

**Formal comments of the EDPS on the draft Commission Implementing Decision (EU) amending Implementing Decision (EU) 2021/1073 laying down technical specifications and rules for the implementation of the trust framework for the EU Digital COVID Certificate established by Regulation (EU) 2021/953 of the European Parliament and of the Council and on the draft Commission Delegated Regulation amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the validity of vaccination certificates issued under the EU Digital COVID Certificate framework**

## 1. Introduction and background

- The following comments concern the draft Commission Implementing Decision (EU) amending Implementing Decision (EU) 2021/1073 laying down **technical specifications and rules for the implementation of the trust framework for the EU Digital COVID Certificate** established by Regulation (EU) 2021/953 of the European Parliament and of the Council ('the draft Implementing Decision'), together with its Annex and the **draft Commission Delegated Regulation amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the validity of vaccination certificates issued under the EU Digital COVID Certificate framework** ('the draft Delegated Regulation').
- These comments are provided in reply to the request by the Commission of 11 December 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')<sup>1</sup>. The EDPS regrets the extremely limited time granted by the Commission for issuing his comments (1 working day). The comments below are limited to the provisions of the Proposal that are most relevant from a data protection perspective.
- These formal comments are without prejudice to any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.
- Both draft proposals recall that Regulation (EU) 2021/953 ('the Regulation') lays down a framework for the issuance, verification and acceptance of interoperable EU Digital COVID Certificates, which serve as proof that a person has received a COVID-19 vaccine, a negative test result or recovered from infection for the purpose of facilitating the holders' exercise

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<sup>1</sup> 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.

of their right to free movement during the COVID-19 pandemic<sup>2</sup>. In order for the EU Digital COVID Certificate to be operational throughout the Union, the Commission adopted the Commission Implementing Decision (EU) 2021/1073<sup>3</sup>, which lays down technical specifications and rules to populate, securely issue and verify EU Digital COVID Certificates, ensure the protection of personal data, lay down the common structure of the unique certificate identifier and issue a valid, secure and interoperable barcode. Lastly, the draft Implementing Decision also mentions that, on 17 November 2021, the Commission adopted an Implementing Decision (EU) 2021/2014<sup>4</sup> setting out uniform rules for populating vaccination certificates referred to in point (a) of Article 3(1) of the Regulation issued following the administration of booster COVID-19 vaccination doses<sup>5</sup>.

## 2. EDPS comments

### 2.1 The draft Delegated Regulation

- Recital 3 of the draft Delegated Regulation recalls that, in line with the Regulation, each Member State will issue, automatically or upon request by the persons concerned, vaccination certificates to persons to whom a COVID-19 vaccine has been administered. Furthermore, the categories of personal data to be contained in the vaccination certificate refer to the identity of the holder, information about the COVID-19 vaccine and the number of doses administered to the holder, together with the certificate metadata, such as the certificate issuer or a unique certificate identifier. The recital further recalls that the data is to be included in the vaccination certificate in accordance with the specific data fields set out in point 1 of the Annex to the Regulation.
- In a recent Rapid Risk Assessment issued by the European Centre for Disease Prevention and Control ('ECDC'), the ECDC notes that emerging evidence shows a significant increase in protection against infection and severe disease following a booster dose in all age groups in the short term<sup>6</sup>. The ECDC recommends that Member States of the Union and EEA countries should urgently consider a booster dose for those 40 years and over, targeting the most vulnerable and the elderly. Moreover, the ECDC also recommends that countries could also consider a booster dose for all adults 18 years and older at least six months after completing their primary series to increase protection against infection due to waning

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<sup>2</sup> Recital 1 of the Delegated Regulation Proposal and recital 1 of the Implementing Decision Proposal.

<sup>3</sup> Commission Implementing Decision (EU) 2021/1073 of 28 June 2021 laying down technical specifications and rules for the implementation of the trust framework for the EU Digital COVID Certificate established by Regulation (EU) 2021/953 of the European Parliament and of the Council (OJ L 230, 30.6.2021, p.32-53).

<sup>4</sup> Commission Implementing Decision (EU) 2021/2014 of 17 November 2021 amending Implementing Decision (EU) 2021/1073 laying down technical specifications and rules for the implementation of the trust framework for the EU Digital COVID Certificate established by Regulation (EU) 2021/953 of the European Parliament and of the Council (OJ L 410, 18.11.2021, p. 180).

<sup>5</sup> Recital (3) of the Implementing Decision Proposal.

<sup>6</sup> <https://www.ecdc.europa.eu/en/publications-data/rapid-risk-assessment-sars-cov-2-november-2021>.

immunity, which could potentially reduce the transmission of the virus in the population and prevent additional hospitalisations and deaths.

- Against this background, and in order to avoid unilateral and diverging measures among Member States, the draft Delegated Regulation aims at establishing, for the purpose of travel, a standard acceptance period of 270 days for vaccination certificates indicating the completion of the primary vaccination series.
- Recital 13 of the draft Delegated Regulation clearly states that “*no acceptance period should be established for additional doses administered to better protect individuals who mount inadequate immune responses following the completion of the primary vaccination series. A need to distinguish between such additional doses and booster doses would create a risk that the health status of such vulnerable groups is disclosed inadvertently. (...)*”. The EDPS welcomes the decision not to distinguish between the different categories of individuals and the reasons according to which these have received an additional booster dose, in order to avoid inadvertent disclosure of personal data.
- **The EDPS recalls that the agreed minimum Certificate datasets (such as vaccination country, date and administered vaccine) may already allow for inferences on vulnerabilities<sup>7</sup>.** The EDPS also notes that inadvertent disclosure of additional personal data may be of particular concern in other contexts where verification of the Digital COVID Certificate may be required by national legislation.

## 2.2 The draft Implementing Decision

- The draft Implementing Decision aims at identifying uniform rules for populating vaccination certificates, in order to distinguish, in all cases, between certificates based on the completion of the primary vaccination series and certificates issued based on the administration of a booster dose. In its Annex, the draft Implementing Decision clarifies that “2/1” will indicate the administration of a booster dose following a primary single-dose vaccination course, or the administration of a booster dose following the completion of a primary course consisting of one dose of a 2-dose vaccine administered to a recovered person in line with the vaccination protocol applied by a Member State. On the other hand, 3/3 will indicate the administration of a booster dose following a primary 2-dose vaccination series.
- The EDPS fully agrees on the need to clarify this issue in the draft Implementing Decision and welcomes that “*Member States shall, automatically or upon request by the persons*

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<sup>7</sup> See EDPB-EDPS Joint Opinion 04/2021 on the 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 facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), para. 27.

*concerned, re-issue certificates in which the administration of a booster dose following a primary single-dose vaccination course is encoded in such a way that it cannot be distinguished from the completion of the primary vaccination series.”*

- The Annex to the draft Implementing Decision states that, if a Member State decides to administer additional doses only to specific sub-groups of the population, it can choose to issue vaccination certificates indicating the administration of such additional doses only upon request and not automatically. The EDPS welcomes the clarification that where such measures are taken Member States shall inform the persons concerned accordingly, as well as that they may continue to make use of the certificate received following the completion of the standard primary vaccination series.

Brussels, 14 December 2021

*(e-signed)*

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