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COVID-19
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WORKING DOCUMENT

From:	Presidency
To:	Ad hoc Working Party on the proposals for a Digital Covid Certificate
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending 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 - compromise proposals on Articles 11 and 16

In view of the negotiations with the European Parliament, delegations will find in the Annex compromise proposals on Articles 11 and 16, on which they will be invited to give their views during the meeting of the *ad hoc* Working Party on the proposals for a Digital Covid Certificate (attachés) on 16 May 2022.

Possible compromise texts for Articles 11 and 16, and related recitals

Article 11

Restrictions to free movement and information exchange

1. **Any restrictions to free movement introduced to limit the spread of COVID-19 shall be based on specific and limited public interest grounds, namely the protection of public health. Any such restrictions shall be in compliance with the [general principles of Union law, in particular] principle of proportionality and non-discrimination and be lifted as soon as the epidemiological situation allows it.**
2. Without prejudice to Member States' competence to impose restrictions *to free movement* on grounds of public health, where Member States accept vaccination certificates, test certificates indicating a negative result or certificates of recovery they shall refrain from ~~introducing imposing~~ additional restrictions to free movement **to holders of the certificates referred to in Article 3(1). such as additional travel-related testing for SARS-CoV-2 infection or travel-related quarantine or self-isolation,** unless they are necessary and proportionate for the purpose of safeguarding public health in response to the COVID-19 pandemic, ~~also~~ taking into account available scientific evidence, including epidemiological data published by the ECDC.

Where a Member State, **in response to the COVID-19 pandemic, and in particular in view of new SARS-CoV-2 variants of concern or interest [or due to worsening of epidemiological situation] introduces restrictions to free movement,** in accordance with Union law, ~~to~~ holders of the certificates referred to in Article 3(1), it shall ensure that they are necessary and proportionate for the purpose of safeguarding public health in response to the COVID-19 pandemic, taking into account available scientific evidence, including epidemiological data published by the ECDC **on the basis of Recommendation (EU) 2022/107, and the precautionary principle.**
3. **Without prejudice to paragraph 2, [...]** **Where a Member State imposes restrictions in accordance with paragraph 2, it shall:**
 - (a) *pay particular attention to the specificities of outermost regions, exclaves and geographically isolated areas and the likely impact of such measures on the functioning of cross-border regions, taking into account their strong social and economic ties;*
 - (b) inform the Commission and the other Member States accordingly, if possible 48 hours in advance of the introduction of such new restrictions. To that end, the Member State shall provide the following information:
 - (i) the reasons for such restrictions, **including all relevant epidemiological data and scientific evidence supporting those restrictions available and accessible at that stage;**
 - (ii) the scope of such restrictions, specifying which certificate holders are subject to or exempt from such restrictions;
 - (iii) the date and duration of such restrictions.

4. Member States shall inform the Commission and the other Member States of the issuance and the conditions of acceptance of the certificates referred to in Article 3(1), including the COVID-19 vaccines they accept pursuant to the second subparagraph of Article 5(5).
5. Member States shall provide the public with clear, comprehensive and timely information with regard to paragraphs 1, 2 and 4. As a general rule, Member States shall make that information publicly available 24 hours before new restrictions come into effect, taking into account that some flexibility is required for epidemiological emergencies. In addition, the information provided by the Member States may be made publicly available by the Commission in a centralised manner.

Recitals

- (7a) ~~*Overall, however, as At the same time, as noted in Recital 13 of Council Recommendation (EU) 2022/107 makes clear, in its recital 13, a significantly higher percentage of the population is better protected from falling seriously ill and dying from COVID-19 as a result of the currently available COVID-19 vaccines. In this improving public health environment, it is all the more important to enhance the protection of the right to free movement by setting out common principles on when Member States might activate restrictions for Union citizens travelling with a valid EU Digital COVID Certificate.*~~
- (8) *In view of the remaining uncertainties regarding the further evolution of the pandemic, it cannot ~~therefore~~ be excluded that Member States continue to require Union citizens exercising their right to free movement to present proof of COVID-19 vaccination, test or recovery beyond 30 June 2022, the date when Regulation (EU) 2021/953 is set to expire. It is thus important to avoid that, in the event that certain restrictions to free movement based on public health are still in place after 30 June 2022, Union citizens and their family members are deprived of the possibility to make use of their EU Digital COVID Certificates, ~~where required by Member States to exercise their right to free movement~~, which are an effective, secure and privacy-preserving way of proving one's COVID-19 status, where their possession is required by Member States in order to exercise their right to free movement. At the same time, given that any restrictions to the free movement of persons within the Union put in place to limit the spread of SARS-CoV-2, including the requirement to present EU Digital COVID Certificates, should be lifted as soon as the epidemiological situation allows, the extension of the application of Regulation (EU) 2021/953 should be limited to 12 months.*
- (8a) *In this context, Member States should require Union citizens exercising their right to free movement to present proof of COVID-19 vaccination, test or recovery only where this is necessary and proportionate in light of the epidemiological situation and associated public health risk, taking into account the precautionary principle. Any restrictions to free movement on grounds of public health imposed during the COVID-19 pandemic should be applied in compliance with the principles of Union law and be lifted as soon as the epidemiological situation allows it, as also outlined in points 1 to 10 of Council Recommendation (EU) 2022/107. Where a Member State, in response to the COVID-19 pandemic, introduces restrictions to free movement, in accordance with Union law, those restrictions should not apply to holders of EU Digital COVID Certificates, unless it is necessary and proportionate to impose restrictions also on such persons, in particular in view of new SARS-CoV-2 variants of concern or interest. In this context, Council Recommendation (EU) 2022/107 sets out the coordinated approach to addressing variants of concern or interest under the so-called emergency brake procedure.*

- (8b) In addition, the extension of Regulation (EU) 2021/953 should not be understood as requiring Member States, in particular those that lift domestic public health measures, to maintain or impose free movement restrictions. **Any verification of the certificates making up the EU Digital COVID Certificate should not lead to further restrictions to the freedom of movement within the Union or to restrictions on travel within the Schengen area. Any need for Member States to verify EU Digital Covid Certificates should not provide a justification for the temporary introduction of internal border controls.** The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union delegated to the Commission pursuant to Regulation (EU) 2021/953 should be equally extended. It is necessary to ensure that the EU Digital COVID Certificate system can adapt to **new evidence regarding the efficacy of COVID-19 health technologies vaccination, reinfection after recovery, or and testing and to** scientific progress in containing the COVID-19 pandemic.

Article 16
Commission reports

1. By 31 October 2021, the Commission shall submit a report to the European Parliament and to the Council. The report shall include an overview of:
 - (a) the number of certificates issued pursuant to this Regulation;
 - (b) guidance requested pursuant to Article 3(11) on the available scientific evidence and level of standardisation regarding the possible issuance of certificates of recovery based on antibody tests, including serological testing for antibodies against SARS-CoV-2, taking into account the availability and accessibility of such tests; and
 - (c) the information received pursuant to Article 11.
2. By 31 March 2022, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation.

The report shall contain, in particular, an assessment of the impact of this Regulation on the facilitation of free movement, including on travel and tourism and the acceptance of the different types of vaccine, fundamental rights and non-discrimination, as well as on the protection of personal data during the COVID-19 pandemic.

The report may be accompanied by legislative proposals, in particular to extend the period of application of this Regulation, taking into account the evolution of the epidemiological situation with regard to the COVID-19 pandemic.

3. By 1 February 2023, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation.

The report shall contain, in particular, an overview of information received pursuant to Article 11, of the restrictions to free movement put in place by the Member States to limit the spread of SARS-CoV-2, and of the domestic and international uses of the certificates referred to in Article 3(1) and whether they constitute obstacles to free movement. ~~It~~ The report shall include an also contain any relevant updates regarding the assessment of the impact of the this Regulation on the facilitation of free movement, including on travel and tourism and the acceptance of the different types of vaccine, the impact on fundamental rights and on the principle of non-discrimination, as well as on the protection of personal data during the COVID-19 pandemic, set out in the report submitted pursuant to paragraph 2.

The report shall also ~~include~~ contain an assessment of the necessity and proportionality of the continued use of the certificates referred to in Article 3(1) for the purpose of this Regulation, taking into account epidemiological developments and the latest available scientific evidence. ~~For this purpose, the~~ When preparing the report, the Commission shall request guidance pursuant to Article 3(11) from ECDC and the Health Security Committee are invited to prepare opinions and/or recommendations, which shall be contained in annexed to the report.

The report may be accompanied by a legislative proposal to shorten the period of application of this Regulation, taking into account the evolution of the epidemiological situation with regard to the COVID-19 pandemic ~~The Commission is invited to propose to shorten the period of application where the~~ and any recommendations from ECDC and the Health Security Committee Opinions/Recommendations so allow to that effect.

(8a) By 1 February 2023, the Commission should submit a third report to the European Parliament and to the Council on the application of this Regulation. The report should contain, in particular, an overview of information received pursuant to Article 11, of the restrictions to free movement put in place by the Member States to limit the spread of SARS-CoV-2, of the domestic and international uses of the EU Digital COVID Certificate, any relevant updates to the assessment included in the second report¹, and an assessment of the necessity and proportionality of the continued use of EU Digital COVID Certificates for the purpose of this Regulation, taking into account epidemiological developments and the latest available scientific evidence. In the report, the Commission should include guidance requested from ECDC and the Health Security Committee. Without prejudice to the Commission's right of initiative, the report could be accompanied by a legislative proposal to shorten the period of application of this Regulation, taking into account the evolution of the epidemiological situation with regard to the COVID-19 pandemic and any recommendations from ECDC and the Health Security Committee to that effect.

¹ Report from the Commission to the European Parliament and the Council pursuant to Article 16(2) of Regulation (EU) 2021/953 of the European Parliament and of the Council 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 (COM(2022) 123 final).