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NOTE

From:	Presidency
To:	Ad hoc Working Party on the proposals on Digital Green Certificate
No. Cion doc.:	7129/21
Subject:	Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable vaccination, testing and recovery certificates for third country nationals legally residing in the Schengen area to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate)

Delegations will find in the Annex a Presidency compromise text on the above-mentioned proposal for further discussion at the Ad Hoc Working Party on the proposals for a Digital Green Certificate on 29 March 2021.

Changes compared to the Commission proposal are marked in **bold/underline** for additions and in ~~bold/strikethrough~~ for deletions.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to third-country nationals legally staying or legally residing in the territories of Member States during the COVID-19 pandemic (Digital Green Certificate)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Under the Schengen acquis, third country nationals lawfully residing in the Union and third country nationals who have legally entered the territory of a Member State may move freely within the territories of all other Member States during a period of 90 days in any 180-day period.
- (2) On 30 January 2020, the Director-General of the World Health Organization ('WHO') declared a public health emergency of international concern over the global outbreak of severe acute respiratory syndrome coronavirus 2 (*SARS-CoV-2*), which causes coronavirus disease 2019 (COVID-19). On 11 March 2020, the WHO made the assessment that COVID-19 can be characterized as a pandemic.
- (3) To limit the spread of the virus, the Member States have adopted various measures, some of which have had an impact on travel to and within the territory of the Member States, such as restrictions on entry or requirements for cross-border travellers to undergo quarantine.

- (4) On 13 October 2020, the Council adopted Council Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic¹.
- (5) On 30 October 2020, the Council adopted Council Recommendation (EU) 2020/1632² on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic in the Schengen area, in which it recommended Member States that are bound by the Schengen *acquis* to apply the principles, common criteria, common thresholds and common framework of measures, set out in Council Recommendation (EU) 2020/1475.
- (6) Many Member States have launched or plan to launch initiatives to issue vaccination certificates. However, for these to be used effectively in connection with cross-border travel within the Union, such certificates need to be fully interoperable, secure and verifiable. A commonly agreed approach is required among Member States on the content, format, principles and technical standards of such certificates.
- (7) Already now, several Member States exempt vaccinated persons from certain travel restrictions. Where Member States accept proof of vaccination in order to waive travel restrictions put in place in compliance with Union law to limit the spread of COVID-19, such as requirements to undergo quarantine/self-isolation or be tested for SARS-CoV-2 infection, they should be required to accept, under the same conditions, valid vaccination certificates issued by other Member States in compliance with the proposal for a Regulation on a Digital Green Certificate (COM(2021)/xxx). This acceptance should take place under the same conditions, meaning that, for example, where a Member State considers a single dose of an administered vaccine to be sufficient, it should do so also for holders of a vaccination certificate indicating a single dose of the same vaccine. On grounds of public health, this obligation should be limited to persons having received COVID-19 vaccines having been granted marketing authorisation pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council³. This should not prevent Member States from deciding to accept vaccination certificates issued for other COVID-19 vaccines, such as vaccines having been granted marketing authorisation by the competent authority of a Member State pursuant to Directive 2001/83/EC of the European Parliament and the Council⁴, vaccines whose distribution has been temporarily authorised based on Article 5(2) of that Directive 2001/83/EC, or vaccines having received a WHO Emergency Use Listing. Regulation (EU) No 2021/xxxx of xx xx 2021 lays down a framework for the issuance, verification and acceptance of interoperable certificates on COVID-19 vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic. It applies to Union citizens and third-country nationals who are family members of Union citizens.

¹ OJ L 337, 14.10.2020, p. 3.

² Council Recommendation (EU) 2020/1632 of 30 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic in the Schengen area (OJ L 366, 4.11.2020, p. 25).

³ 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 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

- (8) In accordance with Articles 19, 20 and 21 of the Convention implementing the Schengen Agreement, the third-country nationals covered by these provisions may travel freely within the territories of the other Member States.
- (9) To facilitate travel within the territories of the Member States by third country nationals who have the right to such travel, the framework for the issuance, verification and acceptance of interoperable certificates on COVID-19 vaccination, testing and recovery established by Regulation (EU) No 2021/xxxx should also apply to third-country nationals who are not already covered by that Regulation, provided that they are legally staying or legally residing in the territory of a Member State and are entitled to travel to other Member States in accordance with Union law.
- (10) For certificates to be used effectively in connection with cross-border travel, such certificates need to be fully interoperable.
- (11) This Regulation should not be understood as facilitating or encouraging the adoption of travel restrictions to free movement, or other fundamental rights, in response to the pandemic. In addition, any need for verification of certificates established by Regulation (EU) 2021/xxx cannot as such justify the temporary reintroduction of border controls at internal borders. Checks at internal borders should remain a measure of last resort, subject to specific rules set out in Regulation (EU) 2016/399 (Schengen Borders Code)⁵.

(11a) Since this Regulation applies to third country nationals already legally staying or residing in the territories of the Member States, it should not be understood as granting third country nationals wishing to travel to a Member State the right to request a Digital Green Certificate from that Member State before arrival on its territory.

- (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 TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of the said Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it.
- (13) This Regulation 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. Although Ireland is not subject to this Regulation, for the purposes of facilitating travel within the Union, Ireland could also issue certificates, which comply with the same requirements as those applicable to the Digital Green Certificate, to third-country nationals legally residing or legally staying in its territory and Member States could accept such certificates. Ireland could also accept certificates issued by Member States to third country nationals legally residing or legally staying in their territories.

⁵ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (OJ L 77, 23.3.2016 p.1).

⁶ Council Decision 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).

- (14) As regards Bulgaria, Croatia, Cyprus and Romania, this Regulation constitutes a development of the Schengen acquis within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.
- (15) As regards Iceland and Norway, this Regulation 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 C, of Council Decision 1999/437/EC⁷.
- (16) As regards Switzerland, this Regulation 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 C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁸.
- (17) As regards Liechtenstein, this Regulation 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 C, of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2011/350/EU⁹.

⁷ Council Decision 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 Council Decision 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).

⁹ Council Decision 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).

- (18) The European Data Protection Supervisor and the European Data Protection Board have been consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ and delivered an opinion on [...],

HAVE ADOPTED THIS REGULATION:

Article 1

Member States shall apply the rules laid down in Regulation (EU) 2021/XXXX [Regulation on a Digital Green Certificate] to those third country nationals who do not fall within the scope of that Regulation but who reside or stay legally in their territory and are entitled to travel to other Member States in accordance with Union law.

Article 2

This Regulation shall enter into force on, **and apply from,** the ~~third~~ day ~~following that~~ of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).