



Council of the
European Union

Brussels, 26 April 2016
(OR. en)

8280/16

LIMITE

COCON 7
CFSP/PESC 341

NOTE

From: General Secretariat of the Council
To: Working Party on Consular Affairs
Subject: Consular démarches: Toolkit on procedural issues

Based on the outcome of the meeting of the Consular Affairs Working Party on 8 April 2016, and subsequent silence procedure, delegations will find attached the above document as agreed by the Consular Affairs Working Party.

Consular Démarches : Toolkit on procedural issues

Opportunity for a joint consular demarche?	Content	Preparation	Roles	Wording and Delivery
<p><i>In all cases:</i></p> <ul style="list-style-type: none"> - The main drive is solving pending consular cases; - Bilateral approach is not having a satisfactory impact. <p><i>The opportunity for a joint demarche will logically be discussed at the local level. The local EU consular/HoM meetings provide for</i></p>	<p>Consular, national competence addressing currently pending cases, also including reminder</p> <p><i>(e.g. prison conditions, pre-trial detention, access to detainees, etc.)</i></p> <p>and possible</p> <p>Exercise of national foreign/consular policy</p> <p><i>(for example in view of a permanent change to avoid future cases.)</i></p>	<p>Coordination of Member States [concerned] within the COCON (hereinafter "COCON coordination"). Concrete steps are:</p> <ul style="list-style-type: none"> - Local EU presidency and capital consult on <ul style="list-style-type: none"> a) opportunity b) involvement of MS in COCON c) joining of like-minded countries; - Text of consular demarche can be developed based on templates; - Presidency reaches agreement with MS in COCON/like-minded countries; - Presidency instructs local Presidency on demarche; - Follow-up will be discussed and monitored in COCON. <p>Reminder demarche:</p> <ul style="list-style-type: none"> - Presidency and local presidency monitor. Both can take the initiative for a reminder demarche; - Same procedure as above; - Presidency instructs local Presidency for demarche to 	<p><i>Presidency:</i></p> <ul style="list-style-type: none"> - Leads consultations locally and in COCON; - Delivers demarche; - Monitors and reports back in COCON. 	<p><i>Wording:</i></p> <p>'EU Member States'</p> <p><i>Delivery (by choice):</i></p> <ol style="list-style-type: none"> 1. Rotating Presidency 2. EU Delegation (on behalf of EU Member States) 3. Each Member State in parallel.

<p><i>the exchange of information and best practises.</i></p>		<p>make sure that demarche is executed along the same line as the first demarche.</p>		
	<p>Mixed consular and exercise of EU foreign policy CFSP (seeking solution for pending and also a permanent change to avoid future cases, state of legislation, respect of human rights...)</p> <p><i>The concrete consular issue can have a linkage with the exercise of the EU CFSP, for example in the context of an open political dialogue with the country (for instance, an EU demarche on prison conditions for EU citizens connects with the EU Human Rights dialogue with that country) or in presence of a binding agreement with the country where procedures are stipulated in case of infringements.</i></p>	<ul style="list-style-type: none"> - COCON coordination for the part concerning currently pending consular cases. Those Member States without pending cases who are interested in joining do so on their own foreign/consular policy; - in consultation with the CFSP Geographic working group for the (political) part. 	<p><i>Presidency:</i></p> <ul style="list-style-type: none"> - Leads consultations in COCON and with like-minded countries; - Consults the relevant geographic CFSP working party. - Delivers demarche; - Monitors and reports back in COCON <p><i>CFSP Geographic Working Group:</i></p> <ul style="list-style-type: none"> - looks at the political part of the demarche. The advice of the CFSP Group could be that the joint demarche can be held as above (consular), or that the demarche has to be amended as to include foreign policy aspects. - If policy is the sole basis of the demarche and the text does not refer to specific consular cases, the policy working group takes over. 	<p><i>Wording:</i></p> <p>'EU and its Member States' (CFSP exercised)</p> <p><i>Delivery:</i></p> <p>Three choices as above</p> <p><u>together with</u> the EU Delegation for the CFSP part</p> <p>(HR could be also be delivering at his/her level).</p>

	<p>Mixed, consular and external projection of EU internal exclusive competence</p> <p><i>The concrete consular issue is coupled with an EU exclusive competence.</i></p> <p><i>For instance, international child abduction.</i></p>	<ul style="list-style-type: none"> - COCON coordination for the part concerning concrete existing consular cases - Consultation with the thematic working group for the (political) part of EU exclusive competence (for example the relevant JAI group for Child Abduction) <p><i>If the demarche only refers to policy, the content of the demarche is exclusively checked by the relevant policy group and the Commission would be in the lead.</i></p>	<p><i>Presidency:</i></p> <ul style="list-style-type: none"> - Leads consultations in COCON and with like-minded countries, Commission, EEAS; - Consults the relevant policy working party; - Instructs on delivery of demarche. - Monitors and reports back in COCON. 	<p><i>Wording:</i></p> <p>'EU and its Member States'</p> <p><i>Delivery:</i></p> <p>Three choices as above</p> <p><u>together with</u> the EU Delegation for the EU policy part)</p> <p>(HR/relevant Commissioner could also be delivering at their level).</p>
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Pretrial Conditions Demarche Draft template

The Member States of the European Union [**together with xxx (other state, e.g. US)**] would like to draw attention to the fact that detained EU Member States [**and xxx**] nationals exceed the maximum time spent in pretrial detention in [**country**], according to domestic law without any trial date set. Therefore the Member States of the European Union [**together with xxx (other state, e.g. US)**] urge the Government of [**xxx**] to see to it that detained EU Member States [**and xxx**] nationals shall not be deprived of their liberty except on such grounds and in accordance with such procedure as are established by domestic law; therefore that any deprivation of liberty in accordance with the law should remain within the limits of that law taking into account the maximum time that can be spent in pretrial detention upon which a trial date should be set; [**amend to highlight local issues and if relevant treaties to which the state is a party, such as ICCPR, and relevant UNGA resolutions**].

[**The second paragraph will go into more detail on the main issue – i.e. length and conditions of pre-trial detention, particular situations in prison, separation of juvenile detainees from other detainees etc**] [as appropriate, add language to the extent that the EU is willing to help in improving standards e.g. by means of technical cooperation].

The Member States of the European Union [**together with xxx (other state, e.g. US)**] would like to thank the Government of [**xxx**] for their attention to this matter and look forward to receiving a reply.

[DATE]

Instructions on delivering a joint consular démarche

Please refer to the table on consular démarches for delivery in case of a démarche concerning common foreign and security policy (CFSP) or an internal EU exclusive competence.

Request

You are requested to deliver a démarche on prison conditions in Cambodia on behalf of the Member States of the European Union together with [###]. Report back before [#####].

Background

[Free text to explain the developments and reasoning leading to the decision for a joint EU consular démarche]

Instructions

- The consular démarche is being delivered to the [country] authorities on behalf of the Member States of the EU (NB not on behalf of the EU).
- [Joint consular démarches are usually delivered by the local representation of the EU Presidency. In the absence of an embassy in the country, another EU MS or the EU delegation can be asked to deliver the démarche on behalf of the Member States (MS) of the EU.]
- The démarche text has been discussed with and approved by all EU MS in the Working Party on Consular Affairs.
- EU MS that have detainees in [country] and have expressed an interest can join in the delivery of the démarche. Arrangements on time and place can be made in consultation with the local representations of those MS.
- The démarche is to be delivered at the highest and most appropriate level (according to your assessment).
- You are requested to deliver the démarche and report back before [#####].
- An assessment of possible results is to be made within two months and sent to [#####], preferably before [#####].

Prison Conditions Demarche Draft template

The Member States of the European Union [**together with xxx (other state, e.g. US)**] urge the Government of [xxx] to improve prison conditions for all the detainees, by taking appropriate measures with a view to ensuring safe prison conditions and the absence of inhuman and degrading treatment, including better and more timely medical and dental treatment; sufficient amounts of food, better regulation of temperatures in prison in particular in the light of the very low outside temperatures in winter; additional time for daily exercise; [**amend to highlight local issues**]

[The second paragraph will go into more detail on the main issue – i.e. length and conditions of pre-trial detention, particular situations in prison, separation of juvenile detainees from other detainees etc]

Therefore, the Member States of the European Union urge the Government of [xxx] to improve prison conditions to an adequate level as recognised in the international standard minimum rules for the treatment of prisoners, as reflected in [**relevant treaties to which the state is a party, such as ICCPR, and relevant UNGA resolutions**]. [as appropriate, add language to the extent that the EU is willing to help in improving standards e.g. by means of technical cooperation].

[DATE]

Draft Prison Conditions Démarche – reminder template

On [date] the Member States of the European Union **[together with xxx (other state, e.g. US)]** urged the Government of [xxx] to improve prison conditions for all the detainees, by taking appropriate measures with a view to ensuring safe prison conditions and the absence of inhuman and degrading treatment, including the provision of better and more timely medical and dental treatment; sufficient amounts of food; better regulation of temperatures in prison, in particular in the light of the very low outside temperatures in winter; additional time for daily exercise; **[amend to highlight local issues]**.

[The second paragraph should go into more detail on the main issue – i.e. length and conditions of pre-trial detention, particular situations in prison, separation of juvenile detainees from other detainees, etc.]

Therefore and once again, the Member States of the European Union urge the Government of [xxx] to improve prison conditions to an adequate level as recognised in the international standard minimum rules for the treatment of prisoners, as reflected in **[relevant treaties to which the state is a party, such as the ICCPR, and relevant UNGA resolutions]**. **[Add language on the extent to which the EU is willing to help in improving standards, e.g. by means of technical cooperation, as appropriate.]**

[DATE]
