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2021/0396 (NLE)

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**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The right of Union citizens to move and reside freely within the European Union is one of the Union's most cherished achievements, and an important driver of its economy. At the same time, the COVID-19 pandemic continues to pose an extraordinary threat to public health across the Union.

In response to the outbreak of the COVID-19 pandemic, the Member States have adopted various measures to limit the spread of the virus, some of which have had an impact on Union citizens' right to move and reside freely within the territory of the Member States, such as restrictions on entry or requirements for cross-border travellers to undergo tests for SARS-CoV-2 infection. When adopting and applying restrictions to free movement, Member States are under an obligation to respect principles of EU law¹, in particular proportionality and non-discrimination.

Unilateral measures in this area have caused significant disruptions as businesses and citizens were confronted with a wide array of diverging and rapidly changing measures. This is particularly harmful in a situation where the European economy has already been significantly affected by the virus. Such divergence may also undermine public trust in health measures, in particular vaccination, which could in turn exacerbate the epidemiological situation.

To ensure increased coordination among Member States, the Council adopted, on 13 October 2020, Council Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic². The Council Recommendation established a coordinated approach on the following key points: the application of common criteria and thresholds when deciding whether to introduce restrictions to free movement, a mapping of the risk of COVID-19 transmission based on an agreed colour code, and a coordinated approach as to the measures, if any, which may appropriately be applied to persons moving between areas, depending on the level of risk of transmission in those areas. This Council Recommendation was later updated in light of developments in the epidemiological situation³.

To further facilitate safe free movement during the COVID-19 pandemic, the European Parliament and the Council adopted, on 14 June 2021, Regulation (EU) 2021/953⁴ establishing the EU Digital COVID Certificate framework for the issuance, verification and

¹ Notably Article 21 of the Treaty on the Functioning of the European Union and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

² OJ L 337, 14.10.2020, p. 3.

³ 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 36 I, 2.2.2021, p. 1).

⁴ 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).

acceptance of interoperable COVID-19 vaccination, test and recovery certificates⁵. To make best use of the EU Digital COVID Certificate framework, the Council also amended, on the same day, Council Recommendation (EU) 2020/1475⁶. According to the amended rules, vaccinated or recovered persons should be exempted from restrictions applied in line with the Council Recommendation.

Since June 2021, two important developments with an impact on the epidemiological situation, and thus also on free movement within the Union, have taken place. First, vaccine uptake has increased significantly, with the cumulative uptake of full vaccination among the total Union population reaching more than 65% by 19 November 2021⁷ compared to less than 30% when the latest amendment and Regulation (EU) 2021/953 were adopted⁸.

Nonetheless, large variations in vaccine coverage across Member States and regions, and in specific population groups, remain. By 19 November 2021, uptake of full vaccination among the total population in the Member States ranged from 23.9% to 81.4% (28.6% to 92.6% among the adult population). This is of significant concern, as it provides ample opportunity for the virus to continue spreading and causing disease, particularly among the unvaccinated.

Compared to June 2021, a significantly higher percentage of the population is thus better protected from falling seriously ill and dying from COVID-19 as a result of the currently available COVID-19 vaccines, which offer protection against severe disease, loss of life and long-term consequences from infection. Vaccination is thus an extremely important – albeit not the only – tool in the arsenal against COVID-19, and efforts are needed to continue to increase vaccine uptake.

Second, the rollout of the EU Digital COVID Certificate has progressed at rapid pace. By November 2021, Member States have issued more than 650 million EU Digital COVID Certificates⁹. The EU Digital COVID Certificate is thus a widely available and reliably accepted tool to facilitate free movement during the COVID-19 pandemic. According to a Eurobarometer survey published in September 2021, about two thirds (65%) of respondents agreed that the EU Digital COVID Certificate is the safest means for free travel in Europe during the COVID-19 pandemic¹⁰. Almost all Member States also use the EU Digital COVID Certificate for domestic purposes.

The EU Digital COVID Certificate framework is not only used successfully by the EU Member States, the three non-EU European Economic Area countries¹¹ and Switzerland¹², but

⁵ Accompanied by 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).

⁶ 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).

⁷ <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#summary-tab>

⁸ Data for week 24 of 2021, available at: <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab>

⁹ For detailed figures, see Report from the Commission to the European Parliament and the Council pursuant to Article 16(1) of Regulation (EU) 2021/953 of the European Parliament and of the Council 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 (COM(2021) 649 final).

¹⁰ Available at: <https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2021/soteu-flash-survey/soteu-2021-report-en.pdf>

¹¹ Iceland, Liechtenstein and Norway.

also by 20 other third countries and territories¹³, with more third countries expected to join in the future. As a result, the EU Digital COVID Certificate framework is the only large-scale system operational internationally¹⁴.

At the same time, the epidemiological situation within the Union, characterised by a high and increasing overall case notification rate, remains challenging, justifying the maintenance or reintroduction of measures aimed at protecting public health. The European Centre for Disease Prevention and Control (ECDC) recommends the further increase of COVID-19 vaccination coverage in all eligible age groups, as well as the maintenance of non-pharmaceutical measures, such as the use of face masks, improved ventilation in closed spaced and physical distancing measures, as major tools to reduce the further spread of the virus and its variants¹⁵.

In view of these developments, the common approach set out in Council Recommendation (EU) 2020/1475 should be adapted further, as also requested by the European Council in its conclusions of 22 October 2021¹⁶. In particular, a person's COVID-19 vaccination, test or recovery status, as evidenced by an EU Digital COVID Certificate, should be the key determinant. As EU Digital COVID Certificates can be safely issued, verified and accepted, persons exercising their right of free movement within the Union who are in the possession of a valid EU Digital COVID Certificate should not be subject to additional restrictions to free movement, such as further tests for SARS-CoV-2 infection. In particular, such persons should in principle not be required to undergo quarantine, given that it constitutes a significant restriction to free movement.

This approach is supported by recommendations issued by the World Health Organization (WHO)¹⁷, according to which fully vaccinated travellers, as well as travellers who have recovered from COVID-19 within the 6 months prior to travelling, should not be subject to additional restrictions. Persons who do not fall within these two categories should be able to travel based on a negative test for SARS-CoV-2 infection.

To simplify the exercise of the right of free movement within the Union, it is necessary to establish a common understanding of the conditions that the three types of EU Digital COVID Certificates (vaccination, test and recovery) need to meet in order to be accepted. This should take into account the latest developments, notably the epidemiological situation and the beginning rollout of vaccine booster doses.

In connection with the administration of booster doses, more and more Member States are adopting rules as to how long vaccination certificates issued following the primary vaccination series are accepted, taking into account that the protection from infection and mild disease with COVID-19 resulting from vaccination appears to be waning over time.

¹² Union citizens and Swiss nationals enjoy reciprocal rights of entry and residence based on the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6).

¹³ https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_en#recognition-of-covid-certificates-from-third-non-eu-countries
¹⁴ COM(2021) 649 final.

¹⁵ <https://www.ecdc.europa.eu/sites/default/files/documents/covid-19-rapid-risk-assessment-16th-update-september-2021.pdf>
¹⁶ EUCO 17/21.

¹⁷ WHO-2019-nCoV-Policy-Brief-Risk-based-international-travel-2021.1, available at: <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-Brief-Risk-based-international-travel-2021.1>

These rules either apply to domestic use-cases only, or also apply to the use of vaccination certificates for the purpose of travel.

On 24 November 2021, ECDC issued a Rapid Risk Assessment¹⁸ indicating that EU/EEA countries should urgently consider a booster dose for those 40 years and over, targeting the most vulnerable and the elderly and that countries could also consider a booster dose for all adults 18 years and older at least 6 months after completing their primary series to increase protection against infection due to waning immunity. This could potentially reduce the transmission in the population and prevent additional hospitalisations and deaths.

To avoid diverging and disruptive measures, the Commission proposes to establish, for the purpose of travel, a standard acceptance period of 9 months for vaccination certificates. This takes into account the guidance of ECDC regarding the administration of booster doses as of 6 months after completion of the primary vaccination series, and provides for an additional period of 3 months to ensure that national vaccination campaigns can adjust and citizens can have access to the administration of boosters. To ensure a coordinated approach, Member States should not accept vaccination certificates issued following the completion of the primary vaccination series if more than 9 months have passed since the administration of the dose indicated therein.

The standard acceptance period of 9 months should apply to certificates issued following the completion of the primary vaccination series. Member States should immediately take all necessary steps to ensure access to vaccination for those population groups whose previously issued vaccination certificates approach the limit of the standard acceptance period, with full regard for domestic decisions on prioritisation for different population groups in the vaccination roll-out in light of national policy and the epidemiological situation.

As reported by ECDC, the follow-up times after administration of booster doses in the available studies are short, and further monitoring of data is needed to determine the duration of immunity following the booster dose against infection, mild disease and severe disease. As of yet, there are no studies expressly addressing the effectiveness of boosters on transmission of SARS-CoV-2 and therefore for now it is not possible to determine an acceptance period for boosters. However, the emerging data on their effectiveness on restoring a high protection against infection indicate that booster doses are also likely to have an important impact on limiting onward transmission and it can reasonably be expected that protection from booster vaccinations may last longer than that resulting from the primary series.

This proposed approach needs to be carefully and closely monitored to assess whether adaptations or changes might be needed on the basis of newly emerging scientific evidence. On the basis of such evidence, the Commission may, if needed, put forward a proposal to apply an appropriate acceptance period also for certificates issued following the administration of a booster dose. It must be duly noted that while vaccines at this stage continue to be highly effective against severe disease, hospitalisations and deaths, the protection against infection and transmission may be subject to decrease over time. In addition, a slight decrease in protection among older individuals and those with clinical risk factors for more severe disease has been observed.

As outlined above, measures made necessary by the COVID-19 pandemic should thus be applied at the personal instead of the regional level, meaning that travellers with a valid certificate should in principle not be subject to additional restrictions. At the same time, the traffic light map showing the epidemiological situation at the regional level should be

¹⁸ <https://www.ecdc.europa.eu/en/publications-data/rapid-risk-assessment-sars-cov-2-november-2021>

maintained in an adapted form, as it is a useful and easily understandable tool for the public and Member States' authorities. In addition to serving as an information-tool, the map should form the basis for specific rules regarding travel from areas with particularly low or particularly high levels of circulation of the virus.

Travellers arriving from areas where the virus is circulating at very low levels, should, in line with the principle of proportionality, not be subject to any restrictions. Such travellers should thus not be required to be in the possession of an EU Digital COVID Certificate or undergo a test for SARS-CoV-2 infection when exercising free movement within the Union. This is without prejudice to the domestic use in the Member States (access to events, restaurants, etc.). Of course, many such travellers will nevertheless be in the possession of a certificate, notably as result of vaccination.

On the other hand, particular attention should be paid to areas where the virus is circulating at very high levels, given the increased likelihood of importing cases from these areas, as well as the strain that prolonged periods of high case numbers can put on these areas' public healthcare systems. To mitigate these public health risks, Member States should advise against all non-essential travel to and from such areas. In addition, persons not in the possession of a vaccination or recovery certificate arriving from such areas should be required to undergo tests and quarantine/self-isolate.

Possibly newly emerging SARS-CoV-2 variants remain a cause for concern and should be carefully monitored. ECDC regularly assesses new evidence on variants detected through epidemic intelligence, rules-based genomic variant screening, or other scientific sources¹⁹. To obtain timely and accurate information on the emergence and circulation of SARS-CoV-2 variants of concern or interest, it is also important that Member States maintain or attain a sufficiently high sequencing volume. Insufficient sequencing volume limits the ability to detect circulating variants of concern before they have an impact on the overall epidemiological situation. In this context, the framework for the definition and assessment of criteria that could result in the triggering of public health interventions against variants of concern, currently being developed by the European expert group on SARS-CoV-2 variants²⁰, should be taken into account once available.

The SARS-CoV-2 variants 'Alpha' and 'Delta' have demonstrated the negative impact new SARS-CoV-2 variants can have on the epidemiological situation. While it may be very difficult to stop the spread of a variant once it has been detected within the Union, given their potential impact, the Commission proposes a procedure for a coordinated approach to delay the spread of new variants within the Union. This should also apply to situations where Member States impose, in accordance with Union law, restrictions because the epidemiological situation in an area worsens quickly, in particular in areas already seriously affected.

In view of the extent of the changes to the approach as set out in Council Recommendation (EU) 2020/1475 as amended, the Commission proposes to replace it with a new Council Recommendation rather than to amend it further. In addition, the Commission proposes to link its period of application to Regulation (EU) 2021/953, as both instruments are meant to expire once the COVID-19 pandemic has ended and no further pandemic-related restrictions to free movement are needed.

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

²⁰ <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=3791&fromMeetings=true&meetingId=27935>

- **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**

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 EU 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 coordinated framework among Member States should be centred upon possession of an EU Digital COVID Certificate. Travellers with a certificate meeting certain conditions should not be subject to additional restrictions to free movement:

- Possession of a valid vaccination certificate should qualify if it indicates that sufficient time has passed since full vaccination as defined in the recommendation, and provided that not more than 9 months have passed since the date of vaccination, where the certificate was issued following the completion of the primary vaccination series.
- Possession of a valid test certificate should qualify if it falls within the standard validity periods defined in the recommendation;
- Possession of a valid recovery certificate should qualify if it indicates that less than 180 days have passed since the date of the first positive test result.

Where reference is made to the EU Digital COVID Certificate, this should also include COVID-19 certificates issued to Union citizens and their family members by third countries covered by so-called ‘equivalence decisions’ adopted pursuant to Article 3(10) or Article 8(2) of Regulation (EU) 2021/953 for the purpose of facilitating the right of free movement within the Union.

Persons not in the possession of an EU Digital COVID Certificate could be required to undergo a test for SARS-CoV-2 infection prior to or after arrival.

Quarantine should be required only in exceptional circumstances as set out in the recommendation, namely:

- in case of travellers not in the possession of a vaccination or recovery certificate arriving from areas where the virus is circulating at very high levels; or
- in response to a new SARS-CoV-2 variant of concern or interest.

In a limited number of cases, persons exercising free movement rights should not be required to be in the possession of an EU Digital COVID Certificate:

- Persons travelling for an essential function or need²¹ and cross-border communities.
- Persons travelling from areas where the virus is circulating at very low levels, given the limited risk of carrying the virus.

In addition, specific rules should apply to children exercising free movement rights:

- When travelling from areas other than those where the virus is circulating at very high levels, children under 12 years of age should not be required to be in the possession of an EU Digital COVID Certificate;
- When travelling from areas where the virus is circulating at very high levels, children aged 6 to 12 years in the possession of a valid EU Digital COVID Certificate or a negative test for SARS-CoV-2 infection, be it a vaccination, test or recovery certificate, should not be required to undergo quarantine/self-isolation;
- When travelling from areas where the virus is circulating at very high levels, children under 6 years of age should be exempt from the requirement to undergo travel-related quarantine/self-isolation or tests for SARS-CoV-2 infection.

To address SARS-CoV-2 variants of concern or interest, and in particular to ensure a coordinated approach regarding efforts aimed at delaying the spread of a new variant within the Union, the so-called ‘emergency brake’ procedure should be streamlined and simplified:

- If a Member State considers it necessary to impose measures on travel from another Member State due to the emergence of a new variant of concern or interest or due to a rapidly deteriorating epidemiological situation in a Member State or region thereof, it should inform the Commission and the Council as soon as possible.
- A roundtable of the Council’s Integrated Political Crisis Response (IPCR) arrangements should be organised, giving the Member State concerned the opportunity to outline the reasoning for its measures. Similarly, based on ECDC’s ongoing surveillance activities, the Commission may suggest that a roundtable is called.
- At this occasion, the Commission may suggest a coordinated approach regarding travel from the affected Member State/region aimed, in particular, at delaying the spread of the variant within the EU (for example testing requirements for vaccinated/recovered persons, quarantine requirements for all/unvaccinated travellers, etc.).
- The IPCR may then conclude to recommend the implementation of these measures by all Member States. The situation should then be reviewed regularly, and the Commission or Member States may suggest lifting the specific measures taken.
- In addition, ECDC should continue to publish its maps on SARS-CoV-2 variants, notably on sequencing volumes and variant distribution.

To continue to provide the public and Member States’ authorities with information as to the evolution of the epidemiological situation across the Union, the regional traffic light map should be maintained. Taking into account the progress in terms of vaccine uptake, the map’s criteria and thresholds should, however, be adapted. The criterion of new cases should be weighted by the vaccine uptake in the same region, to take into account that vaccination reduces the risk of transmitting SARS-CoV-2. For example, in an area where half of the

²¹ This list is more limited than before as many essential travellers have had the opportunity to be vaccinated in the meantime.

population is vaccinated, the weighted rate should amount to 75% of the case notification rate. The resulting weighted rate should be assigned a colour-code²² using the thresholds of the risk assessment model developed by ECDC²³ regarding the 14-day case notification rate, except for regions with an insufficient testing rate. The specifics of the map should be included in an annex to the recommendation.

In addition to providing information, the traffic light map should be used to determine, for the purposes outlined above, the areas where the virus is circulating at very low levels (indicated in green), as well as the areas where the virus is circulating at very high levels (indicated in dark red)²⁴.

²² Green, orange, red, dark red, dark grey, where the testing rate is insufficient, or grey, when insufficient data is available.

²³ Described in Annex 2 of the 15th update of ECDC's Risk Assessment for COVID-19, available at: <https://www.ecdc.europa.eu/sites/default/files/documents/RRA-15th-update-June%202021.pdf>

²⁴ The standard rules should thus apply to persons travelling from 'orange', 'red', 'dark grey' or 'grey' areas.

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

(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) Citizenship of the Union confers on every citizen of the Union the right of free movement.
- (2) Pursuant to Article 21(1) of the Treaty, every citizen of the Union has 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. Directive 2004/38/EC of the European Parliament and of the Council²⁵ gives effect to that right. Article 45 of the Charter of Fundamental Rights of the European Union (the Charter) also provides for freedom of movement and residence. Since the action of the Union proves necessary to attain the objective laid down in Article 21 of the Treaty, and the Treaties do not otherwise provide the necessary powers, the Council may adopt provisions with a view to facilitating the exercise of the rights to move and reside freely.
- (3) Pursuant to Article 168(1) of the Treaty, a high level of human health protection is to be ensured in the definition and implementation of all Union policies and activities.
- (4) On 30 January 2020, the Director-General of the World Health Organization (WHO) declared a public health emergency of international concern over the global outbreak of novel coronavirus, which causes Coronavirus disease 2019 (COVID-19). On 11 March 2020, the WHO made the assessment that COVID-19 can be characterized as a pandemic.
- (5) To limit the spread of the virus, the Member States have adopted various measures, some of which have had an impact on Union citizens' right to move and reside freely within the territory of the Member States, such as restrictions on entry or requirements

²⁵ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

for cross-border travellers exercising free movement rights to undergo tests for SARS-CoV-2 infection.

- (6) As the COVID-19 pandemic has caused an unprecedented health emergency, the protection of public health has become an overriding priority for both the Union and its Member States. On the basis of the protection of public health, Member States may take measures that restrict the free movement of persons within the Union. According to Article 168(7) of the Treaty, the definition of national health policies, including the organisation and delivery of health services and medical care, is the responsibility of Member States and may therefore vary from one Member State to another. While Member States are competent to decide on the most appropriate measures to safeguard public health, it is appropriate to ensure the coordination of such measures, with a view to safeguarding the exercise of the right of free movement and combatting a serious cross-border threat to health such as COVID-19.
- (7) When adopting and applying restrictions to free movement, Member States should respect principles of Union law, in particular proportionality and non-discrimination. This Recommendation is intended to facilitate the application of these principles, in a coordinated manner, to the exceptional situation caused by the COVID-19 pandemic.
- (8) Unilateral measures in this area have the potential to cause significant disruptions as businesses and citizens are confronted with a wide array of diverging and rapidly changing measures. This is particularly harmful in a situation where the economy of the Union has already been significantly affected by the virus.
- (9) A coordinated approach aims to prevent the reintroduction of internal border controls. Border closures or blanket travel bans, as well as suspension of flights, land transport and water crossings, are not justified, as more targeted and coordinated measures, such as COVID-19 certificates or testing, have a sufficient impact and cause less disruption. The system of 'Green Lanes'²⁶ should keep transport flows moving, in particular to ensure the free movement of goods and services, thus avoiding supply chain disruptions.
- (10) To ensure increased coordination among Member States, the Council adopted, on 13 October 2020, Recommendation (EU) 2020/1475²⁷. That Recommendation established a coordinated approach on the following key points: the application of common criteria and thresholds when deciding whether to introduce restrictions to free movement, a mapping of the risk of COVID-19 transmission based on an agreed colour code, and a coordinated approach as to the measures, if any, which may appropriately be applied to persons moving between areas, depending on the level of risk of transmission in those areas. On 1 February 2021, the Council adopted Recommendation (EU) 2021/119²⁸ amending Recommendation (EU) 2020/1475 in view of a very high level of community transmission across the Union, possibly linked to the increased transmissibility of the new SARS-CoV-2 variants of concern.

²⁶ Communication from the Commission on upgrading the transport Green Lanes to keep the economy going during the COVID-19 pandemic resurgence (COM(2020) 685 final).

²⁷ 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).

²⁸ 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 36 I, 2.2.2021, p. 1).

- (11) On 14 June 2021, the European Parliament and the Council adopted 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 pandemic²⁹. The framework was established to facilitate EU Digital COVID Certificate holders' exercise of their right to free movement during the COVID-19 pandemic. That Regulation is also to contribute to facilitating the gradual lifting of restrictions to free movement put in place by the Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner.
- (12) Regulation (EU) 2021/953 started applying as of 1 July 2021. Since that date, vaccinated, tested or recovered persons have had a right to obtain an EU Digital COVID certificate following vaccination, test or recovery in a Member State. To make best use of the EU Digital COVID Certificate framework, the Council adopted, on 14 June 2021, Recommendation (EU) 2021/961³⁰ amending Recommendation (EU) 2020/1475.
- (13) Since June 2021, two important developments with an impact on free movement within the Union have taken place. First, vaccine uptake has increased significantly, with the cumulative uptake of full vaccination among the total Union population reaching more than 65% by 19 November 2021³¹ compared to less than 30% when the latest amendment to Recommendation (EU) 2020/1475 and Regulation (EU) 2021/953 were adopted³². A significantly higher percentage of the population is thus better protected from falling seriously ill and dying from COVID-19 as a result of the currently available COVID-19 vaccines. Second, the rollout of the EU Digital COVID Certificate has progressed at rapid pace. By November 2021, Member States have issued more than 650 million EU Digital COVID Certificates. The EU Digital COVID Certificate is thus a widely available, reliable and accepted tool to facilitate free movement during the COVID-19 pandemic. The EU Digital COVID Certificate framework is not only used by the EU Member States, the three non-EU European Economic Area countries and Switzerland³³, but also by 20 other third countries and territories, with more third countries expected to join in the future. At the same time, the epidemiological situation within the Union remains challenging, justifying the maintenance of measures aimed at protecting public health.
- (14) In view of these developments, the common approach set out in Council Recommendation (EU) 2020/1475 should be adapted further, as also requested by the European Council in its conclusions of 22 October 2021³⁴. In particular, a person's COVID-19 vaccination, test or recovery status, as evidenced by an EU Digital COVID Certificate, should be the key determinant. As EU Digital COVID Certificates can be safely issued, verified and accepted, travellers in the possession of a valid EU Digital COVID Certificate should not be subject to additional restrictions to free movement,

²⁹ OJ L 211, 15.6.2021, p. 1.

³⁰ 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).

³¹ <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#summary-tab>

³² <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab>

³³ Commission Implementing Decision (EU) 2021/1126 of 8 July 2021 establishing the equivalence of COVID-19 certificates issued by Switzerland to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and of the Council (OJ L 243, 9.7.2021, p. 49).

³⁴ EUCO 17/21.

such as further tests for SARS-CoV-2 infection. In particular, persons travelling within the Union should in principle not be required to undergo quarantine, given that it constitutes a significant restriction to free movement.

- (15) This is supported by recommendations issued by the WHO³⁵, according to which fully vaccinated travellers, as well as travellers who have recovered from COVID-19 within the 6 months prior to travelling, should not be subject to additional restrictions. Persons who do not fall within these two categories should in principle be able to travel based on a negative test for SARS-CoV-2 infection.
- (16) To simplify free movement within the Union, it is necessary to set out a common understanding of the conditions that the three types of EU Digital COVID Certificates should meet in order to be accepted.
- (17) Vaccination certificates issued for a COVID-19 vaccine that has been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council³⁶ should be accepted once at least 14 days have passed since full vaccination. Persons who have received the second dose in a two-dose COVID-19 vaccine series, including where two doses of different COVID-19 vaccines have been administered according to national vaccination strategies, and persons who have received a single dose vaccine should be considered as fully vaccinated. Without prejudice to Member States' competence to set their vaccination strategies, a person having received a single dose of a two-dose COVID-19 vaccine that has been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004 after having previously been infected with SARS-CoV-2 should also be considered, in the context of travel, as fully vaccinated, where it is indicated in the vaccination certificate that the vaccination course has been completed following the administration of one dose.
- (18) Most Member States have already announced or have already started to administer COVID-19 vaccine doses additional to the standard primary vaccination series, that is, the vaccination series intended to provide sufficient protection at an initial stage, notably extra doses to persons who may not have responded adequately to the primary vaccination series. Many Member States have also announced or have already started to administer booster doses for people who responded adequately to primary vaccination but show signs of waning immunity.
- (19) On 4 October 2021, the European Medicines Agency's Committee for Medicinal Products for Human Use concluded that an extra dose of the COVID-19 vaccines Comirnaty and Spikevax may be given to people with severely weakened immune systems, at least 28 days after their second dose³⁷. The Committee also evaluated data for Comirnaty showing a rise in antibody levels when a booster dose is given approximately 6 months after the second dose in people from 18 to 55 years old. On the basis of this data, the Committee concluded that booster doses for Comirnaty may be considered at least 6 months after the second dose for people aged 18 years and older. On 25 October 2021, the Committee concluded that a booster dose of Spikevax

³⁵ WHO-2019-nCoV-Policy-Brief-Risk-based-international-travel-2021.1, available at: <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-Brief-Risk-based-international-travel-2021.1>

³⁶ 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 L 136, 30.4.2004, p. 1).

³⁷ <https://www.ema.europa.eu/en/news/comirnaty-spikevax-ema-recommendations-extra-doses-boosters>

may be considered in people aged 18 years and above. This follows data showing that a third dose of Spikevax given 6 to 8 months after the second dose led to a rise in antibody levels in adults whose antibody levels were waning. The booster dose consists of half the dose used for the primary vaccination schedule. As stated by the European Medicines Agency, public health bodies at national level may issue official recommendations on the use of booster doses, taking into account emerging effectiveness data and the limited safety data. The product information documents of Comirnaty³⁸ and Spikevax³⁹ have been updated accordingly to include these recommendations.

- (20) To avoid diverging, confusing or technically incompatible approaches among Member States, the Commission adopted, on 17 November 2021, Implementing Decision (EU) 2021/2014⁴⁰ setting out uniform rules for populating vaccination certificates referred to in point (a) of Article 3(1) of Regulation (EU) 2021/953 issued following the administration of additional COVID-19 vaccination doses.
- (21) In this context, the European Centre for Disease Prevention and Control published, on 24 November 2021, a Rapid Risk Assessment on assessing the current SARS-CoV-2 epidemiological situation, projections for the end-of-year festive season and strategies for response in the EU/EEA⁴¹. According to the European Centre for Disease Prevention and Control, EU/EEA countries should urgently consider a booster dose for those 40 years and over, targeting the most vulnerable and the elderly, and that countries could also consider a booster dose for all adults 18 years and older at least 6 months after completing their primary series to increase protection against infection due to waning immunity, which could potentially reduce the transmission in the population and prevent additional hospitalisations and death.
- (22) The currently available evidence regarding ‘real world’ vaccine effectiveness and the duration of protection shows that all Union-authorized vaccines are, for the moment, highly protective against COVID-19-related hospitalisation, severe disease and death, albeit with some evidence of a slight decrease in protection among older individuals and those with clinical risk factors for more severe disease.
- (23) In connection with the administration of booster doses, more and more Member States are adopting rules as to how long vaccination certificates issued following the primary vaccination series should be accepted, taking into account that the resulting protection from infection with COVID-19 appears to be waning over time. These rules either apply to domestic use-cases only, or also apply to the use of vaccination certificates for the purpose of travel. To avoid diverging and disruptive measures, it is necessary to establish, for the purpose of travel, a standard acceptance period for vaccination certificates.
- (24) This standard acceptance period for certificates issued following the completion of the primary vaccination series should be set at 9 months. This takes into account the

³⁸ https://www.ema.europa.eu/en/documents/product-information/comirnaty-epar-product-information_en.pdf

³⁹ https://www.ema.europa.eu/en/documents/product-information/spikevax-previously-covid-19-vaccine-moderna-epar-product-information_en.pdf

⁴⁰ Commission Implementing Decision (EU) 2021/2014 of 17 November 2021 amending Implementing Decision (EU) 2021/1073 laying down technical specifications and rules for the implementation of the trust framework for the EU Digital COVID Certificate established by Regulation (EU) 2021/953 of the European Parliament and of the Council (OJ L 410, 18.11.2021, p. 180).

⁴¹ <https://www.ecdc.europa.eu/en/publications-data/rapid-risk-assessment-sars-cov-2-november-2021>

guidance of ECDC regarding the administration of booster doses as of 6 months after completion of the primary vaccination series, and provides for an additional period of 3 months to ensure that national vaccination campaigns can adjust and citizens can have access to the administration of boosters. To ensure a coordinated approach, Member States should not accept vaccination certificates issued following the completion of the primary vaccination series if more than 9 months have passed since the administration of the dose indicated therein. Within this standard acceptance period, vaccination certificates that have been issued following the completion of the primary vaccination series should continue to be accepted by a Member State even if it is already administering additional doses.

- (25) Member States should immediately take all necessary steps to ensure access to ensure access to vaccination for those population groups whose previously issued vaccination certificates approach the limit of the standard acceptance period, with full regard for domestic decisions on prioritisation for different population groups in the vaccination roll-out in light of national policy and the epidemiological situation.
- (26) As reported by the European Centre for Disease Prevention and Control, the follow-up times after administration of the booster dose in the available studies are short, and further monitoring of data is needed to determine the duration of immunity following the booster dose against infection, mild disease and severe disease. As of yet, there are no studies expressly addressing the effectiveness of boosters on transmission of SARS-CoV-2 and therefore for now it is not possible to determine an acceptance period for boosters. However, the emerging data on their effectiveness on restoring a high protection against infection indicate that booster doses are also likely to have an important impact on limiting onward transmission and it can reasonably be expected that protection from booster vaccinations may last longer than that resulting from the primary series.
- (27) The Commission should be invited to monitor and to regularly re-evaluate the approach regarding the acceptance period to assess whether adaptations or changes might be needed on the basis of newly emerging scientific evidence including in relation to the acceptance period for certificates issued following the administration of a booster dose.
- (28) To simplify free movement within the Union, the standard validity periods for test certificates should be maintained. The sampling required for a molecular nucleic acid amplification test (NAAT) should, in order to be eligible, be carried out not more than 72 hours prior to arrival. A shorter validity period of not more than 48 hours is justified for rapid antigen tests listed in Annex I of the EU common list of COVID-19 rapid antigen tests agreed by the Health Security Committee⁴².
- (29) Over the last couple of months, the clinical performance of rapid antigen tests has improved. In May 2021, the Technical Working Group on COVID-19 diagnostic tests established by the Health Security Committee⁴³, responsible for maintaining the EU common list of rapid antigen tests, put in place a more structured, coherent and swift procedure for updating the list. Moreover, on 21 September 2021, the Technical Working Group agreed on additional definitions and criteria that should be considered for independent validation studies assessing the clinical performance of rapid antigen

⁴² Available at: https://ec.europa.eu/health/sites/default/files/preparedness_response/docs/covid-19_rat_common-list_en.pdf

⁴³ https://ec.europa.eu/health/security/crisis-management/twg_covid-19_diagnostic_tests_en

tests for COVID-19 diagnosis. Only rapid antigen test results based on nasal, oropharyngeal and/or nasopharyngeal specimens should be valid for the issuance of test certificates in the EU Digital COVID Certificate format. The Technical Working Group agreed to exclude from the list rapid antigen tests solely based on alternative sample types such as saliva. Furthermore, neither pooled rapid antigen tests nor rapid antigen self-tests are included in the list, further increasing the likely consistency of the performance of the tests included. The seventh and latest update of the common list was agreed by the Health Security Committee on 10 November 2021. Given these improvements, all Member States should, for the purpose of travel, accept both test certificates issued following a NAAT and test certificates issued following a rapid antigen test featured in the EU common list.

- (30) In view of evidence supporting a recommendation that people who have recovered from laboratory-confirmed COVID-19 do not need additional travel-related testing for SARS-CoV-2 infection or travel-related self-isolation or quarantine at least within the first 180 days of the first positive NAAT test, holders of such recovery certificates should also be exempted from additional travel restrictions for that period.
- (31) The EU Digital COVID Certificate system offers the possibility for validation rules to be applied automatically to the certificates' datasets, ensuring that travel rules are applied quickly, reliably and predictably. To facilitate the application of EU Digital COVID certificate validation rules, Member States should make use of the standardised business rules processing functionality offered by the EU Digital COVID Certificate system⁴⁴.
- (32) Since the adoption of Regulation (EU) 2021/953, the Commission has adopted several implementing acts establishing that COVID-19 certificates issued by a certain third country to Union citizens and their family members are to be considered as equivalent to certificates issued by Member States in accordance with that Regulation with a view to facilitating the free movement of their holders. Where this Recommendation makes reference to EU Digital COVID Certificates issued in line with Regulation (EU) 2021/953, this should be understood as also covering certificates issued to Union citizens and their family members covered by these implementing acts. To facilitate free movement, Member States should also be encouraged to issue EU Digital COVID Certificates pursuant to Article 8(1) of Regulation (EU) 2021/953 to persons covered by that provision having been vaccinated in third countries, in particular third countries the certificates of which are not covered by such implementing acts.
- (33) As stated in Article 3(6) of Regulation (EU) 2021/953, possession of an EU Digital COVID Certificate is not to be a precondition for exercising the right to free movement. Therefore, persons not in the possession of an EU Digital COVID Certificate should not be prevented from travelling, but could, if necessary, be required to undergo a test for SARS-CoV-2 infection prior to or after arrival to reduce the risk of imported infections.
- (34) This Recommendation covers the use of the EU Digital COVID Certificate to facilitate free movement within the Union during the COVID-19 pandemic. It neither prescribes nor prohibits the use of COVID-19 certificates for domestic purposes, such as access to events, venues or the workplace. As noted in Recital 48 of Regulation (EU) 2021/953, where a Member State decides to use EU Digital COVID Certificates for other purposes, the legal basis for such domestic uses has to be provided for in

⁴⁴ https://ec.europa.eu/health/sites/default/files/ehealth/docs/eu-dcc_validation-rules_en.pdf

national law, which has to comply, among other things, with data protection requirements. As noted in Recital 49 of Regulation (EU) 2021/953, where a Member State has established a system of COVID-19 certificates for domestic purposes, it should ensure that the EU Digital COVID Certificates can also be used and are fully accepted. This is to make sure that holders of such certificates going to another Member State in exercise of their right of free movement do not have to obtain an additional national certificate.

- (35) Given their specific situation or essential function, certain categories of travellers exercising their right of free movement should not be required to be in the possession of an EU Digital COVID Certificate. At the same time, this list could be more limited compared to Recommendation (EU) 2020/1475, given that many persons travelling for an essential function or need are already vaccinated. It should cover transport workers or transport service providers, patients travelling for imperative medical reasons, seafarers, persons who cross borders daily or frequently to go to work or school, visit close relatives, seek medical care, or to take care of loved ones, and children under the age of 12 years.
- (36) In view of the progress made in terms of vaccine uptake and the successful rollout of the EU Digital COVID Certificate, COVID-19 travel measures should be applied at the personal instead of the regional level, meaning that travellers exercising their right of free movement with a valid certificate should, in principle, not be subject to additional restrictions. At the same time, the traffic light map indicating the epidemiological situation at regional level should be maintained, as it is a useful and easily understandable tool for the public and Member States' authorities. The map's criteria and thresholds, as set out in Council Recommendation (EU) 2020/1475, should nevertheless be adapted in order to give greater emphasis to newly notified COVID-19 cases as the key criterion to approximate the risk of a traveller importing infections with SARS-CoV-2. This criterion should be weighted by the vaccine uptake in the same region, to take into account that vaccination reduces the risk of transmitting SARS-CoV-2. The resulting weighted rate should be assigned a colour-code using the thresholds of the risk assessment model developed by ECDC, except for regions with an insufficient testing rate. The specifics of the map should be included in an annex to the Recommendation. Using data provided by the Member States, the map should be published by the European Centre for Disease Prevention and Control on a weekly basis.
- (37) Given the limited risk of travellers arriving from areas where the virus is circulating at very low levels carrying the virus, they should, in line with the principles of necessity and proportionality, not be subject to any restrictions, and should thus also not be required to be in the possession of an EU Digital COVID Certificate or be tested for SARS-CoV-2 infection.
- (38) Particular attention should be paid to areas where the virus is circulating at very high levels, given the increased likelihood of imported cases from these areas, as well as the strain that prolonged periods of high case numbers can put on these areas' public healthcare systems. To mitigate these public health risks, Member States should advise against all non-essential travel to and from such areas. In addition, persons not in the possession of a vaccination or recovery certificate arriving from such areas should be required to undergo a test for SARS-CoV-2 infection prior to departure as well as undergo post-arrival quarantine/self-isolation. Exceptions for essential travellers, in particular for transport workers and transport service providers, should apply in order

to limit the disruption to the internal market and to preserve the functioning of the ‘Green Lanes’.

- (39) To ensure unity of travelling families, children under the under the age of 12 years who are in the possession of a valid EU Digital COVID Certificate, be it a vaccination certificate, a test certificate, or a certificate of recovery, or a negative test for SARS-CoV-2 infection, should not be required to undergo travel-related quarantine/self-isolation. In addition, children under the age of 6 years should be exempt from the requirement to undergo travel-related quarantine/self-isolation or tests for SARS-CoV-2 infection.
- (40) The emergence of new SARS-CoV-2 variants remain a cause for concern and should be taken into account by Member States in the context of restrictions to free movement in response to the COVID-19 pandemic. The European Centre for Disease Prevention and Control regularly assesses new evidence on variants detected through epidemic intelligence, rules-based genomic variant screening, or other scientific sources⁴⁵. This covers, in particular, variants of concern, for which clear evidence is available indicating a significant impact on transmissibility, severity and/or immunity that is likely to have an impact on the epidemiological situation in the EU/EEA, and variants of interest, for which evidence is available on genomic properties, epidemiological evidence or in-vitro evidence that could imply a significant impact on transmissibility, severity or immunity, realistically having an impact on the epidemiological situation in the EU/EEA. To provide an overview of the proportion of variants of concern and variants of interest in the EU/EEA together with sequencing volumes, the European Centre for Disease Prevention and Control is also publishing, on a weekly basis, maps and other data⁴⁶. To obtain timely and accurate information on the emergence and circulation of SARS-CoV-2 variants of concern or interest, it is important that Member States maintain or attain a sufficiently high sequencing volume. Insufficient sequencing volume results in poor ability to detect circulating variants of concern before they have an impact on the overall epidemiological situation. At the same time, it is important that Member States take into account the differences in sequencing volume, so as not to discourage high levels of sequencing.
- (41) The SARS-CoV-2 variants ‘Alpha’ and ‘Delta’, the latter having become the dominant variant within the Union, have demonstrated the negative impact new SARS-CoV-2 variants can have on the epidemiological situation. While it may be very difficult to stop the spread of a variant once it has been detected within the Union, given their potential impact, it is nevertheless appropriate to establish an emergency brake procedure for a coordinated approach that aims to delay the spread of new variants within the Union. To ensure coordination among Member States, this should also apply to situations where Member States impose, in accordance with Union law, restrictions because the epidemiological situation in an area worsens quickly, in particular in areas already seriously affected.
- (42) As set out in Regulation (EU) 2021/953, where a Member State requires, in accordance with Union law, holders of the EU Digital COVID Certificate 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 because, for example, the epidemiological situation in a Member State or in a region

⁴⁵ <https://www.ecdc.europa.eu/en/covid-19/variants-concern>

⁴⁶ https://covid19-country-overviews.ecdc.europa.eu/#4_EUEEA:_variants_of_concern

within a Member State worsens quickly, in particular as a result of a SARS-CoV-2 variant of concern or interest, it is to inform the Commission and the other Member States accordingly, if possible 48 hours in advance of the introduction of such new restrictions. To that end, the Member State is to provide the reasons for and scope of such restrictions, specifying which certificate holders are subject to or exempt from such restrictions, and the date and duration of such restrictions, including to outline their compliance with the principles of proportionality and non-discrimination.

- (43) The emergency brake procedure could be triggered either by a Member State, based on the information to be submitted pursuant to Regulation (EU) 2021/953, or by the Commission, based on the regular assessment of new evidence on variants by the European Centre for Disease Prevention and Control. It may result in an agreement, based on a proposal by the Commission, to apply, for a limited period of time, additional restrictions on travel from the areas concerned, such as testing or quarantine/self-isolation requirements for travellers or both. The framework for the definition and assessment of criteria that could result in the triggering of public health interventions against variants of concern, currently being developed by the European expert group on SARS-CoV-2 variants⁴⁷, should be taken into account once available.
- (44) To preserve the functioning of the ‘Green Lanes’, testing requirements imposed on transport workers and transport service providers as a result of the emergency brake being triggered should be limited to rapid antigen tests, and no quarantine/self-isolation should be required. Such testing requirements should not lead to transport disruptions. Should transport or supply chain disruptions occur, any such systematic testing requirements should be lifted or repealed immediately.
- (45) Contact tracing remains a central pillar of the fight against the spread of the virus, especially in connection with the emergence of new variants. At the same time, effective and timely contact tracing is more challenging when it needs to be performed across borders and for high volumes of passengers travelling close to each other. To facilitate this, a common Digital Passenger Locator Form (‘PLF’)⁴⁸ has been developed, and Member States should be encouraged to make use of this common format to facilitate travel. Member States should also be encouraged to join the PLF Exchange Platform, established on the basis of Commission Implementing Decision (EU) 2021/858⁴⁹, to enhance their cross-border contact tracing capabilities for all transport modes. The PLF exchange platform allows for the secure, timely and effective exchange of data between the competent authorities of the Member States, by enabling them to transmit information from their existing national digital PLF systems and relevant epidemiological information to other competent authorities in an interoperable and automatic manner.
- (46) Where PLFs are also used for purposes other than contact tracing, such as to determine whether an incoming traveller is to undergo a test for SARS-CoV-2 infection, failure to submit a PLF on time before arrival should not result in the traveller being denied of entry into the country concerned, as this would amount to a serious restriction of free

⁴⁷ <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=3791&fromMeetings=true&meetingId=27935>

⁴⁸ <https://www.euplf.eu/en/home/index.html>

⁴⁹ 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).

movement. Where appropriate, such travellers could however be required to undergo other measures, such as a post-arrival test for SARS-CoV-2 infection.

- (47) Clear, timely and comprehensive information to the general public remains crucial to limit the impacts of any restrictions to free movement put in place, ensuring predictability, legal certainty and compliance by citizens. Member States should provide such information in a timely manner, including via the 'Re-open EU' web platform⁵⁰. Member States should also be encouraged to provide, on 'Re-open EU', information on the domestic use of EU Digital COVID Certificates, given the relevance of such information to travellers from other Member States.
- (48) In view of the evolving epidemiological situation, and as more relevant scientific evidence becomes available, the Commission, supported by the European Centre for Disease Prevention and Control, should regularly review this Recommendation, and transmit its findings to the Council for its consideration, together with a proposal to amend the Recommendation, where necessary.
- (49) Given that this Recommendation adapts and further develops the common approach to facilitate safe free movement during the COVID-19 pandemic, Council Recommendation (EU) 2020/1475 should be replaced.
- (50) To allow for sufficient time for the coordinated approach set out in this Recommendation to be implemented, the Recommendation should apply as of 10 January 2022.
- (51) In line with the principle of proportionality, the mechanisms put in place by this Recommendation should be strictly limited in scope and time to restrictions adopted in response to this pandemic. At the latest when Regulation (EU) 2021/953 ceases to apply, this Recommendation should also cease to apply,

HAS ADOPTED THIS RECOMMENDATION:

General Principles

When adopting and applying measures to protect public health in response to the COVID-19 pandemic, Member States should coordinate their actions based on the following principles:

1. Any restrictions to the free movement of persons within the Union put in place to limit the spread of COVID-19 should be based on specific and limited public interest grounds, namely the protection of public health. It is necessary for such limitations to be applied in compliance with the general principles of Union law, in particular proportionality and non-discrimination. Any measures taken should thus not extend beyond what is strictly necessary to safeguard public health.
2. Any such restrictions should be lifted as soon as the epidemiological situation allows it.
3. Member States should ensure that any requirements imposed on citizens and businesses provide a concrete benefit to the public health efforts to combat the pandemic and do not create an undue and unnecessary administrative burden.
4. There may be no discrimination between Member States, for example by applying more generous rules to travel to and from a neighbouring Member State as compared to travel to and from other Member States in the same epidemiological situation.

⁵⁰ <https://reopen.europa.eu/en>

5. Restrictions may not be discriminatory, that is, they should apply equally to returning nationals of the Member State concerned. Restrictions cannot be based on the nationality of the person concerned.
6. Member States should always admit their own nationals and Union citizens and their family members resident in their territory. Member States should in principle not refuse the entry of other persons travelling from other Member States, and should facilitate swift transit through their territories.
7. Member States should pay particular attention to the specificities of cross-border regions, outermost regions, exclaves and geographically isolated areas and the need to cooperate at local and regional level.
8. Member States should avoid disruptions to supply chains and essential travel and should keep transport flows moving in line with the system of 'Green Lanes' system.
9. Member States should regularly exchange information on all matters covered by the scope of this recommendation.
10. Restrictions should not take the form of prohibitions on the operation of certain transport services.

Coordinated framework to facilitate safe free movement during the COVID-19 pandemic

11. Travellers in the possession of a valid EU Digital COVID Certificate issued pursuant to Regulation (EU) 2021/953 meeting the conditions of point 12 should not be subject to additional restrictions to free movement. In particular, persons travelling within the Union should not be required to undergo quarantine.

In this context, the following derogations should apply to the first subparagraph:

- (a) the exemptions set out in point 16;
 - (b) the exceptions set out in point 19(a) for arrivals from areas where the virus is circulating at very low levels and thus unlikely to result in significant level of imported cases;
 - (c) additional measures set out in point 19(c) for arrivals from areas where the virus is circulating at very high levels and thus likely to result in a significant level of imported cases;
 - (d) additional measures agreed pursuant to point 25 to delay the spread of new SARS-CoV-2 variants of concern or interest.
12. An EU Digital COVID Certificate should be accepted if its authenticity, validity and integrity can be verified and if it meets the following conditions:
 - (a) Vaccination certificates issued in line with Regulation (EU) 2021/953 for a COVID-19 vaccine covered by the first subparagraph of Article 5(5) of that Regulation and according to which at least 14 days have passed since full vaccination. Full vaccination should be understood as:
 - having received the second dose in a two-dose series;
 - having received a single-dose vaccine;
 - having received, in line with the vaccination strategy of the Member State of vaccination, a single dose of a two-dose vaccine after having previously been infected with SARS-CoV-2;

- having received an additional dose following the completion of the primary vaccination series;

provided that less than 9 months have passed since the date of vaccination indicated in the certificate, where the certificate was issued following the completion of the primary vaccination series.

Within the time-limit of 9 months, vaccination certificates issued following the completion of the primary vaccination series should, for the purpose of travel in exercise of free movement rights, continue to be accepted even if additional doses are administered in the Member States concerned.

Member States should ensure access to vaccination with booster doses for those population groups whose vaccination certificates approach the limit of the standard acceptance period.

Member States could also accept vaccination certificates issued in line with Regulation (EU) 2021/953 for COVID-19 vaccines covered by the second subparagraph of Article 5(5) of EU Digital COVID Certificate Regulation.

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 line with Regulation (EU) 2021/953 indicating a negative test result obtained:
- not more than 72 hours before arrival, in case of molecular nucleic acid amplification test (NAAT); or
 - not more than 48 hours before arrival, in case of a rapid antigen test (RAT) listed in the common and updated list of COVID-19 rapid antigen tests⁵¹ established on the basis of the Council Recommendation of 21 January 2021⁵².

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 line with Regulation (EU) 2021/953 indicating that less than 180 days have passed since the date of the first positive NAAT result.

- Member States should make use of the standardised business rules processing functionality offered by the EU Digital COVID Certificate system.
- Where this Recommendation makes reference to EU Digital COVID Certificates issued in line with Regulation (EU) 2021/953, this should be understood as also covering certificates covered by an implementing act adopted pursuant to Article 3(10) or Article 8(2) of that Regulation issued by third countries to Union citizens

⁵¹ Available at: https://ec.europa.eu/health/sites/default/files/preparedness_response/docs/covid-19_rat_common-list_en.pdf

⁵² Council Recommendation of 21 January 2021 on a common framework for the use and validation of rapid antigen tests and the mutual recognition of COVID-19 test results in the EU (OJ C 24, 22.1.2021, p. 1).

and their family members. Member States are also encouraged to issue vaccination certificates pursuant to Article 8(1) of Regulation (EU) 2021/953.

15. Persons not in the possession of an EU Digital COVID Certificate issued in line with Regulation (EU) 2021/953 could be required to undergo an NAAT or RAT listed in the common and updated list prior to or after arrival.

Exemptions

16. The following categories of travellers should not be required to be in the possession of a valid EU Digital COVID Certificate issued pursuant to Regulation (EU) 2021/953:
 - (a) the following types of travellers with an essential function or need, when exercising this essential function:
 - 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;
 - patients travelling for imperative medical reasons;
 - seafarers.
 - (b) persons living in border regions and travelling across the border on a daily or frequent basis for the purposes of work, business, education, family, medical care or caregiving;
 - (c) children under the age of 12 years.

EU traffic light map and exceptions and additional measures based thereon

17. Based on the data provided by the Member States, the European Centre for Disease Prevention and Control should publish a map of Member States, broken down by regions, indicating the potential risk of a person travelling from the region being infected with SARS-CoV-2 according to a traffic light system. This map should also include data from Iceland, Liechtenstein, Norway and, as soon as conditions allow⁵³, the Swiss Confederation.

The traffic light map should be based on the criteria, thresholds and colour code set out in the Annex. The European Centre for Disease Prevention and Control should also continue to publish separate maps on other epidemiological indicators.

18. Each week, the European Centre for Disease Prevention and Control should publish updated versions of the maps and the underlying data.
19. The traffic light map should serve to provide the public and Member States' authorities with information as to the evolution of the epidemiological situation across the Union. In addition, Member States should, based on the traffic light map, apply the following measures:

⁵³ Subject to an agreement concluded between the EU and the Swiss Confederation on the cooperation on public health, including on the participation of the Swiss Confederation to the European Centre for Disease Prevention and Control according to Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control (OJ L 142, 30.4.2004, p. 1).

- (a) persons travelling from areas classified as ‘green’ should not be required to be in the possession of a valid EU Digital COVID Certificate issued pursuant to Regulation (EU) 2021/953;
- (b) Member States should discourage all non-essential travel to and from areas classified as ‘dark red’;
- (c) persons not in the possession of a vaccination or recovery certificate arriving from areas classified as ‘dark red’ should be required to undergo an NAAT or RAT listed in the common and updated list prior to departure and to quarantine/self-isolate for ten days after arrival. Quarantine/self-isolation should end early if the person concerned undergoes, at the earliest on the fifth day after arrival, a test for SARS-CoV-2 infection that results in a negative test result.

Where such persons are covered by point 16(a) or (b), they should not be required to undergo quarantine/self-isolation but may be required to be in the possession of a negative test certificate. By way of derogation, transport workers and transport service providers should not be required to undergo self-isolation/quarantine or be in the possession of a negative test certificate while exercising this essential function.

Children under the age of 12 years in the possession of a valid EU Digital COVID Certificate or a negative test for SARS-CoV-2 infection arriving from areas classified as ‘dark red’ should not be required to undergo quarantine/self-isolation. In addition, children under the age of 6 years should not be required to undergo travel-related quarantine/self-isolation or travel-related tests for SARS-CoV-2 infection.

Addressing variants of concern or interest and emergency brake

20. Member States should pay particular attention to the spread of new SARS-CoV-2 variants of concern or interest, especially variants that increase transmissibility or disease severity or affect vaccine efficacy. For this purpose, Member States should make use of the data and risk assessments published by the European Centre for Disease Prevention and Control on variants of concern or interest in the EU/EEA.

To support Member States, the European Centre for Disease Prevention and Control should continue to publish information and maps on SARS-CoV-2 variants of concern or interest, notably on sequencing volumes and variant distribution.

21. To obtain timely and accurate information on the emergence and circulation of SARS-CoV-2 variants of concern or interest, Member States should attain or maintain high sequencing volumes, ideally at a level that allows detection of variants accounting for 1% or less of circulating viruses.

Member States should, on a weekly basis, provide data on the results of the sequencing of SARS-CoV-2-positive cases and sequencing volume, including at regional level, to ensure that any measures can be targeted to those regions where they are strictly necessary.

22. Where a Member State requires travellers, including holders of EU Digital COVID Certificates, to undergo, after entry into its territory, quarantine/self-isolation or to be tested for SARS-CoV-2 infection, or if it imposes other restrictions on the holders of such certificates, in response to the emergence of a new SARS-CoV-2 variant of concern or interest, it should inform the Commission and the other Member States

accordingly, including by providing the information referred to in 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 a Member State imposes additional quarantine/self-isolation or test requirements, in accordance with Union law, because the epidemiological situation in a Member State or in an area within a Member State worsens quickly, in particular in areas already classified as ‘dark red’. In this case, the information provided should clearly indicate why the additional measures are necessary and proportionate.

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’.
24. Based on the information provided in accordance with point 22, the Council, in close cooperation with the Commission and supported by the European Centre for Disease Prevention and Control, should review the situation in a coordinated manner. During such a coordination meeting, the Member State concerned should outline the reasoning for its measures.

The Commission, based on the regular assessment of new evidence on variants by the European Centre for Disease Prevention and Control, and, once available, the framework developed 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 or on a rapidly deteriorating epidemiological situation in a Member State or in a region within a Member State.

25. During a discussion pursuant to point 24, the Commission, could, where necessary and as appropriate, propose that the Council agree on a coordinated approach regarding travel from the areas concerned that aims, in particular, to delay the spread of the variant within the Union, such as testing and/or quarantine/self-isolation requirements for travellers.
26. Any situation resulting in the adoption of measures pursuant to this point should be reviewed regularly. The Commission or Member States may suggest lifting the measures put in place in accordance with the coordinated approach on new SARS-CoV-2 variants of concern or interest.

Passenger Locator Form and contact tracing

27. Member States could consider requiring persons travelling to their territory by means of collective transport modes with pre-assigned seat or cabin to submit Passenger Locator Forms (‘PLF’) in accordance with data protection requirements. For this purpose, Member States should make use of the common Digital Passenger Locator Form developed by the EU Healthy Gateways⁵⁴ and join the PLF Exchange Platform to enhance their cross- border contact tracing capabilities for all transport modes.

⁵⁴ <https://www.euplf.eu/en/home/index.html>

28. If a person develops symptoms upon arrival at the destination, testing, diagnosis, isolation and contact tracing should take place in accordance with the local practice, and entry should not be refused. Information on cases detected on arrival should be immediately shared with the public health authorities of the countries the person concerned has resided in during the previous 14 days for contact tracing purposes, using, where applicable, the PLF Exchange Platform, or otherwise the Early Warning and Response System.

Communication and information to the public

29. In line 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, as early as possible before new measures come into effect. As a general rule, this information should be published at least 24 hours before the measures come into effect, taking into account that some flexibility is required for epidemiological emergencies. 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, which should contain the map published regularly by the European Centre for Disease Prevention and Control pursuant to point 17. Where applicable, Member States should also provide, on ‘Re-open EU’, information on the domestic use of EU Digital COVID Certificates.
31. The substance of the measures, their geographical scope and the categories of persons to whom they apply should be clearly described.

Final provisions

32. This Recommendation should be regularly reviewed by the Commission, with the support of the European Centre for Disease Prevention and Control. The Commission should report thereon regularly to the Council.
33. Recommendation (EU) 2020/1475 is replaced by this Recommendation.
34. This Recommendation should apply from 10 January 2022.
35. This Recommendation will cease to apply at the latest at the same time as Regulation (EU) 2021/953.

Done at Brussels,

*For the Council
The President*



Brussels, 25.11.2021
COM(2021) 749 final

ANNEX

ANNEX

to the

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**

ANNEX
EU traffic light map

1. The traffic light map should be based on the following criteria:
 - (a) the ‘14-day case notification rate’, that is, the total number of newly notified COVID-19 cases per 100 000 population in the last 14 days at regional level;
 - (b) the ‘vaccine uptake’, that is, the cumulative uptake of full vaccination with a primary course in the total population at regional level;
 - (c) the ‘testing rate’, that is, the number of tests for COVID-19 infection per 100 000 population carried out during the last week.

2. To arrive at an overall score, the 14-day case notification rate (C) should be weighted by the vaccine uptake (V) in a specific region. If the value for any of the two criteria is not available at regional level, the value at national level should be used.

For this purpose, the following formula should be used:

$$(C+C*(100-V)/100)/2 = \textit{weighted rate}$$

3. In the traffic light map, an area should be marked in the following colours:
 - (a) green, if the weighted rate is less than 40;
 - (b) orange, if the weighted rate is less than 100 but 40 or more;
 - (c) red, if the weighted rate is less than 300 but 100 or more;
 - (d) dark red, if the weighted rate is 300 or more;
 - (e) dark grey, if the testing rate is 600 or less;
 - (f) grey, if insufficient data is available to assess points (a) to (e).