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Proposal for a

COUNCIL RECOMMENDATION

amending Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

When the Commission adopted, on 25 November 2021, its proposal for what would become Council Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic[1], the epidemiological situation regarding the COVID-19 pandemic was significantly different from today. At that point in time, the Delta variant of concern was still prevalent in the Union. More than ten months later, the highly transmissible Omicron variant has – in the form of different sub-variants – become the dominant variant in the Union[2].

Omicron is less severe than the previously observed Delta variant, which can be attributed at least partially to the protective effect of vaccination and previous infection[3]. As a result, and in combination with these higher levels of protection, pressure on healthcare systems currently remains at manageable levels, even during momentary peaks of infections such as the wave driven by the Omicron BA.4 and BA.5 sub-variants observed during the summer of 2022.

As the Commission has continuously emphasised, any free movement restrictions put in place in response to the COVID-19 pandemic must not extend beyond what is strictly necessary to safeguard public health. As noted in points 1 and 2 of Recommendation (EU) 2022/107, any such restrictions should, in accordance with the principles of necessity and proportionality, be lifted as soon as the epidemiological situation allows. By August 2022, Member States had lifted all measures affecting free movement of persons in the Union, including the requirement for travellers to hold an EU Digital COVID Certificate.

To reflect the current situation, the Commission proposes to adapt the approach set out in Recommendation (EU) 2022/107. In particular, the Recommendation should emphasise that, at this stage of the pandemic, Member States should in principle not impose any pandemic-related restrictions to the free movement of persons on the grounds of public health. The summer wave of 2022 exemplifies how high virus circulation, following the emergence of a new variant of concern, does not necessarily lead to substantial pressure on national healthcare systems. This highlights the importance of a prudent approach when considering the introduction of travel restrictions based on the number of cases or on the presence of a new variant.

At the same time, as noted by the Commission in its Communication of 2 September 2022[4], the global COVID-19 pandemic is not over. New waves of infections that could cause the epidemiological situation to worsen, including as a result of the emergence of a new variant of concern, cannot be excluded. Indeed, as reported by the European Centre for Disease Prevention and Control (ECDC) on 7 October 2022, the epidemiological picture suggests increasing transmission in most Member States, however with no indication of changes in the distribution of circulating variants[5]. The Commission therefore called on Member States to continue coordinating preparedness efforts across the Union. As part of these efforts, on 29

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1 OJ L 18, 27.1.2022, p. 110.

2 https://www.ecdc.europa.eu/en/covid-19/variants-concern

3 https://www.ecdc.europa.eu/en/covid-19/latest-evidence/clinical

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU response to COVID-19: preparing for autumn and winter 2023 (COM(2022) 452 final).

5 https://www.ecdc.europa.eu/en/covid-19/country-overviews

June 2022, the European Parliament and the Council extended the period of application of Regulation (EU) 2021/953 on the EU Digital COVID Certificate until 30 June 2023[6].

The extension of the EU Digital COVID Certificate framework ensures that Union citizens can continue to benefit from interoperable and mutually accepted certificates of COVID-19 vaccination, test and recovery in situations where Member States might consider it necessary to temporarily reintroduce certain restrictions to free movement based on public health. At the same time, it is important to underline that Regulation (EU) 2021/953 in no way obliges Member States to require proof of vaccination, test or recovery status in the context of the exercise of free movement[7].

Where, in response to a severe worsening of the epidemiological situation, a Member State considers that free movement restrictions are nevertheless necessary to safeguard public health and proportionate, those restrictions should be limited to requiring travellers to be in the possession of a valid EU Digital COVID Certificate. To determine whether a situation should be qualified as a severe worsening of the epidemiological situation, Member States should in particular take into account the strain on their healthcare system due to COVID-19, notably in terms of admission to and number of hospital and intensive-care unit inpatients. In this context, the ECDC publishes relevant data on the development of the epidemiological situation[8].

Member States should also assess whether such restrictions are likely to have a positive impact on the epidemiological situation, including a significant decrease in the strain placed on national healthcare systems, given that domestic factors are normally more powerful drivers of the epidemiological situation than cross-border travel. In such situations, domestic non-pharmaceutical interventions, such as mask-wearing, ventilation and physical distancing, rather than travel restrictions, may be effective in slowing down the spread of COVID-19, if implemented early and comprehensively and sufficiently put into practice by society[9].

When it comes to the possible requirement to be in the possession of a valid EU Digital COVID Certificate, the amendments introduced by Regulation (EU) 2022/1034 of the European Parliament and of the Council[10] should be reflected in Recommendation (EU) 2022/107. First, it should be clarified that EU Digital COVID Certificates issued to persons

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6 Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 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 (OJ L 173, 30.6.2022, p. 37). That Regulation was accompanied by Regulation (EU) 2022/1035 of the European Parliament and of the Council of 29 June 2022 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 (OJ L 173, 30.6.2022, p. 46).

7 See also Recital 14 of Regulation (EU) 2021/953: "*This Regulation is intended to facilitate the application of the principles of proportionality and non-discrimination with regard to restrictions to free movement during the COVID-19 pandemic, while pursuing a high level of public health protection. It should not be understood as facilitating or encouraging the adoption of restrictions to free movement, or restrictions to other fundamental rights, in response to the COVID-19 pandemic, given their detrimental effects on Union citizens and businesses* […]".

8 https://www.ecdc.europa.eu/en/covid-19/country-overviews

9 See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on COVID-19 - Sustaining EU preparedness and response: Looking ahead (COM(2022)190 final).

10 Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 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 (OJ L 173, 30.6.2022, p. 37).

participating in clinical trials for COVID-19 vaccines may be accepted by other Member States in order to waive restrictions to free movement. To facilitate the exercise of free movement of Union citizens who have received a COVID-19 vaccine that has completed the WHO emergency use listing procedure, Member States should also be recommended to accept EU Digital COVID Certificates issued following the administration of such vaccines. In addition, test and recovery certificates can now be issued on the basis of laboratory-based antigenic assays.

Given their specific situation or essential function, certain categories of travellers should be exempted from a possible requirement to be in the possession of an EU Digital COVID Certificate. In light of the current security situation, it is important that this list expressly includes diplomats, staff of international organisations, people invited by international organisations whose physical presence is required for the well-functioning of these organisations, military personnel, humanitarian aid workers and civil protection personnel. The list should also include persons covered by Article 2 of Council Implementing Decision (EU) 2022/382[11] and be consistent with the Commission proposal for a Council Recommendation on a coordinated approach to travel to the Union during the COVID-19 pandemic[12]. At the same time, this should not prevent Member States from offering vaccination and testing to these categories of persons.

To be able to react quickly to newly emerging SARS-CoV-2 variants, the 'emergency brake', when measures additional to the EU Digital COVID Certificate could be taken, should be maintained. To align it with the changes outlined above, it should be clarified that the emergency brake procedure could be used in response to the emergence of a new SARS-CoV-2 variant of concern or interest, with the aim of slowing down its spread by means of travel restrictions, buying time to mobilise surge hospital capacity, and triggering vaccine development. It could also be used in situations where the epidemiological situation worsens rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.

Where a Member State introduces a requirement to present a valid EU Digital COVID Certificate, or where it takes additional measures in accordance with the emergency brake procedure, it should swiftly inform the Commission and other Member States accordingly through the Integrated Political Crisis Response (IPCR) network and provide information as to the reasons, expected impact, entry into force and duration of any such travel restrictions. This should include information as to why the introduction of such travel restrictions complies with the principles of necessity and proportionality, for example because of the particular geographical situation of the Member State concerned or the particular vulnerabilities of its national healthcare system.

To obtain timely, relevant and representative information on the emergence and circulation of SARS-CoV-2 variants of concern or interest, Member States should assess the circulation of different SARS-CoV-2 variants in the community by selecting representative samples for sequencing, carry out genetic characterisation and report variant typing results in line with the sequencing guidance published by the ECDC[13].

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11 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

12 COM(2022) 680 final.

13 https://www.ecdc.europa.eu/en/publications-data/methods-detection-and-characterisation-sars-cov-2-variants-second-update

It also remains important to ensure that information on any new measures is publically available as early as possible. Indeed, as noted by the Commission in its Communication of 2 September 2022, Member States should do their utmost to ensure that potential travellers are well-informed about possible travel restrictions they may face when entering another Member State. The Re-Open EU web platform[14] remains a key point of reference for anyone travelling in the Union.

The Commission also proposes to do away with the traffic light map[15] published by the ECDC since the adoption of Council Recommendation (EU) 2020/1475[16] in October 2020. In view of epidemiological developments, the methodology of the map was adapted in February 2021[17], June 2021[18], and January 2022[19]. Its latest iteration, using the 14-day notification rate weighted by vaccine uptake, was based on experiences with the Delta variant. However, the high infection numbers caused by the Omicron variant resulted in large parts of the map being marked in 'dark red' despite all Member States having lifted their free movement restrictions. In addition, as Member States adapted their testing regimes, multiple regions appeared in 'dark grey' due to reported testing rates having fallen below the threshold established by Recommendation (EU) 2022/107. This shift of testing strategies towards representative samples of the population will not change in the foreseeable future. As a result, the traffic light map had become an inadequate depiction of the epidemiological situation in the Union. Following discussions with the Member States and the Commission, the ECDC already temporarily suspended the publication of the map in July 2022.

Consequently, the Commission also proposes to remove, together with the traffic light map, the references to specific additional measures for persons travelling from 'dark red' areas. In any event, the ECDC will continue publishing data on relevant epidemiological indicators[20]. This ensures the continued possibility to compare the epidemiological situation across different regions, in particular in the event of a worsening of the epidemiological situation.

Finally, the mandatory submission of passenger locator forms ('PLF') in the context of intra-EU travel for contact-tracing purposes constitutes an additional requirement for the exercise of free movement. Such a requirement is thus justified only if necessary and proportionate. In particular, Member States should not require travellers using private transport, be it cars, bikes or on foot, to submit PLF. This is because their exposure is necessarily less intensive than in the case of public transport and because they will typically know the identities of their fellow travelling companions.

At the same time, should Member States wish to activate contact tracing of cross-border passengers, common tools, such as the EU digital Passenger Locator Form and the PLF Exchange Platform, are available to exchange passenger data to enhance their contact tracing capabilities while limiting burdens on passengers and transport operators. To avoid the need for the submission of PLF, Member States could, where possible under national law and in

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14 https://reopen.europa.eu/

15 https://www.ecdc.europa.eu/en/covid-19/situation-updates/weekly-maps-coordinated-restriction-free-movement

16 Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 3).

17 Council Recommendation (EU) 2021/119 of 1 February 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 36I, 2.2.2021, p. 1).

18 Council Recommendation (EU) 2021/961 of 14 June 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 213I, 16.6.2021, p. 1).

19 Recommendation (EU) 2022/107.

20 https://www.ecdc.europa.eu/en/covid-19/country-overviews

compliance with data protection rules, also consider using existing passenger data for the purposes of contact tracing.

The Commission, with the support of the ECDC, will continue its regular review of Recommendation (EU) 2022/107. Where necessary, it will propose further amendments in light of new epidemiological developments.

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

This recommendation serves to implement the existing provisions related to restrictions of the freedom of movement on grounds of public health.

- **Consistency with other Union policies**

This recommendation is in line with other Union policies, including those regarding public health and internal border controls.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The Treaty on the Functioning of the European Union (TFEU), and in particular Articles 21(2), 168(6) and 292.

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

Article 292 TFEU enables the Council to adopt recommendations. According to this provision, the Council shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission.

This applies in the current situation, as a consistent approach is necessary to avoid disruptions caused by unilateral and not sufficiently coordinated measures restricting free movement within the Union. Article 21(1) TFEU stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give effect to them. If action by the Union should prove necessary to attain this objective, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of these rights.

Pursuant to Article 168(6), the Council, on a proposal from the Commission, may also adopt recommendations for the purposes of ensuring a high level of human health protection in the definition and implementation of all Union policies and activities

- **Proportionality**

The adoption of unilateral or uncoordinated measures is likely to lead to restrictions on free movement that are inconsistent and fragmented, resulting in uncertainty for Union citizens when exercising their Union rights. The proposal does not go beyond what is necessary and proportionate for achieving the intended objective.

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

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

The proposal takes into account the discussions held at regular intervals with Member States, the information available on the evolving epidemiological situation, and relevant available scientific evidence.

- **Impact assessment**

n.a.

- **Fundamental rights**

Freedom of movement is a fundamental right enshrined in Article 45 of the Charter of Fundamental Rights of the European Union. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedom of others. Article 21 of the Charter prohibits restriction on ground of nationality within the scope of application of the Treaties.

Any limitations to the freedom of movement within the Union justified on grounds of public health must be necessary, proportionate and based on objective and non-discriminatory criteria. They must be suitable for securing the attainment of the objective that they pursue; and not go beyond what is necessary in order to attain that objective.

4. BUDGETARY IMPLICATIONS

None.

5. OTHER ELEMENTS

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

The following changes to Recommendation (EU) 2022/107 are proposed:

– The absence of pandemic-related free movement restrictions, including the obligation to be in possession of an EU Digital COVID Certificate, should be the norm.

– If, in response to a severe worsening of the epidemiological situation, free movement restrictions are nevertheless necessary to safeguard public health and proportionate, they should be limited to the requirement to be in the possession of an EU Digital COVID Certificate, and should exempt essential travellers, children and cross-border commuters. If a Member State introduces such restrictions, it should swiftly provide the Commission and other Member States with information as to the reasons, expected impact, entry into force and duration, and should lift them as soon as the epidemiological situation allows. Such restrictions should be discussed within the Integrated Political Crisis Response (IPCR) network, including with a view to ensuring consistency with the rules on travel from third countries.

– Member States should accept vaccination certificates issued in line with Regulation (EU) 2021/953 for a COVID-19 vaccine that has completed the WHO emergency use listing procedure. Member States could also accept vaccination certificates issued to participants in clinical trials pursuant to Article 5(5) of Regulation (EU) 2021/953.

– The point on test certificates also includes certificates based on laboratory-based antigenic assays included in the EU common list of COVID-19 antigen tests as provided for in Regulation (EU) 2021/953.

– The point on certificates of recovery is limited to a cross-reference to Regulation (EU) 2021/953, also in view of the possibility to issue such certificates based on antigen tests introduced by Commission Delegated Regulation (EU) 2022/256[21].

– The list of essential travellers should also include diplomats, staff of international organisations or people invited by them, military personnel, humanitarian aid workers, civil protection personnel and persons covered by Article 2 of Council Implementing Decision (EU) 2022/382 and be consistent with the list provided for in the Council Recommendation on travel from third countries.

– Additional measures could be taken as an 'emergency brake' to ensure a coordinated approach when faced with the emergence of a new SARS-CoV-2 variant of concern or interest.

– Member States should assess the circulation of different SARS-CoV-2 variants in the community by selecting representative samples for sequencing, carry out genetic characterisation and report variant typing results in line with the sequencing guidance published by the ECDC.

– Where a Member State triggers the emergency brake in response to the emergence of a new SARS-CoV-2 variant of concern or interest, it should not require travellers with an essential function or need or cross-border commuters to undergo quarantine or self-isolation.

– The EU traffic light map set out in the Annex to the Recommendation and the relevant references in points 17 to 19 are deleted, including the corresponding references to 'dark red' areas.

– The point on PLF is adapted to align it with the Commission Communication of 2 September 2022 and to recommend that Member States not require the submission of PLF for travel with private transport or on foot.

[21] Commission Delegated Regulation (EU) 2022/256 of 22 February 2022 amending Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the issuance of certificates of recovery based on rapid antigen tests (OJ L 42, 23.2.2022, p. 4).

2022/0334 (NLE)

Proposal for a

COUNCIL RECOMMENDATION

amending Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 21(2), Article 168(6) and Article 292, first and second sentence thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 25 January 2022, the Council adopted Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475[1]. Recommendation (EU) 2022/107 follows a 'person-based' approach regarding restrictions to free movement linked to the COVID-19 pandemic, by providing that a person who is in the possession of a valid certificate issued on the basis of Regulation (EU) 2021/953 of the European Parliament and the Council[2] ('EU Digital COVID Certificate') should in principle not be subject to additional restrictions, such as tests or quarantine, regardless of their place of departure in the Union. Persons who are not in possession of a valid EU Digital COVID Certificate could be required to undergo a test prior to or no later than 24 hours after arrival. Recommendation (EU) 2022/107 also adapted the methodology of the traffic light map indicating the epidemiological situation at regional level across the Union established by Council Recommendation (EU) 2020/1475[3] and published weekly by the European Centre for Disease Prevention and Control.

(2) On 25 November 2021, when the Commission adopted its proposal[4] for what would become Recommendation (EU) 2022/107, the epidemiological situation concerning the COVID-19 pandemic was significantly different from today. At that point in time, the Delta variant of concern was still prevalent in the Union. More than ten months

[1] Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (OJ L 18, 27.1.2022, p. 110).

[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] Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 3).

[4] Proposal for a Council Recommendation on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (COM(2021) 749 final).

later, the highly transmissible Omicron variant has – in the form of different sub-variants – become the dominant variant in the Union.

(3) Omicron is less severe than the previously observed Delta variant, which can be attributed at least partially to the protective effect of vaccination and previous infection[5]. As a result, and in combination with higher levels of protection resulting from vaccination and prior infection, pressure on healthcare systems currently remains at manageable levels, even during momentary peaks of infections such as the wave driven by the Omicron BA.4 and BA.5 sub-variants observed during the summer of 2022.

(4) Any free movement restrictions put in place in response to the COVID-19 pandemic are not to extend beyond what is strictly necessary to safeguard public health. As noted in points 1 and 2 of Recommendation (EU) 2022/107, any such restrictions should, in accordance with the principles of necessity and proportionality, be lifted as soon as the epidemiological situation allows. By August 2022, all Member States had lifted all measures affecting free movement of persons in the Union, including the requirement for travellers to hold an EU Digital COVID Certificate.

(5) Therefore the approach set out in Recommendation (EU) 2022/107 should be adapted. In particular, that Recommendation should be amended to provide that Member States should in principle not impose any pandemic-related restrictions to the free movement of persons on the grounds of public health. The summer wave of 2022 exemplifies how high virus circulation, following the emergence of a new variant of concern, does not necessarily lead to substantial pressure on national healthcare systems. This highlights the importance of a prudent approach when considering the introduction of restrictions to the free movement of persons based on the number of cases or on the presence of a new variant.

(6) At the same time, the global COVID-19 pandemic is not over. New waves of infections that could cause the epidemiological situation to worsen, including as a result of the emergence of a new variant of concern, cannot be excluded. It is thus important to continue coordinating preparedness efforts across the Union. As part of these efforts, on 29 June 2022, the European Parliament and the Council extended the period of application of Regulation (EU) 2021/953 on the EU Digital COVID Certificate until 30 June 2023.

(7) The extension of the EU Digital COVID Certificate framework ensures that Union citizens can continue to benefit from interoperable and mutually accepted certificates of COVID-19 vaccination, test and recovery, in situations where Member States might consider it necessary to temporarily reintroduce certain restrictions to free movement based on public health. At the same time, it is important to underline that Regulation (EU) 2021/953 in no way obliges Member States to require proof of vaccination, test or recovery status in the context of the exercise of free movement.

(8) Where, in response to a severe worsening of the epidemiological situation, a Member State considers that free movement restrictions are nevertheless necessary to safeguard public health and proportionate, those restrictions should be limited to requiring travellers to be in the possession of a valid EU Digital COVID Certificate. In particular, persons travelling within the Union who are in the possession of a valid EU Digital COVID Certificate should, in such situations, not be required to undergo quarantine, self-isolation or additional testing. To determine whether a situation should

[5] https://www.ecdc.europa.eu/en/covid-19/latest-evidence/clinical

be qualified as a severe worsening of the epidemiological situation, Member States should in particular take into account the strain on their healthcare system due to COVID-19, notably in terms of admissions to and number of hospital and intensive-care unit inpatients. In this context, the European Centre for Disease Prevention and Control publishes relevant data on the development of the epidemiological situation.

(9) Member States should also assess whether such restrictions are likely to have a positive impact on the epidemiological situation, including a significant decrease in the strain placed on national healthcare systems, given that domestic factors are normally more powerful drivers of the epidemiological situation than cross-border travel. In such situations, domestic non-pharmaceutical interventions, such as mask-wearing, ventilation and physical distancing, rather than travel restrictions, may be effective in slowing down the spread of COVID-19, if implemented early and comprehensively and sufficiently put into practice by society[6].

(10) When it comes to the possible requirement to be in the possession of a valid EU Digital COVID Certificate, the amendments to Regulation (EU) 2021/953 introduced by Regulation (EU) 2022/1034 of the European Parliament and of the Council[7] should be reflected in Recommendation (EU) 2022/107. First, it should be mentioned that EU Digital COVID Certificates issued to persons participating in clinical trials for COVID-19 vaccines may be accepted by other Member States in order to waive restrictions to free movement. To facilitate the exercise of free movement of Union citizens who have received a COVID-19 vaccine that has completed the WHO emergency use listing procedure, Member States are also recommended to accept EU Digital COVID Certificates issued following the administration of such vaccines. In addition, test and recovery certificates can now be issued on the basis of laboratory-based antigenic assays.

(11) Given their specific situation or essential function, certain categories of travellers should be exempted from a possible requirement to be in the possession of an EU Digital COVID Certificate. In light of the current security situation, it is important that this list expressly includes diplomats, staff of international organisations, people invited by international organisations whose physical presence is required for the well-functioning of these organisations, military personnel, humanitarian aid workers and civil protection personnel. The list should also include persons covered by Article 2 of Council Implementing Decision (EU) 2022/382[8] and be consistent with Council Recommendation (EU) 2022/XXXX[9]. At the same time, this should not prevent Member States from offering vaccination and testing to these categories of persons.

(12) To be able to react quickly to newly emerging SARS-CoV-2 variants, the ‘emergency brake’, that is to say, the possibility to take other measures in addition to the EU

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6 See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on COVID-19 – Sustaining EU preparedness and response: Looking ahead (COM(2022) 190 final).

7 Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 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 (OJ L 173, 30.6.2022, p. 37).

8 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

9 Council Recommendation (EU) 2022/XXXX on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912 (OJ L XX, Y.Z.2022, p. XX).

Digital COVID Certificate, should be maintained. This 'emergency brake' procedure could be used in response to the emergence of a new SARS-CoV-2 variant of concern or interest, with the aim of slowing down its spread by means of travel restrictions, buying time to mobilise surge hospital capacity, and triggering vaccine development. It could also be used in situations where the epidemiological situation worsens rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.

(13) Where a Member State introduces a requirement to present a valid EU Digital COVID Certificate, or where it takes additional measures in accordance with the emergency brake procedure, it should swiftly inform the Commission and other Member States accordingly through the Integrated Political Crisis Response ('IPCR') network, and provide information as to the reasons, expected impact, entry into force and duration of any such travel restrictions. This should include information as to why the introduction of such travel restrictions complies with the principles of necessity and proportionality, for example because of the particular geographical situation of the Member State concerned or the particular vulnerabilities of its national healthcare system. This should also serve to ensure consistency with the rules on travel from third countries.

(14) To obtain timely, relevant and representative information on the emergence and circulation of SARS-CoV-2 variants of concern or interest, Member States should assess the circulation of different SARS-CoV-2 variants in the community by selecting representative samples for sequencing, carry out genetic characterisation and report variant typing results in line with the sequencing guidance published by the European Centre for Disease Prevention and Control[10].

(15) It also remains important to ensure that information on any new measures is publicly available as early as possible. Indeed, as noted by the Commission in its Communication of 2 September 2022[11], Member States should do their utmost to ensure that potential travellers are well-informed about possible travel restrictions they may face when entering another Member State. The Re-Open EU web platform remains a key point of reference for anyone travelling in the Union.

(16) It is appropriate to discontinue the traffic light map published by the European Centre for Disease Prevention and Control since the adoption of Recommendation (EU) 2020/1475 in October 2020. In view of epidemiological developments, the methodology of the map was adapted multiple times. Its latest iteration, using the 14-day notification rate weighted by vaccine uptake, was based on experiences with the Delta variant. However, the high infection numbers caused by the Omicron variant resulted in large parts of the map being marked in 'dark red', despite all Member States having lifted their free movement restrictions. In addition, as Member States adapted their testing regimes, multiple regions appeared in 'dark grey' due to reported testing rates having fallen below the threshold established by Recommendation (EU) 2022/107. This shift of testing strategies towards representative samples of the population will not change in the foreseeable future. As a result, the traffic light map had become an inadequate depiction of the epidemiological situation in the Union. Following discussions with the Member States and the Commission, the European

[10] https://www.ecdc.europa.eu/en/publications-data/methods-detection-and-characterisation-sars-cov-2-variants-second-update

[11] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU response to COVID-19: preparing for autumn and winter 2023 (COM(2022) 452 final).

Centre for Disease Prevention and Control already temporarily suspended the publication of the map in July 2022.

(17) Consequently, the references to specific additional measures for persons travelling from 'dark red' areas should be removed from Recommendation (EU) 2022/107 together with the traffic light map.

(18) The mandatory submission of passenger locator forms ('PLF') in the context of intra-EU travel for contact-tracing purposes constitutes an additional requirement for the exercise of free movement. Such a requirement is thus justified only if necessary and proportionate. In particular, Member States should not require travellers using private transport, be it cars, bikes or on foot, to submit PLF. This is because their exposure is necessarily less intensive than in the case of public transport and because they will typically know the identities of their fellow travelling companions.

(19) At the same time, should Member States wish to activate contact tracing of cross-border passengers, common tools, such as the EU digital Passenger Locator Form and the PLF Exchange Platform, are available to exchange passenger data to enhance their contact tracing capabilities while limiting burdens on passengers and transport operators. To avoid the need for the submission of PLF, Member States could, where possible under national law and in compliance with data protection rules, also consider using existing passenger data for the purposes of contact tracing.

(20) The Commission, with the support of the European Centre for Disease Prevention and Control, should continue its regular review of Recommendation (EU) 2022/107, and transmit its findings to the Council for its consideration, together with a proposal to amend that Recommendation, where necessary,

HAS ADOPTED THIS RECOMMENDATION:

Recommendation (EU) 2022/107 is amended as follows:

(1) the heading 'Coordinated framework to facilitate safe free movement during the COVID-19 pandemic' after point 10 is replaced by the following:

'Coordinated framework on free movement during the COVID-19 pandemic';

(2) point 11 is replaced by the following:

'11. Member States should not impose any pandemic-related restrictions on the right to free movement of persons on grounds of public health except in the situations covered by points 11a and 22.';

(3) the following points 11a, 11b and 11c are inserted:

'11a. Without prejudice to the emergency brake procedure set out in point 22, a Member State should introduce pandemic-related restrictions on the right to free movement of persons on grounds of public health only in accordance with the general principles set out in points 1 to 10 and in response to a severe worsening of the epidemiological situation.

To determine whether a situation should, for the purposes of the first subparagraph, be qualified as severely worsening, Member States should take into account, in particular, the strain on their healthcare systems due to COVID-19, notably in terms of admissions to and number of hospital and intensive-care unit inpatients.

Before introducing such restrictions, the Member State concerned should assess whether they are likely to have a positive impact on the epidemiological situation, including a significant decrease in the strain placed on national healthcare systems.

The European Centre for Disease Prevention and Control should provide the Member States and the Commission with regular information as to the development of the epidemiological situation.

11b. If a Member State imposes restrictions pursuant to point 11a, travellers should only be required to be in the possession of a valid EU Digital COVID Certificate issued pursuant to Regulation (EU) 2021/953 meeting the conditions of point 12.

In this context, the following derogations should apply:

(a) the exemptions from the need to be in the possession of a valid EU Digital COVID Certificate set out in point 16;

(b) additional measures taken in accordance with the emergency brake procedure set out in point 22 to delay the spread of new SARS CoV-2 variants of concern or interest.

11c. If a Member State imposes restrictions pursuant to point 11a, it should swiftly inform the Commission and the other Member States accordingly through the Integrated Political Crisis Response (IPCR) network. To that end, the Member State should provide the following information:

(a) the reasons for such a requirement, including its compliance with the principles of necessity and proportionality;

(b) an estimate of the expected impact of such a requirement on the epidemiological situation, including in terms of strain posed on national healthcare systems;

(c) the entry into force and duration of such a requirement.

In addition, such restrictions should be discussed within the IPCR network, including with a view to ensuring consistency with Recommendation (EU) 2022/XXXX.'

(4) point 12 is replaced by the following:

'12. The following EU Digital COVID Certificates should be accepted if their authenticity, validity and integrity can be verified:

(a) vaccination certificates issued in accordance with Regulation (EU) 2021/953 for a COVID-19 vaccine covered by Article 5(5), first subparagraph, of that Regulation or a COVID-19 vaccine that has completed the WHO emergency use listing procedure and which indicate that the holder has:

– completed the primary vaccination series and at least 14 days have passed since the last dose; or

– received one or more booster doses following the completion of the primary vaccination series;

provided that the acceptance period set out in Regulation (EU) 2021/953 has not yet elapsed.

Member States could also accept vaccination certificates issued for other COVID-19 vaccines covered by Article 5(5), second subparagraph, of

Regulation (EU) 2021/953 or vaccination certificates issued pursuant to Article 5(5), fourth subparagraph, of Regulation (EU) 2021/953.

On the basis of further scientific evidence, the Commission should regularly re-evaluate the approach set out in point (a).

(b) test certificates issued in accordance with Regulation (EU) 2021/953 indicating a negative test result obtained:

– not more than 72 hours before arrival, in case of a molecular nucleic acid amplification test (NAAT); or

– not more than 24 hours before arrival, in case of an antigen test listed in the EU common list of COVID-19 antigen tests agreed by the Health Security Committee[12].

For the purpose of travel in exercise of free movement rights, Member States should accept both types of tests.

Member States should seek to ensure that test certificates are issued as soon as possible after the collection of the test sample.

(c) certificates of recovery issued in accordance with Regulation (EU) 2021/953 provided that the acceptance period set out in that Regulation has not yet elapsed.';

(5) point 15 is replaced by the following:

'15. If a Member State introduces a requirement to be in the possession of a valid EU Digital COVID Certificate, persons not having it in their possession could be required to undergo an NAAT or antigen test listed in the EU common list of COVID-19 antigen tests prior to or no later than 24 hours after arrival. This does not apply to persons exempted from holding an EU Digital COVID Certificate in accordance with point 16.';

(6) in point 16, point (a) is replaced by the following:

'(a) travellers exercising an essential function or need, in particular:

– transport workers or transport service providers, including drivers and crew of freight vehicles carrying goods for use in the territory as well as those merely transiting;

– healthcare professionals;

– patients travelling for imperative medical or family reasons;

– diplomats, staff of international organisations, people invited by international organisations whose physical presence is required for the well-functioning of these organisations, military personnel, humanitarian aid workers, civil protection personnel and persons covered by Article 2 of Council Implementing Decision (EU) 2022/382[13];

– passengers in transit;

[12] Available at: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health/high-quality-covid-19-testing_en

[13] Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

– seafarers.';

(7) the heading 'EU traffic light map and exceptions and additional measures based thereon' after point 16 is deleted;

(8) points 17, 18 and 19 are deleted;

(9) in point 20, the second subparagraph is replaced by the following:

'To support Member States, the European Centre for Disease Prevention and Control should continue to publish information and data on SARS-CoV-2 variants of concern or interest.';

(10) points 21, 22 and 23 are replaced by the following:

'21. Member States should assess the circulation of different SARS-CoV-2 variants in the community by selecting representative samples for sequencing, carry out genetic characterisation and report variant typing results in line with the sequencing guidance published by the European Centre for Disease Prevention and Control.

22. Where, in response to the emergence of a new SARS-CoV-2 variant of concern or interest, a Member State requires travellers, including holders of EU Digital COVID Certificates, to undergo, after entry into its territory, quarantine or self-isolation or to be tested for SARS-CoV-2 infection, or if it imposes other restrictions on the holders of such certificates, it should swiftly inform the Commission and the other Member States accordingly, including by providing the information referred to in point 11a of this Recommendation, and Article 11(2) of Regulation (EU) 2021/953. If possible, such information should be provided 48 hours in advance of the introduction of such new restrictions. Wherever possible, such measures should be limited to the regional level.

This should also apply to situations where the epidemiological situation worsens rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.

23. Where a Member State triggers the emergency brake and, as a result, requires transport workers and transport service providers to undergo a test for COVID-19 infection, rapid antigen tests should be used and no quarantine be required, which should not lead to transport disruptions. Should transport or supply chain disruptions occur, Member States should lift or repeal any such systematic testing requirements immediately in order to preserve the functioning of the 'Green Lanes'. In addition, other types of travellers falling under points 16(a) and (b) should not be required to undergo quarantine or self-isolation.';

(11) in point 24, the second subparagraph is replaced by the following:

'The Commission, based on the regular assessment of new evidence on variants by the European Centre for Disease Prevention and Control and the analysis provided by the European expert group on SARS-CoV-2 variants, may also suggest a discussion within the Council on a new SARS-CoV-2 variant of concern or interest.';

(12) point 27 is replaced by the following:

'27. Where, in the context of point 11a or 22, Member States require persons travelling to their territory by means of collective transport modes with pre-assigned seat or cabin to submit Passenger Locator Forms ('PLF') for contact-tracing purposes in accordance with data protection requirements, they should make use of the EU

digital Passenger Locator Form developed by the EU Healthy Gateways[14] and join the PLF Exchange Platform to enhance their cross-border contact tracing capabilities for all transport modes. Member States should not require the submission of PLF for travel with private transport. Where possible under national law and in compliance with data protection rules, Member States could also consider using existing passenger data for the purposes of contact tracing.';

(13) points 29 and 30 are replaced by the following:

'29. In accordance with Article 11 of Regulation (EU) 2021/953, Member States should provide relevant stakeholders and the general public with clear, comprehensive and timely information about any measures affecting the right of free movement and any accompanying requirements, such as the need to submit a PLF. This includes information about the lifting or absence of such requirements. The information should also be published in a machine-readable format.

30. This information should be regularly updated by Member States and also be made available on the 'Re-Open EU' web platform in a timely manner. Member States should also provide, on 'Re-open EU', information on any domestic use of EU Digital COVID Certificates.

Information on any new measures should be published as early as possible and, as a general rule, at least 24 hours before they come into effect, taking into account that some flexibility is required for epidemiological emergencies.';

(14) the Annex is deleted.

Done at Brussels,

For the Council
The President

[14] https://www.euplf.eu/en/home/index.html