeanised via its relationship with other policies. Variety is delighting while the success of the *acquis* keeps on developing it to a colourful unity.

References

95/553/EC Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations OJ L 314, 28.12.1995. 73–76. [No longer in force]

96/409/CSFP 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, Official Journal L 168, 06/07/1996. 4–11.

Act V of 2013 on the Civil Code.

¹²⁹TEU Article 6 (3). Wiesbrock highlighted this fact also via pre-Lisbon case-law (C-29/69 *Erich Stauder v City of Ulm – Sozialamt* [1969] ECR 419, para. 7; Joined Cases C-7/56 and 3/57 to 7/57 *Algera and Others v. Common Assembly* [1957] ECR 39, para. 55; and C-299/95 *Friedrich Kremzow v Republik Österreich* [1997] ECR I-2629, para.14.) WIESBROCK, 2012. 64. footnote 61.

¹³⁰Cf. definition of public administrative procedure. HARLOW, Carol – RAWLINGS, Richard: *Process and Procedure in EU Administration*. Hart Publishing, Oxford, 2014. 4.

Act XLVI of 2001 on consular protection

Annexes to the Proposal for a Council Directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP. 9643/18, COCON 9, VISA 134, FREMP 90, Brussels, 1 June 2018.

AUSTERMANN, Frauke: *European Union Delegations in EU Foreign Policy. A Diplomatic Service of Different Speeds*. Palgrave Macmillan, New York, 2014.

BATTINI, Stefano: The Impact of EU Law and Globalization on Consular Assistance and Diplomatic Protection. In: Chiti, Edoardo –Mattarella, Bernardo Giorgio (eds.): *Global Administrative Law and EU Administrative Law*. Springer-Verlag, Berlin – Heidelberg, 2011. 177–178.

BAUMAN, Robert E: *The Passport Book. The Complete Guide to Offshore Residency, Dual Citizenship and Second Passports*, The Sovereign Society, Delray, 2009.

BECÁNICS, Adrienn: Konzuli védelem és segítségnyújtás az Európai Unió perspektívájából. In: Karlovitz, János Tibor (ed.): *Fejlődő jogrendszer és gazdasági környezet a változó társadalomban*. International Research Institute s.r.o., Komárno, 2015. 25–30. <http://www.irisro.org/tarstud2015aprilis/index.html> (18.12.2018.)

Belgian State v. Fatna Mesbah [1999] ECJ, 11 November 1999, Case 179/98, ECR I-7955.

BOGDANDY, Armin von – ARNDT, Felix: *European Citizenship*. Max Planck Encyclopedia of Public International Law [MPEPIL] Article last updated: January 2011. Accessed via the database of the Hague Peace Palace Library, <http://opil.ouplaw.com/peacepalace.idm.oclc.org/view/10.1093/law:epil/9780199231690/law-9780199231690-e615?print=pdf> (17.20.2018).

C-29/69 *Erich Stauder v City of Ulm – Sozialamt* [1969] ECR 419.

C-299/95 *Friedrich Kremzow v Republik Österreich* [1997] ECR I-2629.

CARE Final Report. Consular and Diplomatic Protection. Legal Framework in the EU Member States. 2010. <http://www.careproject.eu/images/stories/ConsularAndDiplomaticProtection.pdf> (18.12.2018.) [CARE report]

Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012. 391–407. [EU Charter]

Commission Implementing Decision C(2018) 674 of 9 March 2018 as regards further technical specifications for the uniform format for visas and repealing Commission Decision C(2010) 3191.

Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Council Directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP, Brussels, 31.05.2018. SWD(2018) 273. [Impact Assessment]

Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification. Brussels, 3.4.2014. COM(2014) 210 final.

- Consolidated version of the Treaty on European Union. OJ C 326, 26.10.2012, 13–390. [TEU]
- Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. 47–390. [TFEU]
- Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 Nov. 1950, 213 U.N.T.S. 222 [ECHR]
- Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service. OJ L 201, 3.8.2010. 30–40 [EEAS Decision]
- 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 OJ L 106, 24.4.2015. 1–13. [Consular Protection Directive]
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification OJ L 251, 3.10.2003. 12–18.
- CSATLÓS, Erzsébet: Consular Cooperation in Third States: Some Aspects Concerning Europeanisation of Foreign Service for EU Citizens. *Bratislava Law Review*, 1 (2017) 1, 71–83.
- CSATLÓS, Erzsébet: Consular Protection Policy of the EU in the View of Good Administration. In: Csatlós, Erzsébet (ed.): *Recent Challenges of Public Administration. Papers Presented at the conference of 'Contemporary Issues of Public Administration'*, 26th April, 2017. Iurisperitus, Szeged, 2017. 85–96.
- Directive 2004/38/EC on the right of EU citizens and their families to move and reside freely within the EU OJ L 158, 30.4.2004. 77–123.
- ECRE Note. Information Note on Family Reunification for Beneficiaries of International Protection in Europe, ECRE, June 2016. http://www.ecre.org/wp-content/uploads/2016/07/ECRE-ELENA-Information-Note-on-Family-Reunification-for-Beneficiaries-of-International-Protection-in-Europe_June-2016.pdf (21.12.2018.)
- Emergency Travel Document (ETD) – Presidency reflection paper. COCON 14, CFSP/PESC 523, COTRA 13, 11955/15, Brussels, 17 September 2015. [ETD Presidency reflection paper]
- EU Citizenship Report 2017, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Strengthening Citizens' Rights in a Union of Democratic Change Brussels, EU Citizenship Report 2017, 31.1.2017, COM(2017)
- Gerardo Ruiz Zambrano v. Office national de l'emploi* [2011] ECJ, 8 March 2011, Case 34/09, ECR I-01177.
- Guidelines for further implementing a number of provisions under Decision 95/553/EC. PESC 833 COCOM 10 11113/08, Brussels, 24 June 2008.
- Guidelines on Consular Protection of EU Citizens in Third Countries. 10109/2/06 REV 2 PESC 534 COCON 14. Brussels, 5 November 2010.

- Guidelines on Consular Protection of EU Citizens in Third Countries. PESC 534 COCON 14 10109/2/06 REV 2 Brussels, 16 June 2006.
- Guidelines on Consular Protection of EU Citizens in Third Countries. COCON 40 PESC 1371 15613/10 Brussels, 5 November 2010.
- GUILD, Elspeth: *The right to leave a country*. Issue Paper by the Council of Europe Commissioner for Human Rights, 2013. <https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/07/31/Ayrilma.pdf> (20.12.2018.)
- GYENEI, Laura: Uniós polgárság: a piacorientált szemlélettől való elszakadás göröngyös útja, A Rottmann-, a Zambrano-, a Mccarthy- és a Dereci-Ügyek Analízise. *Iustum Aequum Salutare*, 8 (2012) 2, 141–164.
- HAGEDORN, Cornelia: Passport. In: *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law, January 2008. <http://opil.ouplaw.com> (24.12.2018)
- HARGITAI, József: *Az útlevél és a külföldre utazáshoz való jog nemzetközi jogi alapjai*, Magyar jog, 42 (1995) 12, 710–718.
- HARLOW, Carol – RAWLINGS, Richard: *Process and Procedure in EU Administration*. Hart Publishing, Oxford, 2014.
- ICAO Doc 9303 Machine Readable Travel Documents (MRTD). Part 2: Specifications for the Security of the Design, Manufacture and Issuance of MRTDs https://www.icao.int/publications/Documents/9303_p2_cons_en.pdf (20.12.2018.)
- International Covenant on Civil and Political Rights, New York, 16 December 1966, 999 UNTS 171 [ICCPR]
- Joined Cases C-7/56 and 3/57 to 7/57 *Algeria and Others v. Common Assembly* [1957] ECR 39.
- KUIJPER, Pieter Jan – WOUTERS, Jan – HOFFMEISTER, Frank – BAERE, Geert De – REMOPOULOS, Thomas: *The Law of EU External Relations. Cases, Materials and Commentary on the EU as an International Legal Actor*. Oxford University Press, Oxford, 2015.
- Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department* [2004] ECJ, 19 October 2004, Case 200/02, ECR I-9925.
- LEE, Luke T.: *Consular Law and Practice*. Frederick A. Praeger, New York, 1961.
- LEQUESNE, Christian: At the Centre of Coordination: Staff, Resources and Procedures in the European External Action Service and in the Delegations. In: Rosa Balfour – Caterina Carta and Kristi Raik (eds.): *The European External Action Service and National Foreign Ministries. Convergence or Divergence?* Ashgate, Burlington, 2015. 45–54.
- LIU, Guofu: *The Right to Leave and Return and Chinese Migration Law*. Brill, Leiden, 2007.
- MAFTEL, Jana: The Normative Interaction between International and National in the Consular Law. *Acta Universitatis Danubius Juridica*, Vol. 12. No. 1. 2016. 65–73.
- Mario Vicente Micheletti and others v. Delegación del Gobierno en Cantabria* [1992] ECJ, 7 July 1992, Case 369/90, ECR I-4239.

- Odigitria AAE v Council of the European Union and Commission of the European Communities* [1996] ECJ, 28 November 1996, Case 293/95, ECR II-02025.
- PIERLUIGI, Simone: Nationality and Regional Integration: the Case of the European Union. In: Forlati, Serena –Annoni, Alexandra (eds.): *The Changing Role of Nationality in International Law*. Routledge, London, 2013. 169–192.
- POPTCHEVA, Eva-Maria: *Multilevel Citizenship. The Right to Consular Protection of EU Citizens Abroad*. PIE Peter Lang, Brussels, 2014.
- Proposal for a Council directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP Brussels, 31.5.2018. COM(2018) 358 final [Proposal]
- Proposal for a Directive of the Council on coordination and cooperation measures regarding consular protection for unrepresented EU citizens'. COCON 11 PESC 1686 COTRA 19 18821/11 ADD2. Brussels, 19 December 2011.
- Protocol (No 7) on the privileges and immunities of the European Union. Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. 266–272.
- Protocol n°4 of the ECHR, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 16.11.1963, Strasbourg, ETS 46.
- Public consultation on the EU Emergency Travel Document (EU ETD) https://ec.europa.eu/info/consultations/public-consultation-eu-emergency-travel-document-eu-etd_en (20.12.2018.)
- Rottmann v. Bayern* [2010] ECJ, 2 March 2010, Case 135/08, ECR. I-1467.
- SCHIFFNER, Imola: *A diplomáciai védelem gyakorlásának eszközei, avagy a fogalom-meghatározás és az elhatárolás problémái*. *Acta Universitatis Szegediensis de Attila József Nominatae Sectio Juridica Politica*, 72 (2009) 18, 523–544.
- SCHIFFNER, Imola: A harmadik államok állampolgárainak jogi helyzete az Európai Unióban, avagy az uniós denizenship jogállása. *Miskolci Jogi Szemle*, 10 (2015) 1. 70–93.
- SCHIFFNER, Imola: Az uniós polgár családtagjainak jogi helyzete az Európai Bíróság legújabb jogeseteiben, különös tekintettel a Zambrano-doktrína alkalmazására. *Jogelméleti Szemle*, 2018/1, 132–150.
- SCHIFFNER, Imola: Az uniós polgár és családtagjainak jogi helyzete az Európai Bíróság esetjogában. *Acta Universitatis Szegediensis. Forum acta juridica et politica*, 4 (2014) 1, 221–235.
- SCHIFFNER, Imola: Az uniós polgárság hatása a tagállami állampolgársági politikákra. *De iuris prudentia et iure publico*, 9 (2015) 2, 1–17.
- SCHÜTZE, Robert: The ERTA Doctrine and Cooperative Federalism. In: Schütze, Robert: *Foreign Affairs and the EU Constitution. Selected Essays*. Cambridge University Press, Cambridge, 2014. 287.

- STAVERA, Anne: Free Movement and the Fragmentation of Family Reunification Rights. *European Journal of Migration and Law*, 15 (2013) 1, 69–70.
- THYM, Daniel: Respect for Private And Family Life Under Article 8 ECHR in Immigration Cases: A Humanright to Regularize Illegal Stay?. *International and Comparative Law Quarterly* (2008) 57, 87–112.
- TORPEY, John: *The Invention of the Passport, Surveillance, Citizenship and the State*. Cambridge University Press, Cambridge, 2000.
- Traveller Identification Program: ID Management Solutions for More Secure Travel Documents. <https://www.icao.int/Security/FAL/TRIP/Pages/default.aspx> (20.12.2018.)
- Treaty on European Union. OJ C 191, 29.7.1992, 1–112. [Maastricht Treaty]
- UDHR, Universal Declaration of Human Rights, 10 December 1948, Paris, UN GA Res 217A
- Vienna Convention on Consular Relations, Vienna, 24 April 1963, 596 UNTS 261 [VCCR]
- Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 U.N.T.S. 331. [VCLT]
- VIGNI, Patricia: The Protection of EU Citizens: The Perspective of International Law. In: Larik, Joris – Moraru, Madalena (eds.): *Ever-Closer in Brussels – Ever-Closer in the World? EU External Action after the Lisbon Treaty*. EUI Working Papers, Law 2011/10.
- WIESBROCK, Anja: Granting Citizenship-related Rights to Third-Country Nationals: An Alternative to the Full Extension of European Union Citizenship? *European Journal of Migration and Law*, 14 (2012) 1, 63–94.
- WOLLENSCHLÄGER, Ferdinand: *The Europeanization of Citizenship. National and Union Citizenships as Complementary Affiliations in a Multi-Level Polity*. Paper presented at the EUSA Tenth Biennial International Conference Montreal, Canada, May 17 – May 19, 2007. <http://aei.pitt.edu/8025/1/wollenschlager-f-03h.pdf> (20.12.2018.)
- WOUTERS, Jan – DUQUET, Sanderijn: *The EU, EEAS and Union Delegations and International Diplomatic Law: New Horizons*. Leuven Centre for Global Governance Studies, Working Paper No. 62. Leuven, 2011. https://ghum.kuleuven.be/ggs/publications/working_papers/2011/62WoutersDuquet (20.12.2018.)
- ZIECK, Marjoleine: *Refugees and the Right to Freedom of Movement: From Flight to Return*, *Michigan Journal of International Law*, 39 (2018) 1, 19–116.