



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
MENGOZZI  
delivered on 21 May 2014<sup>1</sup>

**Case C-575/12**

**AS Air Baltic Corporation**  
**v**  
**Valsts robežsardze (Request for a preliminary ruling**  
**from the administratīvā apgabaltiesa (Latvia))**

(Area of freedom, security and justice — Border control, asylum and immigration — Regulation (EC) No 562/2006 — Article 5(1) — Crossing of borders — Requirement for a valid visa contained in a valid travel document — Regulation (EC) No 810/2009 — Effect of cancellation of the travel document on the validity of the visa contained therein)

1. May a third-country national, subject to a visa requirement, be allowed entry to the territory of the European Union on presenting himself at an external border with a valid visa contained in an invalid travel document and a valid travel document containing no visa? That is the point at issue in this request for a preliminary ruling.

### **I – Legal framework**

#### *A – EU law*

##### **1. The Schengen Borders Code**

2. The aim of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code),<sup>2</sup> as stated in Article 1 thereof, is to establish ‘rules governing border control of persons crossing the external borders of the Member States of the European Union’.

3. Article 5(1) of the Schengen Borders Code lists the entry conditions for third-country nationals as follows:

‘For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

- (a) they are in possession of a valid travel document or documents authorising them to cross the border;

<sup>1</sup> — Original language: French.

<sup>2</sup> — OJ 2006 L 105, p. 1.

(b) they are in possession of a valid visa, if required ...

...'

4. Article 5(4)(b) of the Schengen Borders Code provides:

'By way of derogation from paragraph 1:

...

(b) third-country nationals who fulfil the conditions laid down in paragraph 1, except for that laid down in point (b), and who present themselves at the border may be authorised to enter the territories of the Member States, if a visa is issued at the border ...

...

If it is not possible to affix a visa in the document, it shall, exceptionally, be affixed on a separate sheet inserted in the document. ...'

5. Article 7(3) of the Schengen Borders Code is worded as follows:

'On entry and exit, third-country nationals shall be subject to thorough checks.

(a) [T]horough checks on entry shall comprise verification of the conditions governing entry laid down in Article 5(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:

- (i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;
- (ii) thorough scrutiny of the travel document for signs of falsification or counterfeiting;
- (iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;

...'

6. Article 10(1)(b) of the Schengen Borders Code provides that '[t]he travel documents of third-country nationals shall be systematically stamped on entry and exit. In particular an entry or exit stamp shall be affixed to ... the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border'.

7. Article 13(1) of the Schengen Borders Code provides that '[a] third-country national who does not fulfil all the entry conditions laid down in Article 5(1) ... shall be refused entry to the territories of the Member States'.

## 2. The Visa Code

8. The aim of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code),<sup>3</sup> as stated in Article 1(1) thereof, is to establish ‘the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period’.

9. Article 12 of the Visa Code, which deals with travel documents, is worded as follows:

‘The applicant shall present a valid travel document satisfying the following criteria:

- (a) its validity shall extend at least three months after the intended date of departure from the territory of the Member States or, in the case of several visits, after the last intended date of departure from the territory of the Member States. ...
- (b) it shall contain at least two blank pages;
- (c) it shall have been issued within the previous 10 years.’

10. Article 21(3) of the Visa Code specifies that, ‘[w]hile checking whether the applicant fulfils the entry conditions, the consulate shall verify ... that the travel document presented is not false, counterfeit or forged’.

11. Article 34 of the Visa Code is worded as follows:

‘1. A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued ... A visa shall in principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such annulment.

2. A visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. A visa shall in principle be revoked by the competent authorities of the Member State which issued it. A visa may be revoked by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such revocation.

...

5. If a visa is annulled or revoked, a stamp stating “ANNULLED” or “REVOKED” shall be affixed to it ...

6. A decision on annulment or revocation of a visa and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex VI.

7. A visa holder whose visa has been annulled or revoked shall have the right to appeal ...’

3 — OJ 2009 L 243, p. 1.

B – *Latvian law*

12. Article 4(1)(1) and (2) of the Imigrācijas likums (Immigration Law) is worded as follows:

‘1. Foreign nationals may enter and stay within the territory of the Republic of Latvia where they are in possession of both:

(1) a valid travel document ...

(2) a valid visa in a valid travel document ...’<sup>4</sup>

13. Article 21(1) of the Immigration Law provides that the carrier is to make sure that foreign nationals carried by it are in possession of the necessary documents for entry into the Republic of Latvia. Failure to fulfil that obligation may be punished by the imposition of an administrative fine.

**II – The dispute in the main proceedings and the questions referred for a preliminary ruling**

14. On a flight between Moscow (Russia) and Riga (Latvia) on 8 October 2010, the airline AS Air Baltic Corporation carried an Indian national who, at border control on arrival, presented a valid Indian passport which contained no Schengen visa, along with a cancelled Indian passport containing a multiple entry category ‘C’ Schengen visa issued by the Italian Republic and valid for the period 25 May 2009 to 25 May 2014. The cancelled passport bore the following annotation: ‘Passport cancelled. Valid visas in the passport are not cancelled.’

15. The Latvian authorities responsible for checking whether third-country nationals fulfil the conditions for entry to the territory of the European Union refused the Indian national entry on the ground that he was not in possession of a valid visa contained in a valid travel document.

16. In addition, the Latvian border guards took the view that the airline had infringed national immigration law by carrying to Latvia a passenger who was not in possession of the necessary documents for entry to Latvian territory. Consequently, by decision of 14 October 2010, they imposed on the airline an administrative fine of LVL 2 000.

17. Air Baltic Corporation appealed that decision to the head of the national border control authorities, who, by decision of 9 December 2010, upheld the fine. Air Baltic Corporation thereupon brought a court action, which were dismissed on 12 August 2011.

18. Air Baltic Corporation subsequently brought an appeal before the administratīvā apgabaltiesa (Latvia) (Regional Administrative Court or ‘the referring court’), seeking annulment of the decision imposing the administrative fine in question.

19. According to that court, although Latvian law does indeed require presentation at the border of a valid visa affixed to a valid travel document, it is not clear whether EU law requires third-country nationals subject to a visa requirement<sup>5</sup> to be in possession, when crossing an external border of the European Union, of a valid visa that is contained in a travel document which is also valid; or indeed whether, under EU law, the cancellation of a travel document containing a visa has any effect on the validity of the visa. The administratīvā apgabaltiesa is accordingly uncertain whether the border guards were entitled to treat the Indian national as not having been in possession of the necessary

4 — The provision is to be understood as meaning that, in order to be authorised to enter, third-country nationals subject to a visa requirement must present a valid travel document to which a valid visa is affixed.

5 — See Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1) and the various acts amending that regulation.

travel documents for crossing the border. Lastly, it observes that — as the parties to the proceedings before it pointed out — the authorities in the Member States follow different practices in cases where third-country nationals present themselves at an external border with both a valid visa contained in an invalid travel document and a separate, valid travel document containing no visa.

20. Thus faced with a difficulty relating to the interpretation of EU law, the administratīvā apgabaltiesa (Latvia) decided to stay the proceedings and, by order received at the Registry of the Court of Justice on 7 December 2012, to refer the following three questions to the Court for a preliminary ruling on the basis of Article 267 TFEU:

- ‘1. Must Article 5 of [the Schengen Borders Code] be interpreted as meaning that existence of a valid visa contained in a valid travel document is a mandatory pre-condition for the entry of a third-country national?
2. Under [the Visa Code], does cancellation of a travel document to which a visa sticker is affixed mean that the visa issued is also invalidated?
3. Are national rules which require, as a mandatory pre-condition for the entry of third-country nationals, the existence of a valid visa contained in a valid travel document compatible with [the Schengen Borders Code] and [the Visa Code]?’

### III – The procedure before the Court

21. Air Baltic Corporation, the Latvian, Italian and Finnish Governments, the Swiss Confederation<sup>6</sup> and the European Commission lodged written observations before the Court.

22. At the hearing on 19 March 2014, oral submissions were made by Air Baltic Corporation, the Latvian and Finnish Governments and the Commission.

### IV – Legal analysis

23. If the invalidity of the travel document to which a visa has been affixed affects the validity of the visa itself, then the question whether a third-country national may be authorised to enter the territory of the European Union on the strength of an invalid travel document containing a visa and a valid travel document does not arise.

24. It is therefore necessary for me to reorganise slightly the questions referred by the national court and to begin by considering Question 2. I shall then consider the question whether the Schengen Borders Code requires that a valid visa be contained in a valid travel document at the time of crossing an external border of the European Union. Lastly, in the event that that question is answered in the negative, it will be necessary for me to determine whether the Member States are entitled, under the Schengen Borders Code and the Visa Code, to impose an additional condition of entry over and above the conditions laid down in those codes.

<sup>6</sup> — In accordance with Article 8(2) of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ 2008 L 53, p. 52).

*A – The effects, if any, on the validity of the visa itself of the expiry of the travel document to which it is affixed*

25. I would observe at the outset that Article 34 of the Visa Code governs the circumstances in which visas are to be annulled or revoked. Accordingly, a visa is to be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued<sup>7</sup> and must be revoked where it becomes evident that the conditions for issuing it are no longer met.<sup>8</sup>

26. The Visa Code provides that, in both cases, it is for the competent national authorities which issued the visa or the competent authorities of another Member State to decide on the annulment or revocation of the visa.<sup>9</sup> The authorities of the Member States thus have sole competence to rule on the validity of visas.

27. The revocation or annulment of a visa is evidenced by the affixing of a stamp to the visa itself.<sup>10</sup> A decision to annul or revoke a visa, together with the reasons on which that decision is based, must also be brought to the attention of the visa holder by means of the communication of a standard form.<sup>11</sup>

28. It can be seen from the standard form that the fact that the travel document presented at the time of applying for a visa ceases to be valid is not one of the reasons justifying annulment or revocation of a visa. It is apparent from the form that the only such reason relating directly to the travel document is that the document presented is ‘false, counterfeit or forged’.

29. Since it is not in dispute that the Indian national in question in the dispute before the referring court met the conditions for the issue of the visa at the time of making his visa application, the question which arises is whether the fact that the passport containing the visa ceases to be valid could have led to the visa’s revocation.

30. Clearly, at the time of applying for a visa, the applicant must present a valid travel document. However, it is clear from Article 34 of the Visa Code, read in conjunction with Annex VI thereto, that the fact that, after the visa was issued, the travel document ceased to be valid does not call into question the fact that the conditions for issuing the visa were met, at least not if the person concerned is able to produce a new valid travel document.

31. It must also be emphasised that the Visa Code grants a right of appeal to anyone whose visa has been revoked. That appeal is to be brought against the Member State which has decided on the revocation and the person concerned must be given information regarding the appeal procedure to be followed. Lastly, the revocation must be notified and entered in the visa information system (VIS).<sup>12</sup> The right to receive information and to bring an appeal could not be guaranteed if the validity of a Schengen visa were to depend on a decision taken by the authorities of a non-member State.

7 — Article 34(1) of the Visa Code. See also point 2 of Part A of Annex V to the Schengen Borders Code.

8 — Article 34(2) of the Visa Code.

9 — As to the cases in which the competent authorities of a Member State other than the Member State of issue may decide on the annulment of a visa, see the judgment in *Vo*, C-83/12 PPU, EU:C:2012:202, paragraph 39. Where the authorities of a Member State other than that which issued the visa annul or revoke a visa, they are required to inform the authorities of the Member State of issue to that effect (see Article 34(1) and (2), *in fine*, of the Visa Code).

10 — Article 34(5) of the Visa Code.

11 — Article 34(6) of the Visa Code and Annex VI thereto.

12 — Article 34(6) to (8) of the Visa Code.



32. The legal system governing the annulment and revocation of visas, as laid down in the Visa Code, is thus clearly founded on the premiss that it is the authorities of the Member States which must take decisions on annulment or revocation. In that sense, there is a certain parallelism of procedural requirements, inasmuch as it is those same authorities which issue visas.<sup>13</sup>

33. Indeed, once issued, a visa will take effect in all Member States. It is important, therefore, that the competence to issue, or to refuse the issue, of a visa not be circumvented as a consequence of decisions taken by the authorities of non-member States. In other words, the principle of mutual recognition must take precedence unless and until border guards in the European Union become aware of a significant change in the situation of a third-country national of such a kind as to call into question the assessment made by the authority which issued the visa in question.

34. I cannot, therefore, endorse the position expressed by the Latvian Government at the hearing, which is that, once the passport to which a visa has been affixed ceases to be valid, the passport considered as a whole — that is to say, including any Schengen visa that it may contain — is nothing more than a piece of paper.

35. For all the foregoing reasons, it must be held that a decision declaring a Schengen visa to be invalid may be taken only in the circumstances described in Article 34 of the Visa Code and, in any event, falls within the sole competence of the authorities of the Member States. The fact that the travel document to which a Schengen visa has been affixed ceases to be valid cannot per se affect the validity of the visa itself, as was indeed recognised by the authorities which issued the passport in question when they affixed the stamp stating that, although the passport was cancelled, valid visas contained in the passport were not.

#### *B – The purported obligation to present a valid visa contained in a valid travel document*

36. Given that the Indian national should not have been refused entry to the territory of the European Union simply because the passport containing the Schengen visa had been cancelled, given that the invalidity of the passport does not, in itself, affect the validity of the visa, it remains to be established whether the Schengen Borders Code requires, as a condition of entry, possession of a valid visa contained in a valid travel document.

37. In order to make that determination, I shall begin by demonstrating the inadequacy of a literal interpretation, because of differences between the various language versions, and the need to carry out a schematic analysis. I shall then ascertain whether a teleological interpretation fits with the conclusions drawn from the first analysis, before going on to make one or two concluding remarks.

##### *1. The inadequacy of a literal interpretation and linguistic divergence*

38. Article 5(1) of the Schengen Borders Code lists the conditions which third-country nationals must meet in order for their entry to the territory of the European Union to be authorised. It lists five cumulative conditions. Under point (a), third-country nationals must be ‘in possession of a valid travel document or documents authorising them to cross the border’; under point (b), such nationals must be ‘in possession of a valid visa’, where required.

<sup>13</sup> — Understandably, the applicant in the main proceedings could not, solely on the basis of the invalidity of the passport presented, have anticipated how the EU border guards would treat the visa. Nor was it in a position to refuse to embark the passenger in question at Moscow: first of all, the passport expressly stated that the visas which it contained continued to be valid and, secondly and in any event, under the Visa Code, the competent authorities of the Member States have sole competence to revoke visas. Had the airline acted otherwise, had it treated the visa as invalid purely because the passport had ceased to be valid and consequently refused to embark the passenger at Moscow, the guarantees provided by Article 34 of the Visa Code would have been deprived of any practical effect.

39. A strict, literal interpretation of Article 5(1) immediately reveals, first, that the condition relating to possession of a valid travel document is distinct from that relating to possession of a visa and, secondly, that the legislation is silent as to any requirement concerning the ‘physical’ presentation of those two documents.

40. Nevertheless, taking into account the observations made by the Finnish Government, I am of the view that, even though it does not lay down any express obligation to present a valid visa contained in a valid travel document when crossing an external border of the European Union, Article 5(1) of the Schengen Borders Code cannot, given the scheme of which it forms a part, be considered in isolation. Article 5(1) of the Schengen Borders Code must therefore be read not only together with all the other provisions of the Schengen Borders Code but also in conjunction with the relevant provisions of the Visa Code, to which the Schengen Borders Code is closely related.<sup>14</sup>

41. I would therefore propose, as is entirely customary, to supplement the literal analysis with a schematic and teleological analysis. That is all the more necessary since the parties concerned which have made submissions in these proceedings have referred to Article 7(3)(a)(i) of the Schengen Borders Code in their discussion of the question whether or not a valid visa, for the purposes of Article 5(1) of the Schengen Borders Code and the Visa Code, is to be understood as a visa contained in a valid travel document. As far as the Finnish Government is concerned, inasmuch as Article 7(3)(a)(i) of the Schengen Borders Code states that the travel document must be ‘accompanied’ by a valid visa, that means that only a valid travel document which contains a visa may be presented at the border.

42. The applicant in the main proceedings observes, on this point, that, although the Latvian version of Article 7(3)(a)(i) of the Schengen Borders Code expressly states that there must be a visa in a valid travel document, the other language versions do not. The Danish, English, French and Swedish versions merely require that the travel document be ‘accompanied’ by a visa, which does not necessarily imply that the visa must be physically placed inside the valid travel document.

43. Despite the fact that the question referred by the national court concerns the interpretation of Article 5 of the Schengen Borders Code, in relation to which no differences in the various language versions have been mentioned, it must be recognised that Article 7 of that code is a fundamental provision in the common regulation of the external borders of the European Union and can thus shed light on the interpretation that must be given to Article 5.

44. It must be borne in mind in this regard that the necessity for uniform application and interpretation of EU legislation makes it impossible to consider one version of the text in isolation, but requires that it be interpreted on the basis of both the real intention of the legislature and the aim that the latter seeks to achieve, in the light, in particular, of the versions in all languages.<sup>15</sup> The wording used in one language version of a provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions, since such an approach would be incompatible with the requirement for uniform application of EU law.<sup>16</sup>

45. The need to confirm the initial inference drawn from a literal interpretation of Article 5(1) of the Schengen Borders Code and to surmount the interpretative difficulties arising from the various language versions of Article 7(3)(a)(i) of the code make it necessary to supplement this reasoning with a schematic and teleological analysis.

14 — See, for example, Article 21(1) of the Visa Code.

15 — *Zurita García and Choque Cabrera*, C-261/08 and C-348/08, EU:C:2009:648, paragraph 54 and the case-law cited.

16 — *Zurita García and Choque Cabrera*, EU:C:2009:648, paragraph 55 and the case-law cited.



## 2. Schematic analysis

46. Since the issue of a visa takes place before border checks are carried out at the external borders of the European Union, I shall begin by analysing the Visa Code.

47. Essentially, third-country nationals must lodge an application for a visa at the relevant consulate no more than three months before the start of their visit.<sup>17</sup> They must, in particular, submit an application using a standard form<sup>18</sup> and present a travel document,<sup>19</sup> which must remain valid for at least three months after the last intended date of departure from the territory of the Member States,<sup>20</sup> contain at least two blank pages and have been issued within the previous 10 years.<sup>21</sup> In addition, it is necessary to specify, in sections 12 to 16 of the standard application form, the type of travel document presented by the applicant, the document number, the dates of issue and expiry and the issuing authority.

48. Once the completed visa application form has been lodged with the competent authority, the latter must verify ‘whether the applicant fulfils the entry conditions set out in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code’<sup>22</sup> and, in particular, that ‘the travel document presented is not false, counterfeit or forged’.<sup>23</sup> Multiple-entry visas, such as the visa issued in the case before the referring court, are issued with a period of validity of between six months and five years.<sup>24</sup>

49. The visa sticker is then filled in in accordance with the requirements laid down in Article 27 of the Visa Code and Annex VII thereto. It must contain information relating to the period during which the visa holder’s intended stay is authorised and the number of the travel document to which the visa sticker is affixed, unless the visa is affixed to a separate sheet.<sup>25</sup> It is then affixed in accordance with the requirements of Article 29 of the Visa Code and Annex VIII thereto. It must, in principle, be affixed ‘to the first page of the travel document that contains no entries or stamps’,<sup>26</sup> unless it is affixed to a separate sheet.<sup>27</sup>

50. The time of issue of a visa does not coincide with the time of crossing the external border of the European Union.<sup>28</sup> Indeed, a multiple-entry visa may, as mentioned, be valid for between six months and five years. Accordingly, the Visa Code merely requires that the travel document presented at the time of making the visa application remain valid for at least three months after the last intended date of departure from the territory of the Member States.<sup>29</sup> In any event, I would reiterate that that particular requirement applies merely as one of the conditions which must be met when applying for a visa, since what happens to the travel document between the time when a visa application is lodged and the time when the external border of the European Union is actually crossed is, in any event, beyond the control of the consular authorities.

17 — Article 9(1) of the Visa Code.

18 — Article 10(3)(a) of the Visa Code and Annex I thereto.

19 — Article 10(3)(b) of the Visa Code.

20 — In the case of several visits — which is the position at issue in the main proceedings — see Article 12(a) of the Visa Code.

21 — Points (b) and (c), respectively, of Article 12 of the Visa Code.

22 — Article 21 of the Visa Code.

23 — Article 21(3)(a) of the Visa Code.

24 — Article 24(2) of the Visa Code.

25 — See point 6 of Annex VII to the Visa Code.

26 — Point 1 of Annex VIII to the Visa Code.

27 — See Article 29(2), (3) and (5) of the Visa Code.

28 — Except in exceptional cases: see Chapter VI of the Visa Code.

29 — Article 12(a) of the Visa Code.

51. Thus, after the consular authorities have, amongst other things, verified the validity of the travel document presented and the visa has been issued, the checks carried out at the border constitute a separate step.<sup>30</sup>

52. As regards the Schengen Borders Code, I would observe first of all that its aim is to establish ‘rules governing border control of persons crossing the external borders of the Member States’.<sup>31</sup> It is clearly of fundamental importance that those rules be applied in uniform fashion and, in this connection, I share the concerns expressed by the applicant in the main proceedings in relation to the divergent national practices which that company mentions.

53. As I have already pointed out, the conditions for entry laid down in Article 5 of the Schengen Borders Code include, in particular, possession of a valid travel document or documents authorising the crossing of the border and possession of a valid visa, where one is required. It must be observed that nowhere in this list of entry conditions is there a requirement to present *the* valid travel document that contains *the* valid visa.

54. On crossing a border, third-country nationals are subject to thorough checks which consist in verification of the entry conditions laid down in Article 5(1) of the Schengen Borders Code and a detailed examination of whether the third-country national concerned is in possession of a travel document which is ‘valid ... and which has not expired’, and that the document is ‘*accompanied*’ by the requisite visa.<sup>32</sup> Entry and exit stamps ‘on the travel document’ are also examined in order to verify, by comparing the dates, that the person concerned has not already exceeded the maximum duration of authorised stay in the European Union.

55. There are two separate stages in the thorough checks provided for in Article 7(3) of the Schengen Borders Code: (i) verification of the mere fact of possession — that is to say, whether the third-country national indeed has a valid travel document and a valid visa — and (ii) the examination proper, by which I mean the more substantive verification — including checking for signs of falsification or counterfeiting, comparison of the dates of entry and exit, and verification that the third-country national has sufficient means for his return.<sup>33</sup>

56. That confirms the inference drawn from a reading of Article 5(1) of the Schengen Borders Code that presentation of a valid travel document is a requirement quite separate from that of presenting a valid visa.

57. Once the checks have been carried out, entry may be authorised. In such case, the authorities must systematically stamp the travel documents ‘*bearing* a valid visa, enabling third-country nationals to cross the border’<sup>34</sup> presented by third-country nationals on entry as on exit.<sup>35</sup> The validity condition is laid down only in relation to the visa, not to the travel document.

30 — Article 30 of the Visa Code provides that mere possession of a visa does not confer an automatic right of entry.

31 — Article 1 of the Schengen Borders Code.

32 — Article 7(3)(a)(i) of the Schengen Borders Code; my italics.

33 — Article 7(3)(a)(ii) to (vi) of the Schengen Borders Code. On the third-country national's exit from the national territory, the Schengen Borders Code again draws a certain distinction, providing that the thorough checks to be carried out on exit include verification that the third-country national is in possession of a document valid for crossing the border (Article 7(3)(b)(i) of the Schengen Borders Code) and ‘may also comprise ... verification that the person is in possession of a valid visa, if required’ (Article 7(3)(c)(i) of the code).

34 — Article 10(1) of the Schengen Borders Code; my italics.

35 — Article 10(1)(a) of the Schengen Borders Code.

58. In the alternative case, where the third-country national does not meet all the conditions laid down in Article 5(1) of the Schengen Borders Code, entry is to be refused by a substantiated decision, notice of which is to be given using a standard form.<sup>36</sup> One of the grounds for refusal set out in the form is the fact that the person in question has no valid travel document(s)<sup>37</sup> and the fact that he has no valid visa.<sup>38</sup>

59. It follows from the foregoing analysis that the legislature did not lay down any express requirement that the valid visa appear within a valid travel document. Not only are those two entry conditions addressed separately by Article 5(1) of the Schengen Borders Code, but the distinction is also evident in the general structure of the other provisions.<sup>39</sup>

60. Consequently, from both a literal and a schematic perspective, there is nothing to preclude an interpretation of Article 5 as meaning that, in order to be authorised to enter the territory of the European Union, a third-country national subject to a visa requirement is not required to be in possession of a valid visa contained in a valid travel document.

61. It nevertheless remains to be ascertained whether that interpretation might imperil the objectives pursued by the Visa Code and the Schengen Borders Code.

### 3. Teleological interpretation

62. The Schengen Borders Code establishes a system of border surveillance which is designed to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally and to apprehend such persons.<sup>40</sup> In addition, recital 6 of the preamble to the Schengen Borders Code states that border control ‘is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control’ and that it should help ‘to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States’ internal security, public policy, public health and international relations’.<sup>41</sup>

63. According to the Court, the Schengen Borders Code ‘is part of the more general context of an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime. ... The system established by the Schengen Agreement is consequently based on compliance with harmonised rules for external border controls and, in the present case, on strict compliance with the conditions of entry of third-country nationals into the territory of the States which are party to that agreement, as established by [the Schengen Borders Code]. Each Member State whose territory is part of the Schengen area must have confidence that the controls carried out by every other State in the Schengen area are effective and stringent.’<sup>42</sup> Again according to the Court, ‘border checks serve, first, to ensure that persons may be authorised to enter the territory of the Member State or authorised to leave it and, second, to prevent persons from circumventing those checks’.<sup>43</sup>

36 — See Article 13(2) of the Schengen Borders Code.

37 — See point A of the form set out in Part B of Annex V to the Schengen Borders Code.

38 — See point C of the form set out in Part B of Annex V to the Schengen Borders Code.

39 — This conclusion also seems to be borne out by point 6.1 of the Practical Handbook for Border Guards (Schengen Handbook) produced by the Commission (C(2006) 5186 final of 6 November 2006).

40 — Article 12(1) of the Schengen Borders Code and *Parliament v Council*, C-355/10, EU:C:2012:516, paragraph 70.

41 — *Parliament v Council*, EU:C:2012:516, paragraph 70, and *ANAFE*, C-606/10, EU:C:2012:348, paragraph 24.

42 — *ANAFE*, EU:C:2012:348, paragraphs 25 and 26.

43 — *Adil*, C-278/12 PPU, EU:C:2012:508, paragraph 61 and the case-law cited.

64. Adoption of the Visa Code, on the other hand, is part and parcel of the overall objective of gradually establishing an area of freedom, security and justice. The Visa Code itself pursues the two-fold objective of establishing a multi-layer system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices.<sup>44</sup> In construing the Visa Code, the Court of Justice therefore ensures that neither the objective of facilitating travel nor that of preventing different treatment of visa applicants is compromised.<sup>45</sup>

65. The Finnish Government maintains that it is easier to attain the objectives of security, smooth border crossing, the prevention of threats to public order, public security and public health, the countering of cross-border criminality and the combating of illegal immigration and trafficking in human beings when a valid visa is affixed to a travel document which is also valid.

66. That opinion should not be given undue weight and, in any event, is not decisive.

67. When I described earlier the system established by the Schengen Borders Code in conjunction with the Visa Code, I highlighted a number of factors which, while ensuring the effectiveness of border controls, do not lend support to the argument put forward by the Finnish Government. In the case before the referring court, the authorities in charge of controlling the external border were presented with both the travel document on the basis of which the visa was issued and the 'new' travel document. They were thus able to check that there was a 'match' between the document furnished at the time when the visa application was made — which was actually examined by the competent consular authorities — and the document containing the valid visa, which was presented at the time of crossing the external border of the European Union. On being shown the valid travel document they were thus also able to confirm the identity of the third-country national in question and to verify that the first condition of entry had been met. Lastly, the simultaneous presentation of the two successive travel documents rendered possible an adequate check of the entry and exit stamps on the basis of which the authorities verify that the maximum duration of authorised stay has not been exceeded.

68. Whilst I recognise the fundamental importance to the Member States concerned of there being efficient and effective controls at the external borders of the European Union, and accept that the presentation of two separate travel documents, one valid, the other invalid, might complicate to some degree the task of the authorities responsible for border control,<sup>46</sup> it has nevertheless not been shown that the situation under consideration in this case imperilled, or might imperil, to any significant degree the security objective pursued by the Schengen Borders Code.

69. In this connection, I see a substantial difference between this case and the recurrent practical difficulties, to which the Finnish Government refers, which arise when certain third-country nationals present themselves at border control with far more than just two travel documents, both valid and invalid.

44 — See recital 3 of the preamble to the Visa Code and *Vo*, EU:C:2012:202, paragraphs 34 and 35.

45 — *Koushkaki*, C-84/12, EU:C:2013:862, paragraphs 52 and 54.

46 — The task would, in any event, be rendered no more arduous than that in the exceptional case contemplated by the second subparagraph of Article 10(3) of the Schengen Borders Code, pursuant to which, at the request of the third-country national concerned, the insertion of an entry or exit stamp may be dispensed with, in which case entry or exit is recorded on a separate sheet containing various items of information and given to the third-country national. In that case also, in order to check that the maximum duration of authorised stay has not been exceeded, the authorities will need to check the content of at least two separate documents, namely the separate sheet and the travel document containing, where appropriate, the valid visa. Equally, in certain circumstances, a visa sticker may be affixed to a separate sheet (see Article 29(2), (3) and (5) of the Visa Code).

#### 4. Concluding remarks

70. Finally, authorising the entry of a third-country national who, on being checked at the external borders of the European Union, presents an invalid travel document containing the necessary visa for entry to EU territory together with a valid travel document appears to be in accordance with international standards. Air Baltic Corporation and the Latvian Government have themselves stated, without being contradicted, that point 3.53 of Annex 9 to the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, recommends that, in cases where the travel document has expired even though it contains a valid visa, the visa should continue to be regarded as valid until its expiry date if it is accompanied by a valid travel document.

71. Nevertheless, the Latvian Government questions whether that may be transposed to the context of the Schengen Borders Code, inasmuch as the abovementioned convention recommends the practice in a context in which the visa authorises the third-country national's entry solely into the territory of the State which issued the visa. It must be observed, however, that, although the European Union is not a party to that convention, it has already adopted to some extent the international standard in question, since an amendment to the Handbook for the processing of visa applications and the modification of issued visas,<sup>47</sup> made by Commission Implementing Decision C(2011) 5501 final of 4 August 2011 inserted a new paragraph in point 4.1.1, which states that '[i]n principle a person should travel with a valid visa affixed in a valid travel document. However, when all the blank pages of the Schengen visa holder's travel document have been used for affixing visas or entry/exit stamps, he may travel on the basis of the "full" but invalidated travel document containing the valid visa, and a new travel document.'<sup>48</sup>

72. The Commission has thus taken the view that the presentation of two separate travel documents, one invalid but containing a valid visa and the other valid but containing no visa, would not compromise the effectiveness of controls at the external borders of the European Union. For its part, the Latvian Government stated at the hearing that it had implemented the recommendation in question on the occasion of a reform of national legislation.

73. Admittedly, point 4.1.1 of the Handbook for the processing of visa applications and the modification of issued visas addresses only the specific case where the document containing the visa has ceased to be valid because no more blank pages are available and, moreover, it is merely a recommendation. Nevertheless, it is important that all the objectives of the Visa Code be attained, including that of preventing visa shopping and the different treatment of visa applicants.<sup>49</sup>

74. In this connection, the divergence in national practices to which the national court, the applicant in the main proceedings and the Latvian Government draw attention is worrying, since it will tend to make the external borders of the European Union penetrable to varying degrees. There is therefore a real risk, as Air Baltic Corporation points out, that this discretion on the part of national authorities in authorising or refusing entry to the territory of the European Union in cases where two travel documents are presented, one invalid and containing a visa and the other valid but containing no visa, might become a criterion for selecting the Member State through which third-country nationals choose to enter EU territory. It thus appears to be necessary to harmonise the practice of border guards beyond the simple case where the travel document no longer has any blank pages available.

47 — Decision C(2010) 1620 final of 19 March 2010.

48 — It had already been made clear in the Schengen Handbook that the lack of empty pages in a passport is not, in itself, a valid and sufficient ground to refuse the entry of a person (see point 4.5 of the Schengen Handbook).

49 — See recital 18 to the Visa Code. According to the observations made by the Latvian Government, it appears that the Indian national in the dispute before the referring court was authorised to enter the territory of the European Union on presenting himself, in the same circumstances, at the borders of Member States other than the Republic of Latvia.



75. Furthermore, the reasons which have led the authorities of the third country which issued the travel document to invalidate it are usually not known to the authorities of the Member States responsible for external border controls. In the dispute before the referring court those reasons still remain unknown. But, provided that the invalidity has been ‘remedied’ by the presentation of a travel document whose validity covers the maximum duration of authorised stay in the European Union, and once the necessary checks have been carried out into the authenticity of the new document presented, there is, in my view, no reason to restrict the entry of third-country nationals who present an invalid travel document and a valid travel document merely to those cases in which the invalidity is a result of the lack of available blank pages.

76. In any event, given that the Commission and the Member States which have followed its recommendation have taken the view that, in that latter case, checking the duration of stay is not rendered more difficult by the presentation of separate travel documents, I fail to see why that should be so in the present situation. Indeed, as I have already emphasised, the chronological continuity evidenced by the two travel documents presented by the Indian national enabled the border guards to verify that the number of days of authorised presence on the territory of the European Union had not been exceeded. Lastly, I should make it clear that the option outlined is without prejudice to the application of Article 11 of the Schengen Borders Code, which provides that ‘[i]f the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned’, that presumption being rebuttable.

77. For all the foregoing reasons, I consider that Article 5(1) of the Schengen Borders Code is to be interpreted as meaning that the valid visa required of a third country national subject to a visa requirement when crossing an external border of the European Union need not necessarily be contained in a valid travel document and that the entry conditions laid down in Article 5(1)(a) and (b) of that code may be treated separately, provided that the third-country national in question presents, at the time of crossing an external border, an authentic travel document whose validity covers the maximum duration of stay authorised by the Schengen visa contained in a travel document which has become invalid.

### *C – Question 3*

78. In the event that the Schengen Borders Code and the Visa Code do not require a third country national subject to a visa requirement to present such a visa in a valid travel document, the national court asks, in substance, whether the Member States are entitled to impose additional conditions of entry over and above those laid down in those two codes.

79. While the entry conditions are listed in Article 5 of the Schengen Borders Code, that provision must necessarily be read in conjunction with Article 13 of that code, which deals with the cases in which entry is to be refused.

80. Accordingly, ‘[a] third-country national who does not fulfil all the entry conditions laid down in Article 5(1) ... shall be refused entry’. A decision to refuse entry must be brought to the attention of the third-country national using a standard form.<sup>50</sup> That form sets out nine grounds for refusing entry, eight of which mirror the entry conditions specified in Article 5(1) of the Schengen Borders Code.<sup>51</sup>

50 — Part B of Annex V to the Schengen Borders Code.

51 — Grounds A and B relate to Article 5(1)(a) of the Schengen Borders Code. Grounds of refusal C and D are comparable to those of Article 5(1)(b) of the code. Grounds of refusal E and G relate to Article 5(1)(c) of the code. Ground H is referable to Article 5(1)(d) and (e) of the code and ground I is also referable to Article 5(1)(e) of the code.



81. Only one of the grounds of refusal bears no direct relation to Article 5: that relating to the case where the maximum authorised duration of stay has been exceeded.

82. In any event, the standard form does not allow for the possibility of the border guards adding any further grounds for refusal to the list contained set out therein.

83. In the light of the Court's *dicta* in relation to Article 32 of the Visa Code in its judgment in *Koushkaki*,<sup>52</sup> the fact that Article 13 of the Schengen Borders Code lays down, through a reference to Article 5 of that code, a list of the reasons on the basis of which a decision to refuse entry may be taken, while at the same time providing that the reason is to be notified to the person concerned by means of the form set out in Annex V to the code, 'is a factor supporting the interpretation that the list of grounds of refusal ... is exhaustive'.

84. Moreover, the objective of facilitating legitimate travel, pursued by the Visa Code and referred to by the Court in paragraph 52 of its judgment in *Koushkaki* would be compromised if the authorities of a Member State were able to refuse entry to a third-country national even though that person meets all the entry conditions listed in Article 5 of the Schengen Borders Code and has not exceeded the maximum duration of authorised stay.

85. Furthermore, combating visa shopping requires that the harmonised application of the entry conditions is ensured, as well as the corollary thereto, that is to say, the harmonised application of the grounds for refusing entry.<sup>53</sup>

86. I would add that, by contrast with the case in *Koushkaki*, the additional condition introduced by the national legislature has nothing to do with the complex evaluations of individual positions that might fall within the scope of the discretion which, according to the Court, the EU legislature intentionally left to the Member States as regards the case-by-case evaluation of certain grounds for refusing to issue a visa.<sup>54</sup>

87. As the Commission rightly remarked at the hearing, the discretion acknowledged by the Court in *Koushkaki* cannot be transposed to the first two conditions of entry listed in Article 5(1) of the Schengen Borders Code, which are of a rather technical nature. Accordingly, not only does the national legislature have no right to add any additional condition to those conditions, but nor may it be argued that, in the present case, in construing those first two conditions as being so interrelated that the first could be regarded as satisfied only if the second were satisfied *in tandem*, the national legislature was exercising its discretion.

88. Accordingly, Article 5(1) of the Schengen Borders Code, read in conjunction with Article 13 of that code, is to be interpreted as meaning that the Member States may not impose additional conditions on third-country nationals for the purposes of authorising their entry to the territory of the European Union.

52 — EU:C:2013:862, paragraph 38.

53 — See, by analogy, *Koushkaki*, EU:C:2013:862, paragraph 53.

54 — See paragraph 56 et seq. of *Koushkaki*, EU:C:2013:862.

## V – Conclusion

89. In the light of all the foregoing considerations, I propose that the Court give the following answers to the questions referred for a preliminary ruling by the administratīvā apgabaltiesa, as I have reorganised them:

- (1) A decision declaring a Schengen visa to be invalid may be taken only in the circumstances described in Article 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) and, in any event, falls within the sole competence of the authorities of the Member States. The fact that the travel document to which a Schengen visa has been affixed ceases to be valid cannot per se affect the validity of the visa itself.
- (2) On a proper construction of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), a third country national subject to a visa requirement who presents himself at an external border of the European Union with an invalid travel document that contains a valid visa and a valid travel document that contains no visa meets the entry conditions laid down in Article 5(1)(a) and Article 5(1)(b) of that code, provided that the validity of the new travel document actually covers the maximum duration of stay authorised by the Schengen visa.
- (3) On a proper construction of Article 5(1) of the Schengen Borders Code, read in conjunction with Article 13 of that code, Member States may not impose additional conditions on third-country nationals for the purposes of authorising their entry to the territory of the European Union.