

**Proposal for a Regulation of the EP and of the Council amending
Regulation 810/2009 establishing a Community Code on Visas (Visa Code)
(COM (2018) 252 final -2018/0061 (COD))**

Comments by ECSA, ETF, ICS and ITF

ECSA, ETF, ICS and ITF, representing the European and International Social Partners in the Maritime Sector, welcome the Commission's proposal amending Regulation No 810/2009 establishing a Community Code on Visas (Visa Code) adopted on 14 March 2018 and acknowledge that it has taken up many of the proposals found in their previous joint position submitted in December 2017 in the consultation process on this proposal (attached as Annex I).

ECSA, ETF, ICS and ITF, in particular, welcome the fact that the proposal already recognises the specific needs of the seafaring profession – with regard to the time frame for lodging an application and the availability of visas application at Schengen area entry points.

However, ECSA, ETF, ICS and ITF strongly feel that fuller account must be taken of the particular needs of seafarers throughout the proposal, for example in the new requirements in respect of multiple entry visas (MEVs) and readmission cooperation.

ECSA, ETF, ICS and ITF advocate that it is appropriate to consider seafarers as a special category of professional traveller in view of the specific work-related reasons for seafarers' need for visas, their low risk profile and the inextricable relationship between seafarer movement and the facilitation of world trade- so that their ability to do their jobs and fulfil their essential role in facilitating global seaborne trade is not dependent on their nationality and not stifled by restrictive conditions that they cannot satisfy due to the average length of their contracts.

For these reasons we have outlined below the elements we recommend distinguished co-legislators support and those we consider still need improving.

Joint comments are submitted by ECSA, ETF, ICS and ITF because of the importance the submitters place on facilitating seafarer travel to and from the EU.

Positive Elements that should be supported and retained during negotiations:

ECSA, ETF, ICS and ITF support a number of proposed provisions, which will facilitate seafarers' movement in the EU. In particular, they call on the European Parliament and on the EU Member States to maintain the following positive elements of the proposal:

- **Article 2.11 Definition of Seafarer:**

Article 2.11: The new proposal suggests the following definition:

12. 'seafarer' means any person who is employed, engaged or works in any capacity on board a seagoing ship or a ship navigating in international inland waters'.

This proposal is very much welcome and should be actively supported as it follows the proposal made by ECSA, ETF, ICS and ITF in their joint submission to the consultation process on this new regulation and a much welcome improvement to the proposal found in the Commission's 2014 proposal (Article 2(16)) and the position of the co-legislators.

We here wish to recall the reasons given: since the Maritime Labour Convention (MLC) does not cover all seagoing ships and excludes ships navigating in inland waters we believe that it is better to remove the reference to the MLC and to insert in its place a reference to 'seagoing' ships. The text in the Commission's new proposal will avoid a situation in which certain seafarers are excluded from the entitlement to be issued with a multiple-entry visa simply because they are employed, engaged or working on a particular type of ship to which the MLC does not apply. Retaining the reference to the MLC in the definition would lead to this unintended and unfortunate consequence, as the MLC does not apply to all ships. This may be because they do not fall within the MLC definition of ship in Article II paragraph 1(i) or have been excluded by their flag state in accordance with paragraph 5. Also the MLC will not apply to any ship whose flag state has not ratified. Moreover, it should be noted that the MLC does not have a definition of seafarer but seafarer is defined in the national laws and regulations implementing it. Therefore retaining the reference to MLC would result in inconsistent implementation of the Visa Code rather than promoting harmonisation and predictability.

For all of the abovementioned reasons, ECSA, ETF, ICS, ITF consider it very important to ensure that the new definition in the Commission's proposal of March 2018 is maintained during the legislative process.

- **Article 9.1 – Practical Modalities for lodging an application – timeframe for application for Schengen visas**

ECSA, ETF, ICS and ITF welcome the proposal to allow seafarers in the performance of their duties to lodge applications 9 months before the intended date of travel. Given the length of many seafarers' contracts, this will enable them to apply before leaving home and reduce the number of seafarers having to apply at borders.

This extension is crucial for the shipping industry. Many seafarers have contracts which last an average of 8 months and given the seasonality of their work, those who are not travelling directly to the Schengen area (e.g. a seafarer serving onboard a ship in Brazil, before taking service onboard a ship in Europe) would not be able to apply for a visa before leaving home under the existing rules (which establish a 3-month window). Given the length of their contracts, a 9-month application period would allow them to apply before leaving their home country, and would reduce the number of seafarers having to apply at the border after re-positioning of their ships.

ECSA, ETF, ICS and ITF consider it very important to ensure that this is maintained during the legislative process.

- **Article 11: Application Form**

The proposal amends paragraph 1 in order to add a reference to the possibility of filling in and signing the application form electronically.

Allowing applicants to submit and sign application forms electronically will streamline the process and will improve the process for seafarers without negatively impacting security.

The possibility of online applications has the potential to reduce the burden of all involved (employers, applicants and consular posts) and as such is a very welcome development.

- **Article 23: Decision on the application**

The Commission proposal to reduce the period of decision on applications from 15 to 10 calendar days from the date of the lodging of the application is a much welcome development and in line with the previous joint submission of ECSA, ETF, ICS and ITF which had explained that many ships operate irregular itineraries and port calls determined at short notice and that a reduction of the period of processing and deciding on visa applications to a max of 10 days would be a very welcome improvement for seafarers.

- **Article 36 Visas to seafarers in transit at the external borders**

ECSA, ETF, ICS and ITF welcome the fact that the specificity of seafarers being able to apply at the border, recognised in the current Visa code, is maintained in the new proposal. Whilst MEVs should be established as the norm for seafarers joining, leaving and taking shore leave from ships, visas need to be available at entry points to the Schengen area to take account of unforeseen circumstances.

The Commission however proposes (in article 36(2a)) to remove Annex IX and adopt operational instructions by means of implementing acts in order to update the Annex. ECSA, ETF, ICS and ITF are keen to be involved in this process in order to ensure this reflects the needs of seafarers and the industry.

Elements Requiring Improvement:

Notwithstanding the positive elements highlighted above, ECSA, ETF, ICS and ITF wish to draw attention to the following provisions which, as proposed, would negatively impact seafarer travel and the smooth operation of shipping:

- - **Article 24: Issuing of a Uniform Visa (Issuance of MEVs/Introduction of the mandatory 'cascade' approach)**

This is a very important article for seafarers and the shipping industry and the proposal as it stands is very problematic for the industry.

Paragraph 2: Cascade approach

The proposal requires applicants to have obtained 3 visas in the preceding 24 months in order to benefit from the cascade approach and be issued with a mandatory 1-year MEV (and to subsequently benefit from a 2-year MEV, followed by a 5-year MEV).

Since the average length of contracts of seafarers is 8 months, the requirement of 3 visas in 2 years is too strict in the seafarer context and is practically impossible to be fulfilled by seafarers. Thus it would not enable seafarers to benefit from the cascade approach. This requirement also does not 'reward' applicants who have previously obtained MEVs with validity periods of less than a year.

ECSCA-ETF-ICS-ITF therefore consider it essential that the cascade system is modified to avoid requirements that preclude the majority of seafarers from obtaining MEVs via this system. The proposal must recognise the specificities of seafarers' contracts and enable seafarers to meet the requirements for the mandatory cascade approach in receiving MEVs.

ECSA-ETF-ICS-ITF therefore, taking into account seafarers' contracts and the functioning of the shipping industry, propose that this be modified to 2 visas in 24 months – by Article 24(2)a) being amended to “for a validity period of one year, provided that the applicant has obtained and lawfully used **two visas within the previous two years;**” or to provide for a special rule to this effect for seafarers in recognition of their specific circumstances.

Paragraphs 2b and 2d:

The Commission proposes implementing acts regarding the conditions for issuing MEVs applied in each jurisdiction which can result in stricter or more favourable rules.

ECSCA-ETF-ICS-ITF consider that jurisdiction-specific lists for the application of MEV schemes should be avoided as more harmonised approaches allow for more clarity and certainty for the seafarer and the industry.

Paragraph 2c:

The Commission proposal in this paragraph essentially means that if seafarers do not get the benefit of the cascade approach because the number of visas required is too strict, then they may optionally still be issued MEVs for up to 5 years were they prove the need to travel frequently and demonstrate their integrity and reliability.

In the current 2009 Visa Code, no cascade approach exists and there is recognition of the specificities of seafarers – through the issuing of *mandatory* MEVs where they comply with the requirements under article 24.2.a and b. Under this new Commission proposal, such recognition is removed and if seafarers do not meet the requirements under the cascade system in paragraph 2, seafarers will only be entitled to MEVs on an optional basis. This puts them in a weaker legal position than under the current 2009 code. Moreover, this paragraph is ‘*without prejudice to para 2*’ and therefore it seems to mean that the cascade system will have to apply first before an application can be made under para 2c.

ECSCA, ETF, ICS and ITF consider it crucially important for the industry that seafarers are able to obtain mandatory MEVs (as is currently the case under the existing rules in the 2009 Visa Code) which ensure seafarers can get on and off their ships efficiently even if this means through ‘carving’ out seafarers within this provision.

As explained in their joint position submitted in December 2017, ECSCA, ETF, ICS and ITF call for the consideration of seafarers as a special category of professional traveller in view of the specific work-related reasons seafarers’ need a visa, their

low risk profile and the inextricable relationship between seafarer movement and the facilitation of world trade. They call for the seafarers' ability to do their jobs and fulfil their essential role in facilitating global seaborne trade not to be dependent on their nationality.

Being able to fully benefit from mandatory MEVs would result in more predictability for the industry, and reduce the need for seafarers to apply for visas at the border. Currently while carrying out their contracts, many seafarers arrive at the Schengen borders without visas and have no option but to apply for visas at the border. Member States issue these visas in exceptional cases and in very limited numbers. The result is that seafarers are often unable to disembark from their ships to transit through Schengen. Not only is this situation hugely disappointing to the seafarer and disruptive to the itinerary of the ship, it also means that millions of euros are spent in hotels and flights in third countries when companies have no choice but to disembark seafarers outside Schengen due to visa restrictions. This situation could be greatly improved if seafarers were to be issued MEVs.

Therefore ECSA-ETF-ICS-ITF consider it is very important to:

- Paragraph 2: ensure the requirements for the cascade in para 2 are changed so as to allow seafarers the possibility to benefit from the cascade by amending Article 24(2)a) as follows: "for a validity period of one year, provided that the applicant has obtained and lawfully used **two visas within the previous two years;**
- Paragraph 2c: amend article 24(2c) to maintain the rules for seafarers in the current Visa Code to: "a multiple-entry visa valid for up to 5 years **shall be issued to applicants who prove the need or justify their intention to travel frequently and/or regularly, such as seafarers...**"
- Or to provide for provisos in Paragraphs 2 and 2c stipulating special rules for seafarers in recognition of their specific circumstances.

- **Article 14: Supporting Documents**

ECSA, ETF, ICS and ITF are disappointed to see that the Commission did not propose an exhaustive list of supporting documents as it had in its 2014 proposal and which the support of the Council and the European Parliament.

While we understand that local circumstances may sometimes require some slight variations, however lists of supporting documents need to be as harmonized and exhaustive as possible across the different jurisdictions. Thousands of seafarers coming from different jurisdictions across the globe need to apply for visas to Schengen on a regular basis, and variations in the documents they need to provide causes delays and costs in the application process, and results in wasted time for the industry to try to get an overview of requirements in different jurisdictions. Given the significant number of visa applications linked to the industry on a daily

basis, it is essential for the industry to have clarity and predictability in the supporting documents that must be submitted.

ECSCA-ETF-ICS-ITF therefore believe the list of supporting documents needs to be harmonised and exhaustive, as this will provide more certainty and predictability to seafarers.

- **Article 25: Cooperation on Readmission**

ECSCA, ETF, ICS and ITF are worried about the possible implications of this article on the main seafaring supply countries.

The most important seafarer supply countries outside the EEA are not significant sources of migrants, which means that any measures linking MEVs for seafarers to readmission agreements would be inappropriate. If seafarers were included in such restrictive measures it would make it very difficult for the shipping industries to continue to operate in the EEA. Seafarers should be recognised as a special category of professional traveller in view of the nature of their work, their need to travel for their work.

Given the changed migration situation and increased security threats in recent years, ECSCA, ETF, ICS and ITF understand the Commission's objective of ensuring that some visa-issuing rules can play a part in readmission policy. However, extreme care must be given to ensure that no blanket restrictions are put on entire countries without fully considering the possible economic repercussions.

While the proposal does indicate that the Commission would take into account the Union's overall relations with a third country before deciding it is not cooperating enough and possibly applying restrictive measures, the importance of specific professional travellers, such as seafarers, is not sufficiently addressed. If seafarers were to be included in such restrictive measures, and, for example, no longer be able to benefit from mandatory MEVs, it would make it very difficult for the shipping industry to operate efficiently.

ECSCA, ETF, ICS and ITF consider that the ability for seafarers to fulfil their jobs and fulfil their role in facilitating global seaborne trade should not depend on their nationality. They consider that given the strict vetting procedures shipping companies have in place for their seafarers, and the crucial role seafarers play for the industry, the importance of specific categories of professional travellers such as seafarers should be recognised in the proposal.

ECSCA, ETF, ICS and ITF therefore propose the following amendment:

Article 25a(5) should be amended to read as follows:

"Where...the Commission decides that a country is not cooperating sufficiently, and that action is therefore needed, it may, taking also into account the Union's overall relations with the third country concerned **and the importance of allowing certain categories of professional travellers such as seafarers to continue to benefit from the full facilitations offered by the code**, adopt an implementing act..."

Other issues:

ECSCA, ETF, ICS and ITF wish to also take this opportunity to encourage Member States that have yet to ratify the ILO Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) to do so as soon as soon as possible - as a further means of facilitating seafarer movement and shore leave.

17.05.2018

ECSCA represents the national shipowners' associations of the EU and Norway. Founded in 1965, it promotes the interests of European shipping so that the industry can best serve European and international trade in a competitive and free business environment, to the benefit of both shippers and consumers. The European shipowners control 40% of the global merchant fleet.

ETF is a pan-European trade union organisation which embraces more than 5 million transport workers from 230 transport unions and 41 European countries. It works within an overall framework of global solidarity to represent and defend the interests of transport workers throughout Europe.

ICS is the principal international trade association for the shipping industry, representing shipowners and operators in all sectors and trades. Its membership comprises national shipowners' associations in Asia, Europe and the Americas whose companies operate over 80% of the world's merchant tonnage. Established in 1921, ICS is concerned with all technical, legal, employment affairs and policy issues that affect international shipping, and represents shipowners and operators at various intergovernmental regulatory bodies.

ITF is a global trade union federation representing trade unions in the transport sector. The total membership of ITF affiliates is estimated to be around 16.6 million with 5.1 million being the workers directly affiliated to the ITF. Over 900,000 are seafarers that represent the membership of 218 Maritime trade unions in 102 countries. The ITF Campaigns for the rights of workers and is active in the regulatory international bodies, including the IMO and the ILO.

ECSCA and ETF are the representatives of maritime employers and workers respectively in the EU, where they act as the social partners for maritime transport at the EU Sectoral Social Dialogue Committee for Maritime Transport.

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