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NOTE

From: Presidency
To: Council

Subject: 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

Delegations will find attached the above-mentioned Recommendation.

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

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 restriction¹.
- (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 restriction² 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+ area³.
- (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.

¹ 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 L 208, 1.7.2020, p. 1).

² 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).

³ 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.

- (5) On 17 March 2021, the Commission proposed two Regulations⁴ to create ‘Digital Green Certificates to facilitate safe free movement within the EU during the COVID-19 pandemic. Within the EU, 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.
- (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 726/2004⁵, 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.

⁴ 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.

⁵ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union 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).

- (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, the Digital Green Certificate Regulations 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 infection, they should in principle 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. Member States could also decide to waive restrictions for travellers vaccinated with another COVID-19 vaccine having completed the WHO Emergency Use Listing process. Both should, however, not apply where a Member State has made use of the emergency brake. Until the Digital Green Certificate Regulations are adopted and become applicable, and until the Commission has adopted an implementing act for treating third country vaccination certificates equivalent to Digital Green Certificates, Member States should be able to accept third country certificates containing at least the minimum data set 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/EC⁶; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

⁶ 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).

- (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/EC⁷.
- (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/EC⁸ read in conjunction with Article 3 of Council Decision 2008/146/EC⁹.
- (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, application and development of the Schengen acquis which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC¹⁰ read in conjunction with Article 3 of Decision 2011/350/EU¹¹.
- (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,

⁷ OJ L 176, 10.7.1999, p. 36.

⁸ OJ L 53, 27.2.2008, p. 52.

⁹ 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).

¹⁰ OJ L 160, 18.6.2011, p. 21.

¹¹ 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).

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 ‘75’.

The third paragraph of Point 2 is replaced by the following:

The data concerning “testing rate”, “test positivity rate” and “variant of concern and variant of interest” should be provided by the European Centre for Disease Prevention and Control (ECDC), on the basis of information made available to ECDC. Such data could be complemented by information provided by EU delegations, WHO and other centres of disease control, when available, also based on the checklist annexed to the Communication of 11 June 2020.

A new fourth paragraph is added to Point 2 as follows:

In addition to the information referred to in point 2, first paragraph, the ECDC should publish and regularly update a map presenting the situation with regard to variants of concern and variants of interest in third countries.

3. 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 old paragraph 3 is deleted.

4. The following new Point 6a is inserted after Point 6:

‘6a. Without prejudice to point 6 (a) and (b), where Member States accept proof of vaccination in order to waive travel restrictions to limit the spread of COVID-19, Member States should in principle lift the temporary restriction on non-essential travel to the EU with regard to travellers from 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 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 such travellers 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.

To that end, travellers wishing to undertake non-essential travel to a Member State should be in possession of a valid proof of a COVID-19 vaccination. Member States could accept third country vaccination certificates containing at least the minimum data set such as the identification of the person, the type of vaccine and the date of the administration of the vaccine, 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.

Where Member States decide to lift restrictions for travellers in possession of a valid proof of a COVID-19 vaccination, Member States should, on a case-by-case basis, take into account reciprocity granted to the EU+ area.’

5. In point 7, at the beginning of the first sentence, the words ‘without prejudice to point 6a’ are introduced.

The following new paragraphs are inserted after the third paragraph of Point 7 and become a new Point 7a:

‘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 should, exceptionally, 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 persons referred to in point 6 (a) and (b) and 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, including prior to departure as provided in point 7, 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 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 and in close cooperation with the Commission should urgently 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.’

The fourth and the fifth paragraphs of Point 7 are introduced after point 7a and become the first and the second paragraphs of a new Point 7b.

Done at Brussels,

For the Council

The President