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Proposal for a

COUNCIL DECISION

on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (hereafter “Visa Facilitation Agreement”) entered into force on 1 June 2007¹. The purpose of the Visa Facilitation Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of the European Union and the Russian Federation. The European Union has concluded visa facilitation agreements only with a selected and limited number of third countries. Such agreements are to be a proof of mutual partnership between the EU and the given country and are based on the mutual respect of common values.

In 2011, negotiations were launched on a revision of the Visa Facilitation Agreement in order to take into account the changes to the EU’s legal framework and experience acquired through the implementation of the Visa Facilitation Agreement. In parallel, a dialogue on ‘Common steps towards visa liberalisation’ was initiated. Both exercises were frozen as a consequence of Russia’s illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol in 2014².

In reaction to that illegal annexation in 2014 and the continued destabilising actions in eastern Ukraine, the European Union has introduced (i) economic sanctions in view of Russia's actions destabilising the situation in Ukraine, linked to the incomplete implementation of the Minsk agreements; (ii) sanctions in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; (iii) sanctions in response to the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.

The decision of the Russian Federation to recognise the non-government-controlled areas of Donetsk and Luhansk oblasts of Ukraine as independent entities and the decision to send Russian troops into Ukraine, the unjustified and unprovoked military aggression against its territorial integrity, sovereignty and independence, is a severe breach of international law and international agreements, including the UN Charter, Helsinki Final Act, Paris Charter and the Budapest Memorandum.

As a signatory of the Minsk agreements, Russia has a clear and direct responsibility to work to find a peaceful settlement. With the decision to recognise the non-government-controlled regions of eastern Ukraine as independent entities, Russia has clearly violated the Minsk agreements, which stipulate the full return of these areas to the control of the Ukrainian government.

On 23 February 2022, the EU agreed unanimously on a first package of sanctions, which inflicted an additional cost on Russia in response to its actions. They included individual

¹ Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 129, 17.5.2007).

² Council Conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 3 March 2014.

sanctions, financial restrictions, and restrictions on economic relations between the EU and the non-government-controlled areas of Donetsk and Luhansk oblasts of Ukraine.

On 24 February 2022, the European Council condemned in the strongest possible terms Russia's unprovoked and unjustified military aggression against Ukraine and expressed full solidarity of the Union with Ukraine and its people together with its international partners. By its illegal military aggression, Russia has since continued to grossly violate international law, committing atrocities towards the Ukrainian population and undermining European and global security and stability. Furthermore, the European Council demanded that Russia immediately cease its military actions, unconditionally withdraw all forces and military equipment from the entire territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders.³

Following this, the Union has responded with further packages of sanctions including the freezing of assets and travel bans for individuals. The Union has also adopted restrictive measures concerning the financial, energy, transport and technology sectors. It has also taken additional measures, notably suspending in part the application of the Visa Facilitation Agreement.⁴ This measure suspended facilitations relating to documentary evidence, the visa fee, the issuing of multiple entry visas and the length of procedures for processing visa applications. It targeted Russian holders of diplomatic passports, government officials, business people and representatives of business organisations.

Since the beginning of the Russian full-scale aggression against Ukraine, the situation has worsened significantly with tragic humanitarian consequences for the civilian population and infrastructure and Russia has further expanded its full or partial occupation in the eastern and southern regions of Ukraine. Millions of Ukrainians were forced to flee, all through land borders, as air routes are not available. As a direct consequence of the large-scale invasion, the number of crossings of the Ukrainian border towards neighbouring countries has been continuously growing. On 23 August, it surpassed 11 million according to UNHCR data, out of which around 10 million entries into the EU.

On 31 August, at the Informal meeting of Foreign Affairs Ministers, Member States considered necessary to suspend in whole the Visa Facilitation Agreement, in view of significantly reducing the number of new visas to be issued to Russian citizens by EU Member States and preventing potential visa shopping by Russian citizens.

The EU cannot consider Russia, waging such a war of aggression, as counterpart to the Visa Facilitations Agreement for as long as it continues conducting a destructive foreign policy and military aggression towards an EU candidate country, and demonstrating complete disregard for the international rules-based order.

2. PROPOSED MEASURES

The military aggression against a country bordering the European Union justifies measures to protect the essential security interests of the European Union and its Member States'.

The Russian Federation has not only endangered relations with the European Union and its Member States, but also violated the Minsk agreements by undermining Ukraine's territorial integrity, sovereignty and independence, contrary to its international obligations.

³ European Council conclusions 24 February 2022.

⁴ Council Decision (EU) 2022/333.

In addition, the Russian Federation is pursuing a proactive policy of imposing the use of its international passports by Ukrainian citizens of the Ukrainian regions occupied by the Russian military, in breach of Ukraine's territorial integrity, sovereignty and independence.

In accordance with Article 15(5) of the Visa Facilitation Agreement, each party may suspend it in whole or in part for reasons of public order, protection of national security or protection of public health. All these criteria have been put at risk by Russia's invasion of Ukraine. Russia's flagrant disregard of the international rules-based order is a major risk to public order. There are also specific risks such as the circulation of inhabitants of occupied areas of Ukraine who are close to the Russian regime and who may be issued Russian Federation international passports. This military aggression underpins the development of organised crime and the circulation of illegal weapons, thus threatening the Union's security interests and the national security of the Member States. The increased risks linked to the use of the Zaporizhzhia nuclear plant as a military facility by the Russian Federation poses a major threat to human life.

More generally, the decision to invade Ukraine and continue to pursue the military aggression is incompatible with a trustful relationship between the EU and the Russian Federation. Visa facilitation agreements have been concluded only with a selected and limited number of third countries and stem from a mutual partnership between the EU and the given country. A country waging an unprovoked and unjustified war of aggression should no longer be eligible to enjoy visa facilitations. It is therefore justified to suspend the Visa Facilitation Agreement in whole as regards all citizens of the Russian Federation.

The suspension will also affect categories of travellers such as journalists, pupils, students and researchers who will no longer enjoy facilitations under the suspended Visa Facilitation Agreement. Given the importance of such categories of travellers for the EU and of continuing people-to-people contacts, this issue will be addressed in the upcoming guidelines to be adopted by the Commission on general visa issues with Russia.

Once the Council Decision enters into force, the rules provided for by the Visa Facilitation Agreement will be suspended. Consequently, the general rules of the Visa Code will apply instead.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The substantive legal basis is Article 77(2)(a) of the Treaty on the Functioning of the European Union (TFEU).

In addition, Article 15(5) of the Visa Facilitation Agreement stipulates that *“each Party may suspend in whole or in part this Agreement for reasons of public order, protection of national security or protection of public health. The decision on suspension shall be notified to the other Party not later than 48 hours before its entry into force. The Party that has suspended the application of this Agreement shall immediately inform the other Party once the reasons for the suspension no longer apply.”*

- **Subsidiarity (for non-exclusive competence)**

n.a.

- **Proportionality**

The present proposal is proportionate to the need to safeguard the Union and Member States' security and to react to the unprovoked and unjustified Russian military aggression against Ukraine. Given the worsening of the security situation in Ukraine due to military actions by the Russian Federation and the increased risks that these actions pose to the European Union, it is proportionate to suspend in whole the Visa Facilitation Agreement.

4. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Member States discussed the suspension in whole of the Visa Facilitation Agreement during the Visa Working Party of 13 July 2022. Member States also expressed their views on the suspension during the informal meeting of the Foreign Affairs Ministers (Gymnich) on 31 August 2022 and reached there a political agreement on the suspension of the Agreement in whole.

5. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

6. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the measure will be monitored by the Commission, in particular in the context of Schengen evaluations.

- **Detailed explanation of the specific provisions of the proposal**

The proposal aims at suspending in whole the facilitations provided for in the Visa Facilitation Agreement for Russian citizens. It concerns the documentary evidence to be presented by the applicant ahead of the journey, the amount of the visa fee, the issuing of multiple-entry visas and the length of procedures for processing visa applications. The facilitations relating to these different elements will cease to apply and standard rules of the Visa Code will apply to Russian citizens in relation to: the visa fee (Article 16 of the Visa code), the maximum duration for processing visa applications (Article 23) the issuing of multiple-entry visas (Article 24.2), and documentary evidence to be presented by the applicant ahead of the journey (Article 14)⁵.

⁵ Commission Implementing Decision C(2016) 3347 final of 6.6.2016 establishing the list of supporting documents to be presented by visa applicants in Iran, Iraq and the Russian Federation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) and Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation⁶, (“the Agreement”) entered into force on 1 June 2007, in parallel with the Agreement between the European Community and the Russian Federation on readmission.⁷
- (2) The purpose of the Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of the European Union and the Russian Federation. The desire to facilitate people-to-people contacts as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties is underlined in the preamble to the Agreement.
- (3) Under Article 15(5) of the Agreement, “each Party may suspend in whole or in part this Agreement for reasons of public order, protection of national security or protection of public health”. The decision on suspension shall be notified to the other Party not later than 48 hours before its entry into force. The Party that has suspended the application of this Agreement shall immediately inform the other Party once the reasons for the suspension no longer apply.
- (4) In reaction to the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation in 2014 and to its continued destabilising actions in eastern Ukraine, the European Union has already introduced economic sanctions in response to Russia's actions destabilising the situation in Ukraine, linked to the incomplete implementation of the Minsk agreements; sanctions in respect of

⁶ OJ L 129, 17.5.2007.

⁷ Agreement between the European Community and the Russian Federation on readmission (OJ L 129, 17.5.2007).

actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; and sanctions in response to the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation.

- (5) As a signatory of the Minsk agreements, the Russian Federation has had a clear and direct responsibility to work towards finding a peaceful settlement of the conflict in line with these principles. With the decision to recognise the non-government controlled regions of eastern Ukraine as independent entities, the Russian Federation has clearly violated the Minsk agreements, which stipulate the full return of these areas to the control of the Ukrainian government.
- (6) The decision of the Russian Federation to recognise the non-government-controlled areas of Donetsk and Luhansk oblasts of Ukraine as independent entities and the ensuing decision to send Russian troops into Ukraine further undermines Ukraine's territorial integrity, sovereignty and independence, and is a severe breach of international law and international agreements, including the UN Charter, Helsinki Final Act, Paris Charter and the Budapest Memorandum.
- (7) Since the beginning of the Russian unprovoked and unjustified aggression against Ukraine on 24 February 2022, the situation has worsened, and Russia has expanded its full or partial occupation in the eastern and southern regions of Ukraine. Russia is also using Ukraine's largest nuclear power plant in Zaporizhzhia as a military facility, creating the risks for a major nuclear incident with spill-over effects on neighbouring countries, including Member States.
- (8) On 24 February 2022, the European Council condemned in the strongest possible terms Russia's unprovoked and unjustified military aggression against Ukraine and expressed full solidarity with Ukraine and its people together with its international partners. By its illegal military actions, Russia is grossly violating international law and undermining European and global security and stability. Subsequently, on 25 February, the Union adopted further restrictive measures suspending in part the application of the Agreement, in response to the unprovoked and unjustified Russian military aggression.⁸
- (9) Military aggression which takes place in a country bordering the European Union, such as that which has occurred in Ukraine and which has given rise to the restrictive measures, justifies measures designed to protect the essential security interests of the European Union and its Member States.
- (10) The Russian Federation has also violated the Minsk agreements by undermining Ukraine's territorial integrity, sovereignty and independence. This is contrary to the Russian Federation's international obligations.
- (11) The military actions by the Russian Federation in Ukraine have increased the threats to the public order, national security and public health of the Member States.
- (12) Therefore, in view of the deteriorating situation triggered by Russia's military aggression against Ukraine, the Council considers that the application of the provisions of the Agreement providing for facilitations for citizens of the Russian Federation applying for a short-stay visa should be suspended in whole.

⁸ Council Decision (EU) 2022/333.

- (13) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

The application of the provisions of the Agreement is suspended in whole as regards citizens of the Russian Federation.

Article 2

Council Decision (EU) 2022/333 is replaced by this Decision.

This Decision shall enter into force on the second day following that of its publication in the Official Journal of the European Union and notification to the Russian Federation.

Done at Brussels,

*For the Council
The President*