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PROPOSAL

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Subject:	Proposal for a COUNCIL RECOMMENDATION on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912

Delegations will find attached document COM(2022) 680 final.

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2022/0333 (NLE)

Proposal for a

COUNCIL RECOMMENDATION

on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 30 June 2020, the Council, upon a proposal from the Commission, adopted Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction[1] (the Recommendation) that provided for the gradual lifting of travel restrictions into the EU imposed at the beginning of the COVID-19 pandemic.

The Recommendation set a number of criteria for determining the third countries from which non-essential travel should be allowed to the Member States and other countries to whom the Schengen acquis applies. Third countries, special administrative regions, and other entities and territorial authorities ('third countries and regions') fulfilling the criteria were included in Annex I to the Recommendation. Furthermore, the Recommendation, in its Annex II, provided for a list of essential needs and functions that justify travel from third countries that are not included in the list of Annex I.

The Recommendation was amended on 2 February 2021[2] and on 20 May 2021[3] in order, in particular, to adapt the criteria used to the development of the epidemiological situation, to take account of the roll-out of the vaccination campaigns worldwide and to provide for measures helping to contain the spread of variants of concern and of variants of interest. Furthermore, since its adoption, the Council amended Annex I twelve times in order to add or remove countries from the list of third countries and regions for which the restriction on non-essential travel could be lifted.

On 22 February 2022, the Recommendation (EU) 2022/290[4] was further amended by in order to take into account, in particular, the introduction of the EU Digital COVID certificate by Regulations (EU) 2021/953[5] and (EU) 2021/954[6]. Furthermore, that Recommendation called on the Commission to review the Recommendation, with a view to deleting Annex I, taking

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1 Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L I 208, 1.7.2020, p. 1).

2 Council Recommendation (EU) 2021/132 of 2 February 2021 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 41, 4.2.2021, p. 1).

3 Council Recommendation (EU) 2021/816 20 May 2021 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 182, 21.5.2021, p. 1).

4 Council Recommendation (EU) 2022/290 of 22 February 2022 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 43, 24.2.2022, p. 79).

5 Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 1).

6 Regulation (EU) 2021/954 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) with regard to third-country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 24).

into account the increasing vaccination uptake worldwide, allowing to move from a country-based to a person-based risk assessment approach to travel. The Commission was then asked to report to the Council, and, as appropriate, to submit a proposal to delete Annex I to the Recommendation.

The list of third countries and regions exempt from restrictions on the basis of objective criteria (Annex I) was a useful and proportionate means to keep open the external borders to both non-essential and essential travellers in June 2020 and later, when the production of vaccines was not yet keeping up with the worldwide demand. Nonetheless, this is no longer the case. Since then, the European Medicines Agency (EMA) and the World Health Organisation (WHO) have authorised an increasing number of COVID-19 vaccines have been authorised and produced that hence have been administered in the EU and beyond. It is for this reason that the Commission proposes again to remove Annex I from the Recommendation.

To date, the uptake of the primary vaccination course against COVID-19 in the total population of the EU/EEA had reached 72.7% on 6 October 2022 and has been plateauing since April 2022. The uptake of the first booster/additional dose in the total population was 53.9%.

Worldwide vaccination campaigns have progressed steadily. The current total rate of vaccination of the global population by 7 October 2022 stood at 61.8%[7] for the full first vaccination course of the world's population. However, this figure presents important disparities between countries and regions, with a much lower uptake in developing ones, and has been plateauing as well since April 2022.

Moreover, the European Medicines Agency (EMA) approved on 1 September 2022 two bivalent mRNA vaccines targeting the Omicron subvariant BA.1, in addition to the original strain of SARS-CoV-2, developed by Pfizer/BioNTech and Moderna and, on 12 September 2022, an additional bivalent mRNA vaccine, developed by Pfizer/BioNTech, targeting the Omicron BA.4 and BA.5 subvariants, as well as the original virus. Moreover, a second category of protein-based vaccines, awaited this autumn or winter, will further complement the EU's broad vaccine portfolio.

Furthermore, the implementing decisions establishing that COVID-19 certificates issued by a third country to the EU citizens and their family members, as well as to the third country nationals legally residing and staying in the EU are to be considered as equivalent to certificates issued by Member States in accordance with Regulation (EU) 2021/953 on the EU Digital COVID Certificate ("equivalence decisions")[8] further facilitate the possibility to resume travel into the EU by establishing a framework for the recognition of third-country testing, vaccination and recovery certificates.

In addition, while the overall notification rate of COVID-19 cases in the EU/EEA might continue to fluctuate over time, we need to look at severity indicators like hospitals and Intensive Care Unit occupation that, although also continue to fluctuate, for the moment remain under control. The summer wave of 2022 exemplifies how high virus circulation,

[7] WHO Coronavirus (COVID-19) Dashboard | WHO Coronavirus (COVID-19) Dashboard With Vaccination Data

[8] https://ec.europa.eu/info/publications/commission-implementing-decisions-eu-equivalence-covid-19-certificates-issued-non-eu-countries_en.

following the emergence of a new variant of concern, does not necessarily lead to substantial pressure on national healthcare systems. This highlights the importance of a prudent approach when considering the introduction of travel restrictions based on the number of cases or on the presence of a new variant.

On 15 September 2022, in the framework of the Integrated Political Crisis Response, the Presidency invited Member States to share their views on the coordinated approach to the lifting of restrictions at external borders in accordance with the Recommendation. All States participating in the area without controls at internal borders (the "Schengen area"), including Norway, Switzerland, Liechtenstein and Iceland noted that they currently have no restrictions (or were in the process of removing them) and do not intend to re-introduce any, unless due to a specific concern linked to the emergence of a new variant of concern or of interest appears. All States that took the floor supported the removal of Annex I from the Recommendation, as well as the lifting of travel restrictions.

In view of the above, and if the epidemiological situation remains stable, including with the circulation of known SARS-CoV-2 variants, the Commission considers that restrictions to travel to the Union should be lifted. However, in line with the clear majority of participating States, the Commission considers that the so-called emergency brake provided for in the Recommendation should be maintained. At the same time, experience has shown that there is a need to apply also a common approach when it comes to lifting the emergency brake, in order to avoid lengthy, disproportionate and unnecessary restrictions to international travel.

Finally, despite the past positive developments set out above, the SARS-CoV-2 virus remains active and continues to circulate worldwide and the pandemic is not over. New waves of infections that could cause the epidemiological situation to deteriorate, including as a result of the emergence of a new variant of concern or of interest, cannot be excluded. Indeed, as reported by the European Centre for Disease Prevention and Control (ECDC) on 7 October 2022, the epidemiological picture suggests increasing transmission in most Member States, however with no indication of changes in the distribution of circulating variants[9]. In such a case, Member States and Schengen Associated Countries should be ready to reintroduce in a coordinated manner some or all restrictions.

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

This proposal for a recommendation serves to implement the existing provisions in the policy area, namely carrying out checks on persons and monitoring efficiently the crossing of external borders.

- **Consistency with other Union policies**

This recommendation is in line with other Union policies, including those regarding external relations and public health.

[9] https://www.ecdc.europa.eu/en/covid-19/country-overviews

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The Treaty on the Functioning of the European Union (TFEU), in particular points (b) and (e) of Article 77(2) and Article 292, first and second sentence, thereof.

• Subsidiarity (for non-exclusive competence)

Ensuring the proper functioning of the area without controls at internal borders between Member States is a joint endeavour and shared responsibility that requires a coherent and coordinated approach with regard to the management of the EU's external borders, in particular as regards restrictions for non-essential travel to the EU. The objective of ensuring a coordinated approach cannot be sufficiently achieved by the Member States acting alone, and can be better achieved at the level of the Union.

• Proportionality

The present proposal takes account of the evolving epidemiological situation and all available relevant evidence. The authorities of the Member States remain responsible for implementing the proposed Council Recommendation. The proposed Recommendation aims to reduce the administrative burden by recommending the relaxing of the travel restrictions in place and removing the country-based approach reflected in the Annex I to the Recommendation. Therefore, the proposal is suitable for achieving the intended objective and does not go beyond what is necessary and proportionate.

• Choice of the instrument

This proposal has the objective to replace Council Recommendation (EU) 2020/912 and thus requires another Council Recommendation.

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

• Ex-post evaluations/fitness checks of existing legislation

N/A

• Stakeholder consultations

This proposal takes into account discussions with Member States since the implementation of the first temporary restrictions to non-essential travel. No impact assessment was undertaken, although the proposal takes into account the evolving epidemiological situation and all available relevant evidence.

• Collection and use of expertise

This proposal is based on the incremental scientific expertise concerning the virus SARS- CoV- 2, its way of spreading, its genetic variations leading to strains that are more contagious or result in a more severe outcome (variants of interest and variants of concern), as well as the effectiveness of vaccination, the preliminary results of clinical trials of drugs

treating COVID-19, and of non-pharmaceutical interventions in containing the spread of this virus. The scientific evidence used is mainly that produced by ECDC and by the WHO.

4. BUDGETARY IMPLICATIONS

None.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), points (b) and (e) and Article 292, first and second sentence thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 30 June 2020, the Council adopted Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction[1].

(2) Since then, the increasing vaccination uptake worldwide, with vaccines that offer high levels of protection against severe disease cases and deaths, as well as the circulation of the Omicron BA.4 and BA.5 strains, which have been dominant worldwide since July 2022 and tend to cause less severe outcomes than the previous Delta variants, have led to a significant improvement of the epidemiological situation.

(3) Therefore, in view of the current and expected epidemiological situation, it seems appropriate to recommend the removal of the restrictions on travels into the Union. All Member States and countries to whom the Schengen *acquis* applies have already repealed these restrictions over the summer.

(4) Recommendation (EU) 2020/912 introduced, amongst others, in its Annex I, a list of those third countries, special administrative regions, and other entities and territorial authorities ("third countries or regions") meeting the epidemiological criteria set out in that Recommendation and from which the restriction on non-essential travel into the Union could be lifted. With the relaxation of the restrictions, that list is no longer needed and should, therefore, be repealed.

(5) However, the SARS-CoV-2 virus is still circulating. Therefore, Member States should stand ready to act in a coordinated and proportionate manner in case the epidemiological situation deteriorates significantly, including due to the emergence of a new variant of concern or of interest.

[1] Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 208 I, 1.7.2020, p. 1).

(6) In particular, where the epidemiological situation in a third country or region worsens significantly, Member States should, where necessary, limit non-essential travel with the exception of persons who have been vaccinated or recovered, or have been tested negatively by Nucleic Acid Amplification Test (NAAT) within 72 hours before their departure. This should not prevent Member States from taking additional measures upon arrival such as, for example, additional testing, self-isolation or quarantine.

(7) Whenever a Member State introduces COVID-19-related restrictions in accordance with Council Recommendation 2022/107[2], Member States should, within the Council structures and in close cooperation with the Commission and the European Centre for Disease Prevention and Control (ECDC), coordinate with a view to determining whether similar restrictions should be introduced regarding travel from third countries to Member States.

(8) In this context, the EU Digital COVID certificate established by Regulations (EU) 2021/953 of the European Parliament and of the Council[3] and (EU) 2021/954 of the European Parliament and of the Council[4] should remain the point of reference for proving vaccination, recovery and testing. This should also cover certificates issued by third countries that are covered by an implementing decision adopted pursuant to Article 3(10) or Article 8(2) of Regulation (EU) 2021/953.

(9) Furthermore, when a variant of concern or of interest emerges in a third country or region, Member States should continue to have the possibility to take, in a coordinated manner, urgent, time-limited and flexible measures in order to delay and prepare for the introduction of such a variant of concern or of interest.

(10) This Recommendation should also provide for the necessary exemptions from restrictions on travel from third countries to the Member States. Persons travelling for an essential need or function should be allowed to travel to the Member States and other countries to whom the Schengen *acquis* applies also where the emergency brake applies. For this purpose, the list of essential travellers should be adapted to limit it to those persons who must be able to travel even in such situations.

(11) Similarly, Union citizens and third-country nationals legally residing in the Union should always be able to return to their Member State of nationality or residence, but may be subject to measures upon arrival. Children under 12 years of age should not be required to be in the possession of a proof of vaccination, recovery or a test.

(12) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the

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2 Council Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (OJ L 18, 27.1.2022, p. 110).

3 Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 1).

4 Regulation (EU) 2021/954 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) with regard to third-country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 24).

European Union, Denmark is not taking part in the adoption of this Recommendation. Given that this Recommendation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of the said Protocol, decide within a period of six months after the Council has decided on this Recommendation whether it will implement it.

(13) This Recommendation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[5].This Recommendation does therefore not affect Ireland.

(14) As regards Iceland and Norway, this Recommendation 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*[6] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC[7].

(15) As regards Switzerland, this Recommendation 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*[8] which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[9].

(16) As regards Liechtenstein, this Recommendation constitutes a development of 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*[10] which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[11].

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5 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).

6 OJ L 176, 10.7.1999, p. 36.

7 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).

8 OJ L 53, 27.2.2008, p. 52.

9 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).

10 OJ L 160, 18.6.2011, p. 21.

11 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

(17) All Member States should, in the interest of the proper functioning of the Schengen area, decide on any reintroduction of restrictions on non-essential travel into the Union in a coordinated manner,

HAS ADOPTED THIS RECOMMENDATION:

Lifting of the restrictions on travels

(1) As of [date], all COVID-19 related restrictions for travellers to the Union should be lifted.

Requirements for travels in case of severe worsening of the epidemiological situation

(2) Where necessary to address a severe worsening of the epidemiological situation, either in the Member States or in third countries, Member States, where necessary, should decide, in a coordinated manner in the Council and in close cooperation with the Commission, to reintroduce appropriate requirements for travellers **prior to their departure**. Such requirements could be one, or a combination of, the following:

(a) having received at the latest 14 days before entering the Union, the last recommended dose of a primary vaccination series of one of the COVID-19 vaccines authorised in the Union pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council[12] or of one of the COVID-19 vaccines having completed the WHO Emergency Use Listing process; where the traveller is aged 18 years or above, not more than 270 days are to have passed since the administration of the dose indicated in the vaccination certificate for the completion of the primary vaccination series or, after that period of 270 days, an additional dose must have been received following the completion of the primary vaccination series;

(b) having recovered from COVID-19 within 180 days prior to travelling to the Member States;

(c) having tested negative to a Nucleic Acid Amplification Test (NAAT) taken at the earliest 72 hours before departure to the Member States;

(3) To determine whether a situation should, for the purposes of the point 2, be qualified as severely worsening, Member States should take into account, in particular, the strain on their healthcare systems due to COVID-19, notably in terms of admissions to and number of hospital and intensive-care unit inpatients.

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acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

[12] Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1).

(4) Furthermore, if one or more Member States reintroduce restrictions based on Council Recommendation (EU) 2022/107[13], regarding travel within the Union, Member States should discuss, in close cooperation with the Commission and the European Centre for Disease Prevention and Control established by Regulation (EC) No 851/2004 of the European Parliament and of the Council[14], whether similar restrictions should be introduced under this Recommendation regarding travel from third countries to Member States.

(5) When restrictions have been reintroduced in accordance with points 2 or 4, travellers should be in possession of one or more of the following:

(a) a valid proof of vaccination issued on the basis of a COVID-19 vaccine authorised in the Union pursuant to Regulation (EC) No 726/2004;

(b) a valid proof of vaccination issued on the basis of COVID-19 vaccines that has completed the WHO Emergency Use Listing process but does not appear on the list of vaccines authorised in the Union pursuant to Regulation (EC) No 726/2004;

(c) a valid proof of recovery;

(d) a valid proof of a negative Nucleic Acid Amplification Test (NAAT).

(6) Unless they are covered by point 5 (a), (b) or (c), children from the age of 12 and under the age of 18 should be allowed to travel to a Member States if they are in possession of valid proof of a negative Nucleic Acid Amplification Test (NAAT) taken at the earliest 72 hours before departure.

(7) Children under the age of 12 travelling with a person from the age of 18, who fulfils the requirements set out in points 5 (a), (b) or (c), should not be subject to any additional requirement prior to departure.

(8) The Member States could also apply additional measures **on arrival** in accordance with Union and national law, such as, for example, additional testing, self-isolation and quarantine.

(9) However:

(a) travellers with an essential function or need referred to in the Annex[15] should not be subject to any measures on arrival that would impede the very purpose of the travel;

(b) for transport personnel, seafarers and frontier workers, Member States should not require more than a negative Rapid Antigen Test (RAT) on arrival to enter into any of the Member States;

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13 Council Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475.

14 Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control (OJ L 142, 30.4.2004, p. 1).

15 See also Commission Guidance of 28 October 2020 (COM(2020)686 final, 28.10.2020).

(c) air crews should be exempted from any testing if their stay in a third country was less than 12 hours.

(10) Where Member States impose additional measures on arrival, as set out in point 8, they should make available appropriate information to the travellers in an easily accessible manner.

Proofs of vaccination, recovery and testing

(11) In addition to certificates issued pursuant to Regulations (EU) 2021/953, Member States should accept proofs of COVID-19 vaccination, recovery or testing covered by an implementing act adopted pursuant to Article 3(10) or Article 8(2) of that Regulation.

(12) Where no such implementing act has been adopted, for the purposes of points 5 and 6, Member States could decide to accept, for the purposes of this Recommendation, in accordance with national law, a proof of vaccination, recovery or testing issued by a third country, taking into account the need to be able to verify the authenticity, validity and integrity of the document and whether it contains all relevant data as provided for in Regulation (EU) 2021/953.

Addressing variants of concern or interest and emergency brake mechanism

(13) Where a variant of concern or of interest has been detected in a third country or region, Member States should take urgent measures ("emergency brake") to contain the spread of the variant to the Union. Member States might exceptionally establish within the Council structures an urgent, common and temporary restriction on all travels to their territories for third country nationals who have stayed in that third country or region at any time during the 14 days before departure towards the Member States. This should also apply to situations where the epidemiological situation deteriorates rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.

(14) The Member States, within the Council structures and in close cooperation with the Commission, should regularly review the situation in a coordinated manner.

(15) Such restrictions should expire after 10 calendar days, unless Member States exceptionally decide, within the procedure set out in points 13 and 14, to extend them for an additional period of up to 10 calendar days.

(16) The European Centre for Disease Prevention and Control should publish and regularly update a map presenting the situation with regard to variants of concern and variants of interest in third countries.

Exemptions from temporary travel restrictions

(17) Travellers with an essential function or need referred to in the Annex should not be subject to the travel restrictions referred to in points 2 and 12.

(18) The following categories of persons could be subject to the travel restrictions mentioned in points 2 and 12, but should maintain the possibility to return to the Union:

(a) Union citizens and third-country nationals who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens, as well as their respective family members[16];

(b) third-country nationals who are long-term residents under Council Directive 2003/109/EC[17] and persons deriving their right to reside from other instruments of Union law or national law or who hold national long-term visas, as well as their respective family members.

Where such persons are not in possession of a valid EU Digital COVID Certificate, they could be subject upon arrival to the additional measures mentioned under point 8.

(19) The additional measures that could be applied on arrival as set out in point 8 should continue to apply to travellers exempted from restrictions in accordance with points 17 and 18.

Final provisions

(20) For the purpose of this Recommendation, residents of Andorra, Monaco, San Marino and the Vatican/Holy See should be considered as third-country nationals falling within the scope of point 18(b).

(21) This Recommendation replaces Recommendation (EU) 2020/912. It should apply from [date].

Done at Brussels,

For the Council
The President

[16] As defined in Articles 2 and 3 of 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).

[17] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).