

MODERNISING THE EU'S COMMON VISA POLICY

Comments by ECSA, ETF, ICS and ITF

ECSA, ETF, ICS and ITF warmly welcome the initiative of the Commission to consult relevant stakeholders as part of its preparation of proposals for modernising the EU's common visa policy. We welcome the announced intention to table a proposal that revises some of the existing visa issuing rules, harmonises the diverging approaches and practices between Member States and smoothens the access to visas for bona fide applicants'.

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.

ECSA 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.

GENERAL COMMENTS

Approximately 90% of the world's visible trade is transported by merchant ships and handled by ports worldwide. The EU's ports are among the world's busiest, reflecting the economic strength of the region as an exporter and importer of raw materials, components and finished goods. As such they serve as locations for thousands of seafarers to join and leave their ships and to take the shore leave that is essential to their wellbeing.

Merchant ships are required to be sufficiently and adequately manned/crewed at all times. Seafarers reside all over the world and large numbers of them work on ships that never call at ports in the countries where they live. Air travel to join ships and to return home after completing a tour of duty is an integral part of many seafarers' lives as seafarers travel to ships to relieve crewmembers who have finished their service and are due to return home.

Moreover, under international law, seafarers have a right to access shore facilities and to shore leave which is a key contributor to the health and wellbeing of seafarers. In fact, the Social Partners' agreement on the MLC 2006 (appended to Directive 2009/13/EC) requires that seafarers be granted shore leave to benefit their health and wellbeing.

For the shipping industry to function efficiently and for the seafarers' decent living and working conditions to be ensured, it is therefore essential to facilitate the seafarers' travel to and from ships in EU ports (to join their ships, to be repatriated, to take shore leave) without undue impediment.

Crew changes can sometimes be planned some time in advance. However, some ship operations and trades, known as "tramp" trades, are characterized by irregular itineraries and port calls at short notice, which means that seafarer travel often has to be arranged in a short time frame - - require the processing of visa applications for crew members in a correspondingly short period.

Seafarers are a unique type of traveller – in need of a fast and flexible visa application and issuance process in order to go to work, go home after completion of the tour of duty, to take shore leave. For several years now, third country seafarers have encountered serious practical difficulties in obtaining a visa to enter, re-enter or transit the Schengen area due to procedural difficulties, differences in interpretation of the

rules, which have caused serious administrative and operational burdens for seafarers and their employers.

It is therefore hoped that the new proposed measures will go a long way towards removing administrative burdens and facilitating the entry of seafarers into the Schengen area. Not only would these measures bring certainty to shipping companies when finalizing work contracts; they would also be highly beneficial to seafarers that spend long periods of time at high sea and need flexibility in order to properly carry out their work.

RESPONSES TO QUESTIONS

1. In order to minimise as far as possible administrative burdens for consulates and applicants alike and facilitate tourism and business travel:

- **What procedural requirements, in your view, should be revised?**
- **Could some of them be abolished without a negative impact on security?**
- **Could some procedural requirements be reduced or increased depending on the overall relation between the third country and the EU?**

ECSA, ETF and ICS consider that the following procedural requirements should be considered for revision:

a. Extending the application period for lodging visa applications in advance

Extending the application period before the intended date of travel to at least 9 months is crucial for the shipping industry. Average periods of service on board ships range between 6-10 months, seafarers are generally employed on fixed-term contracts and crew members may not be travelling directly to the Schengen area (i.e. the seafarer may have serving onboard a ship in Brazil before starting service on a ship in Europe). Under the current rules, seafarers are not able to apply for a visa before leaving their home country due to the three –month window set out in the Visa Code. Given the length of their contracts, extending the deadline for application to 9-months ahead of the intended date of travel (as was in the Council's position) is crucial for seafarers as it would allow them to apply before leaving home, and would reduce the number of seafarers having to apply at the border after re-positioning.

b. Reducing the time frame for processing and deciding on visa applications

The majority of ships operate in 'tramp' trades with irregular itineraries and port calls determined at short notice. Therefore, seafarers are often in the position that they can apply for visas only shortly in advance, after the port of embarkation/member

state of embarkation has become known. A reduction of the period of processing and deciding on visa applications to a maximum of 10 days would be a very welcome improvement for seafarers. The complex logistics of shipping and the irregular activities merit a reduced time frame for lodging visa applications especially for seafarers.

c. Making the list of supporting documents exhaustive:

Knowing which supporting documents they need to submit would provide more certainty and predictability to seafarers.

d. Enhancing representation arrangements

ECSA, ETF, ICS and ITF consider that if the Member State competent for issuing a visa is not present with consular services in the applicant's country the applicant should be allowed to lodge the application at the consulate of another Member State. This would reduce the burden on applicants as well as reduce the costs that can be involved in having to travel to a specific consulate.

e. Applying at the Border:

It is crucial for seafarers to be able to apply for visas at the border. Given the nature of the work, the length of the contracts and the fact that crew members will regularly already be employed on a ship when arriving to the Schengen area, they should have the flexibility of applying at the border.

f. Electronic processing:

It is important that application forms, travel documents and other supporting documentation can be processed electronically. The possibility of on-line applications has the potential to reduce the burden of all involved (employers, applicants and consular posts), and as such would be a much welcome development.

2. In order to address the current divergent practices in issuing multiple-entry visas (MEVs) with long validity, potentially leading to visa shopping and competition among Member States:

- **Should a more harmonised implementation be ensured?**
- **Which criteria should determine decisions on issuing MEVs and their validity period?**
- **Should those criteria differ by location of the consulate and/or by nationality of the applicant, depending on the migratory risk?**

ECSA, ETF, ICS and ITF consider that the mandatory multiple-entry visas (MEVs) are crucial for the industry – they ensure seafarers can get on and off the ships easily and effectively – something single-entry visas make it challenging to do. They therefore consider that it's important that, at the very least, seafarers should maintain mandatory MEVs (as is currently the case in the existing Code – 'shall be issued'). It is important to note that ships have arrangements in place to ensure seafarers return to ships before departing to the next destinations.

ECSA, ETF, ICS and ITF would welcome measures to ensure consistency in the practices of Members States and thus more certainty and predictability.

They consider that the criteria to determine decisions on issuing MEVs and their validity period should include the applicant's need or intention to travel frequently and/or regularly due to their occupational status, as provided for in Article 24, paragraph 2(a). Seafarers are a type of applicant that would routinely meet the criteria for the issuing of MEVs through their need to travel to EU Member States frequently and regularly due to their occupational status, as currently recognized in Article 24, paragraph 2(a).

They consider that it would be crucial that if the MEVs are issued to Vis registered regular travellers it is crucial that the definition is not too restrictive that it excludes seafarers/crew members. The average length of contract of seafarers/crew members (6-10 months) must be taken into consideration when defining a VIS registered traveller (i.e. saying that an applicant must be able to demonstrate two Schengen visas in the past 12 months is not possible for a seafarer given the length of their contracts).

3. The current level of the standard visa fee (EUR 60) has not been revised since 2006 and is relatively low compared to other countries.

- **Is there (new) evidence for revising the fee?**
- **How should the appropriate level of the fee be determined?**
- **What would be the likely impact of increasing the visa fee (and as a consequence the service fee)?**
- **Should there be country-specific flexibility to reflect relations with certain third countries, for instance with regard to their level of cooperation with the EU or on the basis of other criteria?**
- **Should the EU as a rule receive the competence to determine all the categories of applicants exempt from the fee?**

ECSA, ETF, ICS and ITF consider that the fee should reflect the service provided. However, the appropriate level of the fee should not be solely linked to administrative costs but rather also take into account the fact that the use of visas that are issued contributes to economic growth in the EU. For example, when crew changes are

conducted in EU ports, they generate economic activities by a number of ancillary services (such as agents, hotels, airports and airlines).

4. External service providers (ESPs) are used by all Member States for providing information to travellers, collecting visa applications and returning travel documents to the applicants.

- **What is your overall assessment of the use of outsourcing in the visa procedure?**
- **How should the regulatory framework for outsourcing evolve?**
- **Is there a need to strengthen the monitoring of ESPs?**

ECSA, ETF, ICS and ITF are supportive of any approaches to the administration of the visa process that ensures that it is efficient and expedient.

5. New IT solutions would allow for a full digitalisation of the visa application process. As previous discussions have shown, this could include the issuing of digital visas instead of physical visa stickers and the possibility for applicants to apply online, including paying the visa fee online and submitting scanned copies of supporting documents.

- **Which of the two issues would you consider as a priority?**
- **Would you consider that both technical feasibility and necessity and proportionality studies should be carried out?**

ECSA, ETF, ICS and ITF are supportive of the use of new IT solutions, such as online applications, uploading of documents and digital visas, which have the potential to facilitate an efficient and expedient process for visa applications and issuances. There would be benefits to exploring new IT solutions in the form of reduced administrative burdens for all concerned (employers, applicants and consular posts).

6. The current visa policy is founded on a differentiation between visa-free and visa-required countries, based on the traveller's nationality.

- **Is the approach exclusively based on nationality still the right one?**
- **Should a more flexible approach based on differentiation among individual travellers be considered, taking advantage of new border management solutions being implemented (EES, ETIAS)?**
- **Should the lists of visa-free and visa-required countries be reviewed in the near future?**

Whilst ECSA, ETF, ICS and ITF consider that the general approach of defining visa policy and visa-exempt individuals according to the traveller's nationality may still be valid, a more flexible approach based on differentiation among type of travellers based

on type of travel and work should be considered and blanket restrictions on everyone from a specific nationality should be avoided.

They consider that it would be appropriate to consider seafarers as a special category of professional traveller, - in view of the specific work-related reasons seafarers' need a visa, their uniquely 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. For this reason, their possibility to receive MEVs should not be subject to blanket limitations linked to for example the applicability of readmission policy arrangements.

SUMMARY OF KEY POINTS

ECSA, ETF, ICS and ITF consider the following are the key points to be taken into account in the preparation of proposals for modernising the EU's common visa policy.

- a. Increase the time frame for lodging visa applications in advance
- b. Reduce the time frame for processing and deciding on visa applications
- c. Enhance representation arrangements by providing for the possibility to make applications for Schengen visas in any Member State if the Member State competent for issuing a visa is not present with consular services in the applicant's country.
- d. Develop an exhaustive list of supporting documents to be submitted with applications;
- e. Provide for the ability to make online applications to improve efficiency;
- f. Ensure seafarers are able to meet requirements for multiple entry visas (MEVs);
- g. Address the divergent practices in the processing and issuing of visas between Member States;
- h. Maintain the provisions concerning "seafarers" within the Community Visa Code as a special category of professional traveler with a uniquely low risk profile;
- i. Avoid requirements for the issuance of MEVs that preclude or restrict the majority of seafarers from availing themselves of them;

- j. Provide for the issuance of visas at the border or on arrival to seafarers who have been unable to obtain their visas in advance; and
- k. Be aware that the majority of seafarer supply countries do not have readmission agreements with the EU.

Consideration of the 2014 proposals

ECSA, ETF, ICS and ITF consider that there would be merit in taking into account the proposals and discussions associated with the 2014 Commission proposal:

On adoption of the 2014 proposal, ETF and ECSA very much welcomed the proposal, as it took into consideration several of the suggestions that both associations had suggested over time. In particular, ETF and ECSA welcomed the following proposals in the Commission's proposal:

- The reduction in the deadline for processing and deciding on visa applications from 15 to 10 days.
- The possibility to lodge visa applications in consulates of other Member States if the Member State competent for processing the visa application is neither present nor represented.
- The possibility to make online applications.
- A simplification of the list of supporting documents, which will also become exhaustive.
- A harmonization of the relevant requirements at national level to ensure equal treatment of visa applicants.

At the same time, ETF and ECSA drew attention to the following two topics, which they believed would merit some further attention from the decision-makers:

a. The definition of seafarer (Article 2 paragraph 16):

- New article 2 § 16 introduced a definition of "seafarer", notably "any person who is employed or engaged or works in any capacity onboard a ship to which the 2006 Maritime Labour Convention applies". ETF and ECSA noted that it is important that any definition of seafarer should not exclude some seafarers. They noted that the wording "ships to which the 2006 Maritime Labour Convention applies" in the context of the Union Schengen Visa Code will create legal difficulties, since it excludes seafarers working onboard ships to which the Maritime Labour Convention does not apply (as the Maritime Labour Convention (MLC) does not cover all seagoing ships and excludes ships navigating in inland waters). They therefore suggested that the following alternative wording to the Commission's proposal: *the definition of seafarer as laid down in Article 2.2 (c) of Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers'*

Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC which reads as follows: “*seafarer means any person who is employed or engaged or works in any capacity on board a ship*”. 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 it.

Further to amendments to the definition by the Council (in DS 8435/16) wherein the Council included a reference to seafarers ‘in international inland waterway trades’, ECSA and ETF drew attention to the fact that if the definition of ‘seafarer’ was adopted as per the Council’s text, an anomaly would have been created since it would have been possible to join a vessel that sails up the Rhine, but possibly not one that proceeds to sea . Therefore, ETF and ECSA suggested to remove the reference to the MLC and to insert in its place a reference to ‘seagoing’ ships in order to 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. They therefore proposed the following rewording: *16. Seafarer’ means any person who is employed, ~~or engaged or works in any capacity on board a~~ seagoing ship to which the Maritime Labour Convention, 2006 applies or a ship navigating in international inland waters”.*

b. Issuance of multiple entry visa / Definition of VIS registered regular travelers

Having considered the Commission’s 2014 proposal, ECSA and ETF supported facilitations for applicants registered in the VIS but drew attention to the fact that the definition of VIS registered traveler as proposed (which was a criterion for issuance of multiple entry visas) was too restrictive and created significant challenges for seafarers to meet the requirements. Seasonality, the average length of contracts (8-10 months) in this sector and the fact that one may work on ships also trading outside Schengen waters, make it practically very difficult for seafarers to meet the criterion of obtaining two visas in a 12-month period as proposed by the European Commission. Therefore, ECSA and ETF suggested that a less restrictive threshold should apply to seafarers to qualify as VIS Registered Regular Traveller – they suggested that taking into account seafarers’ contracts and the functioning of the shipping industry, the qualification should be two visas over a period of 36 months, one visa in the preceding 12 months and/or one multiple entry visa lawfully used in the preceding three years should also be a criterion for a seafarer to qualify as VIS RRT.

Having considered the Council's 2016 position, which introduced the link to readmission agreements, ECSA and ETF submitted a note explaining the major implications of such proposal in view of the fact that the majority of seafarer supply countries do not have readmission agreements with the EU. Moreover, they highlighted the expected serious disturbances to seaborne trade in Europe caused by the right for seafarers to be issued a MEV (Article 24.4 2009 Visa Code) becoming a 'mere possibility' ('may'). They therefore suggested that, in recognition of the specific nature of seafarer travelling and the special use being made of multiple entry visas in this sector¹, to include a specific provision recognising that seafarers are a special category of workers that in view of the nature of their work requires them to travel frequently and extensively to join their ships and return home after a voyage² and that for the maritime industry to work seamlessly it is essential that seafarers can join and leave ships (crew changes) with as few impediments as possible- so as to guarantee the facilitation not only of seafarers' movement for the purposes of their occupation, but also seaborne trade in Europe. Such a provision was in line with the recognition of the special nature of seafarer travelling in the current 2009 Visa Code and in Council's position on Article 8 Practical modalities for lodging an application.

c. Timeframe for application of Schengen visas

ECSA and ETF noted that the proposed extension of the time applying for a visa before the departure date would not benefit crew members who are not travelling directly to the Schengen area (e.g. a seafarer serving onboard a ship in Brazil, before taking service on a ship in Europe) will not be able to apply within the 6-month window proposed. Consequently, ECSA and ETF suggested a twelve months timeframe instead, amending Article 8(1) to read "applications may be lodged twelve months and no later than 15 days before the start of the intended visit".

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¹ Using the current MEV possibilities under the 2009 Visa code, most companies operate long term crew planning strategies to recruit seafarers and ensure timely applications for necessary visas for clearance to embark on a voyage. This requires knowledge of future likely port calls and seafarer nationality. Complications occur when schedules of port calls are unknown or change and when delays occur upon visa application. Unanticipated crew changes may require a seafarer to join a ship in a European port at very short notice, in which case there is a need for the visa application to be processed quickly. Meanwhile, in the case of ships operated in tramp trades (which have irregular itineraries with port calls often determined by the charterer at short notice), the port where the crew change takes place will be known only shortly in advance. Hence visa applications for on-signing crew members will have to be lodged and processed in a correspondingly short period.

² Seafarers remain resident in their home countries and do not take up residence in the countries to which they travel to join their ships.