

**STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION
LEGISLATION AND DOCUMENTS**

Council number 9643/18
COM (2018) 358 Final
ADD 1

Council number 9643/18
COM (2018) 263 Final
ADD 2

Council number 9643/18
COM (2018) 272 Final
ADD 3

Council number 9643/18
COM (2018) 273 Final
ADD 4

Proposals for the Council Directive establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP

Submitted by the Home Office on 04 JUL 2018

SUBJECT MATTER

1. Under the provisions of Article 23 TFEU, EU citizens who find themselves in difficulty in a country where their country of citizenship does not have a diplomatic presence can seek consular assistance from the Embassy or Consulate of any other EU Member state. This can include the provision of an emergency travel document (ETD) to facilitate travel back to the EU or an agreed destination where the citizen can then obtain a passport
2. The UK is unrepresented (meaning there is no embassy, High Commission or consulate) in 49 countries worldwide. In these locations, the UK may rely on an EU member state (or Australia, New Zealand or Canada) to help issue an ETD to an unrepresented British person.
3. In 1996 by Decision 96/409/CFSP EU common format emergency travel documents (ETD) were introduced. This outlined the rules by which ETD were to be issued by member states to unrepresented EU citizens in third countries. The attached draft directive seeks to update the rules and standards reflected in Decision 96/409/CFSP to cover recent EU changes to consular protection and the adoption of higher standards of document security now required for the global security environment.
4. The UK and a number of other EU member states do not issue the current standard format EU ETD as it is a lower integrity document than they currently issue. The EU estimates that 1,000 EU citizens are helped each year by all member states. In 2017, the UK provided a UK ETD to 123 unrepresented EU citizens in third countries globally.

5. This directive seeks reform based upon a number of initiatives including the 2016 Communication on “Enhancing Security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders”, 2017 Citizenship Reform and the consular protection reforms as outlined in the Council Directive (EU) 2015/637 which came fully into force on 1 May 2018.
6. It is proposed that EU member states will be obliged to issue the new EU ETD to unrepresented EU citizens in third countries. Member states will not be required to issue the new EU ETD to their own nationals. EU research suggests that there have been instances of delays or refusal to allow entry of an unrepresented EU citizens on a non-EU standard format ETD issued by another EU member state at borders outside the EU. However, the Foreign and Commonwealth Office (FCO) are not aware of any delays or refusals of entry at borders to EU citizens travelling on a UK ETD.
7. Three options are included in the directive: (i) retain the current standards and current Decision 96/409/CFSP, (ii) new legislation with a new EU ETD with enhanced feature or (iii) new legislation and a new ETD with a Biometric chip. Option (ii) improving the integrity of the ETD and updating rules under which they are issues is recommended.
8. Whilst the UK is in favour of the introduction of a higher integrity ETD and clearer processes, the benefits of a mandatory EU ETD are not clear. The directive will therefore not be supported as drafted on the grounds that the document proposed is less secure than the current UK ETD, there have been no reported issues with UK ETDs and the costs of introduction outside the EU are disproportionate for the number of ETDs issued.

SCRUTINY HISTORY

9. None – The FCO and Home Office have contributed to questionnaires on ETD for unrepresented EU citizens but this is the first time formal proposals have been tabled. The FCO and Home Office have been clear in all questionnaires that we see no need for a standard format EU ETD being made mandatory.

MINISTERIAL RESPONSIBILITY

10. The Secretary of State for Foreign and Commonwealth Affairs is the minister responsible for issuance of emergency travel documents overseas on behalf of the United Kingdom. The Secretary of State for the Home Department has policy responsibility for emergency travel documents alongside all other travel documents, including passports, issued under the Royal Prerogative.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. The issuance of emergency travel documents is a reserved matter under the UK devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

- i. Legal basis: Article 23 of the Treaty on Functioning Rights of the European Union (TFEU) and Directive (EU) 2015/637
- ii. European Parliament Procedure: Directive
- iii. Voting procedure: Qualified majority voting
- iv. Impact on United Kingdom Law: None
- v. Application to Gibraltar: No
- vi. Fundamental rights analysis: No fundamental issues apply

APPLICATION TO THE EUROPEAN ECONOMIC AREA

12. None

SUBSIDIARITY

13. The action proposed is being undertaken at Union level as it seeks to deliver uniformity in expectations for all member states and unrepresented EU citizens outside the EU.
14. We have no evidence that the decision by member states to use their own ETD reduces border security as it will be dependent upon the security of their own ETD and compliance with International Civil Aviation Organization (ICAO) standards. The UK believes that its own ETD delivers the aims of the Directive in terms of security and acceptability. It will be for this reason that the Directive as drafted to make the EU ETD mandatory will not be supported by the UK.

POLICY IMPLICATIONS

15. Passports and emergency travel documents issued by the UK are issued under the Royal Prerogative as exercised by the Secretary of State for the Home Department. No new legislative powers are required as a result of this legislation. The proposed processes are not significantly different to those undertaken today albeit the specific timescales are subject to other EU member state support in providing information will be needed to ensure that they are achieved.
16. The UK was the lead country in the drafting the ICAO guidelines for ETD. The UK ETD significantly exceeds the minimum standards. The proposed EU ETD will be of a lesser standard than that currently issued by the UK. There would be significant costs in introducing the EU ETD, disproportionate to the limited number of unrepresented EU citizens that the UK provides with ETDs annually. For these reasons, the UK is looking to maintain the right to opt out of issuing EU ETD. Currently other member states, including France and Germany, also choose not to use the EU ETD.

17. On 23 June 2016, the people of the United Kingdom voted to leave the European Union. The Government triggered Article 50 of the Treaty of the European Union on 29th March 2017 to begin the process of leaving the EU. Until 29 March 2019, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. The UK will continue to negotiate, transpose and implement EU directives and legislation until 29 March 2019. The UK and EU have also proposing a time-limited implementation period (29 March 2019 to 31 December 2020), during which time the majority of the EU acquis will continue to apply. During the implementation period, the Government may also continue to implement and apply EU legislation, although it will no longer be negotiating proposed directives and legislation in working groups.
18. The Foreign and Commonwealth Office have publicly stated their desire to continue cooperating with the EU on consular affairs. This includes continuing to provide consular protection to unrepresented EU citizens in third countries on a reciprocal basis after the implementation period. This proposed offer includes the provision of ETDs. Negotiations on cooperation in the field of consular affairs will take place as part of negotiations on the future UK-EU security partnership..

CONSULTATION

19. None

IMPACT ASSESSMENT

20. The EU impact assessment focuses on benefits of more secure Schengen borders through an improved EU ETD and also minimising future costs to EU citizens through a quicker and easier process. The UK currently charges the same fee (currently £100) to UK and EU citizens. No significant issues or impacts are highlighted in the impact assessment. We are not aware of any specific issues for UK or EU citizens so support this assessment.

FINANCIAL IMPLICATIONS

21. The UK currently does not issue the standard format EU ETD. The options outlined in the proposed directive have not been formally assessed but there would be disproportionate financial implications (training, equipment, distribution and holding of blank documents) compared to the number issued, if the UK did adopt the EU ETD as it would need to be available worldwide in all UK consular offices outside the EU.

TIMETABLE

22. If the directive is passed it is to become effective within 20 days, and be fully implemented within 24 months which will likely go beyond the UK exit from the EU but may still be within the currently proposed implementation period (29 March 2019 to 31 December 2020).

OTHER OBSERVATIONS

23. None

*Tom ever
Carine*

*Tom ever
Carine*

**Rt Hon Caroline Nokes MP
Minister of State for Immigration**