



EUROPEAN
COMMISSION

Brussels, 3.2.2022
COM(2022) 55 final

2022/0030 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending 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 amending 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In accordance with the Convention implementing the Schengen Agreement¹, third-country nationals legally residing or legally staying in a Member State may travel freely within the territories of the other Member States, provided that they fulfil certain conditions. The policy developed by the Union ensuring the absence of controls on persons when crossing the internal borders thus benefits not only Union citizens but also third country nationals that have the right to travel in the EU. However, some of the restrictions adopted by the Member States in order to limit the spread of severe acute respiratory syndrome coronavirus 2 ('SARS-CoV-2'), which causes coronavirus disease 2019 ('COVID-19'), have had an impact on the exercise of that right. These measures often consisted of restrictions on entry or other specific requirements applicable to cross-border travellers, such as to undergo quarantine or self-isolation or to be tested for SARS-CoV-2 infection prior to and/or after arrival.

To facilitate free movement during the COVID-19 pandemic, the European Parliament and the Council adopted, on 14 June 2021, Regulation (EU) 2021/953² based on Article 21 of the Treaty on the Functioning of the European Union (TFEU) establishing the EU Digital COVID Certificate framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates. Regulation (EU) 2021/953 facilitates free movement by providing Union citizens and their family members, who may be third-country nationals, with interoperable and mutually accepted certificates on COVID-19 vaccination, testing and recovery that they can use when travelling. Where Member States waive certain restrictions on free movement for persons in the possession of proof of vaccination, test or recovery, the EU Digital COVID Certificate helps citizens to benefit from these exemptions.

On the same day, the European Parliament and the Council adopted Regulation (EU) 2021/954³ based on Article 77 TFEU, to facilitate travel within the Schengen Area during the COVID-19 pandemic, extending the EU Digital COVID Certificate framework to third country nationals legally staying or residing in a Member State's territory and who are entitled to travel to other Member States in accordance with EU law.

In addition, the EU Digital COVID Certificate system has proven to be the only functioning COVID-19 certificate system operational at international level on a large scale. As a result, the EU Digital COVID Certificate has gained increasing global significance and contributed to addressing the pandemic at the international level, by facilitating safe international travel and international recovery. By 31 January 2022, the three non-EU European Economic Area countries⁴, Switzerland⁵ and 29 other third countries and territories⁶ are connected to the EU

¹ [OJ L 239, 22.9.2000, p. 19.](#)

² 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 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 (OJ L 211, 15.6.2021, p. 24).

⁴ Iceland, Liechtenstein and Norway.

Digital COVID Certificate system, with more expected to join in the future. The EU Digital COVID Certificate system has been recognised as one of the key digital solutions to restore international mobility⁷, with the International Air Transport Association urging countries to adopt the EU Digital COVID Certificate as the global standard⁸. The Commission will continue its efforts to support third countries interested in developing interoperable COVID-19 certificate systems. This may include offering additional open source reference solutions that allow for the conversion of third-country certificates into a format that is interoperable with the EU Digital COVID Certificate, as it is also possible to connect third countries the certificates of which are made interoperable by means of conversion⁹.

Since its adoption, the EU Digital COVID Certificate has been successfully rolled out across the Union, with more than one billion certificates issued by the end of 2021. The EU Digital COVID Certificate is thus a widely available and reliably accepted tool to facilitate not only free movement of Union citizens and their family members, but also intra-EU travel during the COVID-19 pandemic of the categories of third country nationals mentioned above.

Since the adoption of Regulations (EU) 2021/953 and 2021/954, the epidemiological situation with regard to the COVID-19 pandemic has evolved considerably. On the one hand, the vaccination uptake, including of booster doses, has increased worldwide.

On the other hand, the spread of the SARS-CoV-2 variant of concern ‘Delta’ in the second half of 2021 caused significant increases in the number of infections, hospitalisation and deaths, requiring Member States to adopt strict public health measures in an effort to protect their healthcare system capacity. In early 2022, the SARS-CoV-2 variant of concern ‘Omicron’ caused sharp increases in the number of COVID-19 cases, rapidly replacing ‘Delta’ and reaching an unprecedented intensity of community transmission across the Union and beyond.

Currently, it is not possible to predict the impact of a possible increase in infections in the second half of 2022. In addition, the possibility of a worsening of the pandemic situation because of the emergence of new SARS-CoV-2 variants of concern cannot be ruled out.

In view of the above, it cannot be excluded that Member States continue to require third country nationals legally staying or residing in a Member State’s territory and who are entitled to travel to other Member States in accordance with EU law, to present proof of COVID-19 vaccination, test or recovery beyond 30 June 2022, that is, the date when Regulations (EU) 2021/953 and 2021/954 are currently set to expire. It is thus important to ensure the possibility to make use of the EU Digital COVID Certificates beyond that date.

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, by amending Regulation (EU) 2021/954, the Commission proposes to maintain the existing references to Regulation (EU) 2021/953 and to make a dynamic reference to the same Regulation with regard to the duration of Regulation (EU) 2021/954.

⁵ Union citizens and Swiss nationals enjoy reciprocal rights of entry and residence based on the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6).

⁶ https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_en#recognition-of-covid-certificates-from-third-non-eu-countries

⁷ <https://wtcc.org/News-Article/WTTC-identifies-digital-solutions-for-governments-worldwide-to-significantly-restore-international-mobility>

⁸ <https://www.iata.org/en/pressroom/2021-releases/2021-08-26-01/>

⁹ By means of an implementing act adopted pursuant to Article 8(2) of Regulation (EU) 2021/953.

- **Consistency with existing policy provisions in the policy area**

This proposal is without prejudice to the Schengen rules as regards the entry conditions for third country nationals. The proposed Regulation should not in any way be understood as encouraging or facilitating the reintroduction of border controls at internal borders, which must remain a measure of last resort subject to the conditions set out in Regulation (EU) 2016/399 (“the Schengen Borders Code”).¹⁰

In its proposal for a Council Recommendation amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction¹¹, the Commission proposed to establish a clear link between Council Recommendation (EU) 2020/912 and the EU Digital COVID Certificate in order to assist Member States authorities in verifying the authenticity, validity and integrity of the certificates issued by third countries.

- **Consistency with other Union policies**

This proposal is part of the package of Union measures to respond to the COVID-19 pandemic. It builds, in particular, on the work carried out in the Health Security Committee, the eHealth Network, and the EU Digital COVID Certificate Committee.

This proposal complements proposal COM(2022) 50 final, which seeks to extend the duration of the application of 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.

This proposal also fully respects Member States’ competences in the definition of their health policy (Article 168 TFEU).

This proposal is consistent with the Union's policy on immigration of third country nationals.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 77(2), point (c) TFEU stipulates that the Union shall set out the conditions under which legally staying or legally residing nationals of third countries shall have the freedom to travel within the Union for a short period. The ordinary legislative procedure applies.

The proposal would amend Regulation (EU) 2021/954, which is equally based on Article 77(2), point (c) TFEU.

- **Subsidiarity (for non-exclusive competence)**

The objectives of this proposal, namely to extend the application of Regulation (EU) 2021/954, cannot be achieved by the Member States independently. Action at Union level is thus necessary.

¹⁰ 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).

¹¹ COM(2021) 754 final.

Failure to act at Union level would result in Regulation (EU) 2021/954 ceasing to apply and as a result third country nationals legally staying or residing in a EU/EEA Member State's territory and who are entitled to travel to other Member States in accordance with EU law would no longer be able to request and eventually use an interoperable COVID-19 vaccination, test and recovery certificates.

- **Proportionality**

Union action can add considerable value in addressing the challenges identified above and is the only way by which a single, streamlined and accepted COVID-19 certificate framework can be achieved and maintained.

The adoption of unilateral or uncoordinated measures regarding COVID-19 health certificates may lead to measures that limit the possibility for third country nationals who are entitled to travel within the Union, to engage in such travel.

The proposed amendment should apply in line with Regulation (EU) 2021/953, as proposed to be amended by proposal COM(2022) 50 final, and consequently allows the use of the EU Digital COVID Certificate to be extended for a limited period of time as regards third country nationals who are lawfully residing or staying in the Union and entitled to travel within the Union.

- **Choice of the instrument**

A Regulation ensures the direct, immediate and common implementation of EU law in all Member States.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The proposal takes into account the discussions held at regular intervals with Member States authorities in different fora.

- **Collection and use of expertise**

The proposal builds on the epidemiological information and assessments provided by European Centre for Disease Prevention and Control (ECDC), the assessment of the safety, effectiveness and quality of COVID-19 vaccines carried out by the European Medicines Agency (EMA), the technical exchanges taking place within the Health Security Committee, its technical working group on COVID-19 diagnostic tests and the eHealth Network, as well as relevant available scientific evidence.

- **Impact assessment**

In view of the urgency, the Commission did not carry out an impact assessment.

- **Fundamental rights**

This proposal implies processing of personal data, including health data. There are potential impacts on individuals' fundamental rights, namely Article 7 of the Charter on the respect of private life and Article 8 on the right to the protection of personal data. Processing the personal data of individuals, including collection, access and use of personal data, affects the right to privacy and the right to protection of personal data under the Charter. Interference with these fundamental rights must be justified.

As regards the right to the protection of personal data including data security, Regulation (EU) 2016/679 of the European Parliament and of the Council¹² continues to apply. No derogation from the data protection regime of the Union is envisaged and clear rules, conditions and robust safeguards must be implemented by Member States in line with the EU data protection rules.

4. BUDGETARY IMPLICATIONS

The financing of actions supporting this initiative will be covered by the Legislative Financial Statement submitted with the proposal COM(2022) 50 final.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not relevant.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the proposal amends the duration of Regulation (EU) 2021/954.

Article 2 provides for an expedited entry into force of the Regulation.

¹² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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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), point (c) thereof,

Having regard to the proposal from the European Commission,

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 period¹³.
- (2) On 14 June 2021, the European Parliament and the Council adopted Regulation (EU) 2021/953 establishing the EU Digital COVID Certificate¹⁴. That Regulation sets out a common framework for the issuance, verification and acceptance of interoperable certificates for COVID-19 vaccination, test or recovery certificates to facilitate free movement of EU citizens and their family members during the COVID-19 pandemic. Regulation (EU) 2021/953 is accompanied by Regulation (EU) 2021/954 of the European Parliament and of the Council¹⁵, which extends the EU Digital COVID Certificate framework to third-country nationals who are legally staying or residing in a Member State's territory and who are entitled to travel to other Member States in accordance with Union law.

¹³ 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 (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

¹⁴ 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).

¹⁵ 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 (OJ L 211, 15.6.2021, p. 24).

- (3) Regulations (EU) 2021/953 and (EU) 2021/954 are due to expire on 30 June 2022. Nevertheless, the pandemic is still on-going and the recent outbreak of the ‘Omicron’ variant of concern continues to negatively impact travel within the Union. Consequently, the EU Digital COVID Certificate remains relevant and it is necessary to allow for its continued use.
- (4) The application of Regulation (EU) 2021/953 is to be prolonged by 12 months. Since the objective of Regulation (EU) 2021/954 is to extend the application of Regulation (EU) 2021/953 to certain categories of third country nationals lawfully residing or staying in the Union, the duration of its application should be directly linked to that of Regulation (EU) 2021/953. Regulation (EU) 2021/954 should therefore be amended accordingly.
- (5) This Regulation should not be understood as facilitating or encouraging the adoption of travel restrictions in response to the pandemic. In addition, any need for verification of certificates established by Regulation (EU) 2021/953 should not be considered to justify the temporary reintroduction of controls at internal borders. Checks at internal borders should remain a measure of last resort, subject to specific rules as set out in Regulation (EU) 2016/399 of the European Parliament and of the Council (Schengen Borders Code).
- (6) 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 in its national law.
- (7) 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/EC¹⁶; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application. In order to allow Member States to accept, under the conditions set out in Regulation (EU) 2021/953, COVID-19 certificates issued by Ireland to third-country nationals legally staying or residing in its territory for the purposes of facilitating travel within the territories of the Member States, Ireland should issue those third-country nationals with COVID-19 certificates that comply with the requirements of the EU Digital COVID Certificate trust framework. Ireland and the other Member States should accept certificates issued to third-country nationals covered by this Regulation on a reciprocal basis.
- (8) 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.
- (9) 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

¹⁶ 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).

development of the Schengen *acquis* which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC¹⁷.

- (10) 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/EC¹⁸.
- (11) 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/EU¹⁹.
- (12) Given the urgency of the situation related to the COVID-19 pandemic, this Regulation should enter into force on the third day following that of its publication in the *Official Journal of the European Union*.
- (13) 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 Council²⁰ and delivered an opinion on [...],

HAVE ADOPTED THIS REGULATION:

Article 1

Article 3 of Regulation (EU) 2021/954 is replaced by the following:

‘Article 3

¹⁷ 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).

¹⁸ 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).

¹⁹ 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).

²⁰ 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).

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 July 2021 for as long as Regulation (EU) 2021/953 is applicable.’

Article 2

This Regulation shall enter into force on 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 the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President