



**DEPARTMENT OF POLITICAL SCIENCE  
CENTRE FOR EUROPEAN STUDIES (CES)**

# **ROOM FOR INTERPRETATION?**

A study on how the member states execute the  
harmonized Schengen Visa Code

**Author:  
Stephan Kowitz**

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## **Abstract**

Visa policies in the European Union and the Schengen Area are still a field of research that is still very much out of focus. This paper aims to put light in the dark: by investigating the different interpretations of two Articles of the “Schengen Visa Code”, this research will show that a harmonized visa policy within the member states is far away from being established.

By comparing the visa policies of the member states, it becomes clear that visa harmonization seems to have been achieved on paper by drafting Regulations which all member states have to follow through. The wordings of these Regulations and, above all, some Articles within these Regulations leave so much room for interpretation that the same legal provision is treated considerably differently within the Schengen Area among its member states.

In regard to the waiting time to get an appointment for just filing a visa application, attitudes and interpretations of the particular legal prescriptions vary considerably. This also leaves room concerning the question of how seriously time limits for filing a visa application should be followed through.

Furthermore, the member states have a lot of flexibility regarding the validity and the duration of their issued Schengen visas: Some states issue considerably more visas with a long validity than others.

The above mentioned different treatments and interpretations of European legislation pose the question of how far harmonization has come when looking at the visa policies. And furthermore: is (complete) harmonization actually desired?

# Content

- Introduction ..... 1
  - Possible different interpretations within the Visa Code ..... 1
  - Hypothesis and research aim ..... 4
- Previous research ..... 6
- Theory ..... 8
- Data Collection ..... 11
- Results ..... 15
  - Waiting times for an appointment ..... 15
    - Usage of appointment scheduling systems ..... 15
    - Interpretations of the “rule” of Art. 9 (2) ..... 16
    - Breaches of the two weeks rule? ..... 17
  - The validity of issued visas ..... 18
    - “Bona fide travelers” and “Frequent travelers” ..... 19
    - Visa statistics of the Schengen States ..... 20
- Interpretation of results ..... 23
- Conclusion ..... 26
- References ..... 28
- Appendix ..... 31
  - 1) The questionnaire which has been sent out to all foreign ministries ..... 32

# Introduction

The EU institutions regularly produce legislation, which has to be executed nationally in day-to-day practice, meaning that national officers directly have to apply those regulations in their daily working lives, for example in government authorities or in a visa section of an Embassy or a Consulate-General. With currently 28 member states, it is assumed that all member states and, therefore, their (national) institutions are interpreting and handling these texts differently.

This research will have a look at the Schengen Visa Code (Regulation 810/2009). It is a kind of guidebook for the visa process, targeting mainly the visa sections of the member states at their foreign missions and immigration authorities at the border.

As a regulation under EU legislation, the Visa Code has “direct effect” on those member states which are part of the Schengen Area - an EU regulation becomes an immediately binding legislation for the member states without any further national implementation measures. The provisions of the Visa Code are, therefore, binding regulations for the member states.<sup>1</sup>

It needs to be noted that some EU member states opted out of the Schengen Agreement (United Kingdom, Ireland), others are not yet part of Schengen (Romania, Bulgaria, Cyprus, Croatia) and, in addition, with Norway, Iceland, Switzerland and Liechtenstein, there are four Schengen States which are not member states of the EU. An issued Schengen visa permits traveling within the Schengen Area of 26 states and permits “border-free travel” within the Schengen Area.<sup>2</sup>

## Possible different interpretations within the Visa Code

Some Articles of this Visa Code leave, indeed, space for interpretation. For the purpose of this study, two Articles of the Visa Code have been examined on how they are dealt with within the member states and if there are certain differences regarding the interpretation of their content by the member states. I have chosen the below mentioned Articles, because they already show by their wordings that the Visa Code offers flexibility to the member states. This means that differences, if they exist, could be spotted quite well. The two articles that I have finally chosen are:

a) Art. 9 (2): “Applicants may be required to obtain an appointment for the lodging of an application. The appointment shall, as a rule, take place within a period of two weeks from the date when the appointment was requested.”

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<sup>1</sup> Art. 288 TFEU, also in: Hartley (2014) p. 214

<sup>2</sup> A good summary on the Schengen Area can be found on the website of the Commission: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen\\_brochure/schengen\\_brochure\\_dr3111126\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen_brochure/schengen_brochure_dr3111126_en.pdf)

The first difference among the member states - and even among Embassies and Consulate-Generals of a member state - is the possibility of creating an appointment scheduling system, may it be through the mission itself or by having it outsourced. Alternately, applicants could “walk in” into the visa section without scheduling a prior appointment.

This article is also not clear enough on how strict the two weeks rule is, since there are already two terms that can be interpreted differently in regard of their strength: first is that the appointment SHALL be taking place within two weeks. The use of the word “shall” still leaves room for interpretation: whether these two weeks are meant to be obligatory or rather just serve as a guideline.

The same applies, even more, for the expression “as a rule”. From the meaning of the words, there can be exceptions. This also derives from the common use of the term; or as we say in everyday life: “There is no rule without exception.” It remains to be seen in this research, whether the member states use this “rule” of Article 9 (2) as a binding regulation or if they see the possibility of allowing themselves exceptions.

The Commission itself has already seen this problem, also stating that there seems to have been a considerable amount of complaints as - according to a public consultation - 30 percent of respondents apparently did not receive an appointment within the desired 2 weeks timeframe. The Commission, therefore, stated that it “took up the issue”<sup>3</sup> of infringement with 13 member states in December 2012, as reported in a Commission Staff Working Document. Which measurements exactly have been undertaken, for example whether procedures according to Art. 258 TFEU have been considered or even been started, has not been stated by the Commission.

It seems obvious that the affected states were asked for a statement, since the Staff Working Document is referring to them. Most states referred to problems within certain jurisdictions or peak seasons and would work on this problem, while other states denied a longer waiting period than two weeks.<sup>4</sup> Further measurements or proposals on how to tackle this problem, are not being mentioned.

It is unclear, how the notion of two weeks is being interpreted by member states nowadays and how strongly the member states try to stay under these two weeks waiting time. It could be possible that some countries still have consistently longer waiting periods, for example due to organizational problems or due to a sudden and unexpected increase in the number of applications or shortage of staff.

A result of this could be, among other things, an unreasonably long waiting period for travelers to obtain an appointment and, therefore, their desired visas. On the other hand, “fast”

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<sup>3</sup> European Commission: Commission Staff Working Document SWD(2014) 101 final, p.8

<sup>4</sup> European Commission: Commission Staff Working Document SWD(2014) 101 final, p.8

visa sections with a low waiting time - and, obviously, those that do not even require to schedule an appointment at all - could suffer from higher application numbers, because applicants prefer picking, out of convenience, fast visa sections over the actually competent visa section.

The European Commission has also issued a “Handbook for Processing Visa Applications and the Modification of issued Visas”. No. 3.2.2 of the Handbook confirms the two weeks deadline for obtaining an appointment. The Handbook, furthermore, clarifies that the “capacity of Member States' consulates to handle visa applications should be adapted so that this deadline is complied with even during peak seasons.” The Commission wishes to keep a strict deadline and calls out to the member states to keep the precautions even for peak seasons, but still does not keep the deadline obligatory.

b) Art. 24 no. 1: “(...) A visa may be issued for one, two or multiple entries. The period of validity shall not exceed five years (...)”

This article allows the visa sections to issue visas with a validity of up to five years. The problem is quite similar to a): If one member state is known to issue visas with a longer validity than other states, travelers to that particular country could have an advantage against those with applications at visa sections that are giving visas with shorter validity.

The Handbook by the Commission does not mention a guideline on how visas with longer validity should be issued. Apparently, the Commission has proposed guidelines on how and when to issue visas with a longer validity. These guidelines are, even between Commission and Council, heavily disputed.<sup>5</sup>

The Commission considers the member states generally as “reluctant” in issuing visas with long validity. According to a working paper, 84% of the issued visas have a validity of less than one year, and only 5% were granted a visa with a validity of more than two years.<sup>6</sup>

As such, the Commission admitted with a Communication issued on 14 March 2018 that there is a need to introduce mandatory rules for issuing multiple-entry visas and visas with a validity between one year and five years<sup>7</sup> and suggested proposals in this regard<sup>8</sup>. The Council agreed to start negotiations with the European Parliament about amending the Visa Code, also concerning those mandatory rules on 19 June 2018.<sup>9</sup> Those negotiations just

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<sup>5</sup> Meloni (2009/2) in: Hailbronner/Thym (2016), p.163

<sup>6</sup> European Commission: Commission Staff Working Document SWD(2014) 101, p.22

<sup>7</sup> European Commission: Communication COM (281) 251, No. 3.3

<sup>8</sup> European Commission: Commission Staff Working Document SWD(2018) 78, p.2

<sup>9</sup> European Council: Press Release No. 353/18

started upon completion of this paper. The outcome is unknown at the time of writing and could, therefore, not be evaluated in this research.

Official statistics are available on the visa categories:

category A - airport transit,

category C - short term stay up to 90 days per 180 days timeframe, the usual Schengen Visa and

category D - national visa leading to a residence permit.<sup>10</sup>

Furthermore, there are statistics on the number of entries (single entry or multiple entry) and on the refusal rate, listed for every visa section of every member state.<sup>11</sup> Surprisingly, there is no statistic on the duration of validity of issued visas publicly available. During a meeting with the EU Delegation in Bangkok, I have been informed that there is, indeed, no obligation for the member states to report about the duration of their issued visas.

Both mentioned examples might attract travelers to “visa shopping”, meaning that travelers might try to apply at the visa section of a country which is actually not responsible for this particular case (the rules for the right application are set in Article 5 of the Code, making the visa section of the “main destination country” competent, usually that would be the Schengen state with the longest stay during the travel to “Schengenland”).

As seen in several statements and publications<sup>12</sup>, visa shopping is considered as a serious attempt of fraud, against which the Commission is fighting. Different policies regarding waiting times and validity of visas might attract applicants to file their applications with a mission that is actually not competent, for example to obtain a visa with longer validity. It is, therefore, of importance, if there are visible differences among the member states and their views on the harmonized Visa Code.

## **Hypothesis and research aim**

The aim of this research is to investigate whether there are differences in how the Visa Code is dealt with by the Schengen States, based on the above mentioned examples. Furthermore, it aims to find out, if existing differences can be connected to circumstances of the member states, e.g. similar patterns of “richer” member states, or regional patterns such as similar processes in Nordic countries or in Mediterranean countries?

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<sup>10</sup> Visa Code: Annex VII no. 7 in connection with Article 2 (2) and Article 2 (5)

<sup>11</sup> <https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy>  
opened on 13 December 2017

<sup>12</sup> For example see: [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en)  
opened on 13 December 2017

I strongly believe that it is practically impossible for all 26 Schengen states to follow the same, or at least the similar routine. In my opinion, their national political, sociological and cultural approaches differ too much, to make a common visa policy - even if there is a common, harmonized Visa Code. Doubts about harmonization in the visa process are, though, not a new topic. As it can be seen later in the “previous research” section. Above all, Meloni expresses doubt, whether harmonization is achievable.<sup>13</sup>

My hypothesis is that the Visa Code is actually not managing to construct a complete harmonization of visa policies. Finotelli/Sciortini have actually conducted a thorough research on the visa policies of the Schengen states in certain areas in the world, evaluating, if harmonization has happened among visa sections within certain regions of the world. There is a visible emphasis on the harmonization of visa policy and its consequences, while they also see considerable differences among the member states.<sup>14</sup>

For my hypothesis this also means: Even though the Visa Code is a Regulation, and therefore a classical mean of neofunctionalism, its day-to-day application of the member states show exactly that European visa policy cannot - or at least not completely - be explained by neofunctionalism.

In particular the aim of this research is to find out:

I) Do the member states interpret the two weeks deadline in Art. 9 (2) of the Visa Code differently?

II) Are there differences among the member states in issuing long-term Schengen visas? Are there particular member states issuing more longterm visas than others?

This research aims to answer the questions:

If there are considerable variations in I) and II), are there any objective reasons, why the Articles might be dealt with differently?

Do the differences influence their approach to keep waiting times low? Are there measurements to keep the waiting time low or may they only consider these two weeks as a loose guideline?

Are there specific indicators, such as regional, socio-economic, historic reasons to explain the behavior certain member states?

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<sup>13</sup> Meloni (2017): pp 15-16 and pp. 20-21

<sup>14</sup> Finotelli/Sciortini (2013): pp. 82-84



## Previous research

My experience has shown that it is very difficult to find research in the field of implementation of European law by the member states and how the people at officer's level are applying it in everyday working life.

The question on how a certain member state is dealing with a distinct regulation seems to be, in general, an undiscovered research area. The same is being expected in this study. Research has, so far, not yet observed differences in visas policies between Schengen states and how the officers of the members state are applying visa law.

It is still surprising that the amount of research regarding visa policy is not very elaborated, though some research is, indeed, available. Most research regards the legal aspects of visa regulations themselves and the compatibility with other legal areas such as rights and duties of a traveller.

Annalisa Meloni (University of East London) has published several papers on the harmonisation of European Visa law and one on the Schengen Visa Code in particular including comments (see also prior chapters). Additionally, there are various citations to her papers.<sup>15</sup>

I had the opportunity to meet Ms. Meloni personally<sup>16</sup>. She confirmed that there is a considerable lack of research regarding visa policies and their implementation in general and the Visa Code in particular. She, furthermore, agreed that a certain focus on the question of how vague formulations are dealt with by those, who have to deal with European legislation, for example visa officers, would be helpful.

A 2009 study by Meloni on harmonization, issued just after the introduction of the Visa Code, does not spread optimism.<sup>17</sup> The Visa Code as such, is nevertheless considered an important milestone, even though it lacks some clarifications on legal aspects, above all in the field of appeals. In the same direction points Peers, even though he seems to be less critical about the Visa Code as such.<sup>18</sup>

The above mentioned study by Finotelli/Sciortini is aiming in the same direction as this research. Though, their focus has been different: While they looked at the differences of visas

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<sup>15</sup> Her works are being used and listed throughout this paper, most notable are a commentary about the Visa Code in Hailbronner, Kay/Thym, Daniel: "EU Immigration and Asylum Law: A Commentary" and the Article "The Community Code on Visas: Harmonisation at last?" issued in 2009. All of her used literature is listed in the references.

<sup>16</sup> The meeting took place on 24 January 2018 in London

<sup>17</sup> Meloni (2009), p. 695

<sup>18</sup> Peers (2010), p.131

issued or refused and the possible building of a “Fortress Europe”<sup>19</sup>, this study investigates the process prior to a visa application and has only a look at the validity of an issued visa. The refusal rate will not be taken into account.

There has also not yet been an adequate theory on possible differences in handling the visa process at working level. One of the aims of this study is to investigate, whether there are regional and/or socio-economic patterns among the member states - and if there are parallels to other fields of research, e.g. similarities to patterns in the social dimension of Europe.

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<sup>19</sup> Finotelli/Sciortini (2013), p. 97

# Theory

In regards to the theory applied in this study, I suggest that three common theories on European integration (neo-functionalism, inter-governmentalism and multi-level governance) could be valid, while one seems to stand out: it is suggested to proceed with the neo-functionalism, which has been introduced by Ernst B. Haas in 1958.<sup>20</sup>

Even though it has been 60 years since Haas has introduced his groundbreaking theory, it can still be considered as one of the most accepted theories on European integration. It is also one of the most discussed and most cited theories.

The creation and the approval of a new EU law is not under the control of the national governments anymore. The Visa Code has been created on the initiative of the European Commission<sup>21</sup> and has been voted on by the European Parliament and the Council of Ministers.<sup>22</sup>

Even if a member state voted against a law in the Council of Ministers, it can be outnumbered by the other states.<sup>23</sup> The legislation can come into force, even though a member state did not approve of it. Due to the direct effect of a EU Regulation, it becomes law in all member states.

The execution of the Regulation is nevertheless the responsibility of the member states. The Regulation in question (here: the Visa Code) still can give some freedom to the member states on how a Regulation is implemented and on how strictly it is implemented. For example, there could be an Article in a Regulation that a member state:

- 1) CAN do something,
- 2) SHALL do something or
- 3) MUST do something.

In the first case, there is a certain amount of freedom given to the national government, the second case shows a strong direction, while the last one does not allow any flexibility.

In my opinion, this means that a Regulation can also use elements of the theory of “multi-level governance” by Hooghe/Marks,<sup>24</sup> since there is still a decision on implementation on the national level. I see, however, a lack of the member states’ influence on the actual European law/Regulation as such.

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<sup>20</sup> Haas (1958): pp.145ff.

<sup>21</sup> Visa Code, 3rd paragraph of introduction

<sup>22</sup> Visible already in the title: “Regulation (EC) No. 810/2009 of the European Parliament and of the Council”

<sup>23</sup> Hooghe/Marks (2001): p. 268

<sup>24</sup> Hooghe/Marks (2001): pp. 263ff.

A European Regulation is enforced on a lower (namely: the national) level in its own authorities. This can be compared with a national law, that has to be carried out by regional or local authorities of that state.

It is therefore assumed that the rules on how to decide on visas, their validities and the organisational structure of the visa sections, is in the hand of the competent government agencies of the member states, e.g. the foreign ministries of the member state.

These agencies/ministries could also issue the guidelines and advises on how to interpret certain formulations of the EU legislation and therefore also on how to interpret deadlines like the above mentioned two weeks limit in 1) a).

No matter the background of the situation, the governments are only fulfilling the mandatory provisions of a European law. Even though the general theory of the Thesis would be lying in neo-functionalism, the mentioned parts of multi-level governance could be used to explain certain variation in the implementation of the Regulation, for example who sets the rules for national implementation and on which level.

Coming back to the original thought, multi-level governance can even be seen as a development which derived from neo-functionalism. It can, therefore, be assumed that both are inter-connected, while also current papers take this connection into account.<sup>25</sup>

I am aware that Haas has developed his own theory further, also calling for a “pragmatic constructivism”, which was including the question of identity;<sup>26</sup> this paper, however, will stay closer to the “original idea” of neo-functionalism including, as mentioned before, also clearly visible sign of multi-level governance.

As mentioned before in my hypothesis, I claim that the Visa Code shows, even though it is filled with neofunctionalist thoughts (above all: the thought of harmonization), it cannot be explained alone by neofunctionalism, but is also influenced by other theories.

Other theories such as inter-governmentalism by Stanley Hoffmann<sup>27</sup> would not lead to a feasible outcome, even though it could be still argued that the states are the main actors - through their roles in the Council of Ministers and the influence of national governments as part of the European Commission.

The influence of the states seem, in my opinion, too weak. Even though the Council had to finally approve this Regulation by Qualified Majority voting, the influence of particular states is not strong, since they can be outnumbered. Furthermore, the European Parliament consists

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<sup>25</sup> Luhmann (2007): p. 3

<sup>26</sup> Luhmann (2007): p.4

<sup>27</sup> Hoffmann (1966): pp. 151ff.

exclusively of politicians, elected by the people of the EU member states. The role of the states in the creation of the Regulation looks too marginal to me.

## Data Collection

To reach the goal of this study, I have planned to use a mixed approach of quantitative and qualitative analysis, while the focus is clearly on the qualitative part. To avoid any collusion between my professional life as a government officer and the research aim, I have contacted all mentioned authorities and institutions through publicly available e-mail addresses and contact forms which are visible and accessible on the internet.

This was also necessary to avoid any suspicion of making wrong use of possible professional contacts. Additionally, I am aware of knowing information that cannot be part of the study due to reasons of confidentiality. I wanted to ensure that there is only the possible infringement of me in the role as the researcher. The goal was the highest possible standard of neutrality - and to keep the researcher as objective as possible.

As a first step, I have approached the European Commission for an interview regarding the goals and perspectives of the Visa Code and whether these goals can be considered as fulfilled or whether there should be adjustments.

The Commission proposed the Visa Code and should, therefore, be able to answer questions regarding the ideas of the Visa Code, and regarding the two researched Articles 9 and 24 in particular. The aim was to use the response from the Commission to compare it with the priorities of the Member States in the analysis.

I have contacted the Commission via the official website requesting for an interview with an expert in this field. My request - sent in January 2018 - coincided with the Commission updating proposals for the Visa Code, which I assume as the reason for a delay in responses. I was given a package of current communication issued by the Commission, the latest issued in June 2018. This communication has been included in this paper, wherever considered suitable.

An additional interview request had been sent out to the members of the chairmanship of the Committee on Civil Liberties, Justice and Home Affairs in the European Parliament. The aim of this request was to find out the view of the Parliament, represented by the members of the competent Committee. Also the Parliament had decisive influence in the introduction of the Visa Code. Unfortunately, an interview could not take place for various reason.<sup>28</sup>

An interview request to the EU Delegation in Bangkok (where I lived at the time of research) was considered. The EU Delegations also overlook the visa policy of the member states at the respective post and report their observations to the competent offices in Brussels. For this reason, an insight on how at least the Delegation sees the work being done, has been considered helpful.

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<sup>28</sup> Requests and responses from the Members of the Committee are on file with the author

Indeed, a meeting at the EU Delegation has happened. However, I was told that I can only take general notes on the meeting. Recording, quoting or naming a representative of the EU Delegation was not allowed. For this reason, the meeting was held as an informal discussion for background information, which I was permitted to use in the paper and which has been included wherever I would find it suitable.

I have chosen to conduct a semi-structured interview. In this way, I was able to actively engage with the interviewee and was able to pose important follow-up questions depending on the answers of the interviewee and the course of the interview itself.<sup>29</sup>

As mentioned, I intended to enquire the Commission's official interpretation of the Visa Code, which could have been discovered best with this method.<sup>30</sup> Since interviews did not happen for the above mentioned reasons, the use and the preparation for this part of the methodology became obsolete during the course of my research.

As a second step, a questionnaire had been sent out to the Foreign Ministries of all Schengen States. Personal interrogation was not realistic, due to the high number of possible participants, distributed over different cities all over Europe. E-mail, furthermore, is less time-consuming than a survey by letter. The goal had been to get the official opinion of the respective governments trying to find out the official statements and the official *modus operandi* of the concerned member state.

The questionnaire was sent by e-mail on 9th and 10th January 2018. I considered one month as a good timeframe to receive responses, giving me also enough time to send reminders, if I did not receive a sufficient amount of responses. I was hoping for a sufficient amount of participants by the end of February.

This questionnaire itself was mainly qualitative, asking about the country's official interpretation of certain regulations, but also contained quantitative elements while asking for statistics as it also contained questions such as the share of long-term visas of all issued visas of the state and similar statistics. Since most answers were requested to be given as a short full-text reply, the answers have been analyzed, coded and compared with the other responses to get an overview and to investigate whether certain patterns exist.<sup>31</sup>

The questionnaire also went to the background of the statistics (see above). Questions investigated also, if

- there is an official administrative order from the headquarters of the ministries regarding the mentioned points

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<sup>29</sup> Brinkmann/Kvale (2015), p. 30

<sup>30</sup> Grey (2014), pp. 385-386

<sup>31</sup> Grey (2014), p. 353

- these administrative orders give clear instructions regarding Art. 9 and Art. 24 of the Visa Code

The answers of the questionnaires were additionally intended to provide more information on the behaviors of the member states and why certain behaviors of the members states occur. Are certain member states behaving similarly? Are those member states connected in a certain way (e.g. historically, regionally, socio-economically)? The questionnaire which has been sent out to the foreign ministries is attached as an appendix to this study.

Ideally, all Foreign Ministries should have participated in order to be able to generalize the results. This was unrealistic already from the start. I expected that only a share of the 26 member states would participate.

I personally considered 10 respondents as a good number of participants. I was nevertheless hoping to receive a minimum of 5 responses to carry out a research that can at least to some extend some insights. One aim was to find out how much the harmonization of the visa process has been achieved on a European level.

Indeed, it was hard for me to reach my absolute minimum of 5. By the time of my deadline, one month after the questionnaires had been sent out, I had received only 4 responses.

In their replies, some states referred to information available on the website of the European Commission (<https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy>), however the particular answers on the duration of visas or certain behaviors or the question, if internal regulations exist could not be found there.

Furthermore, a few states, for example Germany and Latvia, referred to information available on the visa process that is openly available on the websites of their foreign ministries. Details on the processes themselves (e.g. how longer waiting periods are being handled or organization processes) could, unfortunately, not be found there.

Reminders were sent out to the remaining Schengen States right after the end of the deadline, in the hope to receive more replies for the aim of the study. Finally, I have received a total of eight responses. A few states responded that they did not have the capacities to participate in the survey. However, despite reminders, the majority of the contacted foreign ministries has not gotten back to me.

It seems obvious that the process of the research is being done in an inductive manner: Relationships, theories and patterns would be found after analyzing the data which has been collected.<sup>32</sup> If the analysis permits, a theory can be formed and possibly be used for further research.

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<sup>32</sup> Grey (2014), pp.17-18



A generalization of the whole visa process as such would be rather difficult and is also not the goal of this study: The research is being done on only two very particular regulations of the “Schengen Acquis”. It should, nevertheless, be possible to draw conclusions on certain patterns, at least among the participating states. These conclusions can be an indicator for further investigation.

As mentioned, quality and reliability of a study depend very much on the number of participants and their willingness to give answers to the questions in a survey/questionnaire (also in an appropriate manner<sup>33</sup>) and in the course of a possible interview. If all survey partners and interview partners had answered all questions accurately, there would not be the question of low validity for the studied questions.

It was already expected that not all questionnaires would be answered and that some questions would not be given the answers as concretely as it would be required. Even with these flaws, I considered certain conclusions would still be possible.

Certain behaviors can be also found with a low number of participants. However, the questionnaire must pose the questionnaire in a way that ensures that the answers are given in the most appropriate way so that they can be used in the research.<sup>34</sup> It was, therefore, crucial to also ask the questions in a way that they could not be misunderstood.

Ethical issues were not expected. This study purely targeted on official statements and views of the European Commission and the government of the EU member states. It was expected that those replies are streamlined within the competent authorities and no sensitive data or unsuitable opinion would be shared (e.g. out of fear of losing a job or out of fear to shake up relations of states).

If there had been a moment of certain requests, I would have tried to accommodate those requests in the best possible way. This would have mainly affected the interviews, where, for example, it is still possible that an interviewee states a personal opinion which is not in line with the official opinion of the government. Those statements would have to be taken into account in an appropriate and confidential manner (e.g. only as a background information).<sup>35</sup> Since no interview could be conducted, this topic did not become an issue.

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<sup>33</sup> Grey (2014), p. 353

<sup>34</sup> Grey (2014), p. 375

<sup>35</sup> Brinkmann/Kvale (2015), pp. 94-95

## Results

Out of 26 Schengen States, there are 25 states issuing visas abroad at the visa sections at their diplomatic or consular missions. Liechtenstein, being the smallest Schengen State, has confirmed that it does not issue visas abroad and that it is being represented in visa matters by Switzerland.<sup>36</sup>

Out of the remaining 25 states, 7 have submitted their answers, which makes a response rate of 28 percent. All 7 participants have filled their questionnaires in a comprehensive manner so that they all can be used as part of this study. Nevertheless, some states could not answer all questions, mainly due to unavailability of data. This will be analyzed as part of the results as well.

The participating states were Austria, Iceland, Italy, Lithuania, Poland, Slovenia and Sweden. Additionally, Slovakia delivered statistics on issued visas, but otherwise referred mainly to the public EU websites. Despite a comparatively low response aim - as mentioned before, I was hoping for 10 responses - there is a mixture of states with a high amount of visa work, states with a lower amount of visa work and everything in-between: Italy entertains 164 visa sections which issued in total more than 1.8 million visas in the year 2017; Iceland entertains two visa section which issued together approximately 6200 visas within one year.

For the sake of better readability, I have separated my analysis in two parts: The first part deals with the rule of maximum two weeks waiting time for an appointment according to Article 9 (2) of the Visa Code and how the visa sections apply this rule. The second part analyses the statistics and policies of the responding states regarding long term Schengen visas.

### Waiting times for an appointment

#### **Usage of appointment scheduling systems**

The responses show different approaches with the management of appointments and with the effort to stay within the two weeks of scheduling an appointment. Most researched states are using appointment scheduling systems, but to a different extent. Italy, Poland, Austria and Iceland confirm that all or almost all visa sections work with appointment systems or outsourcing partners that take over a similar role. Iceland states that processing of an application prior to its decision is being done by their outsourcing partner.

Approximately one third each of the Lithuanian (15 out of 50) and Swedish (20 out of 60) missions schedule appointments through an appointment system. Both states do not apply

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<sup>36</sup> E-mail by the Ministry of Foreign Affairs, Culture and Justice of the Principality of Liechtenstein on 12 January 2018, on file with the author

certain criteria on which such a system is being used. Lithuania, furthermore, indicates that this being done on request by a concerned mission abroad and this usually affects visa sections with a higher workload. Even though Sweden does not state it clearly, a similar procedure can be interpreted from the way the responses have been given in the questionnaire. Slovenia is the only researched state not using any appointment system.

### **Interpretations of the “rule” of Art. 9 (2)**

Before analyzing possible breaches of the rule of maximum two weeks waiting time for an appointment for a visa application, I will have a look on how the Foreign Ministries interpret this rule set in Art. 9 (2) of the Visa Code.

As mentioned in the introduction, it is possible that some states consider the terms “shall” and “as a rule” in less obligatory ways than others. The responses given by some ministries could, indeed, lead to this conclusion.

In my research, I could make out three different interpretations of the wordings in Art. 9 (2). The first type of interpretation is the strictest point of view, meaning that an appointment must be given to an applicant within two weeks of lodging the application. Exceptions would not be permitted.

Among the respondents, Lithuania and Sweden share this view. Furthermore, for Sweden, this rule is an “obligatory standard which all countries should strive to fulfill. This limit ensures a reasonable service level.”

The second interpretation is a middle way: The rule is seen as a generally binding limit. However, exceptions are permitted, for example in cases of a sudden, and possibly unforeseen, rise of workload.

Austria and Poland interpret Art. 9 (2) in this way. Both still regard the limit of two weeks as obligatory and both seem to be eager to obey to this limit, yet they are permitting themselves exceptions. Poland points out that the term “as a rule” as such already permits exceptions, and short term rises are acceptable, even though they should be avoided.

The third interpretation is less strict than the other two: The two weeks are considered as a non-binding guideline. There is not a strict obligation to stay within this limit, even though this still should be aimed for.

This view is shared by Slovenia. Also this view derives from the wording of the term “as a rule”. This rule shall give guidance to a feasible limit that the visa sections shall aim for.

Even though there are obviously different interpretations of Art. 9 (2), there is an agreement on the question, whether this limit of two weeks is a feasible limit. All ministries agree that this limit is practicable and also a executable. There were no complaints about the limit as such.

## **Breaches of the two weeks rule?**

This leaves us with the question of how well the visa sections are able to schedule their appointments within the set limit of two weeks. Unfortunately, this question will be more difficult to answer than expected: despite the use of appointment systems which should technically also allow the ministries to create statistics on waiting times for an appointment and, therefore, also on waiting times of more than two weeks, the participating states were not able to deliver statistics regarding this matter.

Also the EU Delegation in Bangkok could not give me statistics and was not aware of infringements as such. It was pointed out to me that the visa sections would not necessarily have to report to the EU Delegation, but might have to report directly to the Commission in Brussels. It was indicated, though, that in case of an infringement by a particular mission (here: in Bangkok), this breach would have to be reported to Brussels by the EU Delegation.

While concrete statistics were unavailable, there were some concrete responses on the question of “hotspot” areas, where some countries seem to struggle the most with waiting times, and the possible reasons for longer waiting times: Austria points out that there are five missions severely affected by higher waiting time. Those missions are mainly situated in the Balkans and the Middle East. Further problems seems to appear in countries with a higher density in population.

The Austrian Foreign Ministry sees two main reasons for the suspected breach of the two-weeks rule:

- 1) public holidays and the resulting closure of offices on these days resulting in longer queues
- 2) bad preparation of the visa applicants and short notice applications during high season resulting in excess demands

The Swedish Foreign Ministry bases longer waiting periods on similar grounds, mentioning national holidays as a considerable reason. Additionally, “local factors” can play a role for excess workload. While no statistics were given as such, the ministry stated that applicants at Swedish missions wait, in average, 7 days for an appointment.

Slovenia regards its missions in the Russian Federation, Kosovo, China and India as their most affected missions. These focus areas match, to a certain extent, with those mentioned by Austria. However, statistics on infringements and possible reasons for them were not available.

The other Foreign Ministries did not go deeper into possible infringements of the two-weeks-rule. Yet, Poland still admits that those infringements are happening sometimes. Iceland is not having any problems at both of its visa sections.

The existence of infringements of the maximum waiting period can be assumed from the answers given by the Ministries. Furthermore, the Foreign Ministries seem to be mostly aware and prepared for higher demands and workloads in their visa sections.

Austria, Italy and Lithuania said themselves that, during high season, they deploy additional consular staff to the missions facing the biggest problems in order to take over a part of the work and in order to reduce the waiting time at the concerned missions. From the wording of the responses, I assume that the ministries seem to have prepared these additional, temporary, consular staff members as a reserve for missions in high demand.

Poland also emphasizes that outsourcing parts of the work as a mean to put pressure away from its missions and to lower the waiting periods for an appointment at the visa sections. I assume that Polish missions then focus on the main work such as deciding on issuing or rejecting a visa. The remaining ministries did not give a statement on possible measurements.

## The validity of issued visas

During my discussion at the EU Delegation, the topic of the duration or validity of issued visas was, to a certain extent, a surprise. The Delegation admitted that - even though a lot of visa statistics are being asked for by the EU Commission - there is actually no requirement for the member states to report the length of the validity of issued visas to Brussels.

This quite surprising fact also comes to light after analyzing the responses that I have received from the member states: Some states could not give statistics on the validity of visas, because those statistics were not available.

A good example of what kind of statistics can be collected by a member state is Italy. I was forwarded the publicly available link to a consular service statistics book in pdf format<sup>37</sup>. As it can be seen later, also Italy has, surprisingly, no statistics on the duration of validity of issued visas. Their statistics book also contains a considerable amount of visa statistics including number of issued visas related to the purposes of travel. The statistics on the duration of visas is not included, and a statistic is - according to the Italian Foreign Ministry - also not available.

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<sup>37</sup> The link I was given is: [https://www.esteri.it/mae/resource/pubblicazioni/2017/07/annuario\\_statistico\\_2017\\_web3.pdf](https://www.esteri.it/mae/resource/pubblicazioni/2017/07/annuario_statistico_2017_web3.pdf)

## **“Bona fide travelers” and “Frequent travelers”**

Before taking a look at the statistics, I asked the ministries what their requirements would have to be fulfilled by an applicant to be considered a traveller “bona fide” - a category that included the most reliable customers which are, for the same reason, strong candidates for a long term visa.

The term “bona fide” is commonly used in visa practice. The Handbook for the Visa Code refers to it several times. According to the Handbook, a bona fide applicant is “an individual applicant known to the consulate for his integrity and reliability, (in particular the lawful use of previous visas), and for whom there is no doubt that he will fulfill the entry conditions at the time of the crossing of the external borders of the Member States.<sup>38</sup>”

At first sight, most ministries have constructed their “bona fide” requirements out of Art. 24 (2) of the Visa Code. Those requirements include proven integrity and reliability, lawful use of former visas or good economic status in the country of origin.

Having a second look, there are differences in the details. Poland is the only respondent directly referring to the mentioned Article 9 (2). Austria calls the requirements “common vetting criteria”, while Lithuania listed those criteria in its response almost word by word.

Differences start with Italy adding the criteria of having obtained previous visas from other countries, including Schengen States, but also the United Kingdom or the USA. Iceland refers to the required documents for obtaining a visa as per Art 14 of the Visa Code and Art. 6 (4) of the Schengen Borders Code (sufficient means of travel, supporting documents).

Slovenia and Sweden, contrary to all other participants, replied that they do not have any set rules and leave the treatment and definition of bona fide travelers with the visas sections themselves. Yet, Sweden refers to the Handbook for the Schengen Visa Code and has set a certain framework for its visa sections.

A special category of traveller is also the “frequent traveller<sup>39</sup>”, who could almost be considered as a similar category to the “bona fide” traveller. However, in comparison to the bona fide traveller, the frequent traveller has already obtained a certain status just by the use of previously issued visas. A certain integrity is already assumed by the frequency and the legal use of issued visas.

The difficulties of a definition seem to be even bigger with this term or, as Austria points out, the term frequent traveller “leaves room for interpretation”, and the decisions seem to be taken on basis of every single application. Applications seem to be judged, as they are filed, without prior definition. Indeed, no state was able to give a clear definition of a frequent traveller. Only Italy considers three to four journeys per year as frequent traveling.

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<sup>38</sup> Handbook, No. 6.2.3, pp.49/50

<sup>39</sup> The term “frequent traveller” is prominently used in no. (8) of the pre-text of the Visa Code. Like “bona fide”, it is also a term that is commonly used by visa sections in everyday working life.

## **Visa statistics of the Schengen States**

As I have written before, there is no official obligation for the member states to provide statistics on the duration of issued visas. Iceland, Italy, Lithuania and Sweden were, indeed, not able to deliver the desired statistics for this research. Statistics were submitted by Austria, Poland, Slovakia and Slovenia.

A Commission Staff Working document issued in 2014 pointed out that 84% of all issued Schengen Visas had a validity of less than one year and only 5 percent of the issued visas had a validity of more than 2 years<sup>40</sup>. For the matter of this research, I assume that there have been no major changes in the numbers and that still approximately 16 percent of all issued Schengen visas had a validity of one year or more, since more recent statistics could not be found.

With only four states submitting - at least partly - statistics on the subject, it will be difficult to draw conclusions or trends as such. Nevertheless, as we will see in the following paragraphs, also with this quite small group of participants, it is possible to see differences in the attitude towards longterm visas. Some states seem more generous with issuing them, others seem restrictive.

The following results will be dealt with and presented in the alphabetical order of the name of the state. The deeper analysis of the results follows afterwards. The mentioned numbers of visas are - as per request - the numbers of issued visas within 12 months.

The statistics requested were focusing purely on the total number of issued visas. There has not been any distinction between the nationalities of the applicants. A further distinction would have gone beyond the scope of this research, but surely be considered for further studies (see also in the conclusion of this paper).

Austria provided only the numbers of visas with a validity of at least three years and the number of visas with the maximum validity of five years. Still, these numbers look lower than the others in comparison to the numbers submitted in this study and in comparison to the total Schengen statistics.

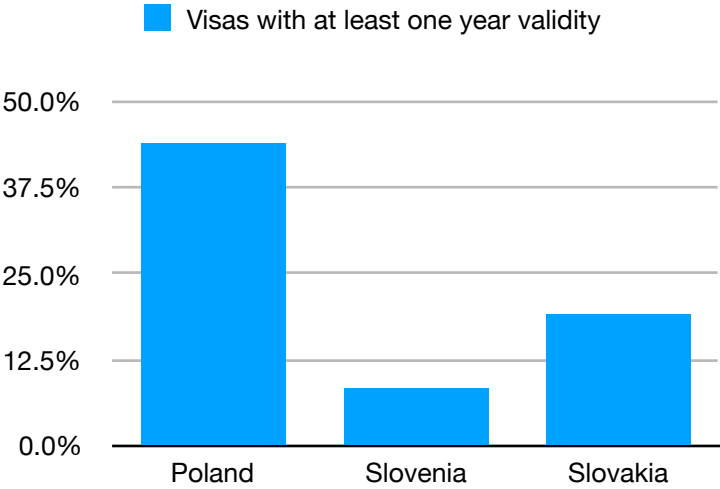
Out of 330.000 issued Austrian visas, roughly 1000 visas (or 0.3 percent) had a validity of at least three years, which is considerably less than the average for visas for more than two years. Marginal is the number of just 200 visas having the maximum validity. The following statistics will show that these numbers are the lowest of all respondents of this study. As it can be seen later in this paper, Austria issues considerably less long term visas than the other states.

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<sup>40</sup> Commission Staff Working Document SWD(2014) 101 final p.3

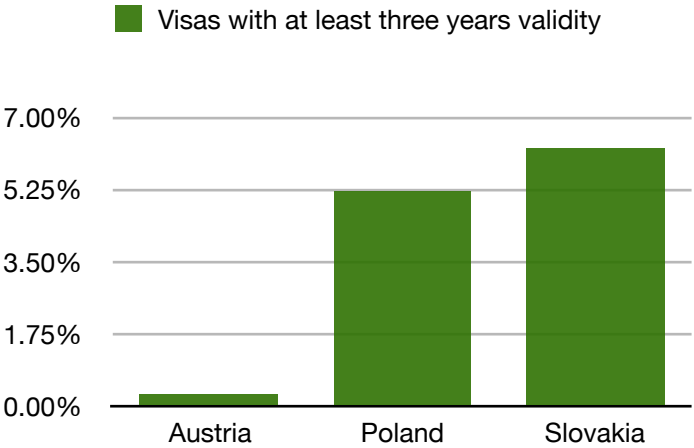
Poland issues considerably more longterm visas than the assumed average and also had the highest share of all participants. 344,331 out of 786,458 Schengen Visas issued in the year 2017 had a validity of at least one year, making it a share of 43.8 percent.

Also, the further Polish issuing rates are high compared to the other states: 40,570 visas (or 5.2 percent) had a validity of at least 3 years. Furthermore, approximately one out of 150 issued Polish Schengen visas had a validity of 5 years (5055 visas or 0.62 percent). This means already that Poland issued ten times more C5 visas in relation to Austria and is by far the highest number given in this study.



Slovakia is the only participant issuing long term visas more or less in an area of the average statistic of the Schengen States. The Slovakian Foreign Ministry delivered a number of 40,681 issued visas within one year. 7756 of these visas were valid for at least one year.

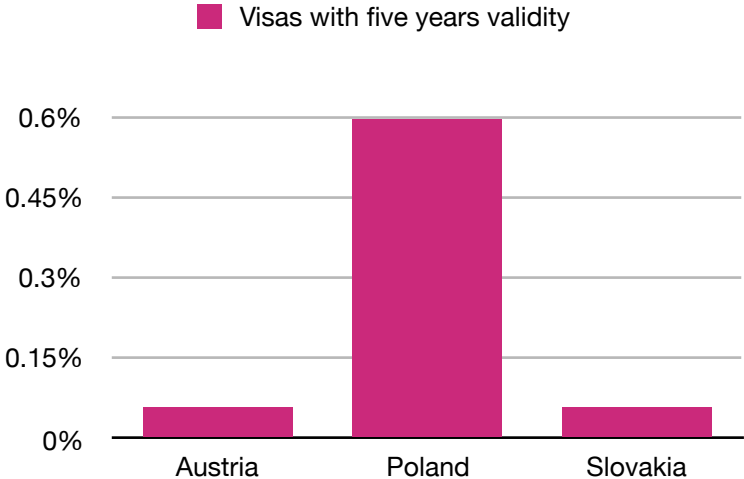
The more interesting statistic here is the comparatively high number of visas which are valid for at least three years: Slovakia shows here the highest rate; with 6.25 percent (2544 visas), the number is even higher than the extraordinarily high Polish figures and is considerably higher than the Schengen average.





This aforementioned number is even more interesting, if one takes the amount of issued C5 visas into consideration: just 24 (in words: twenty-four) applicants were able to obtain a Slovakian Schengen Visa with the maximum validity. The share of C5 visas is with 0.06 percent as low as the numbers submitted by Austria.

Slovenia submitted thorough statistics on the validity of visas up to one year. Even though this research is looking at the statistics of longterm visas, the Slovenien figures give an interesting insight: out of 26,774 visas, there were 14,043 visas with a validity of less then three months and 5718 visas with a validity between six and twelve months.



This means that more than the half of the issued Slovenian visas had a validity of less than 3 months and almost three quarters (73.8 percent) of all issued visas were valid for up to six months. The statistics for longterm visas could only be given as visas which are valid for more than one year. This number comes to 2205 visas or 8.24 percent of all visas. Slovenia here is lower than the average.

## Interpretation of results

The Schengen Visa Code can be considered as a harmonized rulebook which the member states must obey. As we have seen, a harmonized rulebook does not automatically mean that all processes are being dealt with in a harmonized way. Considerable differences can be seen in the interpretation of rules.

With a response rate of not even a third of all contacted foreign ministries, it is not possible to draw general or even final conclusion of the visa policies within the Schengen Area. For the same reason, it is nearly impossible to suggest any general trends within the Schengen Area.

With my research, I see my own hypothesis confirmed: as it looks, the Visa Code has been created by the EU institutions as supranational actors without any influence of the member states; which makes it quite an obvious case of neo-functionalism.

The European laws are binding for all member states (referring here to the member states of the Schengen Area). However, it is also clear that there are considerable variations between the member states. All member states interpret certain Articles of the Regulation differently. The execution of the regulations is directed by national authorities.

The national governments set their own rules for the interpretable laws of EU legislation. The governance goes, therefore, one level down - this can then be considered a case of multi-level-governance. To refer to the hypothesis of my introductory theory section, I now suggest that the Visa Code set a good example that the common theories about the functioning of the EU are not covering the full scope of the EU, above all in regard to visa law.

It rather looks as if neo-functionalism is the “main theory”, which I consider still as the most appropriate theory, but above all multi-level-governance has shown visible influence on the level of the national authorities. Every state makes its own regulations based on the EU legislation, which is being “provided” by the authorities in Brussels.

Obviously, I make these assumptions on basis of a study of a small group of states and only having studied one of the countless EU Regulations. How this behavior relates to the other (not studied) states and to other EU legislation would have to be a topic for a further, much broader research.

In regard of managing their visa sections, appointment scheduling systems are now widespread. Some states are using outsourcing, some seem to use own scheduling systems - at least this interpretation seems to be permitted after analyzing the responses.

Even though most respondents did not mention it openly, I assume that there is a trend to outsource certain parts of managing the visa process, which obviously includes the management of appointments. Poland admitted that outsourcing is an important solution in managing the waiting times for appointments through outsourcing. Iceland and Sweden also openly admitted that they are using the services of the Indian outsourcing provider “VFS Global Inc.”

My personal experience of living abroad has shown me as well that many other Schengen states have outsourced at least parts of their appointments systems to private outsourcing companies. It is quite obvious that this option is for most states is not just an option anymore, but rather a necessary mean for managing their visa sections.

The effects of outsourcing and/or managing the appointments for visa applications have not been explicitly investigated in my research. The broad use of such systems, however, suggests that they are considered as helpful. As mentioned before, it is still remarkable that - despite the use of these systems - official records on waiting times for a visa, and possible infringements of the mentioned “two weeks rule”, could hardly be provided for use in this research.

From the answers provided to me, it can still be assumed that to a certain extent, infringements of that rule happen. Austria provided an extensive list of reasons for infringements and indicated also the most affected missions; the latter was also done by Slovenia. Yet, concrete statistics have not been provided.

It is safe to say that keeping the waiting periods under two weeks seems to be an important issue to at least a few states. The extent and importance of this issue can, however, not be measured, already for the reason of unavailability of statistics. A further indication of the states paying attention to the waiting times is the fact that most states have prepared additional consular staff, who are ready to be sent to visa sections that reach a critical situation with their workload. This means high workload (and longer waiting times) are not a surprise to the foreign ministries.

Interesting were the different interpretations of the two weeks rule during my research. This, as expected, mainly affected the interpretation of the term “rule” as such. From all the answers I have received, I could make out that the Schengen States seem at least to be keen to keep their waiting times as low as possible. Nevertheless, the opinions on how strict the maximum waiting times shall be obeyed differ considerably.

All possible interpretations have been observed: from seeing two weeks as a binding law (Lithuania, Sweden) to seeing the limit as a more or less flexible guideline that permits exceptions (Slovenia). Yet, I could not observe any different behavior based on the different interpretations of Article 9(2). However, I would not consider this as the final result, since these observations have been based on a very low amount of statistics.

Different interpretations and treatments of legal terms were even more visible with the look at Article 24 of the Visa Code and the possibility of issuing Schengen visas with different validities of up to five years. The flexibility of treatments start already with those applicants who may be considered as well reputed: the “bona fide” applicants and the “frequent travelers”; also the treatment of first-time travelers is connected to this interpretation, since also some of them can be considered bona fide by some state (for example due to their social or economic status in the home country).

While some states gave own regulations for these “priority customers” who seem generally eligible to obtain a longterm visa (such as Austria), others refer to existing Schengen law

(such as Poland) while some others transfer the right of interpretation to the officers at their consular post (such as Sweden or Slovenia).

Looking at the provided statistics of longterm visas, I dare to see a connection between states with a clear definition of who is a well-established applicant and would, therefore “deserve” a visa with a longer validity.

As an explanation, I need to point out that I consider the reference of the Slovakian Foreign Ministry to EU documents also as a general reference to EU law in the interpretation of bona fide and frequent travelers. If we take this into account, it becomes visible that those states that have looser rules on bona fide travelers also seem to be more likely to issue long term visas.

This connection can be made with Poland and Slovakia. Slovakia, as mentioned, referred to the EU law in general and Poland makes it depending on a case-to-case basis, whether a long term visa can be issued. These two states were also those with higher shares of long term visas, while Poland obviously is still much more tending to issue visas with a validity of at least one year (43.8 percent of all visas) against Slovakia (19.07 percent). Still, both states are more or less visibly above the average of 16 percent of all issued Schengen visas with validity of at least one year.

In comparison to this, Austria has delivered a comprehensive list of requirements that needs to be fulfilled for bona-fide travelers. Even though complete statistics are missing for Austria, it is visible that their rates for visas with a high validity are by far the lowest, even if we compare their issuing rates of visas with validity of three years and more.

Whether there is a real connection between these two components, still needs to be proven; above all, if the Slovenian numbers are taken into account which do not fit into any category. Slovenia, at least officially, does not have written rules for issuing longterm visas, but transfer these the decisions to their visas sections. Their share of approximately eight percent is low compared to others and to the Schengen-wide average, but - in my opinion - not yet too low to consider the numbers as exceptionally low. Again, more statistics and responses are missing to give a definite statement on this matter.

## Conclusion

This research has proven that there are considerable differences among the member states, when it comes to Schengen visa policies. It seems obvious that some states follow the “Rulebook” of the Visa Code more strictly than others, and some states refrain more from issuing long-term visas than others.

An objective reason for the differences could not be found - apart from a possible connection between having clearly written down pre-conditions for calling an applicant a bona-fide traveler and the issuing of visas with long validity. Social, socio-economic or historic reasons could not be found. To find such a connection, the number of participants seemed to be too low and, also as a consequence of this, the results are still looking too random.

I conclude that a complete harmonization of visa policies within Europe has not yet been reached. It is, of course, still in question, whether this is the goal of the European institutions at all. The latest attempt by the Commission to streamline the practice of issuing long-term visas, indicates that harmonization is - at least to a certain extent - is desired. This is being confirmed by the start of negotiations to amend the Visa Code accordingly.<sup>41</sup> It remains to be seen what effect the amended Visas Code with possibly binding rules on issuing long terms visas will have on the statistics of long term visas.

I must admit that not all research questions could be answered in a satisfactory manner. During the course of data collection, it already become obvious that the results would not be sufficient to present solid results with high validity; I rather managed to find first trends, since different views on the same regulations have become more and more obvious. This is, for sure, ground for deeper research.

I, therefore, regard my study as a kickstarter for further research. This research can not only aim at a broader collection of data and a possible discourse with more states and European institutions, but can also be extended the to further Articles of the Visa Code and even on visa policy as such. With more data, it should then be possible to find certain patterns, if they exist. In addition, research could also be undertaken analyzing differences in the nationalities of the applicants as indicated before with the example of Finotelli/Sciortino.

In the scope upcoming research, studies could also focus on the effects of a partly incomplete harmonization. Those effects could, for example, attract “visa shopping” - an application could be made “suitable” to make it look as though another visa section is competent. The applicants could purposely avoid a competent visa section of a certain member state because of longer waiting times or because they know that some visa sections are more generous with issuing visas with a longer validity.

Since visa policies seems to be a field with a rather low range of research, there is room for far more studies. These fields of research could include effects of a change of visa policy in

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<sup>41</sup> European Council: Press Release No. 353/18

one country or the effects of visa waivers for certain countries (for example: changes in the number of cases of irregular or illegal migration).

In the end, it seems to be open what the final objective of the Visa Code has been: does it aim to be the final rulebook for the visa processes in the Schengen Area leading to a Europe-wide harmonized visa policy? As per the status quo, this objective seems to be far away. There are too many ways in which simple definitions can be interpreted. This was shown in this study by analyzing just two Articles of the Code with just more than a handful of member states.

Or is it a guideline for the member states to establish ground for orientation? This seems to be more likely and would objectively make more sense. This would mean that the institutions involved in the process of creating the Visa Code thought that it would be impossible to completely harmonize the visa process all over Europe. This would then have been, as this study has shown, just a realistic approach.

The possibility of introducing mandatory rules for visas with a validity of more than one year, however, suggests another direction. It can be assumed that there has been an integration failure on European level, meaning that the execution is not harmonized due to vaguely formulated regulations which can be interpreted in one way or the other. The Commission<sup>42</sup> and the Council themselves consider the current version of the Visa Code obviously as not strict enough. Both aim to introduce more binding rules giving less room for interpretation. The results of those negotiations and the formulation of the revised Visa Code will certainly open doors for new and deeper research.

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<sup>42</sup> European Commission: Communication COM (281) 251, No. 3.3

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# Appendix

# 1) The questionnaire which has been sent out to all foreign ministries<sup>43</sup>

## Research on the implementation of the Visa Code on national level

I am currently undertaking a research study on the implementation of the Schengen Visa Code (Regulation (EC) No. 810/2009). This research is being done for the Master Thesis as part of my Master Programme in European Studies at the University of Gothenburg. This Masters Programme is undertaken as a distance learning programme.

I am employed as a civil servant in the German Foreign service, currently posted to Bangkok, and have also worked in visa sections.

The aim of this study is to find out, if and how certain Schengen States are implementing the Visa Code differently. The questions are in regard of waiting times for an appointment in a visa section and in regard of the validity of issued visas.

The questions are regarding visa statistics as such, but also on how the regulations of the Visa Code are implemented by the visa sections.

This questionnaire is being sent to the Foreign Ministries of all 26 Schengen States. All answers will be collected and analysed by myself. The analysis will be used for my Master Thesis, which will also be published by the University of Gothenburg.

For the analysis, it will be necessary to use the answers given in this research also as the inclination of the respective Foreign Ministry. I ensure the highest level of care with the answers provided in the questionnaire, as I am aware of the sensitivity of certain data.

In case of questions, please do not hesitate to send me an e-mail to [stephankowitz@gmail.com](mailto:stephankowitz@gmail.com) or call me directly under +66 95 082 9287. My supervisor at the University of Gothenburg is Andreas Moberg ([andreas.moberg@law.gu.se](mailto:andreas.moberg@law.gu.se)).

I would, therefore, highly appreciate your participation for the matter of research. Since my research is time sensitive, please send the filled out questionnaire by 10 February 2018 as scanned document (preferably pdf format) by e-mail to [stephankowitz@gmail.com](mailto:stephankowitz@gmail.com).

Thank you very much in advance!

**Yours sincerely,**  
**Stephan Kowitz**  
Masters Student  
(Executive Masters in European Studies)  
University of Gothenburg

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<sup>43</sup> The format of the questionnaire has been edited in size and font for better readability of this paper; some of the blank spaces (to fill in the answers) have been removed. Additionally, I removed my personal contact details at the beginning of the text.

The questions themselves or any other parts of the text have not been edited in any way.

**Foreign Ministry of (name of state):**

**Contact person:**

**E-Mail:**

**Phone number:**

- 1) How many foreign missions with visa section does your foreign service entertain?
- 2) Does your foreign service, in general, use appointment scheduling systems for visa applications?  
How many of your visa sections do use appointment scheduling systems?
- 3) If not all visa sections use an appointment scheduling system: On what basis are the visa sections with appointment scheduling system chosen?
  - a) Are there regional focus areas? If yes: Which ones? How are they being chosen?
  - b) Are there focus areas according to the number of applications that a visa section has?  
If yes: Which missions are affected? What is the minimum number of applications?
- 4) According to Art. 9 (2) of the Schengen Visa Code, an appointment shall take place within two weeks after the appointment has been requested. Are all visa sections able to schedule an appointment within two weeks throughout the year?

If not:  
How many visa sections have experienced infringements of this two weeks regulation?
- 5) Were there any regional differences in regards to the affected visa sections? Are some visa sections in certain countries more effected? If yes: Where were these visa sections situated?
- 6) Which visa sections struggle the most with keeping appointments within two weeks?
- 7) What were, according to your point of view, the reasons for these infringements?
- 8) Are there measurements being taken to keep the waiting time under two weeks (e.g. organisational changes, sending more personnel to those visa sections)? Which ones?
- 9) Are there also seasonal measurements, for example during peak seasons? If yes: Which ones?
- 10) To what extend have those measurements already shown any effects?
- 11) Can the maximum of two weeks waiting time of Art. 9 (2) Visa Code, according to your point of view, be considered a feasible limit?  
If yes: Why?  
If no: Why not?
- 12) Do you consider the time limit of Art. 9 (2) Visa Code as obligatory or only as a guideline?  
Please state also a reason for your answer.

- 13) How many visas have the visa sections of your country issued within the last 12 months?
- 14) What validity will be generally given to first time travellers?
- 15) How many of these issued visas had a validity of at least one year (validity between one and five years)?
- 16) How many issued visas had a validity of at least three years (validity between three and five years)?
- 17) How many issued visas had a validity of five years?
- 18) Are there certain criteria an applicant has to fulfil to obtain a visa with validity of one year or more? If yes: Please mention the main criteria.
- 19) Are there regulations on when to consider an applicant a “frequent traveller”?
- 20) On what basis are applicants considered “bona fide”, in particular to be eligible to obtain a long term visa?

Place, Date:

Signature: