



**COUNCIL OF
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NOTE

from:	Presidency
to:	Visa Working Party /Mixed Committee
Subject:	Draft Regulation of the European Parliament and of the Council establishing a Community Code on Visas – Articles 32, 33 and Annexes IX, XII

The Working Party on Frontiers/Mixed Committee on 23 January 2008 examined 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 (document 5478/08 FRONT 9, VISA 16, CODEC 63, COMIX 41).

With a view to contributing to the ongoing discussions on the abovementioned draft Regulation at the Visa Working Party/Mixed Committee, the Annex to this document contains the text examined with the positions expressed by delegations of the Working Party on Frontiers/Mixed Committee at the above meeting in footnotes.

Chapter V**Visas issued at the external borders***Article 32***Visas issued at the external borders^{1 2}**

1. Short-stay visas or transit visas may only be issued at the external borders³ if the following conditions are satisfied:
 - (a) the applicant fulfils the conditions laid down in Article 5(1)⁴ of the Schengen Borders Code;
 - (b) the applicant has not been in a position to apply for a visa in advance⁵,
 - (c) the applicant submits supporting documents substantiating unforeseeable and imperative reasons for entry, 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.

¹ **EL, NL** stated that visa fees should not be waived at external borders. **FR, AT, ES, PT, EL** supported the idea that visa fees should be charged as at consular posts, thus being waived only in exceptional cases.

COM replied that these exceptions from visa fees are already provided for by the current legislation and that similar provisions can also be applied at the borders.

² **HU, EL** suggested to provide special rules for family members of EU and EEA nationals. **COM** stressed that facilitations for these visa applicants are already provided for in Directive 2004/38/EC.

³ **HU, EL, DE, FR, AT, IT, PL, PT, ES** suggested adding "in exceptional cases". **COM** agreed with this suggestion.

⁴ **FR** suggested replacing "Article 5(1)" by "Article 5(1)(a), (c), (d) and (e)" as there was no need to refer to Article 5(1)(b). **COM** agreed with this suggestion.

⁵ **NL, FR** suggested that the application form should be the same as it is currently in the Common Consular Instructions (CCI).

2. Where a visa is applied for at the external border, the requirement that the applicant be in possession of travel medical insurance shall¹ be waived^{2 3}.
3. A visa issued at the external border may, as appropriate, be either
 - (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 single⁴ 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).

¹ **EL, DE, BE, NL, ES** expressed technical and practical difficulties to assure TMI at the borders. **BE, ES** suggested that TMI should not be compulsory. **FR**, supported by **AT, LV, PL, PT**, suggested to replace »shall« by »may«. **COM** agreed with this suggestion.

² **HU** suggested that TMI should not be waived.

³ **EE** proposed the following: "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." **EE** explained it wants to use a similar wording as in Council Decisions 2006/440/EC and 2004/17/EC. The obligation to require Travel medical insurance (TMI) could in **EE** be waived only in special cases (humanitarian, V.I.P.), because in **EE** visa applicants have the possibility to apply for TMI at the airports.

⁴ **BE** suggested to replace "single entry" by "double entry".

6. The provisions on justification and notification of refusals and possibilities of appeal set out in Article 23 and Annex IX shall apply¹.

Article 33

Visas issued to seafarers² in transit at the external border³

1. A seafarer who is required to be in possession of a visa when crossing the external borders of the Member States may be issued with a transit visa at the border where:
- (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 ship⁴ on which he will work or has worked as a seafarer.

¹ **HU, AT, PL** thought that the right to appeal is not necessary. **PL** entered a reservation on this paragraph. **EL, BE** referred to Annex 5 of the Schengen Borders Code. **AT** thought that as there is no obligation to issue a visa, there should not be a right of appeal against a refusal. **RO** drew attention to their legislation, which does not provide for the right of appeal against a refusal. **RO** would send written comments. **COM** referred to the general rule that refusal of a visa needs to be motivated which implies that there should be a right of appeal. **DE** mentioned that having separate provisions for refusal of entry and refusal of visa can cause duplications of appeals and practical problems in enforcing such decisions. Several other delegations (**FR, PT, BE, NL, ES**) also expressed concerns about having separate decisions and procedures of appeal for refusal of entry and refusal of visa.

² **COM** proposed harmonising the text by using the word “seafarer” throughout. **FR** suggested using the word “seamen” to make the text consistent with the Schengen Borders Code.

³ **EL, DE, ES** were in favour of maintaining the current situation of issuing group transit visas for seamen.

BE suggested that the issuance of collective visas could be provided for as an exception to the general principle “one person one document” for visas issued at the borders and for seamen.

COM opposed this proposal, stressing that this principle is based on security reasons and on the use of biometrics.

DE, supported by **IT**, suggested that in case of abolishing group visas alternative measures could be applied to facilitate the tasks of border authorities, such as transmitting all relevant information on seamen in advance.

⁴ **EL** suggested to add “...from a ship of the same company”.

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 2.
3. This Article shall apply without prejudice to Article 32(3), (4) and (5) ¹.

¹ NL suggested adding a reference to Article 32 (2) and (6).

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

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



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 (marked with a tick)
which prevent the issue of a visa:

- ☐ **a false/counterfeit/forged travel document was submitted**
- ☐ **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 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*).**
- ☐ **you did not provide sufficient proof of urgency justifying application for a visa at the
border**

Date and Stamp of diplomatic mission or consular post

Signature of person concerned

ANNEX XII 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 acquis¹ 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 State
 - 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

¹ ES suggested replacing »applying the Community acquis» by «the Schengen acquis in full».

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 2¹

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:²			
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: TRANSFER ☐ LEAVING SERVICE ☐			
SIGNING ON ☐			10
MEANS OF TRANSPORT	CAR ☐	TRAIN ☐	AEROPLANE ☐ 11
DATE OF:	ARRIVAL:	TRANSIT:	DEPARTURE: 12
CAR* ☐ TRAIN* ☐ REGISTRATION N° : JOURNEY ROUTE: FLIGHT INFORMATION: DATE: 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

¹ NL proposed to add the phone number and the IMO number of the ship.

² EL suggested to add a picture of the applicant.

DETAILED DESCRIPTION OF FORM

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

(1)	A.	Surname(s) ¹
	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).

¹ 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.
