COMMISSION IMPLEMENTING DECISION (EU) 2021/1212

of 22 July 2021

amending Implementing Decision (EU) 2017/253 as regards alerts triggered by serious cross-border threats to health and for the contact tracing of exposed persons identified in the context of the completion of Passenger Locator Forms

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC ([1]), and in particular Article 8(2) thereof,

Whereas:

(1) Commission Implementing Decision (EU) 2021/858 ([2]) amended Implementing Decision (EU) 2017/253 ([3]) by establishing a technical infrastructure meant to enable the secure, timely and effective exchange of personal data collected through a passenger locator form ('PLF') between the Early Warning and Response System ('EWRS') competent authorities of the Member States – called the 'PLF exchange platform'. Such technical infrastructure allows the transmission of information from the Member States' existing national digital PLF systems to other EWRS competent authorities, in an interoperable and automatic manner.

(2) The PLF exchange platform allows the EWRS competent authorities of the Member States to exchange well-defined sets of data collected through PLFs, for the sole purpose of SARS-CoV-2 contact tracing of exposed persons by those authorities. It also allows for the exchange of other limited epidemiological data necessary for the contact tracing, in line with the minimisation principle of personal data processing.

(3) Implementing Decision (EU) 2017/253 does not currently allow for the exchange of personal data of persons who have completed a PLF and have been in close contact ([4]) to an infected passenger who has also completed a PLF, even though the exchange of such data is necessary for an effective contact tracing following the identification of a positive case of COVID-19 required under Article 9(1) of Decision No 1082/2013/EU.

(4) The exchange of data relating to such exposed persons is necessary where those persons stay for a limited time in a given destination and, as a result, the EWRS competent authorities of the Member State of destination are not able to contact and test those persons during their stay. Such data exchange is also necessary where the EWRS authorities of the Member State of residence are competent to contact and provide further instructions to the exposed persons. In such situations, and provided that those persons have also completed PLFs, the Member State which identified an infected passenger and initiated the contact tracing measures should use the PLF exchange platform to send alerts to the Member States of initial or last departure or the Member State of residence of those exposed persons. The personal data to be exchanged in such cases should be limited to identification and contact data.

([1]) OJ L 293, 5.11.2013, p. 1.

([2]) Commission Implementing Decision (EU) 2021/858 of 27 May 2021 amending Implementing Decision (EU) 2017/253 as regards alerts triggered by serious cross-border threats to health and for the contact tracing of passengers identified through Passenger Locator Forms (OJ L 188, 28.5.2021, p. 106).

([3]) Commission Implementing Decision (EU) 2017/253 of 13 February 2017 laying down procedures for the notification of alerts as part of the early warning and response system established in relation to serious cross-border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision No 1082/2013/EU of the European Parliament and of the Council (OJ L 37, 14.2.2017, p. 23).

([4]) The European Centre for Disease Prevention and Control ('ECDC') has provided guidance on the definition of a close contact. See ECDC document on '*Contact tracing: public health management of persons, including healthcare workers, who have had contact with COVID-19 cases in the European Union – third update*', dated 18 November 2020.

(5) In order to ensure that the personal data relating to infected passengers and the personal data relating to exposed persons are clearly distinguished, the EWRS competent authorities should indicate whether the exchanged data refer to an infected passenger or to an exposed person.

(6) The exchange of personal data of exposed persons should be subject to the same personal data protection requirements as those that apply to the exchange of personal data of the infected passengers.

(7) EWRS competent authorities should share the data they have, in relation to the legs for which Member States collect information in their PLFs, only where this is necessary to identify exposed persons. It should be clarified that there is no obligation for Member States to collect information for all legs of a journey.

(8) The national PLF systems of Member States may be temporarily unavailable in certain situations, for example, due to technical disruptions. In those cases, the EWRS competent authorities should be able to exchange through the PLF exchange platform the same set of personal data stemming from sources other than their national PLFs, namely from the transport carriers, from the infected passenger or from exposed persons. The collection of personal data from these sources should be based on national law and comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ([5]).

(9) Implementing Decision (EU) 2021/858 defines in Annex I the minimum set of PLF data to be collected through the national PLF, which is necessary for effective cross-border contact tracing based on PLF data. It should be clarified in Annex I that the place of departure and arrival, as well as the time of departure, are not necessary where that information can be derived from the identification number of the transport means, as that information suffices for the purpose of contact tracing.

(10) Implementing Decision (EU) 2017/253 should therefore be amended accordingly.

(11) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725, and delivered an opinion on 13 July 2021.

(12) The measures provided for in this Decision are in accordance with the opinion of the Committee on serious cross-border threats to health established by Article 18 of Decision No 1082/2013/EU,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2017/253 is amended as follows:

(1) in Article 2a(1), the first subparagraph is replaced by the following:

'A platform for the secure exchange of PLF data of infected passengers and of exposed persons for the sole purpose of SARS-CoV-2 contact tracing of exposed persons by the EWRS competent authorities ("PLF exchange platform") is established under the EWRS as a complement of the selective messaging functionality existing within that system.';

(2) Article 2b is amended as follows:

(a) in paragraph 1, the introductory sentence is replaced by the following:

'1. When notifying an alert in the PLF exchange platform, the EWRS competent authorities of the Member State where the infected passenger is identified shall transmit the following PLF data to the EWRS competent authorities of the Member State of the infected passenger's initial departure, or residence where the place of residence is different from the place of initial departure, or to the Member State of the infected passenger's last departure, where the Member State only requires the completion of a PLF for the last leg of a journey:';

([5]) 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).

(b) the following paragraphs are inserted:

'1a. The EWRS competent authorities shall also transmit, through the PLF exchange platform, the PLF data referred to in paragraph 1 of exposed persons to the EWRS competent authorities of the Member States of initial departure or residence of those persons, or to the Member State of the infected passenger's last departure where the Member State only requires the completion of a PLF for the last leg of a journey, provided that such data were collected in the context of contact tracing measures carried out following the identification of an infected passenger, and provided that their transmission is necessary for the purpose of contact tracing.

1b. The EWRS competent authorities transmitting the data referred to in paragraphs 1 and 1a shall indicate whether they refer to an infected passenger or to an exposed person.';

(c) paragraph 2 is replaced by the following:

'2. The EWRS competent authorities of the Member State of initial or last departure of the infected passenger or of the exposed person may transmit the PLF data received to a Member State of departure other than the one declared in the PLF as Member State of departure, where they have additional information pointing to the Member State that should perform the contact tracing.';

(d) paragraph 3 is amended as follows:

(i) the introductory sentence is replaced by the following:

'If necessary to identify exposed persons, when notifying an alert in the PLF exchange platform, the EWRS competent authorities of the Member State where the infected passenger is identified shall transmit the following PLF data, in relation to each available leg of that passenger's journey, to the EWRS competent authorities of all Member States:';

(ii) points (a) and (b) are replaced by the following:

'(a) place of departure of each concerned transport, unless the place can be identified through the information under point (e);

(b) place of arrival of each concerned transport, unless the place can be identified through the information under point (e);';

(iii) point (g) is replaced by the following:

'(g) time of departure of each concerned transport, unless the time can be identified through the information under point (e).';

(e) the following paragraph is added:

'6. Where the national PLF system of a Member State is temporarily unavailable, the EWRS competent authorities of the Member State that collected the personal data referred to in paragraphs 1, 3 and 5 from the transport carriers, from the infected passenger or from the exposed person on the basis of national law may transmit such data through the PLF exchange platform for contact tracing purposes, during the period of temporary unavailability.'.

(3) Annex I is amended in accordance with the Annex to this Decision.

Article 2

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

Done at Brussels, 22 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annex I to Implementing Decision (EU) 2017/253 is amended as follows:

(1) point (7) is deleted;

(2) point (8) is amended as follows:

(a) the introductory sentence is replaced by the following:

'the following information for each leg of a journey for which the Member State requires the completion of a PLF:';

(b) sub-points (a) and (b) are replaced by the following:

'(a) place of departure, unless the place can be identified through the information under sub-point (f);

(b) place of arrival, unless the place can be identified through the information under sub-point (f);';

(c) sub-point (e) is replaced by the following:

'(e) time of departure, unless the time can be identified through the information under sub-point (f);'.