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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 21 to 24 November 2022)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), Juan Fernando LÓPEZ AGUILAR (S&D, ES), presented on behalf of the Committee a compromise amendment (amendment number 3) to the abovementioned proposal for a Decision. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 24 November 2022, the plenary adopted the compromise amendment (amendment number 3) to the abovementioned proposal for a Decision. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

P9_TA(2022)0413

Non-acceptance of travel documents of the Russian Federation issued in Ukraine and Georgia

European Parliament legislative resolution of 24 November 2022 on the 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 (COM(2022)0662 – C9-0302/2022 – 2022/0274(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0662),
 - having regard to Article 294(2) and Article 77(2)(a) and (b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0302/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 16 November 2022 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 59 and 163 of its Rules of Procedure,
1. Adopts its position at first reading hereinafter set out¹;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ This position replaces the amendments adopted on 20 October 2022 (Texts adopted, P9_TA(2022)0370).

P9_TC1-COD(2022)0274

Position of the European Parliament adopted at first reading on 24 November 2022 with a view to the adoption of Decision (EU) 2022/... of the European Parliament and of the Council on the non-*acceptance* of travel documents of the Russian Federation issued in *Ukraine and Georgia*

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 Article 77(2), points (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 procedure¹,

¹ Position of the European Parliament of 24 November 2022.

Whereas:

- (1) In reaction to the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation (Russia) in 2014 and to its continued destabilising actions in eastern Ukraine, the Union has already introduced economic sanctions linked to the incomplete implementation of the agreements signed in Minsk under the auspices of the OSCE's Trilateral Contact Group in response to the crisis in and around Ukraine (the 'Minsk Agreements'), sanctions with regard to 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 Russia.
- (2) As a signatory to the Minsk agreements, Russia has a clear and direct responsibility to work towards finding a peaceful settlement of the conflict in line with the principles set out in the Minsk Agreements. 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 those regions to the control of the Ukrainian government. *That* decision ■ and the ensuing decision to send Russian troops into those regions further undermine Ukraine's sovereignty and independence and constitute a severe breach of international law and international agreements, including the UN Charter, the Helsinki Final Act, the Paris Charter and the Budapest Memorandum.

- (3) *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, in its conclusions of 24 February 2022, demanded that Russia immediately cease its military actions, unconditionally withdraw all its 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. That position was reiterated by the European Council in its conclusions of 25 March 2022, 31 May 2022 and 24 June 2022.*
- (4) *With regard to Georgia, on 1 September 2008 the European Council, in the Presidency conclusions of the extraordinary European Council, strongly condemned Russia's unilateral decision to recognise the independence of Abkhazia and South Ossetia and urged other countries not to recognise their independence.*
- (5) *A military aggression which takes place in a country bordering the 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 Union and its Member States.*

- (6) Since the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol *on 18 March 2014*, Russia has issued Russian international passports to residents of those territories. *On 24 April 2019, the President of Russia signed a decree simplifying the procedure for residents of the non-government-controlled regions of Ukraine's Donetsk and Luhansk to obtain Russian citizenship, including the procedure for the issuance of Russian international passports to those residents. By means of a decree of 11 July 2022, Russia has extended the practice of issuing ordinary Russian international passports to residents of other non-government-controlled regions of Ukraine, in particular to 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 from Ukraine. The decree also applies to children without parental care and legally incapacitated persons who are inhabitants of *those* two occupied regions. The systematic issuance of Russian passports in *those* occupied regions constitutes a further infringement of international law and of Ukraine’s territorial integrity, sovereignty and independence.

(7) *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 Russia. This concerns in particular the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol, the illegal occupation of Donetsk and Luhansk regions, but also further illegal occupation in the eastern and southern regions of Ukraine, in particular the Kherson and Zaporizhzhia regions. Travel documents of the Russian Federation (Russian travel documents) issued in those regions and territories are not recognised or are in the process of not being recognised by Member States, as well as Iceland, Norway, Switzerland and Liechtenstein. The same applies to Russian travel documents issued in the Georgian territories of Abkhazia and South Ossetia which are not under the control of the Georgian government at the time of entry into force of this Decision (breakaway territories).*

- (8) *In order to ensure a common visa policy and a common approach to checks to which persons crossing the external borders are subject, no Russian travel documents issued in or to persons resident in ■ regions **or territories in Ukraine which are occupied by Russia or breakaway territories in Georgia**, should be **accepted** as valid travel documents for the purposes of issuing 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 travel documents started being issued in the respective occupied region or territory or in a breakaway territory. That derogation should apply also to descendants of such persons. Member States should also be able to make a derogation if a person was a minor or legally incapacitated person at the time of the issuance of such travel document.***
- (9) *This Decision does not affect Member States' competence for the recognition of travel documents.*

- (10) For reasons of legal certainty and transparency, the Commission should ***draw up, with the assistance of Member States, a list of Russian travel documents that are not accepted. That list should include the dates from which those travel documents started being issued and from which those travel documents should not be accepted. The Commission should adopt an implementing act containing that list. That implementing act should be published in the Official Journal of the European Union and the list should be incorporated in the list of travel documents established under Decision No 1105/2011/EU of the European Parliament and of the Council¹ in a table of travel documents issued by third countries and territorial entities*** which is publicly available online.

¹ 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).

- (11) This Decision does not affect the right to free movement of Union citizens and their 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 of the European Parliament and of the Council¹ 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 or public health.
- (12) This Decision respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right 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)

- (13) ***This Decision does not affect the Union asylum acquis and in particular the right to apply for international protection. As recalled in the Commission communication of 4 March 2022 entitled 'Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders', Member States retain the possibility to allow holders of travel documents targeted by this Decision who **therefore do not fulfil one or more of the entry conditions laid down in Article 6(1) of Regulation (EU) 2016/399 of the European Parliament and of the Council**¹ and 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 of the European Parliament and of the Council² and Article 6(5) of Regulation (EU) 2016/399. **Those derogations should be applied in the current crisis to the greatest possible extent, in particular to allow entry to all persons who fall under the scope of Council Implementing Decision (EU) 2022/382**³.***

¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77 23.3.2016, p. 1).

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243 15.9.2009, p. 1).

³ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

- (14) Since the objective of this Decision, namely to strengthen the functioning of the common visa policy and the Schengen area by introducing an obligation not to *accept* certain travel documents for the purposes of issuing a visa and crossing the external borders cannot be sufficiently achieved by Member States but can rather, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.
- (15) In accordance with Articles 1 and 2 of the Protocol No 22 on the Position of Denmark annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), 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.

- (16) 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/EC¹; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (17) 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 latter's association with the implementation, application and development of the Schengen *acquis*² which fall within the area referred to in Article 1, points A and B of Council Decision 1999/437/EC³.

¹ 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).

² OJ L 176, 10.7.1999, p. 36.

³ 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).

- (18) 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*¹ 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/EC².

¹ OJ L 53, 27.2.2008, p. 52.

² 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).

- (19) 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*¹ 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/EU².

¹ OJ L 160, 18.6.2011, p. 21.

² 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).

- (20) *As regards Cyprus, Bulgaria and 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.
- (21) In view of the urgency of the situation, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the TFEU and to the Treaty establishing the European Atomic Energy Community.
- (22) In order to allow for the prompt application of the measures provided for in this Decision, and due to the emergency situation in regions and territories in Ukraine occupied by Russia as well as in breakaway territories in Georgia, this Decision should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS DECISION:

Article 1

Travel documents of the Russian Federation (Russian travel documents) issued in or to persons resident in ■ regions *or territories in Ukraine which are occupied by the Russian Federation or breakaway territories in Georgia which at the time of the entry into force of this Decision are not under the control of the Georgian government* shall not be *accepted* 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:

- a) if its holder was a Russian citizen before the relevant date indicated in the implementing act referred to in Article 3 or if the holder is a descendant of such Russian citizen;*
- b) if its holder was a minor or legally incapacitated person at the time of the issuance of such travel document.*

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 in Article 6(5) of Regulation (EU) 2016/399.

This Decision shall not affect the Union asylum acquis and in particular the right to apply for international protection.

Article 3

The Commission *shall draw up, with the assistance of Member States*, a list of *the* travel documents referred to in Article 1, *including the dates from which those travel documents started being issued*.

The Commission shall *adopt an implementing act containing the list referred to in the first paragraph. That implementing act shall be* published in the *Official Journal of the European Union* and the list shall be *incorporated in* the list of travel documents established under Decision No 1105/2011/EU.

Article 4

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

Article 5

This Decision is addressed to the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President