



Council of the
European Union

Brussels, 5 April 2022
(OR. en)

7916/22

JAI 450
FREMP 71
JAIEX 32
VISA 66
FRONT 150
COSI 90
COEST 270
FISC 92

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 28 March 2022

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: C(2022) 2028 final

Subject: COMMISSION RECOMMENDATION of 28.3.2022 on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes

Delegations will find attached document C(2022) 2028 final.

Encl.: C(2022) 2028 final

Brussels, 28.3.2022
C(2022) 2028 final

COMMISSION RECOMMENDATION

of 28.3.2022

**on immediate steps in the context of the Russian invasion of Ukraine in relation
to investor citizenship schemes and investor residence schemes**

COMMISSION RECOMMENDATION

of 28.3.2022

on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) On 23 January 2019, the Commission issued a report on investor citizenship and residence schemes that highlighted the inherent risks of such schemes, among them concerns regarding security, money laundering, tax evasion and corruption¹. Such risks are exacerbated by the cross-border rights associated with citizenship of the Union or residence in a Member State.
- (2) Investor citizenship schemes, under which nationality is granted in exchange for a pre-determined payment or investment and without a genuine link with the Member States concerned, have implications for the European Union as a whole, as every person holding the nationality of a Member State is at the same time a citizen of the Union. A decision by one Member State to grant its citizenship in exchange for payment or investment automatically obliges other Member States to grant rights to the investor, in particular free movement rights, the rights of access to the internal market to exercise economic activities, or the right to vote and stand as a candidate in local and EU elections. It is precisely the benefits of Union citizenship that are often advertised as the main attractive features of such schemes. In the Union, three Member States operate or have operated so-called investor citizenship schemes.
- (3) Investor residence schemes, under which a residence permit is granted in exchange for a pre-determined payment or investment, have an implication for other Member States and the EU as a whole as a valid residence permit grants certain rights to third-country nationals, including to travel freely in the Schengen area. According to the 2019 Commission report, nineteen Member States were at the time running such investor residence schemes.
- (4) The Commission considers that investor citizenship schemes by a Member State are not compatible with the principle of sincere cooperation enshrined in Article 4(3) of the Treaty

¹ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on investor Citizenship and Residence Schemes in the European Union (COM(2019) 12 final).

on European Union and with the concept of EU citizenship as provided for in Article 20 of the Treaty on the Functioning of the European Union and need to be repealed. As a result, it opened, on 20 October 2020, infringement procedures against two Member States, and has been urging another Member State to proceed with ending its scheme. Two of those Member States have in the meantime abolished their citizenship schemes or are in the process of doing so.

- (5) The Commission considers that Member States should also take measures to prevent investor residence schemes from operating in a way that could create risks, in particular linked to security, money laundering, tax evasion and corruption. To this end, Member States should ensure that all necessary measures and safeguards are taken to address these risks, including by establishing and carrying out checks related to the conditions of residence and security prior to the issuance of such residence permits, and verifying whether residence is continuous.
- (6) Limiting the risks associated to investor citizenship and residence schemes operated by third countries is essential. In the context of the monitoring of visa-free regimes and the enlargement process, and having in mind EU interests, the Commission is closely scrutinising investor citizenship schemes of third countries that could be used to circumvent the EU short-stay visa procedure. In case of an increased risk for the internal security of Member States, the exemption from the visa requirement is temporarily suspended².
- (7) In addition to the need to immediately repeal any existing investor citizenship schemes, and to operate investor residence schemes prudently, further action should be considered by Member States in view of Russia's military aggression and invasion of Ukraine and the gravity of the current situation. The unprovoked military aggression and invasion of Ukraine by Russia has been deplored in the strongest terms by the overwhelming majority of States in the United Nations, as expressed in a resolution of the United Nations General Assembly³. The International Court of Justice delivered on 16 March an order indicating that Russia shall immediately suspend the military operations in the territory of Ukraine⁴.
- (8) The European Council, in its conclusions of 24 February 2022⁵, condemned Russia's unprovoked and unjustified military aggression against Ukraine in the strongest possible terms, underlining the gross violation of international law and the principles of the United Nations Charter. The European Council demanded Russia's full respect for Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders, which includes Ukraine's right to choose its own destiny. The European Council affirmed that the Russian government bears full responsibility for its act of aggression, which is causing human suffering and loss of life, and that it will be held accountable for its actions. The European Council also strongly condemned the involvement of Belarus in this aggression against Ukraine and called on it to refrain from such action and to abide by its

² The suspension of the visa exemption with Vanuatu will apply from 4 May 2022. Council Decision (EU) 2022/366 of 3 March 2022 on the partial suspension of the application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver (OJ L 69, 4.3.2022, p. 105).

³ United Nations General Assembly Resolution, Aggression against Ukraine, A/ES-11/L.1 (2 March 2022).

⁴ <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

⁵ European Council conclusions on Russia's unprovoked and unjustified military aggression against Ukraine of 24 February 2022, EUCO 18/22.

international obligations. Therefore, the Council of the European Union adopted several packages of sanctions against Russia and Belarus⁶.

- (9) In response to the war in Ukraine, the European Commission, France, Germany, Italy, the United Kingdom, Canada, and the United States issued, on 26 February 2022, a Joint Declaration on further restrictive economic measures in relation to the Russian invasion in Ukraine. In this Joint Declaration, they committed to taking action to limit the sale of citizenship – so called golden passports – that allow wealthy Russians connected to the Russian government to become citizens and gain access to their financial systems⁷. They committed to launching a transatlantic task force that would ensure the effective implementation of financial sanctions and to working to detect and disrupt the movement of ill-gotten gains. The European Commission has also set up a ‘Freeze and Seize’ Task Force to ensure EU-level coordination on the implementation and enforcement of sanctions against listed individuals, and which will coordinate with the international Task Force to guarantee the efficiency of sanctions.
- (10) The European Parliament adopted, on 1 March 2022, a resolution on the Russian aggression against Ukraine⁸, in which it called on the Member States with residence by investment schemes to review all beneficiaries of such residence status and to revoke those permits attributed to Russian high-net-worth individuals and their families, in particular those linked to sanctioned individuals and companies.
- (11) In its report with proposals to the Commission on citizenship and residence by investment schemes, the European Parliament welcomed the commitment announced by the Member States to take measures to limit the sale of citizenship to Russians connected to the Russian government. It also called upon all Member States to stop operating their investor citizenship and residence schemes for all Russian applicants with immediate effects. In addition, it urged Member States to reassess all approved applications from Russian nationals over the past few years, exploiting all possibilities under national and Union law to ensure that “no Russian individual with financial, business or other links to the Putin regime” retains his or her citizenship and residency rights or that such individuals are temporarily blocked from exercising those rights.
- (12) In response to Russia’s invasion of Ukraine and to the restrictive measures adopted in this regard, one Member State announced that it has suspended, until further notice, the processing of applications from Russian and Belarusian applicants under its investor citizenship scheme. Some Member States have also announced their intention to suspend the issuance of residence permits on the basis of investor residence schemes to Russian nationals. Nevertheless, in view of the gravity of the situation, further measures should be taken by Member States.
- (13) Investor citizenship schemes may have resulted or may still be resulting in the acquisition of Union citizenship by Russian or Belarusian nationals who are subject to the EU restrictive measures. Therefore, Member States which have granted citizenship to Russian or

⁶ <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-ukraine-crisis/>
<https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-belarus/>

⁷ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423

⁸ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0052_EN.html

Belarusian nationals based on an investor citizenship scheme should assess whether these individuals' naturalisations should be withdrawn because they are or become subject to the EU restrictive measures in connection with the undermining or threatening of the territorial integrity, sovereignty and independence of Ukraine ("the EU restrictive measures") or because it is otherwise determined that they significantly support by any means the war in Ukraine or other related activities of the Russian government or Lukashenko regime breaching international law. This assessment should also be carried out by Member States that have phased out their investor citizenship scheme in the meantime. To avoid circumvention and ensure a comprehensive assessment, this should also apply in cases where these individuals have been naturalised as family members of a main applicant. When carrying out this assessment, the Member States concerned are to take into account the principles established by the Court of Justice of the European Union regarding the loss of Union citizenship, in particular the principle of proportionality and the protection of fundamental rights⁹.

- (14) Similarly, investor residence schemes may have resulted and may still be resulting in a privileged access to the EU territory and internal market and circulation within the Schengen area of Russian or Belarusian nationals who are or become subject to the EU restrictive measures or for whom it is otherwise determined that they significantly support by any means the war in Ukraine or other related activities of the Russian government or Lukashenko regime breaching international law.
- (15) Member States should immediately withdraw and refuse to renew, as the case may be, the residence permits granted on the basis of investor residence schemes to Russian and Belarusian nationals, if following an assessment they conclude that these individuals are or become subject to the EU restrictive measures, or because it is otherwise determined that they significantly support by any means the war in Ukraine or other related activities of the Russian government or Lukashenko regime breaching international law, and if this is in accordance with the principle of proportionality, fundamental rights and Member States' national law. This assessment should also be carried out by Member States that may have phased out their investor residence scheme in the meantime. To avoid circumvention and ensure a comprehensive assessment, this should also apply, following an assessment and in accordance with the Family Reunification Directive¹⁰, in cases where such individuals have been granted a residence permit as family members of a holder of a residence permit on the basis of an investor residence scheme.
- (16) Considering the difficulty to conduct the appropriate security checks and due diligence in these particular circumstances and in view of the gravity of the situation, Member States that operate investor residence schemes should also suspend the issuance of residence permits on the basis of such schemes to Russian and Belarusian nationals. This should be done in compliance with the principle of proportionality, fundamental rights, and Member States' national law.

⁹ Judgments of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, and of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189.

¹⁰ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18.

- (17) The Commission will keep the European Parliament and the Council informed about the implementation of this recommendation, based on Member States' reports and any available information, including discussions with Member States, as appropriate.
- (18) This Recommendation should be without prejudice to the admission and residence of Russian and Belarusian nationals in the EU on other grounds, such as humanitarian admission or international protection.
- (19) The European Parliament adopted on 9 March 2022 a report with proposals to the Commission on citizenship and residence by investment schemes, in which it calls for fully phasing out investor citizenship schemes across the Member States and for strictly regulating different aspects of investor residence schemes.
- (20) This recommendation is only one element of the Commission's policy to take determined action on both citizenship and residence investor schemes. It should therefore be seen in the context of this larger effort and is without prejudice to ongoing and future initiatives of the Commission in this respect.

HAS ADOPTED THIS RECOMMENDATION:

INVESTOR CITIZENSHIP SCHEMES

1. Investor citizenship schemes under which the nationality of a Member State, and thereby Union citizenship, is granted in exchange for a pre-determined payment or investment and without a genuine link with a Member State are not compatible with the principle of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union and with the concept of Union citizenship as provided for in Article 20 Treaty on the Functioning of the European Union. Any Member State operating such an investor citizenship scheme needs to ensure compliance with its obligations pursuant to these Treaty provisions by repealing it immediately.

INVESTOR RESIDENCE SCHEMES

2. Member States should take measures to prevent investor residence schemes from operating in a way that could create risks linked to security, money laundering, tax evasion and corruption. To this end, Member States should ensure that all necessary measures and safeguards are taken to address the above-mentioned risks, including by establishing and carrying out checks related to the conditions of residence and security prior to the issuance of such residence permits and verifying whether residence is continuous.

IMMEDIATE STEPS TO BE TAKEN IN THE CONTEXT OF THE RUSSIAN INVASION OF UKRAINE

3. Notwithstanding point 1, any Member State that has naturalised Russian or Belarusian nationals based on an investor citizenship scheme should immediately assess, in accordance with the principles resulting from the case law of the Court of Justice of the European Union, including the principle of proportionality and the protection of fundamental rights, whether these individuals' naturalisations should be withdrawn because:

- the person concerned is or becomes subject to the EU restrictive measures
- or because it is otherwise determined that the person concerned significantly supports by any means the war in Ukraine or other related activities of the Russian government or Lukashenko regime breaching international law.

This should also apply in cases where these individuals have been naturalised as family members of a main applicant.

4. Member States should immediately withdraw, and refuse to renew, as the case may be, the residence permits granted on the basis of an investor residence scheme to Russian and Belarusian nationals, if following an assessment:

- it is established that the person concerned is or becomes subject to the EU restrictive measures
- or because it is otherwise determined that the person concerned significantly supports by any means the war in Ukraine or other related activities of the Russian government or Lukashenko regime breaching international law,

provided that the Member States comply with the principle of proportionality, fundamental rights and their national law. This should also apply, following an assessment and in accordance with the Family Reunification Directive, in cases where such individuals have been granted a residence permit as family members of a holder of a residence permit on the basis of an investor residence scheme.

5. Member States that operate investor residence schemes should suspend the issuance of residence permits on the basis of investor residence schemes to Russian and Belarusian nationals, provided that the Member States comply with the principle of proportionality, fundamental rights and their national law.

6. The Member States concerned should report to the Commission on the implementation of this recommendation by the end of May, in particular the outcome of the assessment as referred to in points 3 and 4. Thereafter, the Member States concerned should also keep the Commission regularly informed.

Done at Brussels, 28.3.2022

For the Commission
Ylva Johansson
Member of the Commission