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2021/0119 (NLE)

Proposal for a

COUNCIL RECOMMENDATION

amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Communication "*A common path to safe and sustained re-opening*" (COM(2021)129) outlined the Commission's intention to keep reviewing the approach set out in Council Recommendation 2020/912 for the lifting of the restriction on non-essential travel to the EU in order to adapt it to the evolving context.

At present, the developments in the epidemiological situation in third countries are heterogeneous.

On the one hand, the emergence and spread of variants of interest and of variants of concerns in some regions and third countries remain a cause of concern. Strong measures remain essential to minimise the import and spread of such variants from high-risk areas into the EU+[1] area, with travel reduced to the minimum and with all possible safeguards. Given the volatility of the situation, it is also essential to be able to respond to risks quickly, and this proposal establishes an "emergency brake" mechanism assisting Member States in deciding on the best measures to avoid or limit the spread of such variants and in providing for a coordinated approach.

On the other hand, the roll-out of COVID-19 vaccination campaigns in third countries, and the subsequent positive effect in limiting the spread of the virus, indicate that there is room to ease travel restrictions, particularly for those already vaccinated. In this sense, this proposal aims at progressively resuming travel from third countries in a safe manner, relaunching tourism, especially in view of the summer season, and business travelling, thus fostering the recovery of Europe's economy. The adoption of the Regulation on the Digital Green Certificate[2] will provide the basis, through a Commission implementing act, for treating third country vaccination certificates as Digital Green Certificates, or to issue such certificates to persons having been vaccinated in third countries.

These two aspects of the proposal are mutually complementary and consistent in achieving the safe opening of the EU whenever possible while, at the same time, ensuring rapid action against existing and possible new variants.

• Consistency with existing policy provisions in the policy area

This proposal for a recommendation serves to implement the existing provisions in the policy area, namely carrying out checks on persons and monitoring efficiently the crossing of external borders.

• Consistency with other Union policies

This recommendation is in line with other Union policies, including those regarding external relations and public health.

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[1] The "EU+ area" includes all Schengen Member States (including Bulgaria, Croatia, Cyprus and Romania), as well as the four Schengen Associated States. It also includes Ireland if it decides to align.

[2] 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) - COM/2021/130 final.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The Treaty on the Functioning of the European Union (TFEU), and in particular points (b) and (e) of Article 77(2) and Article 292, first and second sentence, thereof.

• Subsidiarity (for non-exclusive competence)

Article 292 TFEU enables the Council to adopt recommendations. According to the first sentence of this provision, the Council shall adopt recommendations, and according to the second sentence of 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, considering that a consistent approach at the external border requires a common solution. Article 77(2)(b) TFEU provides for measures on checks on persons crossing the external borders, while Article 77(2)(e) TFEU provides for the absence of any controls on persons, whatever their nationality, when crossing internal borders. Measures on the basis of Article 77(2) TFEU are to be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure. Pursuant to Article 289(1) TFEU, the ordinary legislative procedure takes place on a proposal from the Commission.

• Proportionality

The present proposal takes account of the evolving epidemiological situation and all available relevant evidence. The authorities of the Member States and the Schengen Associated Countries remain responsible for implementing the proposed Council Recommendation. Therefore, the proposal is suitable for achieving the intended objective and does not go beyond what is necessary and proportionate.

• Choice of the instrument

This proposal has the objective to amend Council Recommendation 2020/912. This objective requires another Council Recommendation.

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

• Ex-post evaluations/fitness checks of existing legislation

N/A

• Stakeholder consultations

This proposal takes into account discussions with Member States since the implementation of the first temporary restrictions to non-essential travel. No impact assessment was undertaken although the proposal takes into account the evolving epidemiological situation and all available relevant evidence.

4. BUDGETARY IMPLICATIONS

None

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 77(2)(b) and (e) and 292, first and second sentence thereof,

Whereas:

(1) On 30 June 2020, the Council adopted Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction[3].

(2) On 2 February 2021, the Council amended Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction[4] in order to update the criteria used to assess whether non-essential travel from third countries is safe and should be allowed.

(3) The same amendment introduced mechanisms to contain the spread of variants of concern of the virus SARS-COV-2 in the EU+ area[5].

(4) Since then, mass vaccination campaigns against the virus SARS-COV-2 have been rolled-out in the EU+ area, as well as in many other regions and third countries.

(5) On 17 March 2021, the Commission proposed two Regulations[6] to create 'Digital Green Certificates to facilitate safe free movement within the EU during the COVID-19 pandemic. The Digital Green Certificate will be a proof that a person has been vaccinated against COVID-19, received a negative test result or recovered from COVID-19. The Member States remain responsible for deciding which public health restrictions can be waived for travellers but should apply such waivers in a non-discriminatory way to travellers in possession of a Digital Green Certificate.

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3 Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ LI 208, 1.7.2020, p. 1).

4 Council Recommendation (EU) 2021/132 of 2 February 2021 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 41, 4.2.2021, p. 1).

5 The "EU+ area" includes all Schengen Member States (including Bulgaria, Croatia, Cyprus and Romania), as well as the four Schengen Associated States. It also includes Ireland if Ireland decides to align.

6 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), COM/2021/130 final, and 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 third-country nationals legally staying or legally residing in the territories of Member States during the COVID-19 pandemic (Digital Green Certificate), COM/2021/140 final.

(6) Scientific advice and empirical evidence on the effects of vaccination are becoming increasingly available and consistently conclusive on the fact that vaccination helps in breaking the transmission chain.

(7) This evidence suggests that travel restrictions could be safely waived in certain cases for persons who can demonstrate having received the last recommended dose of a COVID-19 vaccine authorised in the EU pursuant to Regulation (EC) No 726/2004[7] and that such waivers could also be justified to the extent that a person has been vaccinated with a COVID-19 vaccine that has completed the WHO Emergency Use Listing process.

(8) Children who in consideration of their age are excluded from COVID-19 vaccination should be able to travel with their vaccinated parents under condition of having tested negative to a PCR COVID-19 test taken at the earliest 72 hours before crossing the border of the EU+ area. In these cases, Member States could require additional testing after arrival.

(9) However, few or no studies are yet available on whether variants of concern escape the immune response induced by the various COVID-19 vaccines. Therefore, in line with the precautionary approach, an "emergency brake" mechanism should be established in order to allow Member States to adopt, in a coordinated way, urgent and time-limited measures to quickly react to the emergence of a variant in a given third country that has come under specific scrutiny, and in particular where it has been designated by the European Centre for Disease Prevention and Control (ECDC) as a variant of interest. This emergency brake should allow for appropriate measures, including limitations of entry, to be taken, with a view to preventing its import and spread in the EU+ area. Such measures should be subject to rapid coordination in the Council to allow for a common approach.

(10) The progress in having the population of a third country vaccinated against the virus should be taken into account when assessing the epidemiological situation in that country.

(11) Once adopted, Regulation 2021/XXX on the Digital Green Certificate[8] will provide the basis, through a Commission implementing act, for treating third country vaccination certificates equivalent to Digital Green Certificates, or to issue such certificates to persons having been vaccinated in third countries. In order to ensure a coordinated approach of the Member States and to facilitate onwards travel of travellers from third countries within the EU+ area, steps should be taken to facilitate the use of these provisions. To this end, the Member States could consider setting up a portal where persons residing outside the EU+ area could ask for the recognition of their vaccination certificate issued by a third country as reliable proof of vaccination and/or for the issuance of a 'Digital Green Certificate'.

(12) Where Member States accept proof of vaccination in order to waive restrictions put in place in compliance with Union law to limit the spread of COVID-19, such as requirements to undergo quarantine/self-isolation or be tested for SARS-CoV-2

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7 Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L136, 30.04.2004, p. 1).

8 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) - COM/2021/130 final.

infection, they should also waive these requirements for travellers resident in a third country who, at the latest 14 days before entering the EU+ area, have received the last recommended dose of a COVID-19 vaccine having been authorised in the EU pursuant to Regulation (EC) No 726/2004, or of another COVID-19 vaccine having completed the WHO Emergency Use Listing process, if they are able to submit a valid proof satisfying the requirements of the Digital Green Certificate Regulation. This should, however, not apply where a Member State has made use of the emergency brake. Until the Digital Green Certificate Regulation is adopted and becomes applicable, Member States should be able to accept third country certificates based on national law, taking into account the ability to verify the authenticity, validity and integrity of the certificate and whether it contains all relevant data.

(13) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Recommendation and is not bound by it or subject to its application. Given that this Recommendation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of the said Protocol, decide within a period of six months after the Council has decided on this Recommendation whether it will implement it.

(14) This Recommendation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[9]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(15) As regards Iceland and Norway, this Recommendation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC[10].

(16) As regards Switzerland, this Recommendation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC[11] read in conjunction with Article 3 of Council Decision 2008/146/EC[12].

(17) As regards Liechtenstein, this Recommendation constitutes a development of provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation,

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9 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

10 OJ L 176, 10.7.1999, p. 36.

11 OJ L 53, 27.2.2008, p. 52.

12 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

application and development of the Schengen acquis which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC[13] read in conjunction with Article 3 of Decision 2011/350/EU[14].

(18) The legal status of this recommendation as recalled in recitals 13 to 17 is without prejudice of the need for all Member States, in the interest of the proper functioning of the Schengen area, to decide on the lifting of the restriction on non-essential travel into the EU in a coordinated manner,

HAS ADOPTED THIS RECOMMENDATION:

Recommendation (EU) 2020/912 is amended as follows:

1. The fifth indent of Point 2, first paragraph, is replaced by the following:

‘ – the nature of the virus present in a country, in particular whether variants of interest or variants of concern of the virus have been detected. Variants of interest and variants of concern are assessed as such by the European Centre for Disease Prevention and Control (ECDC) based on key properties of the virus such as transmission, severity and ability to escape immune response.’

2. In the second paragraph of Point 2 the figure ‘25’ is replaced by ‘100’.

3. The following new Point 2a is inserted after Point 2:

‘2a. Member States should also lift the temporary restriction on non-essential travel to the EU with regard to third-country nationals other than those referred to in the first paragraph of Point 6 (hereafter “travellers from other regions and third countries”) who have received the last recommended dose of one of the COVID-19 vaccines authorised in the EU pursuant to Regulation (EC) No 726/2004[15] at the latest 14 days before entering the EU+ area.

Member States could also lift the temporary restriction on non-essential travel to the EU with regard to travellers from other regions and third countries who have received the last recommended dose of one of the COVID-19 vaccines having completed the WHO Emergency Use Listing process at the latest 14 days before entering the EU+ area.

A third-country national not covered by the first paragraph of Point 6 wishing to undertake non-essential travel to a Member State should be in possession of a valid proof of a COVID-19 vaccination. To that end, Member States should treat third country vaccination certificates covered by a Commission implementing act adopted under Regulation 2021/XXX as vaccination certificates issued in accordance with that Regulation, or could issue vaccination certificates as referred to in Article 3(1)(a) of Regulation 2021/XXX as persons having been vaccinated in a third country in accordance with Article 6(5) of that Regulation. Until that Regulation is

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13 OJ L 160, 18.6.2011, p. 21.

14 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

15 Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L136, 30.04.2004, p. 1).

adopted and becomes applicable, Member States could accept third country vaccination certificates in accordance with national law, taking into account the need to be able to verify the authenticity, validity and integrity of the certificate and whether it contains all relevant data.'

4. Point 6 is amended as follows:

(a) The following sentence is added after the first paragraph:

'In addition, essential travel should be allowed for the specific categories of travellers with an essential function or need referred to in Annex II.'

(b) The following new paragraphs are inserted after the first paragraph:

'Without prejudice to the first paragraph of Point 6, where the epidemiological situation of a third country or region worsens quickly and, in particular where a variant of concern or of interest has been detected, Member States may adopt an urgent, temporary restriction on all travel into the EU for third country nationals with residence in that third country. This travel restriction should not apply to travellers listed in point i. and points iv. to ix. of Annex II. These travellers should nevertheless be subject to appropriate and regular testing and undergo self-isolation/quarantine even if they have received the last recommended dose of one of the COVID-19 vaccines authorised in the EU pursuant to Regulation (EC) No 726/2004[16] or of one of the COVID-19 vaccines having completed the WHO Emergency Use Listing process at the latest 14 days before entering the EU+ area.

When a Member State applies such restrictions, the Member States meeting within the Council structures in a coordinated manner and in close cooperation with the Commission should review the situation in a coordinated manner. Such restrictions should be reviewed at least every two weeks, taking into account the evolution of the epidemiological situation.'

(c) (c) The old paragraph 3 becomes the new paragraph 5 and is deleted.

7. The fourth and the fifth paragraphs of Point 7 become the first and the second paragraphs of a new Point 7a.

Done at Brussels,

For the Council
The President

[16] Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L136, 30.04.2004, p. 1).