

JUDGMENT OF THE COURT (Fourth Chamber)

4 September 2014 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 810/2009 — Articles 24(1) and 34 — Uniform visa — Annulment or revocation of a uniform visa — Validity of a uniform visa affixed to a travel document which has been cancelled — Regulation (EC) No 562/2006 — Articles 5(1) and 13(1) — Border checks — Entry conditions — National legislation requiring a valid visa affixed to a valid travel document)

In Case C-575/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administratīvā apgabaltiesa (Latvia), made by decision of 4 December 2012, received at the Court on 7 December 2012, in the proceedings

Air Baltic Corporation AS

v

Valsts robežsardze,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Safjan, J. Malenovský, A. Prechal and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 19 March 2014,

after considering the observations submitted on behalf of:

- Air Baltic Corporation AS, by I. Jansons and M. Freimane, Legal Advisers,
- the Latvian Government, by I. Kalniņš and D. Peļše, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Palatiello, avvocato dello Stato,
- the Finnish Government, by J. Heliskoski and J. Leppo, acting as Agents,
- the Swiss Government, by D. Klingele, acting as Agent,
- the European Commission, by G. Wils and A. Sauka, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 May 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1) as amended by Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 (OJ 2010 L 85, p. 1) ('the Schengen Borders Code') and 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).

2 The request has been made in proceedings between Air Baltic Corporation AS ('Air Baltic'), an airline company, and Valsts robežsardze (Latvian border control authorities) concerning the border control authorities' decision to impose an administrative fine on Air Baltic for transporting to Latvia a person who did not have the travel documents necessary to cross the border.

Legal context

EU law

The Schengen Borders Code

3 Recitals 4, 6, 7, 8 and 19 in the preamble to the Schengen Borders Code are worded as follows:

'(4) As regards border control at external borders, the establishment of a "common corpus" of legislation, particularly via consolidation and development of the *acquis*, is one of the fundamental components of the common policy on the management of the external borders ...

...

(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.

(7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

(8) Border control comprises not only checks on persons at border crossing points and surveillance between these border crossing points, but also an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders. It is therefore necessary to lay down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance.

...

(19) Since the objective of this Regulation, namely the establishment of rules applicable to the movement of persons across borders cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. ...'

4 Article 1 of the Schengen Borders 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 European Union.

It establishes rules governing border control of persons crossing the external borders of the Member States of the European Union.'

5 Under point 10 of Article 2 of the Schengen Borders Code, '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 Paragraph 1 of Article 5 of that code, which is entitled 'Entry conditions for third-country nationals', provides:

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

- (a) they are in possession of a valid travel document or documents authorising them to cross the border;
- (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] ...;
- (c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) they are not persons for whom an alert has been issued in the SIS [Schengen Information System] for the purposes of refusing entry;
- (e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.'

7 Article 5(4) of the Schengen Borders Code states that, by way of derogation from Article 5(1), third-country nationals in certain specific situations are to be authorised to enter the territories of Member States, or may be authorised to do so, even if they do not satisfy all the conditions laid down in Article 5(1).

8 Under the second subparagraph of Article 6(1) of the Schengen Borders Code, any measures taken by border guards in the performance of their duties are to be proportionate to the objectives pursued by those measures.

9 Paragraphs 1 and 3 of Article 7 of the code, which is entitled 'Border checks on persons', state:

'1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

...

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

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

- (i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;

...

- (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;

...'

10 Article 8(1) of the Schengen Borders Code provides that border checks may be relaxed as a result of exceptional and unforeseen circumstances.

11 Under Article 10(1) and (3) of the Schengen Borders Code:

'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;

...

3. ...

Exceptionally, at the request of a third-country national, insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating the name and passport number. That sheet shall be given to the third-country national.'

12 Article 13 of the Schengen Borders Code provides:

'1. A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. ...

...

6. Detailed rules governing refusal of entry are given in Part A of Annex V.'

13 In Part A of Annex V to the Schengen Borders Code, point 1(b) states that, when refusing entry, the competent border guard is to write, in indelible ink, the letter(s) corresponding to

the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry.

- 14 The form in Annex V, Part B of that code includes a series of nine boxes the use of which enables the competent authorities to indicate the specific reasons for the refusal of entry at the border.

The Visa Code

- 15 Recital 3 to the Visa Code is worded as follows:

'As regards visa policy, the establishment of a "common corpus" of legislation, particularly via the consolidation and development of the *acquis* (the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 [between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), signed at Schengen on 19 June 1990] and the Common Consular Instructions ..., is one of the fundamental components of "further development of the common visa policy as part of a multi-layer system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions" ...'.

- 16 The first and second subparagraphs of Article 24(1) of that code state:

'The period of validity of a visa and the length of the authorised stay shall be based on the examination conducted in accordance with Article 21.

A visa may be issued for one, two or multiple entries. The period of validity shall not exceed five years.'

- 17 Under Article 29(1) and (2) of the Visa Code:

'1. The printed visa sticker ... shall be affixed to the travel document...

2. Where the issuing Member State does not recognise the applicant's travel document, the separate sheet for affixing a visa shall be used.'

- 18 Article 30 of the code provides that '[m]ere possession of a uniform visa ... shall not confer an automatic right of entry.'

- 19 Under Article 33 of the Visa Code, the period of validity and/or the duration of stay of an issued visa may, in certain specific circumstances, be extended.

- 20 Paragraphs 1 and 2 of Article 34 of that code provide:

'1. A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained. A visa shall in principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State ...

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

Latvian law

- 21 Article 4(1) of the Immigration Law (Imigrācijas likums) of 20 November 2002 (*Latvijas Vēstnesis*, 2000, No 169) provides:

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

- (1) a valid travel document ...
- (2) a valid visa in a valid travel document. ...'

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

- 22 On 8 October 2010, Air Baltic transported to Latvia, on a flight from Moscow to Riga, an Indian citizen who, at border control at Riga airport, produced a valid Indian passport without a uniform visa and a cancelled Indian passport, to which a multiple entry uniform visa was affixed, issued by the Italian Republic and valid from 25 May 2009 to 25 May 2014. The cancelled passport contained the following annotation: 'Passport cancelled. Valid visas in the passport are not cancelled.'
- 23 The Indian citizen was refused entry into Latvian territory on the ground that he did not have a valid visa.
- 24 By decision of 14 October 2010, the Valsts robežsardze imposed an administrative fine of LVL 2000 on Air Baltic, on the ground that, by transporting the Indian citizen, Air Baltic had committed the administrative offence of transporting to Latvia a person without the travel documents necessary to cross the border.
- 25 The complaint that Air Baltic made to the head of Valsts robežsardze against that decision was rejected by decision of 9 December 2010.
- 26 Air Baltic thereupon brought an action contesting the latter decision before the Administratīvā rajona tiesa (District Administrative Court). By judgment of 12 August 2011, the action was dismissed.
- 27 Air Baltic appealed to the Administratīvā apgabaltiesa (Regional Administrative Court or 'the referring court') against that judgment.
- 28 In those circumstances, the Administratīvā apgabaltiesa, on the view that interpretation of the Schengen Borders Code and the Visa Code was necessary to resolve the dispute before it, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Must Article 5 of [the Schengen Borders Code] be interpreted as meaning that existence of a valid visa contained in a valid travel document is a mandatory pre-condition for the entry of a third-country national?
 - (2) Under [the Visa Code], does cancellation of a travel document to which a visa sticker is affixed mean that the visa issued is also invalidated?
 - (3) Are national rules which require, as a mandatory pre-condition for the entry of third-country nationals, the existence of a valid visa contained in a valid travel document compatible with [the Schengen Borders Code] and [the Visa Code]?'

Consideration of the questions referred

Question 2

- 29 By Question 2, which it is appropriate to consider first, the referring court asks in essence whether, on a proper construction of Articles 24(1) and 34 of the Visa Code, the cancellation

of a travel document by an authority of a third country means that the uniform visa affixed to that document is automatically invalidated.

- 30 In that regard, it should be noted that, under Article 24(1) of the Visa Code, the competent authority must, when issuing a uniform visa, set the period of validity for that visa. Thereafter, that period may be extended on the basis of Article 33 of that code in certain specific circumstances.
- 31 However, under Article 34(1) and (2) of the Visa Code, a visa is to be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued and it is to be revoked where it becomes evident that the conditions for issuing it are no longer met.
- 32 A uniform visa thus remains valid at the very least until expiry of the period of validity fixed, when the visa was issued, by the competent authority of the issuing Member State, unless it is annulled or revoked before the expiry of that period, pursuant to Article 34 of the Visa Code.
- 33 However, under paragraphs 1 and 2 of Article 34 of the Visa Code, annulment or revocation of a uniform visa requires the adoption of a specific decision to that effect by the competent authority of the issuing Member State or of another Member State. An authority of a third country is therefore not competent to annul a uniform visa.
- 34 A decision, adopted by an authority of a third country, to cancel a travel document to which a uniform visa is affixed cannot therefore mean that the visa is automatically annulled or revoked.
- 35 Moreover, it follows from Article 34 of the Visa Code that, where a competent authority annuls a uniform visa, its basis for doing so must coincide with one of the grounds for refusal provided for in Articles 32(1) and 35(6) of the code (see, to that effect, judgment in *Koushkaki*, C-84/12, EU:C:2013:862, paragraphs 42 and 43). Accordingly, the only ground for annulling a visa which directly concerns the travel document is, pursuant to Article 32(1)(a)(i) of that code, the situation in which the travel document presented at the time when the visa was issued was false, counterfeit or forged. It follows that the cancellation, after the visa has been issued, of the travel document to which the visa is affixed is not one of the reasons that may justify annulment of the visa by a competent authority.
- 36 In the light of the foregoing, the answer to Question 2 is that, on a proper construction of Articles 24(1) and 34 of the Visa Code, the cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.

Question 1

- 37 By Question 1, the referring court asks in essence whether, on a proper construction of Article 5(1) of the Schengen Borders Code, read in conjunction with Article 13(1) thereof, the entry of third-country nationals into the territory of Member States is subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.
- 38 In that regard it should be noted that Article 13(1) of Schengen Borders Code provides that a third-country national who does not meet all the entry conditions laid down in Article 5(1) of that code and who does not belong to the categories of persons referred to in Article 5(4) thereof is to be refused entry to the territories of the Member States.
- 39 Under Article 5(1) of that code, the first two conditions for the entry of a third-country national into the territories of the Member States are possession of a valid travel document or documents authorising the holder to cross the border, and a valid visa, if required under Regulation No 539/2001.

- 40 It must therefore be noted that the wording of that provision makes a distinction between the entry condition relating to possession of a travel document, laid down in Article 5(1)(a) of the Schengen Borders Code, and that relating to possession of a visa, laid down in Article 5(1)(b) thereof, without in any way suggesting that the affixing of the visa to a travel document that is valid on the date of crossing the border is an entry condition.
- 41 On the other hand, as the Latvian and Finnish Governments pointed out, some language versions of Article 7(3)(a)(i) of the Schengen Borders Code, such as the Spanish, Estonian, Italian and Latvian, express the idea that the competent authorities must ensure, when carrying out border checks, that the third-country national has a valid travel document to which a visa is affixed.
- 42 However, most of the other language versions of that provision of the Schengen Borders Code, that is to say, the versions in Danish, German, Greek, English, French, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Slovenian and Swedish, are couched in terms which do not indicate that the visa must necessarily be affixed to a travel document that is valid at the time of crossing the border, while other language versions, such as the Czech and Finnish, are somewhat ambiguous in that regard.
- 43 The need for a uniform interpretation of a provision of EU law requires that, where there is divergence between the various language versions, the provision in question be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, to that effect, the judgments in *DR and TV2 Danmark*, C-510/10, EU:C:2012:244, paragraph 45, and in *Bark*, C-89/12, EU:C:2013:276, paragraph 40).
- 44 As regards, first, the general scheme in which Articles 5(1) and 7(3)(a)(i) of the Schengen Borders Code arise, it should be noted that, although both those provisions are to be found in Title II of the code, Article 7 is part of Chapter II, entitled 'Control of external borders and refusal of entry', whereas Article 5 is part of Chapter I, entitled 'Crossing of external borders and conditions for entry'.
- 45 It is clear, moreover, both from the title and from the wording of paragraph 3(a) of that provision, that Article 7 of the Schengen Borders Code is not intended to establish entry conditions for third-country nationals, but to clarify the various aspects of the thorough check that the competent authorities must carry out to ensure, in particular, that those nationals meet the entry conditions laid down in Article 5(1) of that code.
- 46 It must also be noted that, under Article 13(2) of the Schengen Borders Code, the precise reasons for a decision refusing entry are to be given to the third-country national by means of the standard form set out in Part B of Annex V to that code.
- 47 As it is, among the nine boxes on that form that the competent authorities must tick in order to indicate the reasons for the decision refusing entry, a number relate, respectively, to the travel document and the visa presented. Not one of those boxes, however, enables the refusal of entry to be justified by the fact that the valid visa presented is not affixed to a travel document which is valid on the date of crossing the border.
- 48 Furthermore, it follows from Article 29(2) of the Visa Code that the EU legislature did not intend to make it absolutely impossible to enter the territory of the Member States without a visa affixed to a valid travel document, since express provision is made in Article 29(2) for a visa to be affixed to a separate sheet in the event that the Member State issuing the visa does not recognise the travel document presented to it.
- 49 Moreover, a visa that is still valid, affixed to a travel document that was cancelled after the visa was issued, would no longer have any effect after such a cancellation if it could not be presented in order to enter the territory of the Member States, even when submitted together with a valid travel document. To construe the Schengen Borders Code in that way would *de facto* divest such a visa of its validity, which flows from Articles 24(1) and 34 of the Visa Code, as interpreted in paragraph 36 above.

- 50 As regards, secondly, the objectives pursued by the Schengen Borders Code, it can be seen from recital 6 thereto that border control should help to combat illegal immigration and trafficking in human beings, and to prevent any threat to the internal security, public policy, public health and international relations of Member States. Furthermore, Article 2(10) of that code states that border checks are carried out to ensure that persons may be authorised to enter the territory of the Member States or authorised to leave it.
- 51 In order to attain those objectives, Article 7(3) of that code provides that, on entry and exit, third-country nationals are to be subject to thorough checks, which are to include 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.
- 52 It is true that, as the Latvian and Finnish Governments have argued, that examination is more difficult where a cancelled travel document to which a valid visa is affixed is presented at the same time as a valid travel document.
- 53 However, as the Advocate General noted in point 68 of his Opinion, the presentation of two separate travel documents does not put the competent authorities in a position where they would be unable to carry out, under reasonable conditions, the checks provided for in Article 7(3) of the Schengen Borders Code, taking into account the information given in the two travel documents presented to them.
- 54 Moreover, those authorities face similar difficulties in the situation, expressly contemplated by the EU legislature, where, instead of the entry or exit stamp being affixed to the travel document, an entry or exit stamp is recorded on a separate sheet, in accordance with the second subparagraph of Article 10(3) of the Schengen Borders Code.
- 55 Furthermore, a finding that the practical difficulties caused by the presentation of two separate travel documents, such as those at issue in the main proceedings, would be sufficient grounds for refusing entry to third-country nationals whose uniform visa is affixed to a cancelled travel document would, in effect, infringe the requirement — laid down in the second subparagraph of Article 6(1) of the Schengen Borders Code, read in conjunction with recital 7 thereto — that border controls must be proportionate to the objectives pursued.
- 56 It follows from the foregoing that the answer to Question 1 is that, on a proper construction of Article 5(1) of the Schengen Borders Code, read in conjunction with Article 13(1) thereof, the entry of third-country nationals into the territory of Member States is not subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.

Question 3

- 57 By Question 3, the referring court asks, in essence, whether Article 5(1) of the Schengen Borders Code, read in conjunction with Article 13(1) thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the entry of third-country nationals to the territory of the Member State concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.
- 58 In view of the answer to Question 1, it appears that Question 3 can be answered in the negative only if a Member State has discretion to refuse a third-country national entry to its territory on the basis of an entry condition that is not laid down in the Schengen Borders Code.
- 59 In that regard, it should be noted that the very wording of Article 5(1) of the Schengen Borders Code makes it clear that that provision lists the conditions for the entry of third-country nationals to the territory of Member States: it does not set out a core list of grounds on which such nationals are to be refused entry to that territory.
- 60 Furthermore, Article 7(1) of the Schengen Borders Code provides that border checks are to be carried out in accordance with Chapter II of Title II of that code.

- 61 Although Articles 7(3) and (8) of the Schengen Borders Code, which are part of Chapter II of Title II, respectively impose an obligation on the competent authorities to verify the entry conditions laid down in Article 5(1) of that code and allow the possibility of border checks being relaxed, there is no reference in any provision of that chapter to the possibility for the authorities to extend those checks by requiring compliance with entry conditions other than those laid down in Article 5(1).
- 62 Moreover, the view that the list of entry conditions laid down in Article 5 of the Schengen Borders Code is exhaustive is supported by the fact that, under Article 13(1) of the code, entry to the territories of the Member States is to be refused in the case of a third-country national who does not fulfil all the entry conditions laid down in Article 5(1) of that code and who does not belong to the categories of persons referred to in Article 5(4), whilst, under the second subparagraph of Article 13(2) of the code, the precise reasons for the refusal must be given by means of the standard form set out in Part B of Annex V thereto (see, by analogy, the judgment in *Koushkaki*, EU:C:2013:862, paragraph 38).
- 63 The standard form set out in Part B of Annex V to the Schengen Borders Code also has nine boxes that the competent authorities are to tick in order to notify the third-country national of the grounds for the decision refusing entry. The sixth box relates to the length of stay specified in the introductory part of Article 5(1) of the Schengen Borders Code, while the other boxes relate to the conditions laid down in Article 5(1)(a) to (e).
- 64 Similarly, Part A of Annex V to the Schengen Borders Code states that, when refusing entry, the competent border guard must, inter alia, write in the passport the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the standard form for refusing entry.
- 65 In addition, it follows from Article 1 of the Schengen Borders Code and recitals 4, 8 and 19 thereto that the objective of the code is to establish the conditions, criteria and detailed rules applicable to the control of external borders of the European Union, which cannot be satisfactorily achieved by the Member States acting alone. Recital 6 to the Schengen Borders Code states, moreover, that border control is in the interests not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border controls — a statement that implies a common definition of the entry conditions.
- 66 The interpretation to the effect that the Schengen Borders Code does no more than oblige the Member States to refuse entry to their territory in certain specific situations, without thereby harmonising the entry conditions to that territory, is therefore incompatible with the very objective of that code (see, by analogy, the judgment in *Koushkaki*, EU:C:2013:862, paragraph 50).
- 67 Moreover, the Court has held that the arrangements put in place by the Schengen Agreement of 14 June 1985 are intended to ensure a high and uniform level of checks and surveillance along external borders which is the corollary of the freedom to cross internal borders within the Schengen Area (judgment in *Commission v Spain*, C-503/03, EU:C:2006:74, paragraph 37), thanks to compliance with harmonised rules for external border controls which are laid down in Articles 6 to 13 of the Schengen Borders Code (see, to that effect, the judgment in *ANAFE*, C-606/10, EU:C:2012:348, paragraphs 26 and 29).
- 68 Moreover, even though, under Article 30 of the Visa Code, mere possession of a uniform visa does not confer an automatic right of entry, the objective of facilitating legitimate travel, which is referred to in recital 3 to that code, would be jeopardised if it lay within the discretion of the Member States to refuse entry to a third-country national holding a uniform visa by adding an entry condition to those listed in Article 5(1) of the Schengen Borders Code, when even the EU legislature did not consider it necessary for such a condition to be satisfied for entry into the territory of the Member States (see, by analogy, the judgment in *Koushkaki*, EU:C:2013:862, paragraph 52).
- 69 It follows that a Member State does not have discretion allowing it to refuse a third-country national entry to its territory by applying a condition that is not laid down in the Schengen Borders Code.

- 70 In the light of the foregoing considerations, the answer to Question 3 is that Article 5(1) of the Schengen Borders Code, read in conjunction with Article 13(1) thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the entry of third-country nationals to the territory of the Member State concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.

Costs

- 71 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 (Fourth Chamber) hereby rules:

1. **On a proper construction of Articles 24(1) and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), the cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.**
2. **On a proper construction of Article 5(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010, read in conjunction with Article 13(1) of Regulation No 562/2006, the entry of third-country nationals into the territory of Member States is not subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.**
3. **Article 5(1) of Regulation No 562/2006, as amended by Regulation No 265/2010, read in conjunction with Article 13(1) of Regulation No 562/2006, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the entry of third-country nationals to the territory of the Member State concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.**