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Subject:	Proposal for a Decision of the European Parliament and of the Council on the non-recognition of Russian travel documents issued in occupied foreign regions - Mandate for negotiations with the European Parliament

Delegations will find hereunder the mandate on the abovementioned proposal approved by the Permanent Representative Committee on 12 October 2022.

2022/0274 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**on the non-acceptance ~~recognition~~ of Russian travel documents issued in Ukraine and Georgia ~~occupied foreign regions~~**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) 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 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.
- (2) 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.

- (3) ~~That~~ decision of the Russian Federation to recognise the non-government controlled areas of Donetsk and Luhansk oblast of Ukraine as independent entities and the ensuing decision to send Russian troops into these areas further undermines Ukraine's sovereignty and independence, constitute a severe breach of international law and international agreements, including the UN Charter, Helsinki Final Act, Paris Charter and the Budapest Memorandum.
- (3a) On 24 February 2022, the European Council, together with its international partners, condemned in the strongest possible terms Russia's unprovoked and unjustified military aggression against Ukraine and expressed full solidarity with Ukraine and its people. 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.¹ This position was reiterated by the European Council on 25 March 2022, 31 May 2022 and 24 June 2022.²
- (4) ~~Such~~ A 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.
- (5) Since the illegal annexation of the Crimean peninsula on 18 March 2014, Russia has issued Russian international passports to residents of Crimea. On 24 April 2019, the President of the Russian Federation signed a decree simplifying the procedure for obtaining Russian citizenship by residents of the non-Government controlled areas of Ukraine's Donetsk and Luhansk regions, including the issuance of Russian international passports to those residents. By means of the decree of 11 July 2022, the Russian Federation has extended the practice of handing out ordinary Russian international passports to other non-government-controlled areas of Ukraine, notably the Kherson and Zaporizhzhia regions. In May 2022, the Russian Federation introduced a simplified Russian naturalisation procedure for orphan children from the so-called Donetsk People's Republic and the so-called Luhansk People's Republic, as well as Ukraine. The decree also applies to children without parental care and legally incapable persons who are inhabitants of ~~these~~ those two occupied regions. The systematic issuance of Russian passports in ~~these~~ those occupied regions constitutes a further infringement of international law and Ukraine's territorial integrity, sovereignty and independence. With regard to Georgia, the European Council on 1 September 2008, strongly condemned Russia's unilateral decision to recognise the independence of Abkhazia and South Ossetia and urged other countries not to recognise their independence.³

¹ European Council conclusions 24 February 2022.

² European Council conclusions of 25 March 2022, 31 May 2022 and 24 June 2022.

³ Presidency Conclusions of the extra ordinary European Council 1 September 2008 (12594/2/08 REV 2).

- (5a) The Union and its Member States as well as Iceland, Norway, Switzerland and Liechtenstein have not recognised the illegal annexation and have condemned the illegal occupation of regions and territories of Ukraine by the Russian Federation. This concerns in particular the annexation of the Autonomous Republic of Crimea and the city of Sevastopol , occupation of Donetsk and Luhansk regions, but also further illegal occupation in the eastern and southern regions of Ukraine, namely the Kherson and Zaporizhzhia regions. Russian travel documents issued in those regions are not recognised or in process of not being recognised by Member States as well as Iceland, Norway, Switzerland and Liechtenstein. The same applies to travel documents issued in the Georgian territories of Abkhazia and South Ossetia which are currently not under the control of the Georgian government (“breakaway territories”).
- (6) ~~Therefore, in view of the breaches of international law and military aggression against Ukraine by Russia, and i~~In order to ensure a common visa policy and a common approach to checks to which persons crossing the external borders are subject, all Russian travel documents issued in or to persons resident in occupied regions **or territories** in **Ukraine or breakaway territories in Georgia** should not be **accepted** recognised as valid travel documents for the purposes of issuing of a visa and of crossing the external borders. Member States should be able to make a derogation for persons who were Russian citizens on the date on which the Russian documents started to be issued in the respective occupied region or territory or in a breakaway territory or to descendants of such persons.
- (6a) This decision does not affect Member States' competence for the recognition of travel documents.
- (6b) For reasons of legal certainty and transparency, the Commission should draw up, with the assistance of Member States, , a list of not accepted Russian travel documents, per region or territory . The list to be drawn up by the Commission should include the dates from which those Russian travel documents started to be issued in those regions or territories and from which the travel documents issued after those dates should not be accepted.

The list should be adopted by means of an implementing act, be published in the Official Journal of the European Union and be incorporated in the list of travel documents established under Decision No 1105/2011/EU of the European Parliament and of the Council⁴, and set out in the accompanying table of travel documents issued by third countries and territorial entities and which is publicly available online.

⁴ Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).

- ~~(7) Member States are and should remain competent for the recognition of travel documents for the purpose of issuing of a visa and of allowing the holder to cross the external borders where the Union has not taken a position thereon.~~
- ~~(8) The non-recognition of Russian travel documents issued in or to persons resident in occupied foreign regions for the purposes of issuing of a visa and of crossing the external borders should extend to all geographical regions, including the Russian-occupied Georgian territories of Abkhazia and South Ossetia. The non-recognition does not affect the validity of such documents for other purposes, including as proof of identity in a national context.~~
- ~~(9) For reasons of legal certainty and transparency, the Commission should make publicly available a list of Russian travel documents that are issued in or to persons resident in occupied foreign regions and which should not be recognised. This list should be incorporated in the list of travel documents established under Decision No 1105/2011/EU of the European Parliament and of the Council⁵, and the accompanying table of recognition that includes information on recognised and non-recognised travel documents and which is publicly available online.~~
- (10) This Decision does not affect the right to free movement of Union citizens and their respective family members, including the possibility for such family members to enter the territory of the Member States without a valid travel document within the meaning in particular of Directive 2004/38/EC and the agreements on free movement of persons concluded by the Union and the Member States, of the one part, and certain third countries, of the other part. Directive 2004/38/EC permits, under the conditions specified therein, restrictions to free movement on grounds of public policy, public security and public health.
- (11) This Decision respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. This Decision should not affect the right to asylum.
- (12) **This decision does not affect the Union asylum acquis and in particular the right to apply for international protection.** Member States **should also** retain the possibility to allow holders of travel documents targeted by this Decision who have not exercised their right to apply for international protection to enter the territory of the Member States in individual cases, as provided for in Articles 25 and 29 of Regulation (EC) No 810/2009 and Article 6(5) of Regulation (EU) No 2016/399.

⁵ Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).

- (13) The objective of this Decision is to strengthen the functioning of the common visa policy and the Schengen area. Those objectives cannot be achieved by Member States acting alone. Therefore, introducing an obligation to not ~~accept~~ ~~recognise~~ certain travel documents for the purposes of issuing of a visa and of crossing the external borders at Union level is necessary. The Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond that what is necessary in order to achieve the objectives.
- (14) In accordance with Articles 1 and 2 of the 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. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.
- (15) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part⁶; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (16) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁷ which fall within the area referred to in Article 1, points A and B of Council Decision 1999/437/EC⁸.

⁶ This Decision falls outside the scope of the measures provided for in Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁷ OJ L 176, 10.7.1999, p. 36.

⁸ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

- (17) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁹ which fall within the area referred to in Article 1, points A and B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁰.
- (18) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹¹ which fall within the area referred to in Article 1, points A and B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹².
- (19) **As regards Cyprus, Bulgaria, Romania and Croatia,** Article 1, point (a) of this Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession, whereas Article 1, point (b) constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.
- (20) Due to the urgency of the situation and the ongoing illegal Russian presence in foreign regions, this Decision should enter into force on the first day following that of its publication,

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

¹¹ OJ L 160, 18.6.2011, p. 21.

¹² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

HAVE ADOPTED THIS DECISION:

Article 1

Russian travel documents issued in or to persons resident in **Russian-occupied regions or territories in Ukraine or breakaway territories in Georgia which are currently not under the control of the Georgian government** shall not be **accepted** ~~recognised~~ as valid travel documents for the following purposes:

- (a) the issuing of a visa in accordance with Regulation (EC) No 810/2009;
- (b) the crossing of the external borders in accordance with Regulation (EU) 2016/399.

Article 2

By way of derogation from Article 1, a Russian travel document referred to in Article 1 may be accepted if its holder was a Russian citizen before the dates indicated in the implementing act referred to in Article 3. This shall apply also to descendants of such Russian citizen.

Member States may allow holders of travel documents covered by this Decision to enter the territory of the Member States in individual cases, as provided for in Articles 25 and 29 of Regulation (EC) No 810/2009 and Article 6(5) of Regulation (EU) 2016/399.

Article ~~2~~3

The Commission shall ~~establish~~ **draw up, with the assistance of Member States,** a list **per region, territory or breakaway territory** of Russian ~~the~~ travel documents referred to in Article 1. **That list shall indicate the dates from which those travel documents started being issued in the occupied regions or territories including breakaway territories.**

That list shall be **adopted by means of an implementing act,** ~~be made available to the public as part of~~ published in the Official Journal and be **incorporated in** the list of travel documents established by Decision No 1105/2011/EU.

Article 4

This Decision shall enter into force on the first day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the European Parliament
The President

For the Council
The President