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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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 – Adoption

1. On 25 November 2021, the Commission presented a 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[1]. On the same day, the Commission presented its proposal at the IPCR roundtable.

2. On 29 November and 2 December 2021, the IPCR exchanged views on the text of the proposal.

3. On 6 December 2021, the IPCR discussed a first Presidency compromise text, followed by Coreper on 10 December 2021, when some delegations asked for the adoption of the text to be delayed in order to take account of the effects of the development of the Omicron variant.

[1] 14115/21.

4. In its conclusions of 16 December 2021, the European Council called for the swift adoption of the revised Council Recommendation on non-essential travel into the EU.

5. On 24 January 2022, the IPCR held a further exchange of views on the initial Presidency compromise text. Following this exchange of views, the Presidency submitted a new compromise text to the IPCR on 7 February 2022.

6. In order to take into account the comments made by delegations at the IPCR meeting on 7 February 2022, the Presidency introduced a limited number of changes. The new compromise text was discussed at the IPCR meeting on 14 February 2022.

7. In view of the above, the Permanent Representatives Committee is invited to approve the Presidency compromise text included in the Annex and to ask the Council to adopt it as an 'A' item at one of its forthcoming meetings. The Permanent Representatives Committee is also invited to request publication of the text of the Recommendation as adopted by the Council in the Official Journal of the European Union.

ANNEX

2021/0397 (NLE)

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

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) 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[2] 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[3].

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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 LI 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 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.

(4) On 20 May 2021, the Council amended Recommendation (EU) 2020/912[4] 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.

(5) On 14 June 2021, the Parliament and the Council adopted Regulations (EU) 2021/953[5] and (EU) 2021/954[6] 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.[7]

(7) 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 as well as considering the evolution of the pandemic, including the emergence of the omicron variant of concern, the increasing vaccination uptake and the progressive lifting of travel restrictions worldwide.

(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.

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4 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 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.

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.

7 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

(9) The standard acceptance period for vaccination certificates issued by third countries following the completion of a primary vaccination series should be set at 270 days. To ensure a coordinated approach, Member States should not accept vaccination certificates issued following the completion of the primary vaccination series if more than 270 days have passed since the administration of the dose indicated therein. In this case, Member States should accept vaccination certificates indicating that an additional dose has been received following the completion of the primary vaccination series.

(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.

(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[8] 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 could 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.

[8] 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).

(13a) Due to the fact that it may not be possible to verify the authenticity, integrity and validity of the vaccination certificates issued by third countries not using the trust framework of the EU Digital COVID Certificate or a vaccination certificate having been recognised as equivalent to it, Member States could also require a valid proof of a negative RT-PCR test before departure where the traveller is fully vaccinated with a COVID-19 vaccine that has been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council[9] but is not in possession of an EU Digital COVID Certificate or one having been recognised as equivalent to it.

(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. Where children above the age of 6 and under the age of 18 are in possession of 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 no test should be required. Children under the age of 6 travelling with an adult should not be subject to additional requirements.

(14a) Member States could allow non-essential travel to persons for whom accepted COVID-19 vaccination is medically contraindicated provided these persons have submitted the necessary documentation and have tested negative to a RT-PCR test before departure.

(15) In consideration of the increasing vaccination uptake worldwide, it is appropriate to start to consider to gradually move from the current hybrid country/person-based approach to a purely person-based approach 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 including the administration of booster doses to ensure the validity of the vaccination certificates and upon a prior general assessment of the vaccination situation in third countries based on data supplied, among others, by the EU Delegations, by 30 April 2022, the Recommendation should be reviewed by the Commission with a view to the deletion of Annex I taking into account the increasing vaccination uptake worldwide. The Commission should report to the Council, and could submit to it, as appropriate, a proposal to delete Annex I.

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[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).

(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 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].

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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).

(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,

HAS ADOPTED THIS RECOMMENDATION:

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

(1) From 1 March 2022, in point 2, second paragraph, the figure "75" is replaced by "100"and the figure "300" is replaced by "600";

(2) From 1 March 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 270 days 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.

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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).

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 270 days 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 could also require a valid proof of a negative real-time polymerase chain reaction (RT-PCR) test taken at the earliest 72 hours before departure. For travellers falling under points b) Member States could apply additional health measures such as isolation, quarantine or receiving vaccine authorised in the EU pursuant to Regulation (EC) No 726/2004.

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.

In such case, they could require a valid proof of a negative RT-PCR test before departure for travellers fully vaccinated with a COVID-19 vaccine that have been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council[17] but are not in possession of a EU Digital COVID Certificate or one having been recognised as equivalent to it.

Unless they are covered by the provisions set out above, children above the age of 6 and under the age of 18 should also 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. Children under the age of 6 travelling with an adult should not be subject to additional requirements.".

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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) New point 12 is inserted:

By 30 April 2022, the Recommendation should be reviewed by the Commission with a view to the deletion of Annex I taking into account the increasing vaccination uptake worldwide.

The Commission should report to the Council, and could submit to it, as appropriate, a proposal to delete Annex I.

Done at Brussels,

For the Council

The President

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[17] 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).