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THE EUROPEAN UNION**

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NOTE

from : Presidency
to : Working Party on Frontiers/Mixed Committee
(EU-Iceland/Norway/Switzerland)

Subject : **Draft Regulation of the European Parliament and of the Council establishing a Community Code on Visas – Articles 32, 33 and Annexes IX, XII**

With a view to the meeting of the Working Party on Frontiers/Mixed Committee on 23 January 2008, delegations will find in the Annex the text of Articles 32, 33 and Annexes IX and XII of the draft Regulation of the European Parliament and of the Council establishing a Community Code on Visas, as it results from the discussions at the Visa Working Party/ Mixed Committee.¹

The Working Party on Frontiers /Mixed Committee is invited to examine the text in the Annex .

The Presidency will inform the Visa Working Party /Mixed Committee of the results of the discussion.

¹ The outcome of the discussions at the Visa Working Party/Mixed Committee on the above Articles and Annexes is set out in doc. 11831/1/07 REV1, VISA 229, CODEC 812, COMIX 675, doc. 15303/07 VISA 355, CODEC 1277, COMIX 979 and doc. 16127/07 VISA 374, CODEC 1409, COMIX 1043.

Chapter V

Visas issued at the external borders

Article 32

Visas issued at the external borders

1. Short-stay visas or transit visas may only be issued at the external borders if the following conditions are satisfied²:
 - (a) the applicant fulfils the conditions laid down in Article 5(1) of the Schengen Borders Code;
 - (b) the applicant has not been in a position to apply for a visa in advance,
 - (c) the applicant submits supporting documents substantiating unforeseeable and imperative reasons for entry³, and
 - (d) the applicant's return to his country of origin or transit through States other than Member States fully implementing the Schengen acquis is assessed as certain.
2. Where a visa is applied for at the external border, the requirement that the applicant be in possession of travel medical insurance shall be waived⁴.
3. A visa issued at the external border may, as appropriate, be either

² **FR** suggested to add "in exceptional cases".

³ **BE, NL, MT** suggested to merge (b) and (c).

⁴ **EE, LU, FI, LV** were of the opinion that the applicant should still be obliged to prove that he benefits a travel medical insurance (TMI). **EE** proposal reads as follows: "Where a visa is applied for at the external border, the requirement for the travel medical insurance may be waived in accordance with national law when this measure serves to promote cultural interests as well as interests in the field of foreign policy, development policy, other areas of vital public interest or for humanitarian reasons." The explanation given by **EE** is to use a similar wording as in Council Decisions 2006/440/EC and 2004/17/EC. Doing so most of the cases where the requirement for the travel medical insurance might be waived should be covered.

- (a) a single entry short-stay visa, entitling the holder to stay for a maximum period of 15 days in all Member States, or
- (b) a single entry transit visa, entitling the holder to a transit of a maximum duration of 5 days, valid for all Member States.

- 4. Where the conditions laid down in Article 5(1) of the Schengen Borders Code are not fulfilled, the authorities responsible for issuing the visa at the border may issue a visa with limited territorial validity for the territory of the issuing Member State only, in accordance with Article 21(1)(a).
- 5. A third-country national falling within a category of persons for whom prior consultation is required in accordance with Article 9 shall, in principle, not be issued with a visa at the border.

However, a visa with limited territorial validity only for the territory of the visa issuing Member State, may be issued at the border for such persons in exceptional cases, in accordance with Article 21(1)(b).

- 6. The provisions on justification and notification of refusals and possibilities of appeal⁵ set out in Article 23 and Annex IX shall apply⁶.

Article 33⁷

Visas issued to seafarers⁸ in transit at the external border

- 1. A seafarer who is required to be in possession of a visa⁹ when crossing the external borders of the Member States may be issued with a transit visa at the border where:

⁵ **DE** entered a scrutiny reservation.

⁶ **SE, FI, DE, AT, SK, PL, EE, LT** entered a scrutiny reservation. **FR** suggested to delete this paragraph. **BE** and **NL** emphasised the risk of possible dual application of the Borders Code and the Visa Code on the same scope.

⁷ **EL** and **KY** entered a reservation.

⁸ **SK** asked whether there is a distinction to be made between seamen and seafarers.

⁹ **FI** and **DE** are of the opinion that the possibility of issuing collective visas should be foreseen. **COM** is not favourable to keeping this kind of visas.

- (a) he fulfils the conditions set out in Article 32(1) and
 - (b) he is crossing the border in question in order to embark on, re-embark on or disembark from a ship on which he will work or has worked as a seafarer¹⁰.
2. Before issuing a visa at the border to a seafarer in transit, the competent national authorities shall comply with the rules set out in Annex XII, Part 1, and make sure that the necessary information concerning the seaman in question has been exchanged by means of a duly completed form for seamen in transit, as set out in Annex XII, Part 2¹¹.
3. This Article shall apply without prejudice to Article 32(3), (4) and (5)¹².

¹⁰ **PT** was of the opinion that it should be left open to Member States to allow seamen to disembark without a visa and proposed to add the following drafting at the end of this point "...or for the purpose of a licence to go ashore." **COM** took note of the proposal. **BE** warned that the PT proposal could constitute an example of incompatibilities between the FAL Convention and EC Law in relation to the seamen, which was on the agenda of SCIFA/Mixed Committee on 21 November 2007.

¹¹ **NO** asked whether seamen have to hold both a passport's number and a seamen book. **COM** replied that Annex XII, Part 2 had been taken out from Regulation (EC) No 415/2003 and that the Member States have been applying this Regulation since then without any problem. **COM** is ready to amend the drafting if necessary.

¹² On the request of BE and NL, **COM** proposed to add a reference to 32(2) and (6).

**ANNEX IX: STANDARD FORM FOR NOTIFYING AND MOTIVATING REFUSAL OF A
VISA**

**DIPLOMATIC MISSION OR
CONSULAR POST OF MEMBER STATE 1)**



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REFUSAL OF VISA,

in accordance with Article 23 of the Community Code on visas

Dear Mr/Ms _____,

**The _____ Embassy/Consulate-General/Consulate in _____ has
[on behalf of (*name of represented Member State*)] examined your visa application dated xx
Month 200x. The visa has been refused.**

The refusal of your visa is based on one or several of the following reasons 2) (marked with a tick)
which prevent the issue of a visa:

- ☐ **a false/counterfeit/forged travel document was submitted 3)**
- ☐ **the purpose and conditions of your stay could not be ascertained**
- ☐ **your intention of return to your country of origin could not be ascertained**
- ☐ **proof of sufficient means of subsistence in relation to the period and form of stay, or
the means to return to the country of origin or transit, was not provided**
- ☐ **you have already stayed for three months 4) during a 6-month period on the
territory _____ of the Member States**
- ☐ **an alert has been issued for the purposes of refusing entry**
 - ☐ in the SIS by(*indication of Member State*)
 - ☐ in the national register
- ☐ **one or more Member State(s) consider you to be a threat to public policy, internal
security, public health or the international relations of one or more of the Member
States of the European Union (*each Member State must indicate the references to national
legislation relating to such cases of refusal of entry*).5)**
- ☐ **you did not provide sufficient proof of urgency justifying application for a visa at the
border**

6)

Date and Stamp of diplomatic mission or consular post

Signature of person concerned

¹³ No logo is required for Norway, Iceland and Switzerland.

COMMENTS ON ANNEX IX

- 1) **PL** suggested the addition of a reference to border authorities. **FR** entered a reservation on the entire Annex. **IT** preferred a more streamlined form and found the second and third box problematic for legal reasons.

Replying to a comment from **NL**, **COM** reminded delegations that the lay out, including the flag, corresponds to the standard form set out in the SBC.

- 2) **SI** suggested that specific reasons for refusing a visa at the border be added.
- 3) **AT** suggested the addition of "or other false/counterfeited or forged documents".
- 4) **NL** wished to replace 3 months by 90 days.
- 5) **PL** suggested the deletion of the wording in brackets. **COM** could not accept this deletion.

ANNEX XII¹⁴ Part 1: OPERATIONAL INSTRUCTIONS FOR ISSUING VISAS AT THE BORDER TO SEAMEN IN TRANSIT WHO ARE SUBJECT TO VISA REQUIREMENTS

The objective of these operational instructions is to provide rules for the exchange of information between the competent authorities of the Member States applying the Community acquis with respect to seamen in transit subject to visa requirements. Insofar as a visa is issued at the border on the basis of the information that has been exchanged, the responsibility lies with the Member State issuing the visa.

For the purposes of these operational instructions:

"Member State port": means a port constituting an external border of a Member State

"Member State airport": means an airport constituting an external border of a Member State; and

I. Signing on a vessel berthed or expected at a Member State port

(a) entry into the Member States' territory via an airport situated in another Member State¹⁵

- the shipping company or its agent shall inform the competent authorities at the Member State port where the ship is berthed or expected that seamen subject to visa requirements are due to enter via a Member State airport. The shipping company or its agent shall sign a guarantee in respect of those seamen;
- the said competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and examine whether the other conditions for entry into the Member State territory have been satisfied. The travel route within the Member States' territory shall also be verified e.g. by reference to the airline tickets;
- the competent authorities at the Member State port shall inform the competent authorities at the Member State airport of entry, by means of a duly completed form

¹⁴ **PT** intends to present a note on technical specifications about this Annex.

¹⁵ **NL** proposed to delete the end of the sentence from "...via an airport...".

for seamen in transit who are subject to visa requirements (as set out in Annex XIII, Part 2), sent by fax, electronic mail or other means, of the results of the verification and indicate whether a visa can in principle be issued at the border;

- where the verification of the available data is positive and the outcome clearly concurs with the seaman's declaration or documents, the competent authorities at the Member State airport of entry or exit can issue a transit visa at the border with a maximum validity of five days. Furthermore, in such cases the seaman's travel document referred to above shall be stamped with a Member State entry or exit stamp and given to the seaman concerned.

(b) entry into the Member States' territory via a land or sea border situated in another Member State

- the procedure is the same as that for entry via a Member State airport except that the competent authorities at the border post via which the seaman concerned enters the Member State territory shall be informed.

II. Leaving service from a vessel that has entered a Member State port

(a) exit from the Member States' territory via an airport situated in another Member State

- the shipping company or its agent shall inform the competent authorities at the said Member State port of the entry of seamen subject to visa requirements who are due to leave their service and exit from the Member States' territory via a Member State airport. The shipping company or its agent shall sign a guarantee in respect of those seamen;
- the competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and examine whether the other conditions for entry into the Member States' territory have been satisfied. The travel route within the Member States' territory shall also be verified e.g. by reference to the airline tickets;
- where the verification of the available data is positive, the competent authorities may issue a transit visa with a maximum validity of five days.

(b) exit from the Member States' territory via a land or sea border situated in another Member State

- the procedure is the same as that for exit via a Member State airport.

III. Transferring from a vessel that entered a Member State port to a vessel that will sail from a port situated in another Member State

- the shipping company or its agent shall inform the competent authorities at the said Member State port of the entry of seamen subject to visa requirements who are due to leave their service and exit from the Member States' territory via another Member State port. The shipping company or its agent shall sign a guarantee in respect of those seamen;
- the competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and examine whether the other conditions for entry into the Member States' territory have been satisfied. The competent authorities at the Member State port from which the seamen will leave the Member States' territory by ship shall be contacted for the examination. A check shall be carried out to establish whether the ship they are joining is berthed or expected there. The travel route within the Member States' territory shall also be verified;
- where the verification of the available data is positive, the competent authorities may issue a transit visa with a maximum validity of five days.

ANNEX XII: Part 2¹⁶

FORM FOR SEAMEN IN TRANSIT WHO ARE SUBJECT TO VISA REQUIREMENTS			
FOR OFFICIAL USE:			
ISSUER: (STAMP) SURNAME/CODE OF OFFICIAL:		RECIPIENT: AUTHORITY	
DATA ON SEAMAN:			
SURNAME(S):	1A	FORENAME(S):	1B
NATIONALITY:	1C	RANK/GRADE:	1D
PLACE OF BIRTH:	2A	DATE OF BIRTH:	2B
PASSPORT NUMBER:	3A	SEAMAN'S BOOK NUMBER:	4A
DATE OF ISSUE:	3B	DATE OF ISSUE:	4B
PERIOD OF VALIDITY:	3C	PERIOD OF VALIDITY:	4C
DATA ON VESSEL AND SHIPPING AGENT:			
NAME OF SHIPPING AGENT:		5	
NAME OF VESSEL:	6A	FLAG:	6B
DATE OF ARRIVAL:	7A	ORIGIN OF VESSEL:	7B
DATE OF DEPARTURE:	8A	DESTINATION OF VESSEL:	8B
DATA ON MOVEMENT OF SEAMAN:			
FINAL DESTINATION OF SEAMAN:			9
REASONS FOR APPLICATION: SIGNING ON ☐		TRANSFER ☐ LEAVING SERVICE ☐ 10	
MEANS OF TRANSPORT	CAR ☐	TRAIN ☐	AEROPLANE ☐ 11
DATE OF:	ARRIVAL:	TRANSIT:	DEPARTURE: 12
FLIGHT INFORMATION:	CAR* ☐ REGISTRATION N° : DATE:	TRAIN* ☐ JOURNEY ROUTE: TIME:	FLIGHT NUMBER:
Formal declaration signed by the shipping agent or the ship-owner confirming his responsibility for the stay and, if necessary, for the repatriation costs of the seaman.			13

* = to be completed only if data available DETAILED DESCRIPTION OF FORM

¹⁶ NL proposed to add the phone number and the IMO number of the ship. DE supported NL on the IMO number.

The first four points deal with the identity of the seaman.

(1)	A. Surname(s) ¹⁷
	B. Forename(s)
	C. Nationality
	D. Rank/Grade
(2)	A. Place of birth
	B. Date of birth
(3)	A. Passport number
	B. Date of issue
	C. Period of validity
(4)	A. Seaman's book number
	B. Date of issue
	C. Period of validity

Points 3 and 4 have been shown separately for clarity since, depending on the nationality of the seaman and the Member State being entered, a passport or a seaman's book can be used for identification purposes.

The next four points deal with the shipping agent and the vessel concerned.

- (5) Name of shipping agent (the individual or corporation who represents the ship-owner on the spot in all matters relating to the ship-owner's duties in fitting out the vessel).

¹⁷ Please give the surname(s) that appear in the passport.

(6)	A. Name of vessel
	B. Flag (under which the merchant vessel is sailing)
(7)	A. Date of arrival of vessel
	B. Origin (port) of vessel
	Letter "A" refers to the vessel's date of arrival in the port where the seaman is to sign on.
(8)	A. Date of departure of vessel
	B. Destination of vessel (next port)

Points 7A and 8A give indications regarding the length of time for which the seaman may travel in order to sign on. It should be remembered that the route followed is very much subject to unexpected interferences and external factors such as storms, breakdowns, etc.

The next four points clarify the reason for the seaman's journey and his destination.

(9) The "final destination" is the end of the seaman's journey. This may be either the port at which he is to sign on or the country to which he is heading if he is leaving service.

(10) Reasons for application

(a) In the case of signing on, the final destination is the port at which the seaman is to sign on.

(b) In the case of transfer to another vessel within the Member States' territory, it is also the port at which the seaman is to sign on. Transfer to a vessel situated outside the Member States' territory must be regarded as leaving service.

(c) In the case of leaving service, this can occur for various reasons, such as end of contract, accident at work, urgent family reasons, etc.

(11) Means of transport

List of means used within the Member States' territory by the seaman in transit who is subject to a visa requirement to reach his final destination. On the form, the following three possibilities are envisaged:

(a) Car (or coach)

(b) Train

(c) Aeroplane

(12) Date of arrival (on the Member States' territory)

Applies primarily to a seaman at the first Member State airport or border-crossing point (since it may not always be an airport) at the external border via which he wishes to enter the Member States' territory.

Date of transit

This is the date on which the seaman signs off at a port in the Member States' territory and heads towards another port also situated in the Member States' territory.

Date of departure

This is the date on which the seaman signs off at a port in the Member States' territory to transfer to another vessel at a port situated outside the Member States' territory or the date on which the seaman signs off at a port in the Member States' territory to return to his home (outside the Member States' territory).

After determining the three means of travel, available information should also be provided concerning those means:

(a) car, coach: registration

(b) train: name, number, etc.

(c) flight data: date, time, number

(13) Formal declaration signed by the shipping agent or the ship- owner confirming his responsibility for the stay and, if necessary, for the repatriation costs of the seaman

If the seamen are travelling in a group, each one has to fill in the data for points 1A to 4C.
