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NOTE

From: Presidency

To: Permanent Representatives Committee

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Subject: 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

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,

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 77(2)(b) and (e) and 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 restriction¹.
- (2) The criteria set out in Council Recommendation (EU) 2020/912 refer to the average EU 14-day notification rate of 15 June 2020. The Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, adopted on 13 October 2020, uses additional criteria that reflect the most recent scientific advice².

New variants of the SARS COV-2 virus are a serious cause for concern. The variants appear to be somewhere between 50–70 % more transmissible³ increasing the burden on healthcare systems.

The criteria and thresholds laid down in Recommendation (EU) 2020/912 should therefore be updated.

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, 1.7.2020, p. 1).

² Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 3).

³ ECDC Risk Assessment: Risk related to spread of new SARS-CoV-2 variants of concern in the EU/EEA, available at: <https://www.ecdc.europa.eu/en/publications-data/covid-19-risk-assessment-spread-new-sars-cov-2-variants-eueea>

- (3) On 22 December 2020, the Commission responded to the appearance of one such variant with the adoption of a Recommendation on a coordinated approach to travel and transport in response to the SARS-COV-2 variant observed in the United Kingdom.⁴
- (4) On 19 January 2021, the Commission in its Communication on a united front to beat COVID-19 called for urgent action to contain the risk of a potentially harsher third wave of infections.
- (5) In the same Communication, the Commission also stressed that all non-essential travel, especially to and from high risk areas, should be strongly discouraged until the epidemiological situation has considerably improved.
- (6) On 21 January 2021, the European Centre for Disease Prevention and Control issued its latest risk assessment on the spread of the new SAR-CoV-2 variants of concern in the EU/EEA⁵, recommending the adoption of stricter measures and of guidance on the avoidance of non-essential travel, including for the purpose of slowing down the importation and spread of the new SARS-CoV-2 variants of concern. In addition to recommendations against non-essential travel, and restrictions on travel for those infected, travel measures such as testing and quarantine of travellers should be maintained, in particular for travellers from areas with a higher incidence of the new variants. If sequencing is still insufficient to exclude the possibility of a higher incidence of the new variants, as per European Centre for Disease Prevention and Control guidance on genomic sequencing, proportionate travel measures should also be considered from areas where there is a continued high level of community transmission.
- (7) In the oral conclusions drawn following the video conference of the members of the European Council on 21 January 2021, the President of the European Council noted that measures restricting non-essential travel into and within the EU may be needed to contain the spread of the virus and called on the Council to review its recommendations on intra-EU travel and non-essential travels into the EU in light of the risks posed by the new virus variants.

⁴ C(2020) 9607 final.

⁵ European Centre for Disease Prevention and Control. Risk related to spread of new SARS-CoV-2 variants of concern in the EU/EEA, first update–21January 2021. ECDC: Stockholm; 2021. Available at: <https://www.ecdc.europa.eu/sites/default/files/documents/COVID-19-risk-related-to-spread-of-new-SARS-CoV-2-variants-EU-EEA-first-update.pdf>

- (8) 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, in accordance with Article 4 of the said Protocol, is to decide within a period of six months after the Council has decided on this Recommendation whether it will implement it.
- (9) 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/EC⁶; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) 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 which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC⁷.
- (11) 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 which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC⁸ read in conjunction with Article 3 of Council Decision 2008/146/EC⁹.

⁶ 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).

⁷ OJ L 176, 10.7.1999, p. 36.

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).

- (12) 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 which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC¹⁰ read in conjunction with Article 3 of Decision 2011/350/EU¹¹,

HAS ADOPTED THIS RECOMMENDATION:

Council Recommendation 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction¹² is amended as follows:

1. The second paragraph of point 1 is replaced by the following:

“To determine the third countries for which the current restriction on non-essential travel into the EU should be lifted, the epidemiological situation in the respective third countries and further criteria as set out in this Recommendation should be taken into account.”

2. Point 2 is replaced by the following:

“As regards the epidemiological situation, the following criteria should apply:

- the ‘14-day cumulative COVID-19 case notification rate’, that is, the total number of newly notified COVID-19 cases per 100 000 population in the previous 14 days;

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

¹² 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, 1.7.2020, p. 1).

- the trend of new cases over the same period in comparison to the previous 14 days is stable or decreasing;
- the ‘testing rate’, that is, the number of tests for COVID-19 infection per 100 000 population carried in the previous seven days;
- the ‘test positivity rate’, that is, the percentage of positive tests among all tests for COVID-19 infection carried out in the previous seven days;
- the nature of the virus present in a country, in particular whether variants of concern of the virus have been detected. Variants of concern are assessed as such by the European Centre for Disease Prevention and Control (ECDC) based on key properties of the virus such as transmission, severity and ability to escape immune response.

To be included in Annex I, third countries should meet the following thresholds: a 14-day cumulative COVID-19 case notification rate of not more than 25, a testing rate above 300, and a test positivity rate of not more than 4%. In addition, the overall response to COVID-19 may be taken into account, in particular available information on aspects such as surveillance, contact tracing, containment, treatment and reporting as well as the reliability of available information and data sources and, if needed, the total average score across all dimensions for International Health Regulations (IHR).

The data concerning the 'testing rate' and the 'test positivity rate' should be provided by the European Centre for Disease Prevention and Control (ECDC), on the basis of information made available to ECDC. Such data could be complemented by information provided by EU delegations, when available, also based on the checklist annexed to the Communication of 11 June 2020.

3. Point 4 is amended as follows:

a) The second paragraph is replaced by the following:

“Travel restrictions may be totally or partially lifted or reintroduced for a specific third country already listed in Annex I, according to changes in some of the conditions set out above and, as a consequence, in the assessment of the epidemiological situation.”

b) The following new paragraphs are added:

"Where the epidemiological situation worsens quickly and, in particular, where a high incidence of variants of concern of the virus is detected, travel restrictions may be rapidly reintroduced for non-essential travel for third countries already listed in Annex I.

In order to lift the temporary restriction on non-essential travel into the EU with regard to the third countries listed in Annex I, Member States should, on a case-by-case basis, take into account reciprocity granted to the EU+ area.”

4. The following new point is inserted after point 4:

“Member States should strongly discourage non-essential travel from the EU+ area to countries other than those listed in Annex I.”

The following points are renumbered accordingly.

5. New point 6 is amended as follows:

(a) The second paragraph is deleted.

(b) The following paragraph is inserted after the deleted second paragraph:

"Where the epidemiological situation worsens quickly and, in particular, where a high incidence of variants of concern of the virus is detected, Member States may temporarily limit the categories of travellers listed in Annex II. Travel justified by compelling reasons should still remain possible."

(c) The last paragraph is replaced by the following:

“The list of specific categories of travellers with an essential function or need referred to in Annex II may be reviewed by the Council, based on a proposal from the Commission, depending on social and economic considerations as well as the overall assessment of the

evolution of the epidemiological situation, based on the methodology, criteria and information referred to above.”

6. New point 7 is replaced by the following:

“Member States should require persons travelling for any essential or non-essential reason, function, or need, with the exception of transport and frontier workers, to have tested negative for COVID-19 on the basis of a polymerase chain reaction (PCR) test taken at the earliest 72 hours before departure, and to submit the appropriate proof of such a test result in the form stipulated by the authorities.

If tests on departure are not possible, persons referred to in point 6 (a) and (b) should have the possibility to carry out the test after arrival, in accordance with national procedures. This is without prejudice to any obligation to undergo any further measure, including quarantine, after arrival.

In addition, Member States may require self-isolation, quarantine and contact tracing for a period of up to 14 days, as well as further COVID-19 testing as needed during the same period, provided that they impose the same requirements on their own nationals when travelling from the same third country. For those travellers arriving from a third country where a variant of concern of the virus has been detected, Member States should impose such requirements and in particular, quarantine upon arrival and additional testing upon or after arrival.

As regards travel undertaken in connection with an essential function or need as set out in Annex II:

- Member States may decide, in a coordinated way, to waive some or all of the above measures in those cases where such measure would impede the very purpose of the travel;
- For transport personnel, seafarers and frontier workers, Member States should not require more than a negative Rapid Antigen Test on arrival to enter into the EU+ area. In the specific case of transport personnel coming from a country where a high incidence of variants of concern of the virus is detected, Member States may require a negative Rapid Antigen Test before departure;

- Air crews should be exempted from any testing if their stay in a third country was less than 12 hours, unless they arrive from a third country where a variant of concern has been detected, in which case they should undergo proportionate testing.

This is without prejudice to general public health requirements that may be imposed by the Member States such as physical distancing and the requirement to wear a mask.”

7. The following new point is inserted after new point 7:

“Member States should develop a Passenger Locator Form (PLF) and require persons entering the EU to submit a PLF in accordance with applicable data protection requirements. A common European Passenger Locator Form is being developed for possible use by Member States. Wherever possible, a digital option for passenger locator information should be used in order to simplify processing and expediting contact tracing, while ensuring equal access to all third-country nationals.”

8. The following points are renumbered accordingly.

Done at Brussels,

For the Council
The President
