

Administration of Consular Protection in Times of COVID: Status Report on Consular Protection of EU Citizens

The rapid and global spread of coronavirus has pushed countries and regions around the world to reinforce border controls almost from one day to another, causing much trouble for people outside of their countries to get back home. The phenomenon was global, as of 27 April 2020, 17 Schengen States notified the European Commission on the reintroduction of border controls at the internal borders on grounds of an immediate threat to public policy, to stop the spreading of the virus.² A huge number of EU citizens were stranded in third States in need of urgent consular assistance services, in particular: repatriation and help with accessing health care in third countries.³

The immediate shutdown reveals the question of how the common consular protection has fulfilled its purpose, notably helping the EU citizens in a non-discriminatory way in the territory outside of the European Union (hereinafter: EU).

The paper aims to give a glance at the situation of the administration of consular protection of distressed EU citizens at the real crisis period of the outburst of the pandemic in the first months of 2020 and analyse what consequences it has for the Europeanisation of the area.

I. The aim of the European common consular protection policy

The right to consular protection for unrepresented EU citizens in third States is set out in the TFEU⁴ and also acknowledged as a basic right by the EU Charter of Fundamental Rights.⁵ The legal institution exists as an additional right to EU citizenship since the Maastricht Treaty⁶ and its current general legislation is a Council Directive adopted in 2015 (hereinafter: Consular Directive).⁷ The new rules clarify when and how EU citizens (and their

¹ PhD, senior lecturer, University of Szeged, Faculty of Law and Political Sciences, Public Law Institute, csatlos.e@juris.u-szeged.hu. This research was supported by the EU-funded Hungarian grant EFOP-3.6.1-16-2016-00008. A shorter version of this paper is presented on the *Harmonization of Serbian and Hungarian (Domestic) Law with the European Union Law and Cross-Border Cooperation* online conference on 17 June 2021 in Szeged.

² Sabbati, Giulio – Dumbrava, Costica: The impact of coronavirus on Schengen borders. European Parliament, PE 649.347 - April 2020. See the list: Temporary Reintroduction of Border Control. Global Citizenship Observatory (GLOBALCIT) https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en (01.05.2021.) See general travel restriction statistics: Piccoli, Lorenzo et al: International travel restrictions in response to the COVID-19 outbreak dataset. EUI Research Data, 2020, Robert Schuman Centre for Advanced Studies. <https://cadmus.eui.eu/handle/1814/68359> (01.05.2021.)

³ Moraru, Madalina Bianca: Effective consular protection of unrepresented EU citizens in third countries during the COVID-19 pandemic: law and policy. https://globalcit.eu/wp-content/uploads/2021/02/Moraru_Consular_Brief.pdf (01.05.2021.) p. 1.

⁴ Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012, pp. 47–390. Articles 20(2)c and 23.

⁵ Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012, pp. 391–407. Article 46.; See Brexit-related concerns of citizenship rights: Eksteen, Riaan Diplomatic and Consular Protection with Special Reference to Article 46 of the EU Charter of Fundamental Rights. *Laws*, vol. 9. no 4. 2020. pp. 8-10.

⁶ Treaty on European Union. OJ C 191, 29.7.1992, pp. 1–112. Article 8c.

⁷ Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate

accompanying family member) in distress in a country outside the EU have the right to seek assistance from other EU Member States' embassies or consulates,⁸ how the Member States shall coordinate their assistance towards EU citizens,⁹ and who should pay for any arising costs¹⁰ but besides providing for an *equal treatment clause*,¹¹ it leaves the consular protection policy and the regulation of consular law in the competence of the Member States,¹² which may lead to significant discrepancies of practice.¹³ However, the success of the policy itself is built upon the crossroad of different policies of different EU legislative competencies from EU citizenship policy to the common foreign and security policy. Thus, the Consular Directive primarily enlists those situations¹⁴ when the Member States, *inter alia*, shall ensure assistance under their domestic consular law but without discrimination to all distressed EU citizens and their accompanying family members. The list includes *repatriation in case of an emergency*,¹⁵ which was probably the most wanted and highest-cost type of consular assistance that required the cooperation of Member States when the closure of borders led to a drastic reduction of means of transport.

II. Administering consular assistance in the Third States under the EU consular policy

To effectively assist EU citizens in need, the Consular Directive makes a basic distinction between coordination and cooperation measures for *regular* assistance cases and for times of *emergencies*. While in regular cases, the cooperation of competent Member State authorities (basically the consular authorities at site and the ministry of foreign affairs of the nationality of the citizen of need) take place, in case of emergency, the direct level of European administration is also engaged, so the administrative background of the fulfilment of consular tasks into multi-level administrative cooperation.

II.1. The ordinary procedure of ensuring help in the distressed EU citizen

The *assisting Member State* present in a third country and the *Member State of the nationality* of the citizen should cooperate closely. Local consular cooperation in respect of unrepresented citizens can be particularly complex, as it requires coordination with authorities

consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC OJ L 106, 24.4.2015, pp. 1–13. [Consular Directive]

⁸ Consular Directive, Articles 1-7.

⁹ Consular Directive, Article 8 and Chapter 2.

¹⁰ Consular Directive, Chapter 3.

¹¹ Poptcheva, Eva Maria: Consular Protection Abroad: A Union Citizenship Fundamental Right? PIE Peter Lang, Brussels, 2014. pp. 171-173.

¹² Csatlós, Erzsébet: A konzuli védelem európai közigazgatása: az együttműködések szervezeti és eljárásjoga az uniós polgár konzuli védelemhez való jogának tükrében. Iurisperitus, Szeged, 2019. p. 81.

¹³ Kozłowski, Krzysztof: Pending the Implementation of Article 23 TFEU and Article 35 TEU – Still Incomplete Right of EU Citizens to Diplomatic and Consular Protection. *Studia Iuridica Lublinensia*, vol. 29. no. 5, 2020. pp. 153-163.

¹⁴ Consular Directive, Article 9. The consular protection may include assistance, *inter alia*, in the following situations: (a) arrest or detention; (b) being a victim of crime; (c) a serious accident or serious illness; (d) death; (e) relief and repatriation in case of an emergency; (f) a need for emergency travel documents as provided for in Decision 96/409/CFSP.

¹⁵ Consular Directive, Article 9. f). It has also been enlisted by the previous consular outline of 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, pp. 73–76. [no longer in force, end of validity: 01/05/2018 by Consular Directive] Article 5 (e).

not represented locally, including where relevant with the competent embassies or consulates. *Unrepresented citizens*¹⁶ should be able to seek consular protection from the embassy or consulate of any Member State. When a Member State is informed of or receives a request for, consular protection from a person who claims to be an unrepresented citizen, it should, except in cases of extreme urgency, always contact the citizen's Member State of nationality without delay and provide it with all the relevant information before providing any assistance. The Member State of nationality should, in turn, without delay provides any information relevant to the case. That consultation should allow the Member State of nationality to request the transfer of the application or to deliver consular protection and also the exchange of information to explore if the citizen does not abusively take advantage of his or her right to consular protection (*forum shopping*). That consultation should also allow the Member States concerned to exchange relevant information for the purpose, for example, of ensuring that an unrepresented citizen. The Member State that received the consular protection claim (assisting Member State) shall relinquish the case as soon as the Member State of nationality confirms that it is providing consular protection to the unrepresented citizen.¹⁷

II.2. Consular assistance in crisis

In case of an emergency when potentially a larger number of subjects are concerned, it is essential to ensure adequate crisis preparedness and crisis management. To that end, competent embassies and consulates, and *Union delegations* should be informed about the potential EU citizens in need. The coordination is either done by a Lead State¹⁸ or by an ad hoc Member State on a non-discriminatory basis. 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 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.¹⁹ However, the notion of crisis or emergency can be interpreted differently,²⁰ the goal of actions is unquestionably giving a full effect of the Consular Directive and the TFEU provision granting the protection of EU citizens.

Interoperability between consular services of the Member States and crisis-management experts of the direct level of EU administration should be enhanced, in particular

¹⁶ 'Unrepresented citizen' shall mean every citizen holding the nationality of a Member State which is not represented in a third country: if it has no embassy or consulate established there on a permanent basis, or if it has no embassy, consulate or honorary consul there which is *effectively in a position to provide* consular protection in a given case. [emphasise added by Author] See, Consular Directive Article 4 and 6. The latter condition is a flexible rule to help the effective protection of citizens and does not stand for *forum shopping* among the best available national practices. See, Csatlós, Erzsébet: EU ETD: Towards a New Chapter in EU Citizens' Rights and a Better Administrative Cooperation. *International Law Review*, vol. 10. no. 2. 2019. pp. 70; 72-74.

¹⁷ Consular Directive, Article 10.

¹⁸ European Union guidelines on the implementation of the consular Lead State concept. OJ C 317, 12.12.2008, p. 6-8. point 1. A Member State which wishes to assume the task of Lead State in a third country will notify this through the COREU network. If there is no objection from another Member State within 30 days or unless it renounces the task through the COREU network, the Member State will be declared the Lead State in the third country concerned. The Lead State will take on the tasks in the event of a major consular crisis defined by point 2.1. (b).

¹⁹ Consular Directive, Article 11.; 16.

²⁰ Becánics, Adrienn: A konzuli védelem „európaizálódása”— válsághelyzetekben biztosított segítségnyújtás az uniós polgárok számára. *Jog, állam, politika*, 10. évf. 2. sz. 2018. pp. 150-151.

through their participation in multi-disciplinary crisis teams, such as those under the *European External Action Service* (EEAS) crisis response and operational coordination and crisis management structures and under the *Union Civil Protection Mechanism (UCPM)*. The support by the UCPM can be requested, for instance, by the Lead State or the Member State(s) coordinating the assistance.²¹

The EU has no consular competence, the EU does not assist citizens; it may only ensure help and cooperation to the Member States and their competent organs and authorities. However, as *Moraru* point out, the consular network of all the Member States is lower than the EU delegations network²² of the EEAS and all the Member States have a permanent representation in only four countries – China, India, Russia and USA – whereas only five of the 27 Member States have representations in more than half of the countries.²³ The EU Delegations all around the world are hybrid administrative constructs that combine diplomatic tasks in virtue of their belonging to the EEAS as their prolonged, local organs and operational tasks such as development cooperation and trade which role is inherited from the former European Community Delegations.²⁴ The Commission's delegations are now Union delegations under the authority of the High Representative and are an integral part of the EEAS structure with both regular EEAS staff (including Heads of Delegation) and staff from relevant Commission services.²⁵

Based on the *solidarity clause* of the Treaty on the Functioning of the European Union (TFEU), a legal obligation is established for the EU and its Member States to assist each other when a Member State is the object of a terrorist attack or a natural or man-made disaster in their territories.²⁶ The Commission has a supporting competence in the area of civil protection; that is: the Member States still bear the primary responsibility when it comes to preventing, preparing for and responding to disasters. However, some disasters can overwhelm the response capacities of any Member State acting alone and a well-coordinated and rapid mutual assistance amongst the Member States is an essential goal that oversteps the burdens of subsidiarity and proportionality test. Solidarity is interpreted in an extended way

²¹ Consular Directive, preamble (20)-(22).

²² EU in the World. https://eeas.europa.eu/headquarters/headquarters-homepage/area/geo_en#collapse-c0d930fe3146658e5c2c9b3f82d8c9c6 (01.05.2021.)

²³ Based on the data available on the website of the European Commission (ec.europa.eu/consularprotection/content/home_en) by Moraru: i.m. p. 1.

²⁴ Helly, Damien et al.: A closer look into EU's external action frontline. Framing the challenges ahead for EU Delegations. European Centre for Development and Policy Management, Briefing Note, no. 62. 2014. <https://ecdpm.org/wp-content/uploads/BN-62-EU-External-Action-Challenges-EU-Delegations-2014.pdf> (01.05.2021.) p. 4.

²⁵ Antoniadis, Antonis – Schütze, Robert – Spaventa, Eleanor: The European Union and Global Emergencies. A Law and Policy Analysis. Hart Publishing, Oxford and Portland, Oregon, 2011. p. 255.

²⁶ TFEU Article 222 says: 1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to: (...) (b) assist a Member State *in its territory*, at the request of its political authorities, in the event of a natural or man-made disaster. 2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it *at the request of its political authorities*. To that end, the Member States shall coordinate between themselves in the Council. 3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions. 4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action. [emphasize added by Author]

when the population of Europe is outside the territory of the integration but exposed to the above-mentioned challenges. This kind of implementation was expressed by the UCPM concept as it expands the territorial scope of disasters outside the EU when common action is required.²⁷

The European Commission, under the responsibility of DG ECHO, through its *Emergency Response Coordination Centre* (ERCC) and the delegations of the EEAS thus closely cooperate and provides assistance upon request when the scale of an emergency is too big for a single Member State to respond on its own. Since 2001,²⁸ the UCPM is a channelled form of cooperation coordinated by the ERCC to serve this purpose between the EU Member States and participating countries in the field of civil protection, to improve prevention, preparedness and response to disasters inside and outside the EU.²⁹ When the mechanism is activated, the *States taking part*³⁰ in the UCPM offer assistance, such as personnel or equipment, and their offers of assistance are coordinated through the ERCC. The EU contributes up to 75 % of the transport and operational costs of deployments, however, in certain cases, it can reach up to 100 % of the total eligible costs if this is necessary to make the pooling of Member States' assistance operationally effective.³¹

The ERCC can identify gaps in European assistance and propose how these gaps can be covered, through financial support from the EU.³² Under the UCPM, the Commission can co-finance operational costs, including transport costs, thus enabling delivery of the assistance to the place where it is needed only within a few hours with lower budgetary impact than an individual action by a Member State would cost.³³

²⁷ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism, OJ L 347 20.12.2013. (modified by multiple times) preamble (4)

²⁸ The Community Civil Protection Mechanism (CCPM) was introduced by Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions. OJ L 297, 15.11.2001, p. 7. recast by Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism. OJ L 314, 1.12.2007, p. 9. However, it has roots from much earlier in the history of the integration. Wendling, Cécile: *The European Union Response to Emergencies. A Sociological Neo-Institutionalist Approach*. European University Institute, Florence, 2009. https://cadmus.eui.eu/bitstream/handle/1814/11315/2009_Wendling.pdf?sequence=2&isAllowed=y (01.05.2021.) p. 98.

²⁹ See Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism, OJ L 347 20.12.2013. pp. 924-947. it was modified multiple times. [hereinafter: UCPM Decision] Article 2; Decision (EU) 2019/420 of the European Parliament and of the Council of 13 March 2019 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism. OJ L 77I 20.3.2019, pp. 1–15. Parker, Charles F. – Persson, Thomas – Widmalm, Sten: *The effectiveness of national and EU-level Civil Protection Systems: Evidence from 17 Member States*. *Journal of European Public Policy*, vol. 26. no. 9. 2019. pp. 1313-1314.

³⁰ According to UCPM Decision Article 28, the UCPM shall be open to the participation of: (a) European Free Trade Association (EFTA) countries which are members of the European Economic Area (EEA), in accordance with the conditions laid down in the EEA Agreement, and other European countries when agreements and procedures so provide; (b) acceding countries, candidate countries and potential candidates, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective Framework Agreements and Association Council Decisions, or similar agreements.

³¹ UCPM Decision Article 23 is amended accordingly by Decision (EU) 2019/420 of the European Parliament and of the Council of 13 March 2019 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism OJ L 77I. 20.3.2019. pp. 1–15. (14).

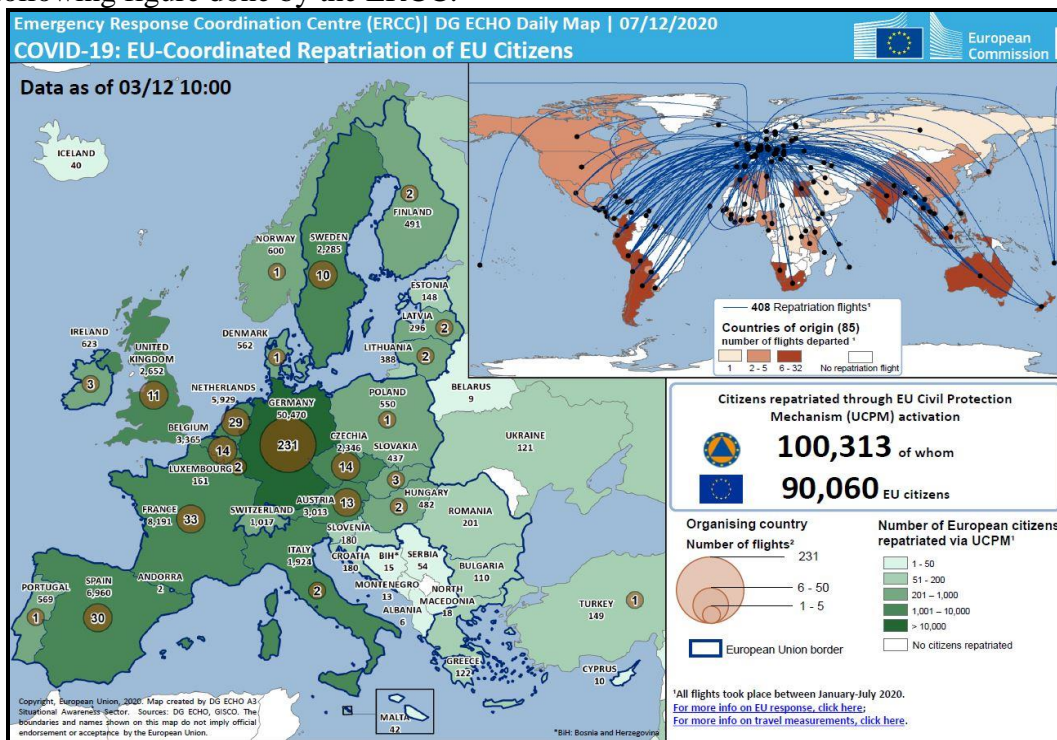
³² UCPM Decision, Article 12.

³³ Emergency Response Coordination Centre (ERCC). *European Civil Protection and Humanitarian Aid Operations. Facts & Figures* Last updated 15/01/2021. https://ec.europa.eu/echo/what/civil-protection/emergency-response-coordination-centre-ercc_en (01.05.2021.)

III. An unprecedented repatriation effort – by joint forces

In the spring of 2020, a huge number of EU citizens were stranded in third States due to the outbreak of the COVID-19 and the sudden closure of borders and the drop in transport possibilities. The common priority was to repatriate EU citizens via commercial flights, but when this option was no longer possible, the UCPM was activated and the ERCC, together with EEAS and EU Member States, stepped in to ensure special assets, flights, ships to ensure repatriation. Since the beginning of the pandemic, more than 590.000 people have been flown back to Europe on flights organised by the Member States. In addition, the UCPM has so far facilitated the repatriation of around 60.000 EU citizens to Europe from countries all over the world.³⁴

Accurate and purely domestic data is not available except for Germany, which has carried out the largest repatriation process in its history as brought home over 240 thousand German citizens and about 7,500 EU citizens.³⁵ Information on the several Member States is also published that repatriated EU citizens outside the EU civil protection mechanism but these data are not collected in a comprehensible manner and the examples are based on sources from the EU Member States via the *Common Emergency Communication and Information System* (CECIS) and claimed to be not exhausted.³⁶ The year 2020 is summarised in the following figure done by the ERCC.



1. EU coordinated repatriation of EU citizens as of 7 December 2020.
https://ec.europa.eu/info/sites/default/files/repatriation_map_7122020.jpg (01.05.2021.)

Since the beginning of the pandemic, as of information summarised and published in early December 2020, between January and July, over 90,000 stranded EU citizens (and more

³⁴ Good stories on consular support for EU citizens stranded abroad. EEAS homepage 07/06/2020. https://eeas.europa.eu/headquarters/headquarters-homepage/76203/good-stories-consular-support-eu-citizens-stranded-abroad_enb (01.05.2021.) Here, see also a summary of actions per each third State where the EU provided support.

³⁵ Germany Carries Out the Largest Repatriation Process in Its History. SchengenVisaInfo.com, May 11, 2020. <https://www.schengenvisa.info/news/germany-carries-out-the-largest-repatriation-process-in-its-history/>

³⁶ European solidarity in bringing people home. https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/coronavirus-european-solidarity-action_en#european-solidarity-in-bringing-people-home (01.05.2021.)

than 10,000 non- EU citizens) have been brought home on board 408 repatriation flights from all over the world. Approximately 360 flights were facilitated and co-financed by the CPM.³⁷ The exact number of citizens (including nationals, other EU citizens and non-EU citizens) repatriated under the UCPM are seen from the charts below.

EU Member States		UCPM Participating States		United Kingdom
Austria	3013	Iceland	40	2652
Belgium	3365	Montenegro	13	
Bulgaria	110	North Macedonia	18	
Cyprus	10	Norway	600	
Czech Republic	2346	Serbia	54	
Germany	50470	Turkey	149	
Greece	122	Total	874	
Spain	6960			
Finland	491			
France	8191			
Croatia	180			
Hungary	482			
Ireland	623			
Italy	1924			
Lithuania	388			
Luxembourg	161			
Latvia	296			
Malta	42			
Netherlands	5929			
Poland	550			
Portugal	569			
Romania	201			
Sweden	2285			
Slovenia	180			
Slovakia	437			
Unknown EU	25			
Total	90,060			

2. Number of citizens repatriated under the UCPM. Source: Summary table - repatriation flights under the Union Civil Protection Mechanism. 3 December 2020 – final. Chart based on:

https://ec.europa.eu/info/sites/default/files/summary_tables_of_repatriation_flights_3_december_2020.pdf (01.05.2021.) p. 14.

So, in general, 2020 may serve as a pilot year for a global emergency as one in three passengers were European citizens from a different nationality than the country organising the repatriation flight.³⁸ Given the fact that in the last couple of decades, the number of emergencies in the world has been growing,³⁹ it can be concluded that the further development of the administration of emergency response shall stay on the agenda. It is proven that the need for the joint action is effective and unavoidable. The ERCC ensure 24/7 operational capacity and serve the Member States and the Commission upon request from the national authorities and coordinates the offered assistance of the Member States and the

³⁷ Summary table - repatriation flights under the Union Civil Protection Mechanism. 3 December 2020 – final. https://ec.europa.eu/info/sites/default/files/summary_tables_of_repatriation_flights_3_december_2020.pdf (01.05.2021.) More detailed data is available here on the exact number of repatriated nationals /non-national EU citizens/ non-EU citizens and the place where they were staying.

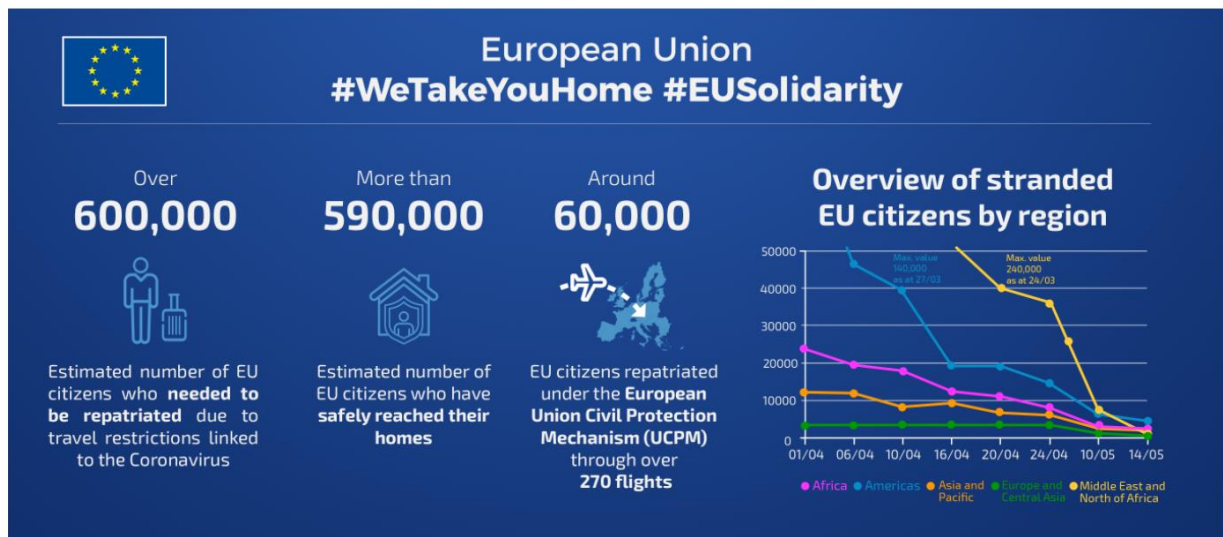
³⁸ European solidarity in bringing people home. https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/coronavirus-european-solidarity-action_en#european-solidarity-in-bringing-people-home (01.05.2021.)

³⁹ Frisell, Eva Hagström – Oredsson, Maria: Building Crisis Management Capacity in the EU. FOI – Swedish Defence Research Agency, Stockholm, 2006. pp. 13-14.

Participating States if the Member State in need – that requested the assistance – accepts the offers.⁴⁰ The centre manages a reserve of pre-committed assistance from EU Member States, Participating States and the UK during the transition period, that can be *immediately* deployed. These States may commit resources on standby in a pool, ready to be deployed as part of a faster and more coherent European response when the need arises. The request and acceptance are important elements leading to the activation of the mechanism, as in principle, the requester of assistance shall bear the costs of assistance provided by the Member States. Any Member State may offer its assistance entirely or partially free of charge and in the case of the Covid repatriations, the EU also took part in the financing: already in March, the European Commission adopted the first amending budget for the year 2020, increasing the EU budget by €45 million to help the repatriation.⁴¹

IV. Consequences taken from 2020 on consular protection administration

As the following chart says, the repatriation in the first part of 2020 is claimed as a success story of the EU.



3. Summary of the success story of repatriation. https://eeas.europa.eu/headquarters/headquarters-homepage/76203/good-stories-consular-support-eu-citizens-stranded-abroad_enb (01.05.2021.)

Since the first attempts of Europeanisation of consular protection, there have been debates over the role of the EU delegations and certain basic consular functions to shift to them developing them to be 'euroconsulats'.⁴² As for now, their role is complementary: 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 intervention teams, and facilitate the exchange of information.⁴³ Financial and practical considerations to develop delegations - already said to be the embassies of the EU - are supported by mainly those smaller states which are less advantageous situation to respond to a crisis like the global

⁴⁰ UCPM decision, Article 7.

⁴¹ Good stories on consular support for EU citizens stranded abroad. EEAS homepage. 07/06/2020. https://eeas.europa.eu/headquarters/headquarters-homepage/76203/good-stories-consular-support-eu-citizens-stranded-abroad_enb

⁴² Csatlós (2019) pp. 147-148.

⁴³ Consular Directive, Article 11.

pandemic, although sovereignty and foreign policy concerns are still very strong against it, therefore the current situation is that the task (and the responsibility) is in the competence of the Member States. However, it is clear, that individually, there are challenges that cannot be faced or less effectively; that is supported by the fact that a *Consular Task Force* has been set up by the EEAS and the Commission and with the Member States assisted the ongoing efforts for repatriations through the UCPM.⁴⁴

Otherwise, the preparatory work of the new directive on the issue of emergency travel document (hereinafter: EU ETD)⁴⁵ also considered the evaluated role of the delegations.⁴⁶ In addition, the EU direct level administration has an institutional framework that allows having a constant background to handle the preparation, response and recovery phase of crisis management.⁴⁷ However, it shall also emphasise that a survey has shown that some countries did not see much of a need or a role for the EU in dealing with *their own domestic crises and disasters*. EU's involvement in civil protection were not universally positive and one of the main complaints is its overly bureaucratic nature and having unrealistic expectations of Member States. It was also stated that the Commission often forgets the principle of 'volunteerism', and that it should make 'requests' to the member states rather than 'demands'. the EU consists of too many confusing authorities and bodies, which leads to obvious problems with coordination and legitimacy.⁴⁸ Such concerns were concluded of internal crisis management although, highlight important factors, especially with coordination – ordering issues, that shall be avoided in external crisis management.

Indeed, their diplomatic function is about to be exploited by empowering them to contribute to the increasing of the acceptance of EU ETDs,⁴⁹ so the next step for optimized usage of their presence and toolkit to the execution of certain consular functions in an emergency. A well-coordinated response to disasters at the European level can avoid duplication of relief efforts and ensure that assistance is tailored to the needs of those affected. To lessen the burden on contributing states, the ERCC already can liaise directly with the national civil protection authorities of the country in need and can also financially support the delivery of civil protection teams and assets to the affected country.⁵⁰

⁴⁴ Joint statement of the Members of the European Council. Brussels, 26 March 2020. <https://www.consilium.europa.eu/media/43076/26-vc-euco-statement-en.pdf> pp. 5-6. points 21-22.

⁴⁵ Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP. OJ L 163, 20.6.2019. pp. 1–12. [EU ETD Directive]

⁴⁶ 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. p. 21.; Emergency Travel Document (ETD) – Presidency reflection paper. COCON 14, CFSP/PESC 523, COTRA 13, 11955/15, Brussels, 17 September 2015. p. 4., see also Lequesne, Christian: At the Centre of Coordination: Staff, Resources and Procedures in the European External Action Service and in the Delegations. In: Rosa Balfour –Catherine Carta –Kristi Raik (eds.): The European External Action Service and National Foreign Ministries. Convergence or Divergence? Ashgate, Farnham, 2015. pp. 48-49. Csatlós, Erzsébet: The EU ETD Directive and the Development of EU Administrative Procedural Law Theoretical Remarks. Jogelméleti Szemle, 2021/1. p. 10.

⁴⁷ Lindström, Madelene: EU Consular Cooperation in Crisis Situations. In: Stefan Olsson (ed.): Crisis Management in the European Union. Springer, Cooperation in the Face of Emergencies. Springer, Heidelberg, 2009. 111-119.

⁴⁸ Widmalm, Sten – Parker, Charles F. – Persson, Thomas: Civil Protection Cooperation in the European Union. How Trust and Administrative Culture Matter for Crisis Management. Palgrave Macmillan, Cham, 2019. pp. 65-66.

⁴⁹ Union delegations in third countries should notify the uniform EU ETD format and any subsequent modifications to the relevant authorities of third countries, report on the acceptance of the EU ETD by third countries and promote its use. The specimens used for this purpose should be provided to the European External Action Service by a Member State with the support of the Commission. EU ETD Directive, preamble (19) and Article 13.3.

⁵⁰ Emergency Response Coordination Centre (ERCC). European Civil Protection and Humanitarian Aid Operations. Facts & Figures Last updated 15/01/2021. <https://ec.europa.eu/echo/what/civil->

The UCPM has proven to be a useful tool to mobilise and coordinate the assistance provided by the Participating States responding to crises. However, the COVID-19 pandemic has shown the need for better European Union preparedness for future large-scale emergencies, while proving the limitations of the current framework. The inter-connectedness of our societies confronting the same emergency and their resulting difficulty to help each other has demonstrated the need for enhanced action at Union level requested by the European Council Joint Statement on 26 March 2020: “*We must also draw all the lessons of the present crisis and start reflecting on the resilience of our societies when confronted with such events. In that respect, the time has come to put into place a more ambitious and wide-ranging crisis management system within the EU.*”⁵¹ It predicts further Europeanisation of civil protection.⁵²

The administration of EU citizen related interest outside the EU is mostly affected by the Commission’s proposal to amend the UCPM decision to improve its efficiency submitted on 2 June 2020. The UCPM currently relies on Member States’ resources. As shown in recent months, this system is hardly challenged when the Member States are impacted by the same emergency simultaneously and are therefore unable to offer each other assistance. In such cases of large-scale high impact emergencies, the Union is currently unable to step insufficiently to fill these critical gaps. An extra layer of protection was established in 2019 in the form of *rescEU* by upgrading the UCPM to respond to challenges caused by extreme weather conditions and emerging threats, such as the coronavirus, which assumes the non-ability of Member States to help each other. The aim was also to streamline and simplify administrative procedures in the long run to reduce the time needed to reach people in need of assistance.⁵³ So, the EU already took a step forward to ensure a faster and more comprehensive response. However, it is not enough and the ECPM requires more flexibility and autonomy. To that end the proposal reinforces the Commission’s role by providing logistical capacity, enhancing the ERCC’s operational coordination and monitoring role in support, simplifying budget issues⁵⁴ and in general: design a more flexible system for response to large-scale emergencies.⁵⁵ To this end, the proposal empowers the Commission to adopt immediately applicable implementing acts, in the case of an emergency which needs an

[protection/emergency-response-coordination-centre-ercc_en](#) (01.05.2021.)

⁵¹ Joint statement of the Members of the European Council. Brussels, 26 March 2020. <https://www.consilium.europa.eu/media/43076/26-vc-euco-statement-en.pdf> (01.05.2021.) p. 6.

⁵² See in this context: Morsut, Claudia – Kruke, Bjørn Ivar: Europeanisation of Civil Protection: the Cases of Italy and Norway. *International Public Management Review*, vol. 20. no. 1. 2020. pp. 23-37.

⁵³ Decision (EU) 2019/420 of the European Parliament and the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism. OJ L 77I. 20.3.2019, pp. 1–15. *rescEU* capacities shall be acquired, rented or leased by Member States. For that purpose, direct grants may be awarded by the Commission to Member States without a call for proposals. The Member State on the territory of which *rescEU* capacities are deployed shall be responsible for directing response operations. In the event of deployments outside the Union, Member States hosting *rescEU* capacities shall be responsible for ensuring that *rescEU* capacities are fully integrated into the overall response. In the event of deployment, the Commission through the ERCC shall agree with the requesting Member State on the operational deployment of *rescEU* capacities. The requesting Member State shall facilitate operational coordination of its own capacities and *rescEU* activities during operations. The coordination of the different response capacities shall be facilitated, where appropriate, by the Commission through the ERCC. (Article 12 3.;6-8.)

⁵⁴ According to the proposal, the total budget allocated for the Union Civil Protection Mechanism amounts to EUR 3 455 902 000 (in current prices) for the 2021-2027 period. EUR 1 268 282 000 shall derive from heading 5 “Resilience, Security and Defense” of the MFF 2021-2027 (new paragraph 1a in article 19) and EUR 2 187 620 000 shall be made available through the European Recovery Instrument based on empowerment provided in the new Own Resources Decision. Proposal for a Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (Text with EEA relevance) Brussels, 2.6.2020 COM(2020) 220 final. [UCPM modification proposal] p. 5. point 4.

⁵⁵ UCPM modification proposal, pp. 1-2.; 6.

instant response, where, in duly justified cases, imperative grounds of urgency so require. This would allow the EU to react without delay to large-scale emergencies which might have a high impact on human lives, health, environment, property, and cultural heritage, affecting at the same time the majority of all Member States.⁵⁶ The modification to the decision on UCPM was adopted on 20 May 2021.⁵⁷

By doing so, even if consular protection is not *expressis verbis* mentioned, it pushes a step towards the institutionalisation of the direct level of European administration in an emergency by reinforcing links with other relevant EU-level entities involved in crisis management and by strengthening its monitoring and early warning functions.

V. Conclusion

The common concept of the united European nation seemed to disappear with lightning speed at the outburst of the pandemic as, among the first measures, each Member State shut down their borders. It gave occasion to examine how the Covid -19 has influenced the execution of the EU's consular protection policy in third states. The basic research question was if the cooperation on consular protection performed well during the first year of the global crisis and what message it gives to the development of Europeanisation and European administration of consular protection.

The real answer could be given by those people who experienced it and demanded help in third states. The types of assistance may have a very different nature, so now, under legal terms, I would like to stress only the case of repatriation, that is: bringing home those who stuck in a foreign country outside the EU. Repatriation of the stranded EU citizens in case of an emergency is among those consular measures that are highlighted as to be ensured on an equal treatment basis. Accurate and purely domestic data is not available for each member State but the statistics of the first year make it clear that the Union Civil Protection Mechanism had a major role, so as the EU financial sources and the operative forces of its supranational institutional background. The paper thus explores the consular protection cooperation and coordination mechanism in ordinary times and crisis especially because of the recent repatriation numbers shown by the statistics of 2020.

Experiences show the need for joint actions in this field instead of subsidiary solutions in the hands of Member States. Despite the competency rules, the 2020 happenings put a step forward to further Europeanisation of consular protection administration and it also raises the question of the long-debated issue of centralisation of certain consular tasks to direct level of EU administration under effectivity and economic reasons.

⁵⁶ See esp. UCPM modification proposal, preamble, (21); pp. 12; 14; 15; 21.

⁵⁷ Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (Text with EEA relevance) OJ L 185, 26.5.2021, pp. 1–22.