

EU Covid-19 certificate

A tool to help restore the free movement of people across the European Union

SUMMARY

The Covid-19 crisis has had a severe impact on free movement in the EU. To address this issue, on 17 March 2021 the Commission issued a proposal to establish a 'digital green certificate' – a common framework for issuing, verifying and accepting interoperable health certificates. The certificate would include proof of vaccination, Covid-19 test results, and/or information that the holder has recovered from being ill with Covid-19. The proposal has been given priority by the co-legislators with a view to seeking to reach agreement and launch the certificate before summer 2021.

A temporary digital health certificate is seen as a less restrictive measure than others currently in place, such as entry bans, quarantine and business closures, and may allow for a gradual reopening of the economy. Whereas the initiative has been welcomed by some (such as the tourism and transport sectors), the certificate raises a number of concerns, in relation to its design, fundamental rights implications and overall usefulness.

This briefing discusses the Commission's proposals and the initial positions of the EU co-legislators in the broader context. It analyses a number of key issues raised by the certificate, namely: its legal scope, the different types of certificates included in the overall digital green certificate, the risk of discrimination, data protection concerns, technical aspects, the timeframe and the overall added value of the certificates.



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Introduction

To reduce the transmission of SARS-CoV-2, the virus causing the Covid-19 disease, Member States have imposed a series of restrictions on movement and social life that have affected the free movement of people significantly. Despite efforts to establish a [common approach](#) to lifting restrictions, Member States continue to enforce varying [measures](#), including border controls, quarantine and Covid-19 testing requirements. However, with the gradual roll-out of vaccination [campaigns](#) in the Member States (aiming to vaccinate 70 % of the adult EU population by the summer), there is renewed hope of easing travel restrictions in the EU in a coordinated manner.

On 17 March 2021, the Commission presented two proposals to establish a common framework for the issuance, verification and acceptance of interoperable health certificates – a 'digital green certificate' – aiming to facilitate free movement in the EU. The proposals were given priority by the co-legislators with a view to reaching an agreement and launching the certificate before the summer. The initiative has been strongly supported by certain sectors, in particular tourism and transport. However, other stakeholders have raised concerns relating to the scope, fundamental rights implications and usefulness of the certificate.

Background

The yellow fever certificate is currently the only vaccination certification system established at international level, under the [International Health Regulations](#). The World Health Organization (WHO) maintains a [list](#) of yellow fever vaccination requirements and recommendations for each country (as well as recommendations regarding malaria and polio vaccinations). Many African and South American countries ask travellers (from all or certain countries) to show proof of yellow fever vaccination upon arrival. In Europe, only Albania and Malta have such requirements (for travellers from risk areas). In a number of cases, there are discrepancies between WHO recommendations and country requirements. For example, Argentina, Brazil and Peru do not impose vaccine entry requirements, despite the WHO recommendation.¹

Since the beginning of the Covid-19 pandemic, there have been suggestions about establishing Covid-19 immunity 'passports' to attest individuals' immunity to catching (and spreading) the disease, so as to allow them to exercise free movement.² More recently, a number of governments, organisations and companies have already launched or are preparing to launch digital vaccination certificate initiatives to certify vaccination, testing and/or immunity.³

In December 2020, the WHO began work on a [smart vaccination certificate](#), to establish key specifications, standards and a trust framework for a digital vaccination certificate 'to facilitate implementation of effective and interoperable digital solutions that support Covid-19 vaccine delivery and monitoring'. Israel has already [rolled out](#) a green pass for people who have received a second dose or have recovered from Covid-19. Similar schemes are also in place in [Bahrain](#), [China](#), [Japan](#) and [Saudi Arabia](#).

The International Air Transport Association (IATA) is testing a [travel pass](#), a mobile app that stores a traveller's verified certifications for Covid-19 tests or vaccines. Several airlines operating in the EU have signed up to test the IATA travel pass, including [Air Baltic](#). The Commons Project Foundation and the World Economic Forum have developed the [Common Pass](#) platform enabling individuals to demonstrate that they meet the health entry requirements of their destination country. The pass is linked to a Common Trust Network allowing individuals to access their health information (lab results and vaccination records). The initiative is [supported](#) by a number of stakeholders, such as Airports Council International, and the World Travel and Tourism Council.

A group of more than 220 companies and organisations (including Microsoft, Oracle, and Salesforce) have meanwhile launched the [vaccination credential initiative](#) aiming to harmonise standards and produce implementation guidelines for issuing and verifying Covid-19 and other vaccination certificates.

Initiatives in EU Member States

Several Member States have already launched, and others are planning to establish digital vaccination certificates. As of 19 May 2021, [Austria](#) was expected to issue 'green passes' to persons who have been vaccinated against Covid-19, recovered from the disease, or have been recently tested negative for Covid-19. On 6 April, [Denmark](#) launched a corona pass to certify that someone has either been fully vaccinated, has tested negative in the previous 72 hours, or has tested positive two to 12 weeks earlier. The pass is stored in a smartphone app and linked to the Danish identity card (ID) system. It allows citizens to access certain non-essential businesses including, hairdressers, beauty salons and driving schools (and soon cinemas, theatres and gyms). Those who do not comply risk being fined. Together with the WHO, [Estonia](#) has been working on a digital Covid-19 vaccine certificate since October 2020. On 30 April 2021, the country launched a [digital vaccination certificate](#) for Covid-19. The digital certificates, in the form of a QR code on a mobile app, are issued through the Estonian national patient portal. On 29 April 2021, [France](#) began testing a digital green certificate for Covid-19 tests (on flights to Corsica and the French overseas *départements*). As of the beginning of May 2021, people getting the Covid-19 vaccine in France will be issued with a certificate and a QR code that can be scanned into an app. It is also reported that France is planning to pilot a [vaccine pass](#) scheme for air passengers reaching the country with carrier Air France.

In March 2021, it was reported that [Bulgaria](#) was preparing the European 'green e-certificate' for tourists. According to press reports, [Czechia and Hungary](#) are considering joining Israel's 'green pass' initiative. [Finland](#) is preparing a Covid-19 vaccination certificate to be issued by the country's national eHealth infrastructure. In April 2021, the [Lithuanian](#) prime minister announced plans to roll out a national digital Covid-19 pass, a QR code named 'Freedom ID', that will exempt people from some restrictions, for instance on indoor dining, sporting events and large parties. The pass will be built into the EU digital green certificate. In January 2021, [Poland](#) announced plans to issue a vaccine certificate. In April 2021, [Spain](#) began working on implementing the EU digital green certificate. On 23 April 2021, [Sweden's](#) national eHealth agency announced a digital vaccine certificate that could be accessed and downloaded from a dedicated web portal using electronic ID.

The EU Covid-19 certificate

Commission proposals

On 17 March 2021, the Commission proposed a legal framework to establish a digital green certificate to facilitate free movement during the Covid-19 pandemic. The framework consists of two legislative proposals: [one](#) concerning EU citizens and members of their families and the [other](#) concerning third-country nationals legally staying or legally residing in the territory of a Member State. The second proposal seeks to ensure that the digital green certificate is also issued to non-EU nationals residing in Member States or Schengen Associated States and to visitors who have the right to travel to other Member States.

The main features of the proposed certificate are as follows:

- It will be used to facilitate free movement in the EU, but would not be used to justify restrictions (e.g. border control) or as a pre-condition for exercising free movement rights.
- It will include proofs certifying that a person has been vaccinated against Covid-19, received a negative test result or recovered from Covid-19.
- Member States may decide to use the certificate for other purposes, on the basis of national law.
- Member States may decide to issue it on paper or in digital format or both. It will include a barcode and text in at least the national language of the issuing state and in English.

- It will contain only the personal data 'necessary' to confirm and verify the authenticity and validity of certificates, which will not be transmitted to the Member States of destination and will not be stored in an EU database.
- It will be based on an EU framework ensuring interoperability, validity and security.
- It will be suspended once the Covid-19 pandemic ends, with the possibility to be reactivated in a future pandemic.

Council mandate

On 14 April, the Council [agreed](#) on its negotiating mandate. Its key amendments:

- state explicitly that the certificate is not a precondition to exercise free movement rights and it is not a travel document;
- clarify the status of certificates issued to EU citizens and their family members and to legally staying/residing third-country nationals vaccinated in third countries;
- strengthen provisions regarding data protection;
- provide that the regulations will apply for 12 months from the date of entry into force;
- provide for a transitional provision of six weeks after the entry into force of the legislation to allow Member States to implement the framework;
- introduce a provision to allow Ireland, and the other Member States to mutually accept certificates issued to third-country nationals based on reciprocity, as Ireland is not party to the relevant Schengen provisions on which the system would be based.

Parliament position

Parliament agreed to use the urgent [procedure](#) for the proposals, i.e. voting directly in plenary without a committee report. The rapporteur for the Committee on Civil Liberties, Justice and Home Affairs (LIBE) is Juan Fernando López Aguilar (S&D, Spain). On 29 April, the Parliament adopted its negotiating [mandate](#), which included 25 amendments. The key [positions](#) include:

- changing the name of the certificate to the 'EU Covid-19 certificate';
- ensuring that certificates do not serve as travel documents and become a precondition for travelling thus penalising people without the certificate;
- ensuring that holders of the certificate are not subject to additional restrictions on free movement (such as quarantine, self-isolation or testing);
- including certificates for vaccines authorised for use in the EU by the European Medicines Agency (EMA) and allowing Member States to decide whether they also accept certificates for vaccines from the WHO list for emergency use, but exclude vaccines were in temporary use by Member States on the basis of Directive [2001/83/EC](#);
- ensuring 'universal, accessible, timely and free of charge testing' in order to avoid discrimination against those not vaccinated and for economic reasons;
- ensuring that the Covid-19 tests associated with the certificate are free of charge;
- limiting the duration of the certification scheme to a maximum of 12 months;
- ensuring that the certificate works alongside any initiative set up by the Member States;
- ensuring that personal data obtained from the certificates is not stored in destination Member States and that no central database is established at EU level;
- ensuring that vaccines are produced at scale, priced affordably and allocated globally.

The co-legislators held interinstitutional negotiation meetings on 3, 11 and 18 May 2021.

Key issues

1. Purpose(s) of the certificate

As provided in [Article 21](#) of the Treaty on the Functioning of the European Union (TFEU), citizens of the Union shall enjoy the right to free movement subject to the 'limitations and conditions' laid

down in the Treaties and secondary legislation. The purpose of the EU Covid-19 certificate is to facilitate people's free movement in the EU, but, according to the Commission proposal, **'should not be a pre-condition** for exercising free movement rights'. The Parliament proposed to clearly state that 'the Regulation does not introduce or establish any additional formality or requirement for the exercise of the right to free movement or the right of entry in the territory of the Member States pursuant to Directive [2004/38/EC](#) and Regulation (EU) [2016/399](#)'.

According to the Commission's proposal, the certificate **does not in itself guarantee that all restrictions** on free movement will be lifted. Member States remain responsible for deciding which public health restrictions can be waived for travellers holding the certificate. What the regulation seeks to guarantee is that, should a Member State decide to waive restrictions to holders of certificates from that Member State, they should **waive the restrictions to holders of certificates from all** other Member States. The proposal also imposes **new obligations on Member States** that continue to impose restrictions on holders of the certificate to notify the Commission and all other Member States and explain the reasons for such measures. An amendment proposed by Parliament, however, would require restrictions to be waived for holders of vaccination certificates.

The proposal does not specifically consider the **duration of the validity** of each type of certificate. Nor does it mention at which moment, when exercising free movement within the EU, the certificate would be valid, though it could be presumed that it should be valid up to the moment of crossing the border. It should be noted that a requirement by a Member State that the validity of the certificate should span at least the intended period of stay would make this requirement **equivalent to a visa** and therefore incompatible with the Treaties.

According to the Commission's proposal, the **use of the certificate for purposes other** than facilitating EU free movement would be possible, providing a national legal basis is established. As emphasised by the European Data Protection Supervisor (EDPS) and the European Data Protection Board (EDPB), in their joint [opinion](#), 'any possible further use than the intended purpose of facilitating free movement between EU Member States ... may lead to unintended consequences and **risks to the fundamental rights** of EU citizens'.

In cases of **businesses requiring certificates** for access to their services, the general equality clauses provided in Member States' constitutions would apply, where these have horizontal application or where a general equality clause with horizontal application is provided in secondary legislation. Otherwise, it must be ensured that:

- the enforcement of the requirement is consistent and non-selective in order to avoid potential discrimination based on race or ethnic origin ([Directive 2000/43](#));
- restrictions do not (in)directly discriminate on the basis of nationality or residence, meaning that proof of vaccination has to be accepted irrespective of the place of vaccination. A business should not, therefore, require that the vaccination take place in the Member State where the business is established, or that proof of vaccination be provided in an official language of that Member State, or that the vaccination be of a type that is provided in the Member State of establishment, when other types of vaccination are available in other Member States (Article 20(2) of [Directive 2006/123](#));
- people who cannot be vaccinated, on medical or other grounds (e.g. pregnancy), have access to the service under different conditions (e.g. providing a proof of negative test and/or wearing a mask) (Article 4 of [Directive 2004/113](#)).

2. Holders of the certificate

The certificate will be issued to **EU citizens and their family members**, regardless of their nationality, who are resident in a Member State. The first proposal states that 'Pursuant to this regulation, the certificates making up the Digital Green Certificate should be issued to beneficiaries as referred to in Article 3 of Directive [2004/38/EC](#), that is, EU citizens and their family members, whatever their nationality, by the Member State of vaccination or test, or where the recovered

person is located' (para. 16). It should be noted that Article 3(1) of Directive 2004/38/EC does not apply to EU citizens and their family members where they reside in the Member State of nationality of the EU citizen. In the context of the proposed regulation, it should be considered that by analogy EU citizens would also be beneficiaries of the directive when in their Member State of nationality.

The certificate should also be issued to **third-country nationals** (TCNs) who are not family members of Union citizens and reside in the EU (excluding Denmark and Ireland) and to non-resident visitors who have the right to travel to other Member States. Member States should also issue such vaccination certificates to Union citizens and their family members who have been vaccinated in a third country and provide reliable proof to that effect. In practical terms, there is no differentiation between these categories of beneficiaries of the certificate. The certificates will not mention the legal basis and the right of entry will be based on the established procedures under the Free Movement Directive or the Schengen Borders Code.

The proposals do not cover TCNs who do not have a residence right or right to free movement in the EU, including **asylum-seekers and undocumented migrants**. This is, in principle, in line with the aim to facilitate free movement. However, fundamental rights issues may arise if the certificates are used for other purposes. If residence rights were to be checked for vaccination purposes, this might have a [chilling effect](#), restricting the right to health care as protected by Article 35 of the [Charter of Fundamental Rights of the EU](#) (CFR). Amendments proposed by Parliament and Council seek to replace 'EU citizens' in Article 2 of the regulation with a reference to 'people'.

According to the Commission proposals, the certificate issued to EU citizens and their family members will be valid in all EU Member States, and possibly in Iceland, Liechtenstein, Norway and Switzerland. However, the regulation concerning certificates issued to other resident third-country nationals is not directly applicable to Denmark and Ireland. Ireland is free to take part in its adoption and Denmark can decide within six months whether to implement the regulation. A proposed amendment by Council would require the acceptance of such certificates issued by Ireland on the basis of reciprocity. Since the regulation will become part of the Schengen *acquis*, it will also be applicable to Bulgaria, Croatia, Cyprus and Romania.

3. Certificates included

The EU Covid-19 certificate will cover three types of certificate – vaccination certificates, test certificates, and certificates for people who have recovered from Covid-19.

According to the Commission proposals, Member States will be obliged to accept, under the same conditions, all **vaccination certificates** issued under this system. This is limited to vaccines that have received EU-wide marketing authorisation. There are currently four Covid-19 vaccines that have received [conditional marketing authorisation](#) in the EU (Pfizer-BioNTech, Moderna, AstraZeneca and Janssen); three others are currently [under rolling review](#) by the European Medicines Agency (EMA). However, Member States may also accept, for the same purpose, Covid-19 vaccines having been granted marketing authorisation by the competent authority of a Member State pursuant to Directive 2001/83/EC or Covid-19 vaccines that have received WHO [Emergency Use Listing](#). Whereas Council agrees with this inclusive approach, Parliament proposed to **exclude the issue of certificates** for vaccines authorised temporarily under Directive [2001/83/EC](#).

There is widespread concern about the **lack of clear scientific evidence** regarding the effect of the Covid-19 vaccination on the transmission of the disease.⁴ The Commission proposal provides for the possibility to adjust the framework, by means of Commission implementing acts, as more scientific data 'becomes available'. It also states that the Commission 'may ask' the Health Security Committee established by Article 17 of Decision No 1082/2013/EU to issue guidance on the available scientific evidence on the effects of medical events documented in the certificates.

The EU certificate will include an **interoperable test certificate** containing only the results of nucleic acid amplification tests (NAAT) and rapid antigen tests included in the [list](#) established by the

Health Security Committee on the basis of Council Recommendation [2021/C 24/01](#). Both Parliament and Council have proposed amendments requiring the Commission to 'publish the list of Covid-19 rapid antigen tests established on the basis of Council Recommendation 2021/C 24/01, including any updates'.

Lastly, the proposal will also include **recovery certificates** to be issued as of the 11th day after a positive NAAT test or a positive rapid antigen test listed in the common and updated list of Covid-19 rapid antigen tests. The certificate will include a term of validity, which cannot be more than 180 days after the date of first positive test result. Parliament proposes that 'it shall also be possible to issue a certificate of recovery through the detection of antibodies by a serological test'.

The inclusion of proof of recovery in the digital health certificate reopens (or continues) a debate that began in 2020 around establishing Covid **'immunity passports'**. Despite a number of initiatives and suggestions (including in Europe), immunity passports were strongly opposed, owing to concerns about the lack of scientific [evidence](#) about immunity to Covid-19, and legal and ethical concerns over discrimination and fairness.⁵ In this context, establishing a EU digital health certificate could be seen, in part, as introducing a Covid-19 immunity passports 'through the back-door'.

One 2020 paper⁶ argued that the scientific acceptability of immunity papers depends on satisfying three conditions: understanding the extent of protection conferred by immune responses to the virus; establishing the minimum duration of immunity against the virus; and ascertaining the existence of reliable and widely available tests that can identify individuals who are immune. Whereas some progress has been made in understanding the virus and in developing more reliable antibody tests, important evidence is still lacking with regard to the Covid-19 immune response.

Insufficient scientific evidence

Despite progress in understanding Covid-19 and impressive success in developing vaccines against the virus causing the disease, there is still considerable uncertainty about the disease and vaccines. The effectiveness of the different vaccines in preventing symptomatic disease varies. The duration of protection afforded by the vaccines is still undetermined and there is uncertainty around the extent to which vaccinated people can still contract and spread Covid-19.

The WHO has warned of the lack of strong scientific evidence on the effects of vaccines on the transmission of Covid-19. On 15 January 2021, it [recommended](#) against using proof of vaccination or immunity as a condition of international travel 'as there are still critical unknowns regarding the efficacy of vaccination in reducing transmission and limited availability of vaccines'. On 23 April 2021, the WHO [recommended](#) not to 'require proof of vaccination as a condition of entry, given the limited (although growing) evidence about the performance of vaccines in reducing transmission and the persistent inequity in the global vaccine distribution'.

In [guidance](#) issued on 8 April 2021, the European Centre for Disease Prevention and Control (ECDC) stated that there are 'many uncertainties concerning the duration of protection and the effectiveness of Covid-19 vaccine products against SARS-CoV-2 onward transmission, particularly given the new variants emerging and continuous escape mutations'. Moreover, 'clinically validated laboratory assays for detection of antibodies are still lacking and therefore these results need to be considered cautiously ... correlates of protection are still to be defined which is necessary to be able to comment on the possibility of re-infection and the duration of immunity'.

4. Risk of discrimination

The proposal for an EU Covid certificate raises a number of concerns regarding compliance with the CFR. According to the EDPS/EDPB [opinion](#) on the proposal, the adoption of the certificate should not result in discrimination towards individuals and must be fully in line with the fundamental principles of necessity, proportionality and effectiveness, in line with EU data protection law.

The certificate will fall within the ambit of private life as laid down in Article 7 CFR and Article 8 of the [European Convention on Human Rights](#) (ECHR) because it is used to exempt its holders from

having to provide further medical evidence, such as on the spot tests. Any requirements infringing on this protection must be justified and proportionate and non-discriminatory in the sense of Article 21 CFR and Article 18 TFEU. This also means that when a person does not (yet) have access to the 'vaccination certificate', different means must be provided for that person in the form of the 'test certificate' or 'certificate of recovery', to ensure that the person can benefit from exemptions from certain restrictions.

According to [guidance](#) issued by the Council of Europe, whereas the harmonisation of certificates for administrative purposes for travel and medical reasons is commendable, the possible use of such certificates for purposes not strictly medical, e.g. giving individuals **exclusive access to rights, services or public places**, raises numerous human rights questions. In a January 2021 [resolution](#), the Parliamentary Assembly of the Council of Europe emphasised that states must 'ensure that no one is discriminated against for not having been vaccinated, due to possible health risks or not wanting to be vaccinated'.

The proposal concerning EU citizens and family members aims to ensure that any facilitation of movement for holders of the certificate applies across the EU, without **discrimination on grounds of nationality**. While the proposed regulation does not require that the certificates automatically waive any restrictions imposed, Articles 5(5), 6(5) and 7(5) of the proposed regulation provide that where a Member State accepts a certain type of proof to waive restrictions put in place, it shall equally accept such proof issued by other Member States under the same conditions. These are conditions that stem from principles set out in the free movement case law of the European Court of Justice, more specifically in cases [Reed](#) (para. 29) and [Dafeki](#). The uniform format should also enable the use of the certificates in other languages, avoiding discrimination based on nationality.

Whereas these provisions address the issue of discrimination based on nationality, limiting the waiver only to Covid-19 vaccination certificates, and excluding proofs of recovery or tests, could constitute **discrimination on other grounds**. For example, people who have recovered from the disease could have less access to vaccination. There are also concerns regarding restrictions for nationals from Member States that have rolled out vaccination campaigns using vaccines not yet accepted by the EMA. According to Article 5(5) second paragraph, Member States may also accept certificates issued for other vaccines that have been temporarily authorised in other Member States or that have received a WHO Emergency Use Listing. In accordance with the same principles set out above, when a Member State itself has issued temporary authorisation for a certain vaccine, it must accept vaccine certificates for this type of vaccine issued by other Member States. Parliament's proposal to exclude vaccination certificates for vaccines used under a temporary authorisation based on Directive 2001/83/EC, where that vaccine is not on the WHO Emergency Use Listing, would affect residents of those Member States.

Where a Member State does [not mention the type of the vaccine](#) on the certificate and uses vaccines that are not eligible for an EU Covid-19 certificate, no certificate of this Member State will be able to be accepted and additional proof of the type of the vaccine received would be required. Moreover, bilateral agreements between Member States on mutual recognition of national certificates may violate the principle of non-discrimination based on nationality, where certificates of other Member States that fulfil the same requirements are not equally recognised.

Concerns about discrimination are also raised in the context of uneven access to vaccination across the EU. For example, it is [argued](#) that, since 'vaccination is currently not readily accessible for all, this could lead to a **two-tier society**, with the vaccinated enjoying unrestricted free movement while others face restrictions that render their right to free movement difficult or impossible to exercise in practice'. In the EU, the [vaccination campaign](#) began at the end of December. On 19 January, the Commission [asked](#) Member States to vaccinate at least 70 % of the adult population by the summer. According to the [ECDC's vaccine tracker](#), Member States are at different stages in their vaccination campaigns.

Until accepted vaccines become universally available, prioritisation of certain groups of the population for vaccination can lead to discrimination on multiple grounds, such as age or social origin. To comply with Articles 7 and 21 CFR, people belonging to non-priority groups should be able to benefit from the lifting of restrictions by means of different proofs. This is especially [imperative](#) for people 'who are not able to have vaccines for medical reasons, such as pregnant women or people with certain preconditions, minorities who have difficulty accessing health services or parts of the population vulnerable to misinformation'.

Similarly, unequal access to tests for the purpose of facilitating free movement may raise concerns over discrimination. For example, the high cost of tests could place burdens on people, leading to what some commentators have [called](#) a 'free movement tax'. In particular when proof of tests are required for other purposes, such as accessing public services, the associated costs of testing could constitute a violation of human rights.

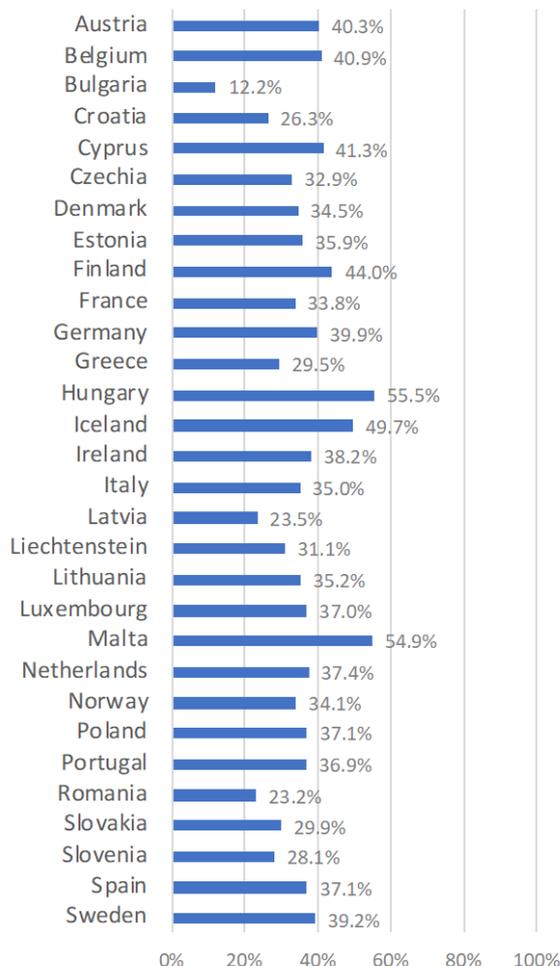
To ensure equal access to testing, Parliament proposes that 'Member States shall ensure universal, accessible, timely and free of charge testing possibilities in order to guarantee the right to free movement inside the Union without discrimination on grounds of economic or financial possibilities'. In response, the Commission has stressed that

the reimbursement of tests is a national competence. Although this may be a national competence, cases where Member States do not reimburse such tests or pay for them directly might constitute a violation of human rights; in particular where the tests are required for other purposes, since they then become essential services in the meaning of Article 20 of the [European Pillar on Social Rights](#).

5. Data protection aspects

Implementation of the EU certificate requires the processing of personal data, including health data, which falls under the scope of Regulation (EU) 2016/679 (GDPR). Processing individuals' personal data, including collection, access and use of personal data, affects their right to privacy and to protection of personal data under the CFR. Interference with these fundamental rights must therefore be justified. In line with the principle of minimisation of personal data, the Commission's proposal provides that the certificate should **contain only the personal data necessary** for the purpose of facilitating the exercise of the right to free movement during the Covid-19 pandemic. The certificate includes the following data: name, date of birth, date of issuance, relevant vaccine/test/recovery information and a unique identifier of the certificate. The Commission may adopt delegated acts in order to add, modify or remove data fields on categories of personal data. The data may be transmitted/exchanged across borders for the sole purpose of obtaining the information necessary to confirm and verify the holder's vaccination, testing or recovery status. The

Cumulative uptake of at least one vaccine dose (% of adults) on 17 May 2021



Source: [ECDC](#).

proposal **does not create a legal basis for retaining personal data** obtained from the certificate by the Member State of destination or by cross-border passenger transport service operators and does not establish a European database on vaccination, testing or recovery from Covid-19. Lastly, the personal data processed for the purpose of issuing the certificates, including the issuance of a new certificate, **must not be retained longer than is necessary** for its purpose and in no case longer than the period for which the certificates may be used to exercise the right to free movement.

In their joint [opinion](#), the EDPB and the EDPS consider that justification of the need for specific data field categories and data fields of personal data to be processed within the certificate 'is **not clearly defined** in the proposal'. They also consider that the proposal 'should state that the controllers and processors shall take **adequate technical and organisational measures** to ensure a level of security appropriate to the risk of the processing'. They also argue that the certificate should 'be **limited to Covid-19**, including its variants', and urge that the proposal 'expressly provide that access and subsequent use of the data by Member States once the pandemic has ended is not permitted', providing clear indications in this regard, 'including a clear review and sunset clause'.

6. Temporal scope

The proposed certificate is considered a **temporary measure**. According to the Commission's proposal, the certificate will be suspended once the WHO declares the end of the Covid-19 international health emergency. However, if the WHO declares a new international public health emergency caused by Covid-19, a variant of it, or a similar infectious disease, the certificate could be reactivated. It must be noted that, in the absence of a health emergency the continued requirement of a health certificate would not fulfil the necessity and proportionality requirements of the public health justification and would violate Article 5(1) of Directive 2004/38/EC, which states that no entry visa or equivalent formality may be imposed.

The possibility of the extended use of the certificate raises concern about arriving at a situation in which [health status verification](#) becomes '**a normal part of life**' when moving within Europe. This could also be seen as another example of how the pandemic is accelerating the rollout of digital identity infrastructures with significant implications for individuals and society as a whole. Critics have [pointed out](#) that infrastructure deployed as a temporary measure tends to persist after crises, in particular when such solutions can be readily applied in a great number of contexts such as workplaces, schools, and the hospitality and entertainment sectors.

The possibility to prolong or reactivate the EU certificate is particularly worrying, given the limited hope of eliminating the disease in the near future. As a recent ECDC [report](#) states, 'it is, in fact, plausible that the virus will continue to escape natural and vaccine-induced immunity over time due to selective pressure... very high vaccine coverage would need to be sustained on an ongoing basis, **since full eradication of SARS-CoV-2 is considered unachievable**, given the animal reservoirs'.

7. Technical infrastructure

According to the proposal, the certificate will be available, free of charge, in **digital or paper format**. The certificate will contain an interoperable barcode allowing for the verification of its authenticity, validity and integrity. The information must also be shown in human-readable form and, at least, in the official language or languages of the issuing Member State and in English. Some have raised concerns about the possibility of Member States issuing certificates only in digital format, which could be [discriminatory](#) against people without access to digital devices. Parliament has proposed an amendment stating that prospective holders are 'entitled to receive the certificates in the format of their choice', and that these must be 'user friendly' and 'accessible to persons with disabilities'.

In order for these national digital certificates to be effective in a cross-border context, they need to be fully **interoperable, secure and verifiable**. Interoperability refers to the ability of different systems to work with each other. Parliament proposes to establish a trust framework 'based on a public key infrastructure' to verify the integrity of the certificate and to 'allow for detection against

fraud, in particular forgery'. It also requests that, 'where a Member State has adopted or adopts a national digital certificate for purely domestic purposes, it shall ensure that it is fully interoperable with the EU Covid-19 Certificate trust framework'.

Technical work on the interoperability of the EU Covid-19 certificate is under way. On 12 March 2021, the Commission and the Member States working in the eHealth Network updated the guidelines for an [overall trust framework](#) for interoperable and reliable Covid-19 health certificates and on the [basic interoperability requirements](#) for verifiable vaccination certificates for medical purposes. Guidelines on a [minimum dataset](#) for recovery certificates were issued on 15 March 2021. On 21 April 2021, the Commission and the eHealth Network published detailed [technical specifications](#) for the certificate. An updated [common list](#) of Covid-19 rapid antigen tests and a common standardised set of data to be included in Covid-19 test result was released on 10 May 2021.

The next step regarding the technical specifications is to set up national infrastructure, launching national solutions for issuing, verifying and storing the certificates, and establishing the EU gateway. After the pilot stage scheduled for May 2021, the EU gateway is expected to be ready in June for the Member States to join. A significant number of Member States have already shown interest in participating in the pilot programme.

Added value

The proposal for a digital green certificate is one of the latest initiatives born out of efforts to develop a **coordinated approach** to lifting Covid-19-related restrictions on free movement. Despite great expectations, the proposed EU certificate is not intended to restore, on its own, full EU free movement of people. The aim is to **facilitate free movement** by ensuring equivalent treatment for the certificate's holders across the EU. Although Parliament has demanded that the certificates be more clearly linked to the removal of restrictions, the Member States are to remain responsible for deciding which public health measures they consider necessary to tackle the pandemic.

The proposal to impose **notification obligations** on the Member States that maintain free movement restrictions is noteworthy. However, the effectiveness of such obligations is unclear, in particular given the [limited effectiveness](#) of the comparable but stronger notification obligations imposed by the Schengen Code concerning the introduction of border controls.

The added value of the proposed certificate also relies on its **timely and effective implementation**. With regard to timing, a group of [public health experts convened by the Ada Lovelace Institute](#) found that 'there may be a comparatively narrow window where there is scientific confidence about the impact of vaccines on transmission and enough of a vaccinated population that it is worth segregating rights and freedoms... once there is population-level herd immunity it will not make sense to differentiate, and passports would be unnecessary'. If this is the case, some [argue](#) that all energy and resources⁷ should be spent on vaccination campaigns instead.

Given that many Member States are developing Covid-19 certificates, it is crucial that these schemes be **interoperable across the EU**. The Covid certificate builds on previous experience in the context of developing an interoperability [gateway](#) for cross-border exchange of data between national contact tracing and warning mobile applications aiming to combat the Covid-19 pandemic. However, this means that the latest initiative will face similar challenges. For example, despite extensive coordination efforts (although there is no legislative instrument), there are still a number of national Covid-19 contact tracing apps that are [not interoperable](#) across the EU.

The remaining **knowledge gaps regarding the virus** could affect the usefulness of the certificate. As new knowledge is likely to become available in the future, it is crucial that the initiative remains sufficiently flexible to be able to adapt to new scientific evidence. It remains disputed, however, whether the current level of scientific uncertainty is compatible with launching certification schemes. For example, a WHO spokesperson recently [commented](#) that the organisation is not in

favour of requiring vaccination passports for travel, given uncertainty over whether inoculation prevents transmission of the virus, and also given equity concerns.

From a **global perspective**, there are concerns that linking vaccination certification with international travel 'would unfairly burden most low- and middle-income countries, which may lack adequate doses to fully vaccinate their populations for several years'.⁸ The data available shows that lower-income countries have secured [far fewer doses](#) than high-income countries. Moreover, approximately 70 countries, including most sub-Saharan African nations, have not even begun their vaccination campaigns. Global vaccine inequity and travel restrictions 'will further exacerbate the lack of diversity and inclusion that is widespread in global health'.⁹

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ENDNOTES

¹ S. Vanderslott S. and T. Marks, '[Travel restrictions as a disease control measure: Lessons from yellow fever](#)', *Global Public Health*, Vol. 16(3), 2020.

² C. Dumbrava, [Lifting coronavirus restrictions: The role of therapeutics, testing, and contact-tracing apps](#), in-depth analysis, EPRS, European Parliament, July 2020, p. 28.

³ A tracker of Covid-19 digital certificates initiatives is provided by Ada Lovelace Institute, [International monitor: vaccine passports and COVID status apps](#).

⁴ L. O. Gostin, I.G. Cohen and J. Shaw, '[Digital Health Passes in the Age of COVID-19: Are "Vaccine Passports" Lawful and Ethical?](#)', *JAMA*, 7 April 2021.

⁵ R. C. H. Brown, J. Savulescu, B. Williams and D. Wilkinson, '[Passport to freedom? Immunity passports for COVID-19](#)', *Journal of Medical Ethics*, Vol. 46(10), 2020.

⁶ V. Teck Chuan et al. '[Immunity certification for COVID-19: ethical considerations](#)', *Bulletin of the World Health Organization*, Vol. 99(2), 2021.

⁷ Under the proposal, the Commission will use Emergency Support Instrument funds to support the most urgent measures and, once the legal basis of the Digital Europe programme enters into force, will explore how some of the expenditure could be carried out under that programme. Appropriations under the MFF from 2021 to 2024 total €53.7 million.

⁸ Gostin L.O., Cohen I.G. and Shaw J. '[Digital Health Passes in the Age of COVID-19](#)', *JAMA*, 7 April, 2021.

⁹ P. Madhukar, [How Vaccine Passports Will Worsen Inequities In Global Health](#), *Nature Microbiology*, 3 April 2021.

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