

STATEMENT BY THE GSLP/LIBERAL OPPOSITION

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The Spanish Government is flouting acceptable standards of behaviour by continuing to send non-EU passengers who do not have a Schengen visa back to London when a flight destined for Gibraltar is diverted to Malaga instead. The Opposition has received reports that there was another such incident involving a group of non-EU nationals at Malaga airport yesterday.

The Opposition understands that the British Airways flight from London Heathrow was diverted to Malaga yesterday because of poor weather conditions in Gibraltar. The standard procedure in these circumstances is that the passengers on board the plane and their luggage are then driven to Gibraltar by bus. However, once again, a group of non-EU nationals who did not have a Schengen visa were not allowed to transit through Spain to Gibraltar and were sent back to London instead. This is totally unacceptable and it needs to be resolved. These situations frequently affect seamen who are travelling to Gibraltar to provide a crew change for vessels waiting in the Bay as well as other non-EU nationals who are resident in Gibraltar.

Last year, following similar complaints received by the Opposition, Shadow Minister for Civil Aviation Dr Joseph Garcia raised the issue with Liberal Democrat MEP for Gibraltar and the South West Graham Watson. Mr Watson questioned the European Commission on the matter. He was told in April 2009 by Commissioner Barrot, responsible for Justice, Freedom and Security, that there was provision in EU law in such situations for a transit visa to be issued at the airport provided that the passenger in question was in possession of a visa for their final destination, in this case Gibraltar.

The Commissioner advised that Council Regulation (EC) 415/2003 covered the issue of visas at the border including the issue of such visas to seamen in transit. The Commissioner said that: "Member States' authorities responsible for checks on persons may exceptionally, by way of derogation from the general rule that visas shall be issued by diplomatic and consular authorities, issue visas at the borders, provided that the person applying for a transit visa at the border is in possession of the necessary visas, if applicable, for his/her onward journey." The Commission concluded that "it would therefore seem that application of these provisions could be appropriate in the situation referred to by the Honourable Member."

Commenting on the matter, Shadow Civil Aviation Minister Dr Joseph Garcia said:

"This means that if the Spanish authorities want to be helpful, all that they have to do is make use of the derogation that exists in EU law and issue the necessary visa at Malaga airport to those EU nationals bound for Gibraltar who do not have one. The Spanish authorities must understand that these non-EU nationals did not have a Schengen visa because they had no desire to enter Spain. They ended up in Malaga through no fault of their own because of the bad weather in Gibraltar. Spain should exercise its discretion and show some commonsense in this matter."