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## **REPORT**

on the initiative by the Kingdom of Spain with a view to the adoption of a Council regulation amending the Schengen rules relating to the issue of visas at the border, including the issue of such visas to seamen  
(8372/2002 – C5-0289/2002 – 2002/0810(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Anna Karamanou

***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 19 June 2002 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative by the Kingdom of Spain with a view to the adoption of a Council regulation amending the Schengen rules relating to the issue of visas at the border, including the issue of such visas to seamen (8372/2002 – 2002/0810(CNS)).

At the sitting of 1 July 2002 the President of Parliament announced that he had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0289/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Anna Karamanou rapporteur at its meeting of 9 July 2002.

It considered the initiative by the Kingdom of Spain and the draft report at its meetings of 11 November 2002, 10 December 2002 and 21 January 2003.

At the last meeting it adopted the draft legislative resolution by 41 votes to 0, with 2 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Giacomo Santini (vice-chairman), Anna Karamanou (rapporteur), Niall Andrews, Elspeth Attwooll (for Francesco Rutelli, pursuant to Rule 153(2) of the Rules of Procedure), Giuseppe Brienza, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Hans Udo Bullmann (for Martin Schulz, pursuant to Rule 153(2) of the Rules of Procedure), Marco Cappato (for Mario Borghezio), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2) of the Rules of Procedure), Michael Gahler (for Eva Klamt, pursuant to Rule 153(2) of the Rules of Procedure), Ewa Hedkvist Petersen (for Adeline Hazan), Roger Helmer (for Charlotte Cederschiöld, pursuant to Rule 153(2) of the Rules of Procedure), Margot Keßler, Alain Krivine (for Ole Krarup), Jean Lambert (for Heide Rühle), Baroness Sarah Ludford, Eryl Margaret McNally (for Gerhard Schmid, pursuant to Rule 153(2) of the Rules of Procedure), Claude Moraes (for Martine Roure), Peter Michael Mombaur (for Thierry Cornillet, pursuant to Rule 153(2) of the Rules of Procedure), Hartmut Nassauer, Elena Ornella Paciotti, Paolo Pastorelli (for Mary Elizabeth Banotti), Hubert Pirker, Giovanni Pittella (for Walter Veltroni, pursuant to Rule 153(2) of the Rules of Procedure), José Javier Pomés Ruiz (for Marcelino Oreja Arburúa, pursuant to Rule 153(2) of the Rules of Procedure), Bernd Posselt, Ole Sørensen (for Bill Newton Dunn), Olle Schmidt (for Lousewies van der Laan), Ingo Schmitt (for The Lord Bethell), Sérgio Sousa Pinto, Patsy Sørensen, The Earl of Stockton (for Christian Ulrik von Boetticher), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Rainer Wieland (for Timothy Kirkhope, pursuant to Rule 153(2) of the Rules of Procedure),

The report was tabled on 22 January 2003.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the initiative by the Kingdom of Spain with a view to the adoption of a Council regulation amending the Schengen rules relating to the issue of visas at the border, including the issue of such visas to seamen (8372/2002 – C5-0289/2002 – 2002/0810(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Spain (8372/2002<sup>1</sup>),
  - having regard to Rule 62 of the EC Treaty,
  - having been consulted by the Council pursuant to Article 67 of the EC Treaty and to the Protocol on integrating the Schengen *acquis* into the framework of the European Union that is annexed to the Treaty (C5-0289/2002),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0006/2003),
1. Approves the initiative by the Kingdom of Spain as amended;
  2. Calls on the Council to alter its text accordingly;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the initiative by the Kingdom of Spain substantially;
  5. Instructs its President to forward its position to the Council and Commission and to the Government of the Kingdom of Spain.

Text proposed by the Kingdom of Spain

Amendments by Parliament

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Amendment by Bill Newton Dunn

Amendment 1  
Throughout the text

***Throughout the text, change the term 'he'***  
*to 'she' and the term 'his' to 'her'.*

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<sup>1</sup> OJ C 9, 12.6.2002, p. 6.

**to ‘he or she’ and the term ‘his’ to ‘his or her’.**

*(This amendment applies to the entire legislative text; the adoption of this amendment means that technical adjustments throughout the text will be necessary.)*

Or. en

### *Justification*

*In the interests of clarity and whilst acknowledging that the contingent of female seafarers might be limited, the latter should, however, be directly included in the Regulation.*

### Amendment 2

#### Recital 1

(1) The rules for issuing visas at the border to seamen in transit need to be clarified and updated, in particular to allow group transit visas to be issued at the border to seamen who ***are of the same nationality and*** are travelling in a group, as long as the period of transit is limited.

(1) The rules for issuing visas at the border to seamen in transit need to be clarified and updated, in particular to allow group transit visas to be issued at the border to seamen who are travelling in a group, as long as the period of transit is limited.

### *Justification*

*Group visas are issued when seamen from the same vessel travel in groups of between five and fifty persons, and there is no good reason why they should be of the same nationality.*

### Amendment 3

#### Recital 3 a (new)

***3a. The measures required for the implementation of this Regulation shall be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.***

### *Justification*

*In accordance with the Article 202, third indent of the EC Treaty, the Council shall confer on the Commission powers for the implementation of the rules it lays down and shall lay down procedures for the exercise of those powers.*

*Council Decision 1999/468/EC of 28 June 1999 lays down the procedures for the exercise of implementing powers conferred on the Commission and applies inter alia to the changes provided for in Article 3 of this initiative, which must be made using the regulatory procedure provided for in the Decision.*

### Amendment 4

Article 1, paragraph 1, introductory sentence

1. ***In exceptional circumstances***, a third-country national who is required to be in possession of a visa when crossing the external borders of the Member States, may be issued with a ***short-stay*** visa at the border where the following conditions are satisfied:

1. ***As an exception to the general rule under which visas shall be issued by diplomatic and consular authorities, as provided for in Article 12(1) of the Convention implementing the Schengen Agreement signed in Schengen on 19 June 1990<sup>1</sup>, hereinafter referred to as the 'Schengen Convention'***, a third-country national who is required to be in possession of a visa when crossing the external borders of the Member States, may be issued with a visa at the border where the following conditions are satisfied:

<sup>1</sup> OJ L 239, 22.9.2000, p. 19.

### *Justification*

*Article 12(1) of the Convention implementing the Schengen Agreement provides that the EC uniform visa provided for in Article 10, whose period of validity shall not exceed three months, shall be issued by the diplomatic and consular authorities.*

*Article 11 of the Convention lays down the two types of visa that may be issued, namely: (a) travel visas, which shall be valid for no more than three months in any half-year; and (b) transit visas, which shall be valid for no more than five days.*

*Article 17 also provides for the possibility of laying down conditions governing the issue of visas at the border in exceptional cases, visas which technically cannot be called 'short-stay visas' since, under the 'Schengen' terminology, such visas cover all possible cases, as compared to 'long-stay' visas which cover stays exceeding three months and are issued by each Member State in accordance with its national law.*

*Lastly, the term 'Schengen Convention' is inserted in order to avoid unnecessary repetition.*

### Amendment 5

#### Article 1, paragraph 1, point (a)

(a) he shall fulfil the conditions laid down by the provisions of Article 5(1)(a), (c), (d) and (e) of the Convention ***implementing the Schengen Agreement of 1985, signed at Schengen on 19 June 1990<sup>1</sup>, hereinafter referred to as the "Schengen Convention"***;

(a) he shall fulfil the conditions laid down by the provisions of Article 5(1)(a), (c), (d) and (e) of the ***Schengen*** Convention;

<sup>1</sup> OJ L 239, 22.9.2000, p. 19.

### *Justification*

*For legal purposes, the first reference to the term 'Schengen Convention' should appear in the introductory sentence, rather than below it.*

*The entry requirements and conditions to which the Schengen Convention article refers are ones which must be satisfied if entry into the EU is to be secured.*

### Amendment 6

#### Article 1, paragraph 1, point (a a) (new)

***(aa) he was unable to apply for a visa at***  
.....



*an earlier date;*

*Justification*

*Given that visas may be issued at borders only under exceptional circumstances in accordance with the rules governing the EC 'uniform visa', they must be issued only when the person concerned was unable to apply for a visa at an earlier date, under the normal procedure.*

Amendment 7

Article 1, paragraph 2, introductory sentence

2. A visa issued at the border when the conditions described in paragraph 1 are satisfied may, as appropriate, be either:

2. A visa issued at the border when the conditions described in paragraph 1 are satisfied may, as appropriate, be either ***a travel visa or a transit visa, in accordance with Article 11(1) of the Schengen Convention, which:***

*Justification*

*The normal procedures for visas enabling people to enter the EC for short periods are intended to enable them to travel or to pass through a territory en route to the territory of a third State, and are covered by Article 11 of the Schengen Convention.*

Amendment 8

Article 1, paragraph 2, point (a)

(a) ***a uniform visa,*** or

(a) ***is valid for all Member States applying the provisions of Title II, Chapter 3 of the Schengen Convention,*** or

### *Justification*

*Title II, Chapter 3 of the Schengen Convention covers visas. Article 10 establishes the 'uniform visa' valid for the entire 'Schengen territory', which may be issued for stays lasting no longer than three months. Article 11 provides for two types of visa, namely: (a) 'travel' visas, valid for continuous stays of no more than three months in any half-year; and (b) 'transit' visas, issued so as to enable the holder to pass through the Schengen territory en route to a third State, and which is valid for no more than five days.*

### Amendment 9

#### Article 1, paragraph 2, point (b)

(b) ***a visa with*** limited territorial validity within the meaning of the provisions of Article 10(3) of the Schengen Convention.

(b) ***has*** limited territorial validity within the meaning of the provisions of Article 10(3) of the Schengen Convention.

### *Justification*

*Uniform visas are normally valid throughout the Schengen territory. However, in exceptional cases Member States may, pursuant to Article 10(3) of the Schengen Convention, restrict their validity to part of the territory.*

### Amendment 10

#### Article 1, paragraph 2, subparagraph 2

In both cases, the visa issued shall not be valid for more than one entry. The validity of ***such short-stay*** visas shall not exceed 15 days.

In both cases, the visa issued shall not be valid for more than one entry. The validity of ***travel*** visas shall not exceed 15 days. ***The validity of transit visas shall not exceed five days.***

### *Justification*

*The issue of visas at the border under exceptional circumstances is justified on the grounds of travel or transit needs. Owing to the fact that they are issued at border only in exceptional cases by authorities other than the diplomatic or consular authorities, the maximum period of validity for 'travel' visas should be 15 days and the period of validity of 'transit' visas should be commensurate with the aim of allowing the holder to reach his destination, without, however, exceeding five days, in line with the rules for visas issued under the normal procedure.*

### Amendment 11 Article 1, paragraph 3

3. A third-country national who applies for a transit visa at the border shall be in possession of the visas required to continue his journey to states of transit other than Member States, and for the state of destination. The transit visa issued shall allow for direct transit through the territory of the Member State or Member States concerned.

3. A third-country national who applies for a transit visa at the border shall be in possession of the visas required to continue his journey to states of transit other than Member States ***applying the provisions of Title II, Chapter 3 of the Schengen Convention***, and for the state of destination. The transit visa issued shall allow for direct transit through the territory of the Member State or Member States concerned.

***The validity of such a transit visa shall not exceed 5 days.***

### *Justification*

*Not all the EU Member States form part of the Schengen territory. The United Kingdom and Ireland are not bound by the Schengen acquis but may request to take part in some or all of its provisions in accordance with Article 4 of the Protocol integrating the Schengen acquis into the framework of the European Union that is annexed to the Treaty of Amsterdam.*

*The second subparagraph has been deleted since it has been placed in a more appropriate position in the previous article.*

Amendment by Carlos Coelho

### Amendment 12 Article 1, paragraph 4a (new)

***4a. In any event the rules governing the***  
*production of personal data must always be*

*protection of personal data must always be followed.*

Or. pt

*Justification*

*Whenever personal data are forwarded in connection with the issue or the withholding of a visa, guarantees relating to the accuracy, the use and the protection of personal data must be fully upheld.*

Amendment 13

Article 2, paragraph 1, introductory sentence

1. By derogation from Article 1(1), a seaman 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: *(Does not affect the English version.)*

*Justification*

*(Does not apply to the English version.)*

Amendment 14

Article 2, paragraph 1, point (a)

(a) he fulfils the requirements set out in Article 1(1)(a) and (c), and (a) he fulfils the requirements set out in Article 1(1) and (3), and

*Justification*

*In line with previous amendments.*

Amendment 15  
Article 2, paragraph 1, subparagraph 2

The transit visa shall include a mention that the holder is a seaman.

The transit visa ***shall be issued in accordance with Article 1(2) and*** shall include a mention that the holder is a seaman.

*Justification*

*In line with previous amendments.*

Amendment 16  
Article 2, paragraph 2

2. Seamen who are ***of the same nationality and*** travelling in a group of between five and fifty individuals may be issued with a group transit visa at the border where the requirements of paragraph 1 above are met in respect of each of the seamen in the group.

2. Seamen who are travelling in a group of between five and fifty individuals may be issued with a group transit visa at the border where the requirements of paragraph 1 above are met in respect of each of the seamen in the group.

*Justification*

*See the justification to amendment 1.*

Amendment by Carlos Coelho

Amendment 17  
Article 2, paragraph 4a (new)

***4a. Information relating to the nationality and the registration of the vessels in question must also be exchanged.***

*Justification*

*The exchange of information relating to the nationality and the registration of the vessels in question must cease to be purely informal in nature and there should also be scope for the on-line exchange of information.*

Amendment 18  
Article 3

***The Council, acting by qualified majority, at the initiative of one of its members or on a proposal from the Commission, shall amend Annexes I and II as necessary.***

***1. The Commission shall be assisted by the Committee set up pursuant to Article 6 of Regulation (EC) No 1683/95 of 29 May 1995<sup>1</sup>.***

***2. Where reference is made to this article, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999<sup>2</sup> shall apply.***

***3. The Committee shall adopt its own rules of procedure.***

<sup>1</sup>*OJ L 164, 14.7.1995, p. 1.*

<sup>2</sup>*OJ L 184, 17.7.1999, p. 23.*

*Justification*

*See the justification to amendment 2.*

*It should also be specified that the regulatory committee, composed of the representatives of the Member States and chaired by the representative of the Commission, that is to assist the Commission shall adopt its own rules of procedure in accordance with Article 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission pursuant to Article 202, third indent of the EC Treaty.*

Amendment 19  
Article 5, paragraph 1, point (c)

***(c) Annex 14 of the Common Manual.***

***deleted***

*Justification*

*Part of the annex should be replaced rather than the whole of it being repealed.*

Amendment 20  
Article 5, paragraph 2

2. Point 5 and point 5.1 of Part II of the Common Manual shall be replaced by ***a reference to the text of this Regulation as follows:***

"The rules on issuing visas at the border are contained in Council Regulation (EC) No .../2002 of .... on the issue of visas at the border, including the issue of such visas to seamen in transit."

2. Point 5 and point 5.1 of Part II of the Common Manual shall be replaced by ***the following*** text:

"The rules on issuing visas at the border are contained in Council Regulation (EC) No .../2002 of .... on the issue of visas at the border, including the issue of such visas to seamen in transit (*see Annex 14*)."

*Justification*

*The introductory sentence has been simplified. Furthermore, it is quite clear that if this initiative is adopted by the Council, the points in the Common Manual that it affects must be replaced accordingly.*

Amendment 21  
Article 5, paragraph 2 a (new)

***2a. The first sentence in Annex 14 shall be replaced by the following:***

***"The rules on issuing visas at the border, including the issue of such visas to seamen in transit, are contained in Council Regulation (EC) No .../2003 of .... or shall be adopted on the basis of that Regulation."***

***The rest of Annex 14 is hereby repealed.***

### *Justification*

*Suitable adjustments should be made to the relevant parts of the Common Manual so as to bring them into line with the provisions of this initiative, while the parts that are incompatible should be repealed.*



## EXPLANATORY STATEMENT

### I. INTRODUCTION

During the 19<sup>th</sup> century the industrial revolution, which had begun in the United Kingdom at the end of the 18<sup>th</sup> century with the introduction of the steam engine, gradually spread to most European countries, to the USA and to Japan.

One of the main consequences of that revolution was the vast movement of people which occurred, both within each country and internationally. This required the countries of Europe to pass legislation relating to foreigners.

Provisions were adopted to govern the way in which each country's consular offices stamped a visa in the passports issued by foreign authorities for the purpose of monitoring the arrival of foreign citizens on their territories.

After the First World War, attempts were made to abolish visas by means of international agreements concluded under the auspices of the League of Nations. Those fraught attempts were, however, frustrated by the tragic political developments which culminated in the Second World War.

Once that war was over, a vast system of international (in many cases bilateral) treaties was introduced for the purpose of regulating and facilitating the movement of individuals from one country to another.

The creation of an area of freedom, security and justice in the EU, in which individuals may move freely throughout EU territory as they cross internal borders, clearly requires a harmonised immigration policy to be adopted as an essential additional measure.

Such a policy calls for a very wide range of measures, essential amongst which is the one relating to the policy on visa requirements for foreigners wishing to cross external borders.

For this reason, visas serve a dual purpose within the EU legal framework which, in order to combat crime and illegal immigration, provides for checks to be carried out on foreigners crossing its external borders;

- (a) visas constitute an additional formality carried out outside EU territory, since only visa holders can seek entry;
- (b) visas also constitute a facility, since they provide non-EU citizens with a guarantee that their documents will be accepted by the authorities in the country of entry, thereby ensuring that they will not be rejected at the border.

### II. DEVELOPMENTS IN EU VISA POLICY

#### (A) In relation to the intergovernmental cooperation provided for under the Schengen agreements

Before the Schengen Agreements came into force, each Member State carried out its own

checks on persons entering its territory, with due regard to the fact that Article 54 of the EC Treaty lays down the principle of the free movement of workers originating in any Member State and consequently prohibits the establishment of a visa requirement between the various Member States.

The Schengen Agreements were signed in 1985 by France, Germany and the Benelux countries and were implemented by means of intergovernmental cooperation, since at that time not all the EC Member States agreed with the idea of opening up the Community to the free movement of persons, be they EC or non-EC citizens. The implementing agreement was signed in 1990 and it came into force on 26 March 1995. Since then, all the EU Member States have signed the agreements, with the exception of Ireland and the United Kingdom. To those thirteen Member States may be added Iceland and Norway, which are States associated to the EU.

At present, checks on the entry of non-EU citizens to the territory of the countries which are signatory to the above agreements are carried out by the Member State whose borders constitute the edge of the 'Schengen area'. Those borders are known as 'external borders' as opposed to 'internal borders', which separate the signatory Member States from one other.

Under the Schengen Agreement, possession of a visa is one of the conditions for entry to the territory of the Contracting Parties, which are required to adopt a common policy on the matter and to set up a uniform visa system as a condition of the free movement of persons.

The Schengen Agreement also lays down rules (in Chapter 3, Section 1 thereof, which is concerned with visas for short visits) relating to:

- (a) the introduction of a uniform visa valid for the entire territory of the Contracting Parties and issued for visits not exceeding ten months (Article 10);
- (b) the terms and conditions of the uniform
  - travel visa, for visits not exceeding three months, and of the uniform
  - transit visa, valid for a maximum of five days (Article 11);
- (c) the issue of the uniform visa by the diplomatic or consular authorities of the Contracting Parties (Article 12);
- (d) the taking of a decision by the Schengen Executive Committee regarding the conditions governing the issue of visas at borders in cases where it was not possible for a visa to be issued in the home country of the non-EU national who has applied for it (Article 17(3)).

Finally, the Schengen Agreement lays down (in Chapter 3, Section 2, which is concerned with visas for long visits) that visas for visits of more than three months shall be national visas issued by one of the Contracting Parties in accordance with its own legislation (Article 18).

## **(B) AS REGARDS THE EUROPEAN UNION**

Before the advent of the Maastricht Treaty (which was signed on 7 February 1992) the European Communities had virtually no powers relating to external borders. Once it came into force, and in compliance with Article 100 C(1) thereof, a common list of non-member countries whose nationals would require a visa in order to enter EU territory was drawn up at EU level and is currently regulated by means of Council Regulation (EC) No 539/2001 of 15 March 2001<sup>1</sup>.

However, once the list had been drawn up, each Member State was free to lay down the conditions governing the movements of citizens from non-member countries which did not appear on the list.

Furthermore, in compliance with Article 100 C(3) of the Maastricht Treaty, a uniform format for visas was laid down by means of Council Regulation (EC) No 1683/95 of 29 May 1995<sup>2</sup>, as amended by Council Regulation (EC) No 334/2002 of 18 February 2002<sup>3</sup>.

Lastly, it should be pointed out that, pursuant to Article 5 of Council Regulation (EC) No 1683/95, 'visa' means, for the purposes of that Regulation:

'an authorisation given by or a decision taken by a Member State which is required for entry into its territory with a view to:

- an intended stay in that Member State or in several Member States of no more than three months in all [travel visa],
- transit through the territory or airport transit zone of that Member State or several Member States [transit visa]'.

In any event, legislation governing visas and residence permits was highly diverse and it sprang from a variety of legal backgrounds: some was based on Community law (as regards the format of the visa and the list of countries whose citizens require a visa in order to enter the EU) and some on intergovernmental cooperation known as 'Schengen' (concerned with the terms and conditions under which visas are issued, the authorities which are entitled to issue them, the documents to which visas may be affixed and the checks to be carried out at borders).

### **(C) THE AMSTERDAM TREATY**

The Amsterdam Treaty, which came into force in May 1999, gave real impetus to visa policy (amongst many other things) by incorporating the Schengen *acquis* into the EU and by bringing visas, asylum, immigration and other policies relating to the free movement of persons into the Community sphere through the creation of a new Title IV within the EC Treaty.

In this connection, mention must be made of:

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<sup>1</sup> OJ L 81, 21.3.2001, p. 1

<sup>2</sup> OJ L 164, 14.7.1995, p. 1

<sup>3</sup> OJ L 53, 23.2.2002, p. 7

- Article 62(2)(b) of the EC Treaty, as regards the adoption of a set of legislative measures covering all aspects of a harmonised short-stay visa policy (i.e. for stays of no more than three months);

- Article 63(3) of the same Treaty which, as part of immigration policy, lays down the package of measures needed in order to regulate 'conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion'.

### **III. INITIATIVE BY THE KINGDOM OF SPAIN WITH A VIEW TO THE ADOPTION OF A COUNCIL REGULATION AMENDING THE SCHENGEN RULES RELATING TO THE ISSUE OF VISAS AT THE BORDER, INCLUDING THE ISSUE OF SUCH VISAS TO SEAMEN**

#### **(A) BACKGROUND**

The general rules governing the issue of uniform types of visa and the issue of visas with limited territorial validity are contained in the Common Consular Instructions (conventionally abbreviated to CCI).

On the other hand the general rules governing the issue of visas at borders and the specific rules relating to the issue of visas to seamen in transit are scattered through various provisions of the Schengen *acquis*:

- (a) Common Border Manual,
- (b) Annex 14 of the Common Manual,
- (c) Common Consular Instructions,
- (d) two Schengen Executive Committee decisions which have not been incorporated either into the Common Manual or into the Consular Instructions.

#### **(B) SUBSTANCE**

The purpose of the initiative by the Kingdom of Spain is to 'tidy up' the existing Schengen *acquis* by using a single EC legal instrument (a proposal for a Council regulation) as a means of regulating the disparate legislation governing the issue of visas at borders, including those issued to seamen in transit.

The future Regulation would repeal:

- (a) Schengen Executive Committee Decision SCH/Com-ex (94) 2 of 26 April 1994 on the issue of uniform visas at the border (which appears as Annex 14 of the Common Manual, concerning the performance of checks on the crossing of the EU's external borders);
- (b) Schengen Executive Committee Decision SCH/Com-ex (96) 27 of 19 December 1996 on the issue at the border of visas to seamen in transit (which has not so far been incorporated into the Common Manual, even as an annex).

The proposal for a regulation brings together in a single legislative text the provisions and

practices laid down in the two abovementioned decisions, and also introduces a new provision: namely, that when seamen in transit travel in groups of between 5 and 50 persons of the same nationality, they may be issued with a group visa in the form of a label, covering all the members of the group.

The label would be affixed to a separate sheet, which would not be valid as a travel document. It should be proposed to the Commission that it draw up a uniform format for that separate sheet.

It is intended that the future regulation should appear as Annex 14 to the Common Manual, which should incorporate the practices applicable to seamen in transit which are not currently part of that Manual, even though they are applicable at all the EU's external borders.

The only new legislative feature to be introduced would be the possibility of issuing group visas to groups of seamen in transit, since the only current possibility is that of issuing visa labels (with uniform validity in all the Schengen countries) individually to each seaman. Such a practice causes valuable time to be lost and inflicts serious losses on seamen, shipping companies and airlines, since it frequently causes flights or flight connections to be missed.

### **(C) ASSESSMENT**

Firstly, your rapporteur regrets the fact that the Initiative by the Kingdom of Spain is not bold enough to sort out the current chaos apparent within the Schengen *acquis* as regards the issue of visas.

It is disappointing to note that no advantage has been taken of the proposal to establish a group visa for seamen in transit in order to press for the thorough reforms which the obscure, labyrinthine and impenetrable Schengen *acquis* requires.

That said, your rapporteur must acknowledge, from a purely objective point of view, that the Initiative by the Kingdom of Spain clarifies and simplifies the current complex system for the issue of visas at borders by means of a first-pillar legal instrument.

If this were to be supplemented by the establishment of a group visa for seamen in transit (which would help to solve serious practical and currently insoluble problems which cause serious personal and financial losses), your rapporteur believes that, duly corrected and amended, the Initiative by the Kingdom of Spain would help to make the complex Schengen *acquis* somewhat more comprehensible and would provide solutions to problems affecting Europe as a whole.

Hence, taking a constructive view and continuing to urge the governments of the Member States, the Council and the Commission to 'tidy up' the currently incomprehensible Schengen *acquis*, your rapporteur has tabled nineteen amendments, the basis for which may be found in the relevant justifications.