

Formal comments of the EDPS on the draft Commission Implementing Decision 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

1. Introduction

- The following comments concern the **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 Proposal'), together with its Annex.
- These comments are provided in reply to the request by the Commission of 8 March 2022 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')¹. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments 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 the EUDPR.
- The Proposal recalls that Regulation (EU) 2021/953 ('the Regulation') sets out the EU Digital COVID Certificate which is to serve as proof that a person has received a COVID-19 vaccine, a negative test result or recovered from infection². The Commission Implementing Decision (EU) 2021/1073 lays down technical specification 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 barcode³.

¹ 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.

² Recital (1) of the Proposal.

³ Recital (4) of the Proposal.

- Additionally, the Proposal recalls that, pursuant to Article 4 of the Regulation, the Commission and the Member States are to set up and maintain a trust framework for the EU Digital COVID Certificate, able to support the bilateral exchange of certificate revocation lists containing the unique certificate identifiers of revoked certificates.⁴
- The Proposal specifies that EU Digital COVID Certificates have become a target for fraudsters seeking to find ways to issue fraudulent certificates and that, in addition, certain EU Digital COVID Certificates may be revoked by Member States at national level for medical and public health reasons, for example because a batch of vaccines administered was later found to be defective.⁵ However, “[w]hile the EU Digital COVID Certificate system is capable of immediately revealing forged certificates, authentic certificates that are unlawfully issued on the basis of false documentation, unauthorised access or with fraudulent intent cannot be detected in other Member States unless the lists of revoked certificates generated at national level are exchanged between Member States. The same applies for certificates that have been revoked for medical and public health reasons. (...)”⁶
- Therefore, **the objective of the Proposal is to enhance the EU Digital COVID Certificate trust framework by supporting the bilateral exchange of certificate revocation lists between Member States⁷ by laying down provisions on the role of the Member States and of the Commission as regards the exchange of certificate revocation lists⁸.** However, recital 12 of the Proposal clarifies that “[t]his Decision does not cover temporary suspension of certificates for national use cases outside the scope of the EU Digital COVID Certificate Regulation, for example because the holder of a vaccination certificate has tested positive for SARS-CoV-2. (...)”.

2. EDPS comments

2.1. Processing of pseudonymised unique identifiers of revoked certificates

- The EDPS welcomes that, pursuant to Article 1 of the draft Proposal, Article 5a(5) would provide that “[t]he information submitted to the gateway shall comprise the following information (...): (a) the pseudonymised unique certificate identifiers of revoked certificates; and (b) an expiry date for the submitted certificate revocation list”, as this seems to be in line with the principle of data minimisation.

⁴ Recital (5) of the Proposal.

⁵ Recital (7) of the Proposal.

⁶ Recital (8) of the Proposal.

⁷ Recital (11) of the Proposal.

⁸ Recital (15) of the Proposal.

- The EDPS also particularly welcomes that recital 14 of the Proposal explicitly provides that “(...) *the unique identifier should be considered as pseudonymised data for the processing operations carried out within the framework of the gateway.*” In fact, upon verification of the certificate by the verifying authorities, a data subject whose certificate has been revoked would indeed be fully identifiable to the verifying authorities through the unique identifier itself.
- The EDPS also notes that Article 5a(4) of the Proposal provides that “[w]here personal data is exchanged via the gateway, the processing shall be limited to the purpose of supporting the exchange of revocation information. Such personal data shall only be used for the purpose of verifying the revocation status of EU Digital COVID Certificates issued within the scope of Regulation (EU) 2021/953.” In this regard, the EDPS welcomes the reference to the principle of purpose limitation and recalls that the certification lists to be processed through the gateway should not contain any personal data other than the unique identifiers⁹.

2.2. Roles and responsibilities of the parties involved

- The EDPS notes that Article 5a(9) of the Proposal provides that the designated national authorities or official bodies of the Member States processing personal data in the gateway shall be joint controllers of the data processed and that their respective responsibilities shall be allocated in accordance with the proposed Annex VI to the Proposal. Moreover, Article 5a(10) of the Proposal provides that the Commission shall be the processor of personal data processed within the gateway, that it shall ensure the security of the transmission and of the hosting of personal data within the gateway and shall comply with the obligations of the processor laid down in the proposed Annex VII. **The EDPS welcomes the joint controllership arrangement provided for in Annex VI to the Proposal**, in which the roles and responsibilities of the designated national authorities or official bodies of the Member States are clearly allocated. **The EDPS also welcomes the specific role assigned to the Commission as a processor of personal data together with its specific responsibilities, pursuant to Annex VII to the Proposal.**

Brussels, 11 March 2022

(e-signed)
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⁹ See recital (9) of the Proposal.