COMMISSION IMPLEMENTING DECISION (EU) 2023/396

of 20 February 2023

establishing the equivalence, for the purpose of facilitating the right to free movement within the Union, of COVID-19 certificates issued by Hong Kong Special Administrative Region to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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 ([1]), and in particular Article 8(2) thereof,

Whereas:

(1) Regulation (EU) 2021/953 lays down a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates ('EU Digital COVID Certificate') for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic. It is also to contribute to facilitating the gradual lifting of restrictions to free movement put in place by Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner.

(2) Regulation (EU) 2021/953 provides for the acceptance of COVID-19 certificates issued by third countries to Union citizens and their family members where the Commission finds that those COVID-19 certificates are issued in accordance with standards that are to be considered as equivalent to those established pursuant to that Regulation. Furthermore, in accordance with Regulation (EU) 2021/954 of the European Parliament and of the Council ([2]), Member States are to apply the rules laid down in Regulation (EU) 2021/953 to third-country nationals who do not fall within the scope of that Regulation, but who are legally staying or residing in their territory and who are entitled to travel to other Member States in accordance with Union law. Therefore, any equivalence findings laid down in this Decision should apply to COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region to Union citizens and their family members. Similarly, on the basis of Regulation (EU) 2021/954, such equivalence findings also apply to COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region to third-country nationals legally staying or residing in the territory of the Member States under the conditions laid down in that Regulation.

(3) On 5 July 2022, Hong Kong Special Administrative Region provided the Commission with detailed information on the issuance of interoperable COVID-19 vaccination, test and recovery certificates under the system entitled 'COVID-19 Electronic Vaccination and Testing Record System (eVT)'.Hong Kong Special Administrative Region informed the Commission that it considered that its COVID-19 certificates are being issued in accordance with a standard and technological system, that are interoperable with the trust framework established by Regulation (EU) 2021/953 and that allow for the verification of the authenticity, validity and integrity of the certificates. In this

([1]) OJ L 211, 15.6.2021, p. 1.

([2]) 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).

regard Hong Kong Special Administrative Region informed the Commission that COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region in accordance with the 'COVID-19 Electronic Vaccination and Testing Record System (eVT)' contain the data set out in the Annex to Regulation (EU) 2021/953.

(4) Hong Kong Special Administrative Region also informed the Commission that it accepts vaccination, test and recovery certificates issued by the Member States and countries of the European Economic Area in accordance with Regulation (EU) 2021/953.

(5) On 23 November 2022, following a request by Hong Kong Special Administrative Region, the Commission carried out technical tests that demonstrated that the COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region in accordance with the 'COVID-19 Electronic Vaccination and Testing Record System (eVT)' are interoperable with the trust framework established by Regulation (EU) 2021/953, allowing for the verification of the authenticity, validity and integrity of the certificates. The Commission also confirmed that the COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region in accordance with the 'COVID-19 Electronic Vaccination and Testing Record System (eVT)' contain the necessary data.

(6) In addition, Hong Kong Special Administrative Region informed the Commission that it currently issues interoperable vaccination certificates for the Comirnaty and CoronaVac COVID-19 vaccines.

(7) Hong Kong Special Administrative Region also informed the Commission that it issues interoperable test certificates for nucleic acid amplification tests.

(8) Furthermore, Hong Kong Special Administrative Region informed the Commission that it issues interoperable certificates of recovery.

(9) In addition, Hong Kong Special Administrative Region informed the Commission that when verifiers in Hong Kong Special Administrative Region verify certificates, the personal data included in them will be processed only to verify and confirm the holder's vaccination, test result, or recovery status, and will not be retained afterwards, with the exception of health data of persons who test positive upon arrival which would be recorded as part of the epidemiological investigation.

(10) The necessary elements for establishing that COVID-19 certificates issued by Hong Kong Special Administrative Region in accordance with the 'COVID-19 Electronic Vaccination and Testing Record System (eVT)' are to be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953 are thus fulfilled.

(11) Therefore, COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region in accordance with the 'COVID-19 Electronic Vaccination and Testing Record System (eVT)' should be accepted under the conditions referred to in Article 5(5), Article 6(5), and Article 7(8) of Regulation (EU) 2021/953.

(12) In order for this Decision to be operational, Hong Kong Special Administrative Region should be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.

(13) In order to protect the Union's interests, in particular in the area of public health, the Commission may use its powers to suspend application of this Decision or repeal it, if the conditions of Article 8(2) of Regulation (EU) 2021/953 are no longer met.

(14) In order to connect Hong Kong Special Administrative Region to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953 as rapidly as possible, this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.

(15) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 14 of Regulation (EU) 2021/953,

HAS ADOPTED THIS DECISION:

Article 1

COVID-19 vaccination, test and recovery certificates issued by Hong Kong Special Administrative Region in accordance with the 'COVID-19 Electronic Vaccination and Testing Record System (eVT)' shall, for the purpose of facilitating the right of free movement within the Union, be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953.

Article 2

Hong Kong Special Administrative Region shall be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.

Article 3

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

Done at Brussels, 20 February 2023.

For the Commission
The President
Ursula VON DER LEYEN