



WHITE PAPER

SEAFARERS AND SCHENGEN

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CALL FOR ACTION TO MEMBER STATES

Take a stance in the proceedings before the European Court of Justice against incorrect interpretation of European Union law by the Netherlands

The interpretation of the Netherlands about the entry and exit of seafarers is not in line with the uniform Schengen rules, allows unrestricted access of non-EU seafarers to Schengen, causes implementation problems and triggers an exodus of maritime business to non-EU ports



INTRODUCTION

CROSSING BORDERS IN AN EFFICIENT WAY

Seagoing vessels and seafarers cross borders all the time. For security and trade purposes, it is important that these **border crossings** take place in an efficient and pragmatic way. Within the Schengen area, the Schengen Borders Code regulates border crossings. This Code provides for a uniform system that is to be applied consistently throughout Schengen.

Special rules apply for vessels and for **the exit and entry of seafarers**, according to the Code. In Schengen, non-EU seafarers receive an entry stamp at the border crossing point of the airport in order to travel over land to the port of their vessel. At the border crossing point in the port, these seafarers receive an exit stamp before signing on the vessel. This exit stamp is provided irrespective of the date of departure of the vessel. Their stay within the Schengen area is limited to their transit-time; the day(s) to travel from the airport to the port of their vessel. After receiving an exit stamp, these seafarers are deemed to have left the Schengen area.

A DUTCH BORDER CROSSING POINT DEVIATES

Only from 2016 onwards, the border authorities in Rotterdam started applying their own random rules. Only in this port, exit stamps were refused if the non-EU seafarer would not depart with the vessel immediately. This **change** caused immediate problems for seafarers and shipping companies.

More than 300 seafarers, their employers and several shipping companies have objected against this arbitrary practice in Rotterdam. This practice has been **suspended** by the Dutch Minister pending the outcome of the proceedings.

Since 2016, the proceedings have been ongoing. The highest administrative court in the Netherlands has now requested the **European Court of Justice** to answer the question at which moment a non-EU seafarer should receive an exit stamp according to the Schengen Borders Code. If the European Court follows the interpretation of the Dutch Minister of Migration, this can have a tremendous impact on the maritime sector in Schengen.

INITIATIVE

This **call for action to Member States of the European Economic Area** is an initiative of:

- Royal Association of Netherlands Shipowners
- Netherlands Maritime Technology
- Maritime by Holland / *Nederland Maritiem Land*
- Port of Rotterdam
- HISWA Holland Marine Industry

CALL FOR ACTION & EXECUTIVE SUMMARY

CALL FOR ACTION

The Member States of the European Economic Area¹ are requested to **lodge their written observations** in the preliminary ruling proceedings before the European Court of Justice, supporting the uniform interpretation of the Schengen Borders Code that non-EU seafarers receive an exit stamp when signing on the vessel, irrespective of the date of departure of the vessel. This is in the interest of border security and in the interest of the maritime sector in Schengen.



The written remarks should be submitted two months after the notice of the proceedings is published in the Official Journal of the European Union.

EXECUTIVE SUMMARY

Contrary to decades of a consistent practice of providing an exit stamp to non-EU seafarers when they sign on at the vessel, the Dutch Minister of Migration² is now of the opinion that these seafarers should only receive an exit stamp when they depart from the port with the vessel immediately. Important is that, generally, a period of time lapses between the moment of signing on at the vessel and the actual departure of a vessel.

The Dutch Minister's interpretation is incorrect and undesirable

1. Breach of Schengen Borders Code

According to the Code, seafarers are only in Schengen when travelling to and from their vessel. When seafarers sign on at the vessel, they cross the external border of Schengen in the sea port. Hereafter, the seafarers can only stay on board the vessel or within the area of the port of call. The Minister's interpretation is in breach of these rules.

3. Problematic to execute in practice

Having authorities place exit stamps at the moment a vessel departs, as the Minister argues, is impracticable, if not impossible, especially for larger ports.

2. Unrestricted access within Schengen

The Minister's opinion means that non-EU seafarers who signed on their vessels, can still move freely throughout the Schengen area.

4. Harmful for the maritime sector

Due to the limited amount of days that non-EU seafarers can stay in Schengen, larger vessels that are in port for a longer period of time will divert to ports outside the Schengen area, taking their business with them.

¹ The Member States of the European Union as well as Iceland, Liechtenstein and Norway.

² *Staatssecretaris van Justitie en Veiligheid.*

THE CASE

WHAT HAPPENED?

In 2016, several offshore vessels were laying in the port of Rotterdam to mobilize for new projects, some of the vessels for a longer period of time, others only a few days. The non-EU seafarers, new crew flown in by air, normally received an exit stamp when signing on the vessel. Now, they were refused an exit stamp. Supposedly, no exit stamp was provided since the vessel did not depart immediately. When non-EU seafarers do not receive an exit stamp when signing on their vessel, they remain *in* the Schengen area. These seafarers can only stay a limited amount of days in Schengen.

PROCEEDINGS

Over 300 seafarers, their employers and several shipping companies started proceedings against the Dutch Minister of Migration, because the refusal of exit stamps is in breach of EU-law.

- The Court of Rotterdam ruled that the refusal was indeed in breach of the Schengen Borders Code and thus that the Minister acted unlawful.³
- The Minister appealed. Since the interpretation of the Schengen Borders Code is key in this case, the highest administrative court of the Netherlands has instigated preliminary ruling proceedings to clarify EU-law.⁴
- The question submitted to the **European Court of Justice** is:

When should a non-EU seafarer who signs on a seagoing-vessel in a port at the external border of Schengen receive an exit stamp, when the seafarer signs on the vessel, or when the vessel actually departs?

IMPORTANCE OF THE CASE

The answer to this question is of tremendous importance for seafarers, shipping companies, ports, border authorities and the maritime sector in general.

If the European Court of Justice supports the stance of the Dutch government, this will mean that all throughout Schengen non-EU seafarers will not be able to receive an exit stamp until a vessel (actually) departs. This will cause significant and costly operational problems for companies, ports and border authorities.

³ Verdict (in English) is available [here](#).

⁴ Verdict (in Dutch) is available [here](#). The verdict in English will become available soon.

REASON 1: IN BREACH OF UNION LAW

EU LAW TAKES PRECEDENCE

The Schengen Borders Code provides a uniform framework of rules.⁵ There is no margin of discretion for the Member States regarding entry and exit stamps. When a person crosses an external border of Schengen at a border crossing point, the authorities must provide a stamp.⁶

PORTS, VESSELS AND SEAFARERS

Sea ports, such as the port of Rotterdam, are 'external borders' of Schengen.⁷

Specific rules apply for vessels and seafarers. According to the Code, a seafarer is a person who holds a seaman's book and signs on at his vessel as a crew member.⁸

When a **seafarer signs on** a vessel in a sea port, he crosses the external border. According to the Code, a non-EU seafarer is obligated to present himself at the border crossing point in the port, and the seafarer must in turn be provided with an exit stamp.⁹

And vice versa: when a **seafarer signs off** the vessel, the non-EU seafarer must go through the border crossing point in the port to receive an entry stamp. This means that if a vessel sails into a sea port, the seafarers on board are not crossing the external border and do not receive entry stamps, until they sign off the vessel.¹⁰

The entry and exit is simple. All seafarers on board (either having sailed into port or signed on in port) are outside the Schengen area, the non-EU seafarers cannot travel freely within the Schengen area.

⁵ It is important to note that the Code only provides rules for the entry and exit of persons and (the interpretation of) these rules do not affect the application of (national) social and labour regulations.

⁶ Preamble under 15 and Art. 11 of the Schengen Borders Code (EU/2016/399).

⁷ Art. 2 section 2 of the Code.

⁸ Art. 19 and 20 section 1 under c and Annex VII under 3 of the Code.

⁹ Art. 5 section 1 and Art. 11 section 1 of the Code.

¹⁰ According to the Code, only third country nationals (in this case: seafarers who do not have the nationality of an EU-Member State or Liechtenstein, Norway and Iceland, hereinafter: 'non-EU seafarers') are obligated to visit the border crossing point to obtain an entry/exit stamp when crossing the external border. When EU-seafarers cross the external borders, they are not obligated to do so.

SHORE LEAVE

This systematic approach also follows from the rules about shore leave. It is internationally accepted that seafarers should have the opportunity for social and humanitarian reasons to go on shore for a walk. This would mean that each time a seafarer steps off the gangway, the seafarer would have to present himself at the border crossing point and receive an entry stamp. This is not desirable. Therefore, the Code exempts seafarers from these obligations when on shore leave in the area of the port of call.¹¹

DURING TRANSIT IN SCHENGEN

Thus, the seafarer is only in Schengen during his transit time; when travelling from airport to vessel and vice versa. This also follows explicitly from the Visa Code.¹²

CONCLUSION

An exit stamp must be issued to a non-EU seafarer when he presents himself at the border crossing point before signing on a vessel, irrespective of the (actual) departure of the vessel.

The interpretation from the Dutch Minister of Migration that exit stamps to non-EU seafarers are only provided when a vessel (actually) departs, is in breach of the Code. The Schengen border crossing takes place earlier: the moment that the seafarer signs on the vessel.

Breakdown:

supremacy of EU law
sea port = external border
signing on/off vessel = border crossing
border crossing = stamp
shore leave = exemption from stamping

¹¹ Annex VII under 3 of the Code.

¹² Art. 36 Visa Code (EC/810/2009).

REASON 2: UNRESTRICTED ACCESS WITHIN SCHENGEN

AT THIS MOMENT

Non-EU seafarers receive an exit stamp when they sign on the vessel. This means that they can only remain on the vessel and in the area of the port of call. As long as the vessel is in port, the border authorities can verify who stays on board through the periodic crew lists and the estimated date of departure, as provided by the Captain.¹³

The situation is transparent: all seafarers on board are 'outside' Schengen, either having signed on and received an exit stamp *or* sailed into port and not having received an entry stamp.

THE DUTCH MINISTER'S REASONING

If non-EU seafarers would only receive an exit stamp at the moment that the vessel actually departs, the seafarers would be allowed to **move freely throughout Schengen** until the departure of the vessel. Many vessels remain in port for a longer period of time, some days, some weeks, some months. In the port of Rotterdam alone more than 100.000 seafarers sign on vessels each year.¹⁴

In addition, the situation with respect to seafarers would become **confusing**. The crew on board a vessel would consist of some seafarers that have sailed into port, are outside of Schengen and can only remain on board and in the port of call. Other crew members who signed on at the vessel in port would remain in Schengen until the (actual) departure of the vessel. They can move freely throughout Schengen.



This means that within Schengen area hundreds of thousands of non-EU seafarers can travel freely challenging border security. Also, the situation with respect to the status of crew on board would become intransparent.

¹³ Annex VI under 3 of the Code.

¹⁴ Source: according to figures of the Port of Rotterdam.

REASON 3: PROBLEMATIC TO EXECUTE

AT THIS MOMENT

Before signing on and after signing off the vessel, each non-EU seafarer visits the border crossing point to receive an exit or entry stamp. This is an efficient and pragmatic way to stamp seafarers in and out.

THE DUTCH MINISTER'S REASONING

If non-EU seafarers are stamped out when the vessel (actually) departs, this means:

- that the authorities will have to visit each vessel that departs, because seafarers cannot travel to the border crossing point at the day/time of departure of the vessel
- multiple vessels - especially in larger ports - depart at the same time, while berthed at different places
- many vessels depart outside office hours
- only shortly before departure, a departure date/time is known
- the estimated departure date/time of vessels is regularly adjusted due to changing circumstances causing operational problems; this also means that stamps already placed would have to be cancelled

According to the Code, Member States must ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, the Member States are obligated to deploy appropriate numbers of staff and resources.¹⁵



The capacity of border authorities has to be increased tremendously to avoid delays of departure of vessels. In any case, delays are expected to increase significantly.

¹⁵ Preamble under 17 of the Code.

REASON 4: HARMFUL ECONOMIC EFFECTS

PROBLEMATIC FOR NON-EU SEAFARERS AND SHIPPING COMPANIES

If the interpretation of the Dutch Minister of Migration is followed, this causes serious problems for the crewing operations of vessels.

Non-EU seafarers are only allowed to stay a maximum amount of days in Schengen, being **90 days in every 180 days**.¹⁶ If seafarers would only receive an exit stamp at the moment a vessel actually departs, their days in Schengen are not limited to their transit time to and from the vessel. Days between signing on the vessel and the actual departure of the vessel would then count as well.

If vessels lay in port a longer period of time, or if vessels frequent different Schengen-ports, these seafarers could **overstay** the minimum of days. This is especially the case:

1. when the rotation of crew is 2/3 of the time on board followed by 1/3 of the time leave (for instance: 12 weeks on board followed by 6 weeks leave) or
2. when the seafarer works more than 90 consecutive days.

Due to changing itineraries, routes and assignments, it is impossible for shipping companies to calculate beforehand when the maximum amount of days is reached.

SIGNIFICANT COST INCREASE

Offshore vessels, cruise vessels, (large) fishing vessels, super yachts and any other vessel that may plan a longer stay in port or that frequent Schengen ports regularly are confronted with this problem if the interpretation of the Dutch Minister is followed by the European Court of Justice. Vessels stay in port for a longer period of time for a variety of reasons such as mobilisation for a new project, maintenance, docking, awaiting cargo.

To avoid overstaying of seafarers, ship owners will be forced to:

- sail with more crew members due to adjustment of the rotation, so that seafarers sail a shorter time and enjoy a longer time leave
- sail in and out port every time crew members have signed on the vessel
- have crew sign on via an intra-vessel transfer at sea and/or with a helicopter

These measures are very expensive, while no border security interest is being met.

For a large vessel operator/owner, the additional costs are estimated at **millions of euros annually**.¹⁷

¹⁶ For visa-required nationalities this can be (much) shorter. Their stay is limited to the visa-days.

¹⁷ To sail with solely EU-seafarers will not be an option for most shipping companies, since (1) there are no sufficient EU-seafarers available and (2) the additional costs hereof are such that companies will be forced out of the market.



One of the most cost-efficient solutions for shipping companies will be to divert to a port outside Schengen

DIVERTING TO A NON-SCHENGEN PORT - LOSS OF ORDERS AND EMPLOYMENT

The negative economic consequences of (large) vessels diverting to non-Schengen ports cannot be overseen. It is hard to estimate the financial impact hereof in the long run. However, the financial impact in terms of the loss of orders for the maritime sector in the Schengen area as well as a loss of employment is expected to be potentially enormous.

EXAMPLE: OFFSHORE IN THE PORT OF ROTTERDAM

In 2015, **160 off shore vessels** visited the Port of Rotterdam, of which 56 stayed longer than one month and 23 vessels stayed longer than three months.

As an illustration, **one large off shore vessel** that was in port for a few months to mobilize for the next project and undergo maintenance has commissioned dozens of millions of Euros to more than 50 European companies in the maritime sector. These companies worked for over 360.000 man-hours on board, excluding the man-hours on shore.

If the ship owners of these vessels would decide to divert to a non-Schengen port, the loss in terms of missed orders and of a decrease of employment would be enormous.

TO CONCLUDE

If the Dutch Minister's interpretation is followed, ship owners will face significant cost increases to manage their crewing schedules. Diverting to a non-Schengen port may be the most cost-efficient option for ship owners. It goes without saying that this will be an economic setback for the maritime sector in the Schengen area.

CONCLUSION

The **Schengen Borders Code provides uniform rules** regarding the exit and entry of seafarers on board sea-going vessels. Every Member State must apply these rules consistently and systematically. The rules allow for an efficient and pragmatic way of crossing borders in sea ports. An important element hereof is that non-EU seafarers receive an exit stamp at the border crossing point in the sea port before signing on the vessel, irrespective of the (actual day of) departure of the vessel.

Contrary to decades of stamping non-EU seafarers in and out in accordance with these rules of the Code, the **Dutch Minister of Migration** is now of the opinion that these seafarers should only receive an exit stamp when they immediately depart with the vessel. This opinion is **in breach of the systematic set of rules** for the exit and entry of seafarers that the Code prescribes. In addition, this interpretation will challenge border security, cause implementation problems and is expected to trigger an exodus of vessels to ports outside Schengen. The harmful economic effects are potentially enormous.

Therefore, Member States are called upon to **lodge their written observations** in the preliminary ruling proceedings before the European Court of Justice against the incorrect interpretation of the Dutch Minister of Migration.

MORE INFORMATION

Links:

- [Schengen Borders Code](#) (in English)
- [Ruling of the Court of Rotterdam](#) (in English)
- [Ruling of the Administrative Jurisdiction Division of the Council of State](#) (in Dutch)
- Pending: publication of the interim ruling proceedings (in English)

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