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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In reaction to the illegal annexation of the Autonomous Republic or Crimea and the city of Sevastopol by the Russian Federation in 2014 and the continued destabilising actions in eastern Ukraine, the European Union has already 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 oblast of Ukraine as independent entities and the decision to send Russian troops into Ukraine, an unprecedented 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 sanctions, financial restrictions, and restrictions on economic relations between the EU and the non-government-controlled areas of Donetsk and Luhansk oblasts.

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 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. [1]

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 partially the application of the Visa Facilitation Agreement.[2] This partial suspension targeted certain categories of Russian citizens, including members of Russian official delegations, members of national and regional Governments and Parliaments and business people.

[1] European Council conclusions 24 February 2022.

[2] Council Decision (EU) 2022/333.

Since the beginning of the Russian aggression against Ukraine, the situation has worsened with tragic humanitarian consequences for the civilian population and infrastructure and Russia has further illegally expanded its full or partial occupation in the eastern and southern regions of Ukraine.

The negative evolution of Russia's internal policy, characterised by growing political repression by the government to preserve the current political and economic order, has increasingly affected the EU-Russia relations. In response, the Commission, in parallel to the present proposal, has also proposed to fully suspend the EU-Russia Visa Facilitation Agreement[3].

Since the Member States have not recognised the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation or of other Russian-occupied regions in Ukraine, travel documents issued by the Russian authorities in these territories have generally not been recognised by Member States for the purposes of issuing of a visa and of crossing the external borders. The same applies to the travel documents issued in the Russian-occupied Georgian territories of Abkhazia and South Ossetia. These positions are reflected in the table of recognised travel documents issued by third countries[4], which the Commission frequently updates, based on Member States' notifications.

The Commission issued guidelines to Member States' consulates in Ukraine and in the Russian Federation on lodging Schengen visa applications by the residents of Crimea following the illegal annexation of Crimea by Russia in 2014. Further guidelines were developed in 2016 as a common approach to the issue of non-recognition of certain categories of ordinary Russian international passports issued by the Russian administrative authorities established by Russia in Crimea and Sevastopol. In 2019, the Commission services and the European External Action Service prepared guidance on how to handle visa applications lodged by residents of Ukraine's Donetsk and Luhansk regions holding ordinary Russian international passports. The Russian Federation is currently extending the practice of handing out ordinary Russian international passports to other non-government-controlled areas of Ukraine, in particular the Kherson and Zaporizhzhia regions. In May 2022, Russia 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 two occupied regions.

This proposal aims to ensure that Russian travel documents issued in or to persons resident in the occupied foreign regions, irrespective of the geographical location, are not recognised by the Member States for the purposes of issuing of a visa and of crossing the external borders. The measure establishes a common approach on the non-recognition of such travel documents.

- **Consistency with existing policy provisions in the policy area**

This initiative is in line with the actions set out in European Council conclusions on 24 February 2022 and further develops the Guidance to the Member States and Schengen Associated Countries' consulates in the Russian Federation and Ukraine on how to handle visa applications lodged by residents of Ukraine's Donetsk and Luhansk regions holding ordinary Russian international passports issued after 24 April 2019. This proposal

[3] 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 (COM(2022) 661).

[4] Travel documents issued by third countries and territorial entities (Part I), available at <https://home-affairs.ec.europa.eu/travel-documents-issued-third-countries-and-territorial-entities-part-i_en>.

complements the partial suspension of the EU-Russia Visa Facilitation Agreement and the proposal of the Commission to fully suspend the Agreement that is presented in parallel.

This Decision does not affect the application of Decision 1105/2011/EU or the obligations of Member States under that Decision with regard to travel documents on which the Union has not taken a position.

- **Consistency with other Union policies**

The proposal constitutes a further response of the Union to the Russian military aggression against Ukraine and the Russian 'passportisation' in occupied foreign regions. The proposal is fully consistent with the statement of the High Representative on behalf of the EU on attempts of the Russian Federation to forcefully integrate parts of Ukrainian territory[5]. Moreover, including the travel documents issued in the Russian-occupied Georgian territories of South Ossetia and Abkhazia is in line with the calls of the European Council[6] strongly condemning Russia's unilateral decision to recognise the independence of Abkhazia and South Ossetia and urging other countries not to recognise their independence.

This proposal is without prejudice to the right of freedom of movement of Union citizens within the meaning of Article 20(1) TFEU and third-country nationals who enjoy rights of free movement equivalent to those of Union citizens, as well as of their respective family members. Directive 2004/38/EC[7] lays down rules on the entry of third-country nationals enjoying the right of free movement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Articles 77(2)(a) and (b) TFEU.

The proposal establishes an obligation for Member States not to recognise travel documents issued by the Russian authorities in or to persons resident in occupied foreign regions for the purposes of visa issuance and the crossing of external borders.

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

Action in the area of freedom, security and justice falls within an area of competence shared between the EU and the Member States in accordance with Article 4(2) TFEU. Therefore, the principle of subsidiarity is applicable by virtue of Article 5(3) TEU, according to which the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

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5 Press release, "Ukraine: Declaration by the High Representative on behalf of the EU on attempts of the Russian Federation to forcefully integrate parts of Ukrainian territory", 3 June 2022, available at <Ukraine: Declaration by the High Representative on behalf of the EU on attempts of the Russian Federation to forcefully integrate parts of Ukrainian territory - Consilium (europa.eu)>.

6 Presidency conclusions of the Extraordinary European Council, 1 September 2008 (12594/2/08 REV2).

7 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

The recognition of travel documents has so far been a Member State competence as the Union has not previously exercised its shared competence pursuant to Articles 77(2)(a) and (b) TFEU as regards the recognition of travel documents in the domain of the common policy on visas and the checks to which persons crossing the external borders are subject.

The objectives of this proposal cannot be sufficiently achieved by the Member States acting alone, and can be better achieved at the level of the Union. This is because the objectives concern the invalidation of travel documents that are required in the context of submitting an application for a visa or for crossing the external borders of the Member States. The integrity of the Schengen area and the need to ensure a uniform response to the Russian 'passportisation' in occupied foreign regions require a coherent approach across the entire Schengen area. Without this proposal, the recognition or non-recognition of such travel documents would be subject to individual Member State decisions and could lead to severe discrepancies on the issuance of visas to persons habitually resident in regions occupied by Russia and their ability to cross the external borders. This measure will bring legal certainty on the issue and be directly applicable in the Member States.

The Union may therefore adopt the proposed measure, in accordance with the principle of subsidiarity.

- **Proportionality**

According to the principle of proportionality laid down in Article 5(4) TEU, there is a need to match the nature and intensity of a given measure to the identified problem.

The aim of the measure is to ensure a well-functioning common visa policy and policy on external border checks as well as to safeguard the security of the Union and its Member States. The proposed measure is a response to Russia's unprovoked and unjustified military aggression against Ukraine. This proposal fully respects Member States' sovereign right under public international law on state recognition. The proposed non-recognition of travel documents does not affect the right of States to adopt any decision concerning the recognition of any territorial entity as an international personality of the international community. Moreover, the proposed measure does not affect the possible validity of these travel documents in the context of proving identity in national proceedings or interactions. Therefore, it would continue to be up to individual Member States to decide which kinds of documents may be furnished to prove one's identity.

Since the EU has not recognised the illegal annexation of the Crimean peninsula by the Russian Federation or of other Russian-occupied regions in Ukraine, travel documents issued by the Russian authorities in these territories should be unequivocally invalidated by Union law for the purposes of travel. The same applies to travel documents issued in the Russian-occupied Georgian territories of Abkhazia and South Ossetia. Similarly, this measure of non-recognition would apply to all travel documents issued by Russian authorities in any foreign regions Russia possibly and illegally invades or occupies in the future.

- **Choice of the instrument**

The proposal concerns the Schengen-wide non-recognition of travel documents issued by Russian authorities in occupied foreign regions in the context of the common visa policy and the checks to which persons crossing the external borders are subject. Taking into account the fact that the ordinary legislative procedure applies and the targeted scope of the proposed measure, a Decision of the European Parliament and of the Council is appropriate.

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

The issue of non-recognition of Russian travel documents issued in the occupied foreign regions was discussed in the Council Visa Working Party on 13 July 2022. Following the informal meeting of foreign affairs ministers (Gymnich) on 31 August 2022, the High Representative reported that Member States agreed politically on the non-recognition of Russian travel documents issued in the occupied foreign regions.

- **Fundamental rights**

The proposed measure respects the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union, in particular the freedom of movement and residence, the right to asylum, the rights of the child and the principles of non-refoulement and of non-discrimination.

While the proposed measure will essentially have the effect of impeding travel of certain categories of third-country nationals to the EU by virtue of not recognising their travel documents as valid for the purposes of issuing of a visa and of crossing the external borders, the measure will not equal a travel ban against those persons. Member States retain the right to issue a visa with limited territorial validity and affixing the visa sticker on a separate sheet in accordance with Articles 25 and 29 of Regulation (EC) No 810/2009 and/or derogate from the entry conditions provided for in Article 6 of Regulation (EU) No 2016/399. In particular, Member States should make use of this right in order to ensure respect for the rights of the child and the principle of non-refoulement.

The right to asylum and the Union asylum acquis are not affected by the proposed measure.

Finally, although the travel documents issued by Russia in the occupied foreign regions would not be recognised for purposes of entry into the Schengen area, the validity of those documents as identity documents in a domestic context is not affected.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OTHER ELEMENTS

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

The Commission will monitor and evaluate the implementation of the proposed measure in the context of local Schengen cooperation and in the framework of the Travel Document Committee, established under Article 8 of Decision 1105/2011/EU.

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

The proposal provides for the non-recognition of Russian travel documents that have been issued in or to persons resident in the occupied foreign regions for the purposes of issuing a visa and of crossing the external borders. For reasons of legal certainty, clarity and transparency, the Commission should establish a list of those Russian travel documents that should not be recognised for the purposes of travel into the Schengen area. This list will be publicly available on the Commission website as part of the table of recognition of travel documents and list of travel documents issued by third countries, as established by Decision 1105/2011/EU.

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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) The 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.

(4) Such 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, Russia has issued Russian international passports to residents of Crimea. 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 two occupied regions. The systematic issuance of Russian passports in these occupied regions constitutes a further infringement of international law and Ukraine's territorial integrity, sovereignty and independence.

(6) Therefore, in view of the breaches of international law and military aggression against Ukraine by Russia, and 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 foreign regions should not be recognised as valid travel documents for the purposes of issuing of a visa and of crossing the external borders.

(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 Council[8], 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) Member States 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.

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[8] 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 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 part[9]; 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*[10] which fall within the area referred to in Article 1, points A and B of Council Decision 1999/437/EC[11].

(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*[12] 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/EC[13].

(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

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9 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).

10 OJ L 176, 10.7.1999, p. 36.

11 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).

12 OJ L 53, 27.2.2008, p. 52.

13 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).

development of the Schengen *acquis*[14] 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/EU[15].

(19) 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,

HAVE ADOPTED THIS DECISION:

Article 1

Russian travel documents issued in or to persons resident in occupied foreign regions shall not be 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

The Commission shall establish a list of Russian travel documents referred to in Article 1.

That list shall be made available to the public as part of the list of travel documents established by Decision No 1105/2011/EU.

Article 3

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	*For the Council*
The President	*The President*

[14] OJ L 160, 18.6.2011, p. 21.

[15] 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).