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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 November 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. prev. doc.:	8387/21
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Subject:	Proposal for a COUNCIL RECOMMENDATION amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction

Delegations will find attached document COM(2021) 754 final.

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Brussels, 25.11.2021
COM(2021) 754 final

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Proposal for a

COUNCIL RECOMMENDATION

amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Since the last amendment to Recommendation (EU) 2020/912, that the Council adopted on 20 May 2021[1], the Parliament and the Council adopted Regulation (EU) 2021/953 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 and Regulation (EU) 2021/954 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.

Considering that vaccination has played a major role in restoring travel to the EU, the Commission proposes to amend Recommendation (EU) 2020/912 to establish a clear link between the Recommendation and the EU Digital COVID Certificate so to assist the Member States authorities in verifying the authenticity, validity and integrity of the certificates issued by third countries.

Furthermore, on 22 October 2021, the European Council called for further coordination to facilitate of travel into the EU. It is, therefore, proposed to increase the threshold of the '14-day cumulative COVID-19 case notification rate' from 75 to 100 (the average rate in the EU/EEA on 14 November 2021 was 473,8 per 100 000 inhabitants), while at the same time raising the weekly testing rate from 300 to 600 per 100 000 inhabitants, to take account of the general increase in testing capacities (the average weekly rate in the EU/EEA on 14 November 2021 was above 5 000 tests per 100 000 inhabitants).

Taking into account the guidance of ECDC regarding the administration of booster doses as of 6 months after completion of the primary vaccination series, and while providing for an additional period of 3 months to ensure that national vaccination campaigns can adjust and citizens can have access to the administration of boosters, a standard acceptance period of 9 months following the completion of the primary vaccination series is being proposed. To ensure a coordinated approach, Member States should not accept vaccination certificates issued following the completion of the primary vaccination series if more than 9 months have passed since the administration of the dose indicated therein.

Finally, even though the vaccination uptake continues to increase worldwide and several third countries progressively reopen their borders to international travellers who are fully vaccinated, a possibility that the EU has offered since 20 May 2021, the Commission considers it premature to make a full and immediate shift from the current hybrid country/person-based to a purely person-based approach as it would penalise travellers from third countries with a low vaccination rate. Therefore, Annex I (Third countries, Special Administrative Regions and other entities and territorial authorities whose residents should

[1] 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).

not be affected by temporary external borders restriction on non-essential travel into the EU) should only be discontinued and the relevant provisions deleted on 1 May 2022. This will simplify the content of the Recommendation and reduce the administrative burden linked to its implementation.

- **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.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Treaty on the Functioning of the European Union (TFEU), and 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, including 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 proposed amendments to the Council Recommendation 2020/912 will reduce the administrative burden by relaxing the travel restictions in place and ultimately removig 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 amend Council Recommendation 2020/912. This objective 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 variations in more contagious and severe strains (variants of interest and variants of concern), as well as the efficacy of vaccination and of non-pharmaceutical intervention in containing the spreading of this virus. The scientific evidence used is mainly that produced by the European Centre for Disease Prevention and Control (ECDC) and by the World Health Organisation (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[2].

(2) On 2 February 2021, the Council amended Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction[3] to update the criteria used to assess whether non-essential travel from third countries is safe and should be allowed.

(3) The same amendment introduced mechanisms to contain the spread of variants of concern of the virus SARS-COV-2 in the EU[4].

(4) On 20 May 2021, the Council amended Recommendation (EU) 2020/912[5] to take into account the roll-out and the positive effects of the vaccination campaigns in containing the spread of the virus, as well as in order to further contain the importation and spread into the EU of the emerging variants of interest and of concern.

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2 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 LI 208, 1.7.2020, p. 1).

3 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).

4 The "EU+ area" includes all Schengen Member States (including Bulgaria, Croatia, Cyprus and Romania), as well as the four Schengen Associated States. It also includes Ireland if Ireland decides to align.

5 Council Recommendation (EU) 2021/816 of 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).

(5) On 14 June 2021, the Parliament and the Council adopted Regulations (EU) 2021/953[6] and (EU) 2021/954[7] on EU Digital COVID Certificate. The EU Digital COVID Certificate has proved to be a fundamental tool to help restore travel within the EU.

(6) Since the adoption of Regulation (EU) 2021/953, the Commission has adopted several implementing acts establishing that COVID-19 certificates issued by a certain third country are to be considered as equivalent to certificates issued by Member States in accordance with that Regulation. Vaccination, recovery and test certificates covered by such implementing acts can thus be securely and reliable authenticated. Therefore, the EU Digital COVID Certificate, and in particular the implementing decisions adopted on this basis, have also facilitated the safe reopening of travel from third countries to the EU.[8]

(7) Considering the evolution of the pandemic, as well as the increasing vaccination uptake and the progressive lifting of travel restrictions worldwide, the current approach set out in Recommendation (EU) 2020/912 should be updated to take account of the establishment of the EU Digital COVID certificate.

(8) On 22 October 2021, the European Council in its conclusions, in light of the development of the epidemiological situation, called for further coordination to facilitate free movement within, and travel into, the EU, and for a revision of the two Recommendations, including Council Recommendation (EU) 2020/912.

(9) The standard acceptance period for vaccination certificates issued following the completion of a primary vaccination series should be set at 9 months. This takes into account the guidance of ECDC regarding the administration of booster doses as of 6 months after completion of the primary vaccination series, and provides for an additional period of 3 months to ensure that national vaccination campaigns can adjust and citizens can have access to the administration of boosters. To ensure a coordinated approach, Member States should not accept vaccination certificates issued following the completion of the primary vaccination series if more than 9 months have passed since the administration of the dose indicated therein.

(10) To further facilitate safe travel into the EU, the threshold for the 14-days cumulative COVID-19 case notification rate should be increased from 75 to 100 per 100 000 inhabitants. At the same time and to take account of the enhanced testing capabilities almost two years after the first appearance of the virus, the required minimum weekly testing rate should also be increased from 300 to 600 tests per 100 000 inhabitants. This should further increase the reliability of the data used to determine to what extent non-essential travel should be possible from a given third country.

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6 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.

7 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.

8 The updated list of equivalence decisions is published on the following webpage : https://ec.europa.eu/info/publications/commission-implementing-decisions-eu-equivalence-covid-19-certificates-issued-non-eu-countries_en

(11) To better allow for non-essential travel into the Union and to increase predictability for third-country travellers, Member States should not only accept COVID-19 vaccines that have been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council[9] but also those having completed the emergency listing procedure of the World Health Organisation (WHO).

(12) Furthermore, as alternative to vaccination, Member States should allow non-essential travel to persons having recovered from COVID-19 within 180 days prior to travelling to the EU and who hold an EU Digital COVID certificate or one having been recognised as equivalent to it.

(13) At the same time, to further reduce the risk of transmission of the SARS-CoV-2 virus, Member States should also require a valid proof of a negative real-time polymerase chain reaction (RT-PCR) test before departure when the traveller has either (i) received a COVID-19 vaccine having completed the WHO Emergency Use Listing process but that does not appear on the list of vaccines authorised in the EU pursuant to Regulation (EC) No 726/2004 or (ii) recovered from COVID-19 within 180 days prior to travelling to the EU.

(14) Children above the age of 6 and under the age of 18 should be able to travel under the condition of having tested negative to a RT-PCR test before departure. In these cases, Member States could require additional testing after arrival, quarantine or self-isolation.

(15) In consideration of the increasing vaccination uptake worldwide, it is considered appropriate to gradually move from the current hybrid country/person-based approach to a purely person-based approach and therefore to remove the Annex I and base the lifting of travel restrictions solely on the vaccination status or the function/need fulfilled by travellers. However, at the moment there are still third countries with either a limited access to vaccines or a low vaccination rate. Therefore, to give time to third countries to increase their vaccination rates and upon a prior general assessment of the vaccination situation in third countries based on data supplied, among others, by the EU Delegations, Annex I and the relevant provisions of Recommendation (EU) 2020/912 should be deleted on 1 March 2022. Discontinuing Annex I should simplify the Recommendation (EU) 2020/912 and reduce the administrative burden linked to its implementation.

(16) 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 TFEU, Denmark is not taking part in the adoption of this Recommendation and is not bound by it or subject to its application. 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.

(17) This Recommendation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision

[9] Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union 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).

2002/192/EC[10]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(18) 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*[11] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC[12].

(19) 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*[13] 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[14].

(20) 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*[15] which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2011/350/EU[16].

(21) The legal status of this Recommendation as recalled in recitals 15 to 19 is without prejudice to the need for all Member States, in the interest of the proper functioning of the Schengen area, to decide on the lifting of the restriction on non-essential travel into the Union in a coordinated manner,

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10 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).

11 OJ L 176, 10.7.1999, p. 36.

12 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).

13 OJ L 53, 27.2.2008, p. 52.

14 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).

15 OJ L 160, 18.6.2011, p. 21.

16 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).

HAS ADOPTED THIS RECOMMENDATION:

Recommendation (EU) 2020/912 is amended as follows:

(1) From 10 January 2022, in point 2, second paragraph, the figure “75” is replaced by “100”and the figure “300” is replaced by “600”;

(2) From 10 January 2022, in point 6a, first, second and third paragraphs are replaced by the following:

“Without prejudice to point 6 (a) and (b), where Member States accept proof of vaccination in order to waive travel restrictions to limit the spread of COVID-19, Member States should in principle lift the temporary restriction on non-essential travel to the EU with regard to such travellers who have received the last recommended dose of one of the COVID-19 vaccines authorised in the EU pursuant to Regulation (EC) No 726/2004* at the latest 14 days before entering the EU+ area, provided that less than 9 months have passed since the administration of the dose indicated in the vaccination certificate for the completion of the primary vaccination series, or an additional dose has been received following the completion of the primary vaccination series.

Member States should also lift the temporary restriction on non-essential travel to the EU with regard to such travellers who have received the last recommended dose of one of the COVID-19 vaccines having completed the WHO Emergency Use Listing process at the latest 14 days before entering the EU+ area, provided that less than 9 months have passed since the administration of the dose indicated in the vaccination certificate for the completion of the primary vaccination series, or an additional dose has been received following the completion of the primary vaccination series.

Member States should also lift the temporary restriction on non-essential travel to the EU with regard to such travellers who have recovered from COVID-19 within 180 days prior to travelling to the EU.

To that end, travellers wishing to undertake non-essential travel to a Member State should be in possession of either:

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

b) a valid proof of COVID-19 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 EU pursuant to Regulation (EC) No 726/2004 or,

c) a valid proof of recovery.

For travellers falling under points b) and c) above, the Member State should also require a valid proof of a negative real-time polymerase chain reaction (RT-PCR) test taken at the earliest 72 hours before departure.

In addition to EU Digital COVID certificates, Member States should accept such proofs of COVID-19 vaccination or recovery if they correspond to certificates having been recognised as equivalent to those issued in accordance with Regulation

(EU) 2021/953 of the European Parliament and of the Council** in an implementing act adopted by the Commission under Article 8 of that Regulation.

Where no such act concerning certificates issued by a third country has been adopted, Member States could accept, in accordance with national law, a proof of testing and vaccination issued by the third country taking into account the need to be able to verify the authenticity, validity and integrity of the certificate and whether it contains all relevant data as provided for in Regulation (EU) 2021/953.

Children from 6 years and below 18 years of age should be allowed to undertake non-essential travel to a Member State if they are in possession of valid proof of a negative real-time polymerase chain reaction (RT-PCR) test taken at the earliest 72 hours before departure. In these cases, Member States could require additional testing after arrival, as well as quarantine or self-isolation.".

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* 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 L136, 30.04.2004, p. 1).

** 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).

(3) From 1 March 2022:

(a) point 1 is replaced by the following:

"1. Temporary restrictions on non-essential travel into the EU should be lifted with regard to the residents of third countries in accordance with the rules set out in this Recommendation.".

(b) points 2 to 5, point 9 and Annex I are deleted.

Done at Brussels,

For the Council
The President