



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

5 February 2020\*

(Reference for a preliminary ruling — Regulation (EU) 2016/399 — Schengen Borders Code — Control at the external borders — Third-country nationals — Article 11(1) — Affixing of stamps on travel documents — Exit stamp — Determination of the time of exit from the Schengen area — Signing-on of seamen with ships that are in long-term mooring in a sea port)

In Case C-341/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 9 May 2018, received at the Court on 24 May 2018, in the proceedings

**Staatssecretaris van Justitie en Veiligheid**

v

**J. and Others,**

intervener:

**C. and H. and Others,**

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, I. Jarukaitis, E. Juhász, M. Ilešič and C. Lycourgos, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 June 2019,

after considering the observations submitted on behalf of:

- J. and Others, by K. Boele, advocaat,
- the Netherlands Government, by P. Huurnink, M.K. Bulterman and M.H.S. Gijzen, acting as Agents,
- the German Government, initially by T. Henze, R. Kanitz and J. Möller, and subsequently by the latter two, acting as Agents,

\* Language of the case: Dutch.

- the Greek Government, by S. Chala, C. Fatourou and G. Konstantinos, acting as Agents,
- the European Commission, by G. Wils and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 October 2019,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 11(1) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1, ‘the Schengen Borders Code’).
- 2 The request has been made in proceedings between the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) (‘the State Secretary’) and J. and Others, third-country nationals who are seamen, concerning the refusal to affix an exit stamp from the Schengen area to their passports when signing on with ships in long-term mooring in the port of Rotterdam (Netherlands).

### **Legal context**

#### *The Schengen Borders Code*

- 3 Recitals 6 and 15 of the Schengen Borders Code state:

‘(6) 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. Border control 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.

...

- (15) It should be possible to have checks at external borders relaxed in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at border crossing points. The systematic stamping of the documents of third-country nationals remains an obligation in the event of border checks being relaxed. Stamping makes it possible to establish, with certainty, the date on which, and where, the border was crossed, without establishing in all cases that all required travel document control measures have been carried out.’
- 4 Article 1 of that code, entitled ‘Subject matter and principles’, provides:

‘This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the Union.

It lays down rules governing border control of persons crossing the external borders of the Member States of the Union.’

5 Article 2 of that code, headed ‘Definitions’, states:

‘For the purposes of this Regulation, the following definitions apply:

- (1) “internal borders” means:
  - (a) the common land borders, including river and lake borders, of the Member States;
  - (b) the airports of the Member States for internal flights;
  - (c) sea, river and lake ports of the Member States for regular internal ferry connections;
- (2) “external borders” means the Member States’ land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders;
- ...
- (8) “border crossing point” means any crossing-point authorised by the competent authorities for the crossing of external borders;
- ...
- (10) “border control” means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;
- (11) “border checks” means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it;

...’

6 According to Article 5 of the Schengen Borders Code, entitled ‘Crossing of external borders’:

‘1. External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 39.

2. By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during fixed opening hours may be allowed:

...

- (c) in accordance with the specific rules set out in Articles 19 and 20 in conjunction with Annexes VI and VII.

...’

7 Article 6 of that code, entitled ‘Entry conditions for third-country nationals’, provides:

‘1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border ...

...

(b) they are in possession of a valid visa, if required pursuant to 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)], except where they hold a valid residence permit or a valid long-stay visa.

...

2. For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorised under a residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States.

...

5. 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 territory of the Member States, if a visa is issued at the border in accordance with Articles 35 and 36 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) (OJ 2009 L 243, p. 1)].

...’

8 Article 8 of the Schengen Borders Code, headed ‘Border checks on persons’, provides, in paragraph 3:

‘On entry and exit, third-country nationals shall be subject to thorough checks as follows:

(a) thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 6(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:

...

(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;

...

(h) in addition to the checks referred to in point (g) thorough checks on exit may also comprise:

- ...  
(ii) verification that the person did not exceed the maximum duration of authorised stay in the territory of the Member States;

...'

9 Article 11 of the code, entitled 'Stamping of the travel documents', reads as follows:

'1. The 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:

- (a) the documents, bearing a valid visa, enabling third-country nationals to cross the border;
- (b) the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border;
- (c) the documents enabling third-country nationals not subject to a visa requirement to cross the border.

...

3. No entry or exit stamp shall be affixed:

...

- (c) to the travel documents of seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call;

...'

10 Article 13 of that code, entitled 'Border Surveillance', states in paragraph 1:

'The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. ...'

11 Article 19 of that code, headed 'Specific rules for the various types of borders and the various means of transport used for crossing the external borders', provides:

'The specific rules set out in Annex VI shall apply to the checks carried out at the various types of border and on the various means of transport used for crossing border crossing points.

Those specific rules may contain derogations from Articles 5 and 6 and Articles 8 to 14.'

12 Article 20 of the Schengen Borders Code, entitled 'Specific rules for checks on certain categories of persons', states in paragraph 1:

'The specific rules set out in Annex VII shall apply to checks on the following categories of persons:

...

- (c) seamen;

...

Those specific rules may contain derogations from Articles 5 and 6 and Articles 8 to 14.’

- 13 Annex VI to the code concerns, according its heading, ‘Specific rules for the various types of border and the various means of transport used for crossing the Member States’ external borders’.
- 14 Point 3 of that annex, entitled ‘Sea borders’, contains point 3.1, entitled ‘General checking procedures on maritime traffic’, which reads as follows:

‘3.1.1. Checks on ships shall be carried out in the port of arrival or departure, or in an area provided for that purpose, located in the immediate vicinity of the vessel or on board ship in the territorial waters as defined by the United Nations Convention on the Law of the Sea[, signed in Montego Bay on 10 December 1982, entered into force on 16 November 1994, ratified by the Kingdom of the Netherlands on 28 June 1996 and approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1)]. Member States may conclude agreements according to which checks may also be carried out during crossings or, upon the ship’s arrival or departure, on the territory of a third country, respecting the principles set out in point 1.1.4.

...

3.1.5. The master shall notify the competent authority of the ship’s departure in due time and in accordance with the rules in force in the port concerned.’

- 15 Annex VII to that code, entitled ‘Special rules for certain categories of persons’, contains point 3, entitled ‘Seamen’, which states:

‘By way of derogation from Articles 5 and 8, Member States may authorise seamen holding a seafarer’s identity document issued in accordance with the International Labour Organization (ILO) Seafarers’ Identity Documents Convention No 108 (1958) or No 185 (2003), the Convention on Facilitation of International Maritime Traffic (FAL Convention) and the relevant national law, to enter the territory of the Member States by going ashore to stay in the area of the port where their ships call or in the adjacent municipalities, or exit the territory of the Member States by returning to their ships, without presenting themselves at a border crossing point, on condition that they appear on the crew list, which has previously been submitted for checking by the competent authorities, of the ship to which they belong.

...’

### *The Visa Code*

- 16 Article 35 of Regulation No 810/2009, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1) (‘the Visa Code’), entitled ‘Visas applied for at the external border’, provides in paragraph 1:

‘1. In exceptional cases, visas may be issued at border crossing points if the following conditions are satisfied:

...

- (c) the applicant’s return to his country of origin or residence or transit through States other than Member States fully implementing the Schengen *acquis* is assessed as certain.’

- 17 Article 36 of that code, entitled ‘Visas issued to seafarers in transit at the external border’, provides:
- ‘1. A seafarer who is required to be in possession of a visa when crossing the external borders of the Member States may be issued with a visa for the purpose of transit at the border where:
- (a) he fulfils the conditions set out in Article 35(1); and
  - (b) he is crossing the border in question in order to embark on, re-embark on or disembark from a ship on which he will work or has worked as a seafarer.
2. Before issuing a visa at the border to a seafarer in transit, the competent national authorities shall comply with the rules set out in Annex IX, Part 1, and make sure that the necessary information concerning the seafarer in question has been exchanged by means of a duly completed form for seafarers in transit, as set out in Annex IX, Part 2.
- ...’

- 18 Annex IX to that code contains Part 1 which, according to its title, sets out the ‘rules for issuing visas at the border to seafarers in transit subject to visa requirements’. Part 2 of that annex sets out the model form for seafarers in transit subject to the visa requirement.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 19 J. and Others are seamen and third-country nationals who entered the Schengen area through Schiphol International Airport in Amsterdam (Netherlands), before reaching the sea port of Rotterdam by land, for the purpose of signing on with specialised ships, operating autonomously, which are in long-term mooring in that port, in order to carry out on board, without those ships leaving that port, various tasks intended to prepare for erecting, inter alia, oil platforms and pipelines at sea. At the end of their period of work on board, which, according to their circumstances, amounted to 5 or 10 weeks, those seamen either arrived by land at Schiphol International Airport in Amsterdam or departed on the ship concerned.
- 20 When, on various dates during January to March 2016, those seamen presented themselves to the Zeehavenpolitie Rotterdam (Rotterdam Seaport Police, Netherlands), the national authority responsible for border control in the port of Rotterdam, indicating their intention to sign on with a ship moored in that port, that authority, departing from previous practice, refused to affix an exit stamp on their travel documents on the ground that the date on which the ship concerned would actually leave that port and, therefore, the Schengen area, was not clear.
- 21 J. and Others, as well as certain ship operators, namely C. and H. and Others, brought administrative appeals before the State Secretary to challenge those refusals. Stating that, in accordance with the consistent practice of the Netherlands authorities, such a stamp had always been issued to seamen at the time of their signing on, irrespective of whether they would leave the port shortly thereafter on board a ship, they argued that the effect of the new practice of the Rotterdam Seaport Police was that, as third-country nationals authorised, in principle, to remain in the Schengen area for a maximum period of 90 days within a 180-day period, the duration of authorised stay of the seamen concerned in the Schengen area runs out more quickly. In addition, as they are required to wait 180 days before re-entering the Schengen area, those seamen suffer a loss of income.
- 22 By decisions adopted in June and July 2016, the State Secretary dismissed those administrative appeals, first, as inadmissible in so far as they had been brought by the ship operators and, second, as unfounded in so far as they had been brought by the seamen, on the ground that the mere fact that a seaman signs on with a ship does not mean that he exits the Schengen area, within the meaning of

Article 11(1) of the Schengen Borders Code. According to the State Secretary, such an exit takes place only when the seaman concerned boards or is on board a ship, the master of which has notified the Rotterdam Seaport Police of the departure of the ship and when the latter actually then leaves the port with the seamen on board.

- 23 By four judgments of 17 May 2017, the rechtbank Den Haag (District Court, The Hague, Netherlands) allowed the appeals brought by J. and Others against those decisions on the ground that, when they signed on, the seamen concerned crossed an external border of the Member States and exited the Schengen area, within the meaning of Article 11(1) of the Schengen Borders Code. According to that court, it appears from the derogating provisions set out in Article 11(3)(c) and Annex VII to that code, relating to the rules applicable to seamen who go ashore when their ships calls in, that the EU legislature considers that when seamen embark and disembark from a ship in a sea port, that constitutes a crossing of an external border. That court takes the view that that assessment is supported by Article 36 and by the provisions of Annex IX to the Visa Code, according to which the competent national authorities may issue a transit visa to seamen for the duration of their journey from the airport of entry to the port where they sign on.
- 24 The State Secretary brought an appeal against those judgments before the Raad van State (Council of State, Netherlands).
- 25 That court notes that ships regularly remain moored in sea ports, such as that of Rotterdam, for several months. Moreover, the information provided by the State Secretary does not call into question the argument put forward before that court that the competent authorities of many Member States affix an exit stamp when seamen sign on, regardless of whether the ship with which they have signed on leaves the port shortly thereafter.
- 26 The referring court takes the view that it is not clear from the Schengen Borders Code at what moment in time a seaman who has entered the Schengen area through an airport and who, by land, reaches a ship in long-term mooring in a sea port such as that of Rotterdam to sign on there, is to be regarded as having exited the Schengen area. In particular, it is not possible to determine clearly whether such an exit requires an actual departure from the Schengen area. The Schengen Borders Code does not define the concept of ‘exit’, as referred to in Article 11(1) of that code, nor does it determine where the external borders of the Member States are precisely located, nor when they are crossed. The question of whether an exit stamp should be affixed, and if so, when, is therefore uncertain.
- 27 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 11(1) of [the Schengen Borders Code] be interpreted as meaning that a third-country national who previously entered the Schengen area, for example through an international airport, exits within the meaning of the Schengen Borders Code as soon as he, as a seaman, signs on with a seagoing vessel that is already berthed in a sea port which is an external border, irrespective of whether, and if so when, he will leave that sea port with that ship? Or, in order for there to be an exit, must it first be established that the seaman will leave the sea port with the seagoing vessel concerned, and if so, does a deadline apply within which the departure must take place and at what time must the exit stamp then be applied? Or should a different time, whether or not under other conditions, be equated with “exit”?’

### **Consideration of the question referred**

- 28 By its question, the referring court asks, in essence, whether Article 11(1) of the Schengen Borders Code must be interpreted as meaning that, where a seaman who is a third-country national signs on with a ship in long-term mooring in a sea port of a State forming part of the Schengen area for the

purpose of performing work on board, before leaving that port on that ship, an exit stamp must, where provided for by that code, be affixed to the seaman's travel documents at the time he signs on, even if that ship does not leave that port shortly thereafter, or at a time subsequent to signing on and, in the latter case, at what moment in time specifically.

- 29 It is apparent from the information provided by the referring court that long-term mooring is a practice in the maritime sector whereby ships remain at berth or anchored in a port for a period of up to several months, with seamen who have signed on with such ships staying in that port for all or part of the period during which they have been signed on to carry out their work on board.
- 30 To answer the question referred, it is appropriate, as a preliminary point, the note that, as is apparent from Article 1 of the Schengen Borders Code, the subject matter and principles of that code are to develop the European Union as a common area of free movement without internal borders and to establish rules governing border control of persons crossing the external borders of the Member States forming part of the Schengen area (see, to that effect, judgment of 14 June 2012, *Association nationale d'assistance aux frontières pour les étrangers*, C-606/10, EU:C:2012:348, paragraph 23).
- 31 Under Article 2(2) of the code, 'external borders' refers, inter alia, to Member States' land borders and sea borders 'and their airports [and] sea ports', provided that they are not 'internal borders' within the meaning of that code, the latter concept referring, under paragraph 1(b) and (c) of that article, inter alia, to airports of the Member States for internal flights and to sea ports of those States for regular internal ferry connections.
- 32 According to Article 5(1) of the Schengen Borders Code, 'external borders', within the meaning of that code, may, in principle, be crossed only at border crossing points, which Member States must notify to the Commission. According to Article 2(8) of the code, the phrase 'border crossing point' means any crossing point authorised by the competent authorities for the crossing of those external borders.
- 33 In accordance with Article 11(1) of the Schengen Borders Code, the travel documents of third-country nationals are to be systematically stamped on 'entry' to and 'exit' from the Schengen area. As the Court has already had the opportunity to state, a grant of leave to enter or exit takes the form of such a stamp (judgment of 26 July 2017, *Jafari*, C-646/16, EU:C:2017:586, paragraph 52).
- 34 In the present case, it is common ground that, first, both Schiphol International Airport in Amsterdam and the sea port of Rotterdam, both situated within the territory of the Netherlands, constitute an 'airport' and a 'sea port' respectively, falling within the definition of 'external borders' of the Schengen area, as defined in Article 2(2) of the Schengen Borders Code, and, second, the Kingdom of the Netherlands notified the Commission that that entire sea port is a 'border crossing point' within the meaning of Article 2(8) of that code.
- 35 Furthermore, it is also not disputed that the seamen in question in the main proceedings entered the Schengen area through Schiphol International Airport in Amsterdam, at which time the competent Netherlands authorities affixed to their travel documents the entry stamp laid down in Article 11(1) of the Schengen Borders Code, and that those seamen then reached the sea port of Rotterdam by land for the purpose of signing on with a ship moored in that port on a long-term basis, on which they carried out their work, without the ship leaving that port. It is common ground that, at the end of that period of work on board, those seamen either arrived at Schiphol International Airport in Amsterdam by land or left the port on the ship concerned.
- 36 In that context, the question arises as to when, in the latter of those situations, the exit stamp laid down in Article 11(1) of the Schengen Borders Code should be affixed to the travel documents of those seamen.

- 37 J. and Others and the Greek Government argue that the seamen in question in the main proceedings leave the Schengen area when they sign on with one of the ships moored in the sea port of Rotterdam, because it is at that time that they cross the external border in that port by reporting to a border crossing point. The exit stamp laid down in that provision should therefore be affixed to the travel documents of those seamen on the date on which they sign on, irrespective of when the ship concerned departs.
- 38 By contrast, the Netherlands and German Governments and the Commission submit, in essence, that the seamen in question in the main proceedings exit the Schengen area when the ship with which they have signed on actually leaves the sea port concerned with those seamen on board. In that respect, those governments state that exiting that area requires the seamen concerned to cross an external geographical border of the Schengen area which is not laid down by the Schengen Borders Code but by the United Nations Convention on the Law of the Sea, which establishes that border at a distance, in principle, of 12 nautical miles measured from baselines established in accordance with that convention in the territorial waters of the Member States concerned. The exit stamp laid down in Article 11(1) of that code should therefore be affixed to the travel documents of those seamen respectively, according to the Netherlands Government and the Commission, within a reasonable timeframe or imminently before the departure of the ship concerned. The German Government considers that that stamp should be affixed on the day of exit from the Schengen area when the date of departure of the ship has been established.
- 39 In order to determine when an exit stamp should be affixed, pursuant to Article 11(1) of the Schengen Borders Code, to the travel documents of a seaman in the situation described in paragraph 28 of this judgment, it is necessary to examine, initially, when that seaman is to be regarded as having left the Schengen area, in order to then determine, based on the time of that exit, when the exit stamp laid down in that provision must be affixed by the competent national authorities.
- 40 As regards, in the first place, the determination of the time of exit from the Schengen area, it should be noted that, according to the Court's settled case-law, it follows from the requirements both of the uniform application of EU law and the principle of equality that the wording of a provision of EU law that does not contain any express reference to the law of the Member States in order to determine its meaning and scope must, throughout the European Union, be interpreted independently and uniformly throughout the European Union, irrespective of characterisation in the Member States, taking into account the wording of the provision at issue and also its context and the purpose of the rules of which it forms part (see, to that effect, inter alia, judgments of 9 November 2017, *Maio Marques da Rosa*, C-306/16, EU:C:2017:844, paragraph 38, and of 3 October 2019, *X (Long-term residents — Stable, regular and sufficient resources)*, C-302/18, EU:C:2019:830, paragraph 26).
- 41 Consequently, in the absence of a reference to national law in Article 11(1) of the Schengen Borders Code, the concept of 'exit' contained in that provision must be regarded as an autonomous concept of EU law, the meaning and scope of which must be identical in all Member States. It is therefore for the Court to give a uniform interpretation of that term in the EU legal order.
- 42 As regards, first, the wording of Article 11(1) of the Schengen Borders Code, since neither that provision nor any other provision of that code, in particular Article 2, contains a definition of the concept of 'exit' from the Schengen area, its meaning and scope must be determined in accordance with its usual meaning in everyday language (see, to that effect, inter alia, judgments of 26 July 2017, *Jafari*, C-646/16, EU:C:2017:586, paragraph 73; of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 65; and of 12 September 2019, *Koton Mağazacılık Tekstil Sanayi ve Ticaret v EUIPO*, C-104/18 P, EU:C:2019:724, paragraph 43).

- 43 In its usual meaning, the concept of ‘exit’ from the Schengen area is not ambiguous and must be understood as referring to the physical act of movement of a person from a place which is part of the Schengen area to a place which is not part of that territory (see, by analogy, judgments of 4 May 2017, *El Dakkak and Intercontinental*, C-17/16, EU:C:2017:341, paragraphs 19 to 21, and of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 30).
- 44 As regards, next, the context of Article 11(1) of the Schengen Borders Code, it should be noted at the outset that it can already be inferred from Article 2(11) and Article 6(2) of that code that a person does not exit the Schengen area whilst he or she is staying on the territory of a State forming part of that area, as those provisions equate the Schengen with the ‘territory of the Member States’.
- 45 Consequently, the mere fact that a person has crossed a ‘border crossing point’ within the meaning of Article 2(8) of that code, where, as is apparent from paragraph 32 of this judgment, the external border control imposed by that code has been carried out, does not mean that that person has exited the Schengen area if he or she is still staying in part of the territory of a State forming part of that area.
- 46 It follows that a seaman who, after entering the territory of the Schengen area through an international airport situated in a State forming part of that area, stays on a ship moored in one of the sea ports of that State during the period in which he carries out his work on board, cannot be regarded as having left the Schengen area.
- 47 It is true, that, as indicated in paragraph 31 of this judgment, Article 2(2) of the Schengen Borders Code defines the concept of ‘external borders’ of the Schengen area as referring, first, to the Member States’ land and sea borders and, second, inter alia, to their airports and sea ports, provided that they are not internal borders.
- 48 However, the sole purpose of that provision, as is apparent from its wording, is to connect certain airports and ports of the States forming part of the Schengen area to the external borders of the Schengen area for the sole purpose of, in accordance with the provisions of Article 77(2)(b) TFEU, facilitating the practical application of checks on persons crossing the external borders of the Schengen area.
- 49 As the Netherlands and German Governments argue, in essence, checks relating to the crossing of the borders of the Member States which are the external borders of the Schengen area must be carried out at a place which allows the practical and efficient organisation of those checks, without that place necessarily being the actual place where the borders are crossed.
- 50 In that regard, it should be noted that, under Article 5(2)(c) and Article 19 of the Schengen Borders Code, read in conjunction with Annex VI to that code, checks at the sea borders of the Member States may even be carried out, by way of derogation, outside the border crossing points referred to in Article 2(8) of that code, with point 3.1.1. of that annex stating in that regard that checks on ships may be carried out, depending on the circumstances, at the port of arrival or departure, or in an area set aside for that purpose, located in the immediate vicinity of the vessel or on board ship in the territorial waters as defined by the United Nations Convention on the Law of the Sea, during crossings or, if an agreement has been concluded to that effect, on the territory of a third country, upon the ship’s arrival or departure.
- 51 Furthermore, in accordance with Article 5(1) of the Schengen Borders Code, read in conjunction with Article 2(8) and (10) of that code, checks at the external borders of the Schengen area are in principle to take place at border crossing points which have been authorised by the Member States ‘for’ the crossing of those borders and are to be carried out ‘in response exclusively’ to the ‘intention to cross’ such a border or ‘the act of crossing that border’.

- 52 It thus appears that the Schengen Borders Code is based on the premiss that the control of third-country nationals at a border crossing point will be followed shortly thereafter, even if the person concerned remains temporarily on the territory of the Member State concerned, by an actual crossing of the external border of the Schengen area.
- 53 From that perspective, the presentation of a person at a border crossing point of a sea port of a State forming part of the Schengen area cannot in itself be equated with that person exiting the Schengen area, but at most reflects that person's intention, in most cases, to leave that area shortly thereafter.
- 54 In the present case, however, it is common ground that a seaman recruited to work on board a ship which is in long-term mooring in such a sea port does not intend, at the time when he arrives, for the purposes of signing on with that ship, at a border crossing point of the sea port concerned, to leave the territory of the Member State concerned shortly thereafter and, consequently, the Schengen area.
- 55 Finally, with regard to the objective pursued by Article 11(1) of the Schengen Borders Code, it should be noted that that code is part of the more general context of an area of freedom, security and justice without internal frontiers, in which, in accordance with Article 3(2) TEU and Article 67(2) TFEU, the free movement of persons is ensured in conjunction with appropriate measures with respect, inter alia, to external border controls (see, to that effect, judgment of 14 June 2012, *Association nationale d'assistance aux frontières pour les étrangers*, C-606/10, EU:C:2012:348, paragraph 25).
- 56 As is apparent from recital 6 of that code, border control at Member States' external borders 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 (see, to that effect, judgment of 14 June 2012, *Association nationale d'assistance aux frontières pour les étrangers*, C-606/10, EU:C:2012:348, paragraph 24).
- 57 In that context, checks carried out at border crossing points as part of border controls are intended, under Article 2(11) of the Schengen Borders Code, to ensure that persons may be authorised to enter or leave the territory of the Member States.
- 58 As is apparent from Article 6(1) of that code, third-country nationals may only stay on the territory of the Schengen area for a maximum period of 90 days in any 180-day period, which means that the 180-day period preceding each day of stay is examined.
- 59 In that regard, Article 6(2) of the Schengen Borders Code states that, for the purposes of calculating compliance with that maximum duration of authorised stay, the 'date of entry' and the 'date of exit' are 'the first day of stay on the territory of the Member States' and 'the last day of stay on the territory of the Member States', respectively.
- 60 It is in order to ensure compliance with those provisions that Article 11(1) of the Schengen Borders Code lays down the principle that the travel documents of third-country nationals are to be systematically stamped on entry and exit, in order to establish, with certainty, according to recital 15 of that code, the date on which, and where, the external border was crossed.
- 61 Thus, in accordance with Article 8(3)(a)(iii) and (h)(ii) of that code, the purpose of the examination of the entry and exit stamps on the travel document of the third-country national concerned is 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 Schengen area.

- 62 It follows that affixing entry and exit stamps is closely linked to the competent national authorities carrying out their task of controlling, inter alia, short-term stays in the Schengen area, in order to, in accordance with Article 13(1) of the Schengen Borders Code, combat, inter alia, unauthorised crossings (see, to that effect, judgment of 4 September 2014, *Air Baltic Corporation*, C-575/12, EU:C:2014:2155, paragraphs 50 and 51).
- 63 Consequently, so as not to allow a third-country national to remain in the Schengen area beyond the maximum duration of authorised stay, which would be contrary to the objective pursued by Article 11(1) of the Schengen Borders Code, such a national cannot be regarded as having left the Schengen area when he or she is still on the territory of a State forming part of that area.
- 64 It follows from the foregoing that a seaman who signs on with a ship in long-term mooring in the sea port of a State forming part of the Schengen area, for the purpose of staying in that port for all or part of the period during which he has been signed on to carry out his work on board, cannot be regarded as having left that area at the time he signs on.
- 65 That conclusion is not capable of being called into question by the derogations provided for in Articles 5(2)(c), Article 11(3)(c) and Article 20(1)(c) of the Schengen Borders Code, read in conjunction with point 3 of Annex VII to that code, regarding seamen who have signed on with a ship calling at a sea port and who stay ashore.
- 66 It is common ground that those provisions, which, in essence, are intended to ease the controls of seamen who are present within the territory of the Member State concerned only when the ship puts in and in the area of the port of call, by exempting them, in particular, from the obligation to obtain an entry or exit stamp on their travel documents, do not apply to seamen who work on board a ship that is in long-term mooring in a sea port.
- 67 For the same reasons, the provisions of Articles 35 and 36 and Annex IX to the Visa Code concerning visas issued at the external borders and transit visas are also not capable of affecting the conclusion in paragraph 64 of this judgment, since, in any event, it is common ground that the seamen in question in the main proceedings were not in possession of such visas.
- 68 As regards, in the second place, when an exit stamp should be affixed to the travel documents in a situation such as that described in paragraph 28 of this judgment, it should be noted that, according to the very wording of Article 11(1) of the Schengen Borders Code, that affixing must take place ‘on exit’ from the Schengen area.
- 69 It follows that such a stamp must be affixed at the time of such an exit, which, as follows from paragraphs 44 to 64 of this judgment, corresponds to the crossing of an external border of the Schengen area.
- 70 In accordance with the premiss referred to in paragraph 52 of this judgment, where it is established that the control of the persons concerned at a border crossing point will not be followed shortly thereafter by the crossing of an external border of the Schengen area, it is important that the exit stamp is affixed to their travel documents by the competent national authorities at a time close to that crossing, in order to ensure, in accordance with the objective pursued by the Schengen Borders Code referred to in paragraphs 60 to 63 of this judgment, that those authorities remain in a position to monitor actual compliance with short-stay limits in the Schengen area, taking into account the actual duration of those persons’ stay within the territory of that area.
- 71 In this case, it is common ground that a seaman hired to work on board a ship in long-term mooring in a sea port of a State forming part of the Schengen area does not intend, at the time of signing on with that ship, to leave that area shortly thereafter. Consequently, such a seaman is not entitled to have an exit stamp affixed to his travel documents at the time of signing on.

- 72 It is only when the departure of that ship from such a sea port to a place outside the Schengen area becomes imminent that that exit stamp must be affixed to his travel documents.
- 73 In that respect, it should be noted that it is apparent from point 3.1.5 of Annex VI to the Schengen Borders Code that the master of a ship is required to notify the competent authority of the ship's departure 'in due time', in accordance with the rules in force in the port concerned.
- 74 Consequently, the exit stamp laid down in Article 11(1) of that code must be affixed to the travel documents of a seaman recruited to work on board a ship in long-term mooring in a sea port of a State forming part of the Schengen area at the time when the master of the ship concerned notifies the competent national authorities of the imminent departure of that ship.
- 75 Any other interpretation of that provision would facilitate abuse and circumvention of the rules laid down by EU law for short-term stays in the Schengen area, by allowing any seaman who is a third-country national to stay indefinitely in a sea port in the territory of a State forming part of the Schengen area.
- 76 Consequently, the answer to question referred is that Article 11(1) of the Schengen Borders Code must be interpreted as meaning that, when a seaman who is a third-country national signs on with a ship in long-term mooring in a sea port of a State forming part of the Schengen area, for the purpose of working on board, before leaving that port on that ship, an exit stamp must, where provided for by that code, be affixed to that seaman's travel documents not at the time of his signing on, but when the master of that ship notifies the competent national authorities of the ship's imminent departure.

### **Costs**

- 77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

**Article 11(1) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) must be interpreted as meaning that, when a seaman who is a third-country national signs on with a ship in long-term mooring in a sea port of a State forming part of the Schengen area, for the purpose of working on board, before leaving that port on that ship, an exit stamp must, where provided for by that code, be affixed to that seaman's travel documents not at the time of his signing on, but when the master of that ship notifies the competent national authorities of the ship's imminent departure.**

[Signatures]