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Formal comments of the EDPS on the draft Commission Implementing Decision (EU) 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

1. Introduction and background

- The following comments concern the **draft Commission Implementing Decision (EU) 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** ('the Proposal'), together with its Annexes.
- These comments are provided in reply to the request by the Commission of 14 October 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')¹. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR.
- The Proposal recalls that Regulation (EU) 2021/953 ('the Regulation') sets out the EU Digital COVID Certificate, which is to serve as proof that a person has received a COVID-19 vaccine, a negative test result or recovered from infection for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic². The Proposal also recalls that, in order for the EU Digital COVID Certificate to be operational throughout the Union, the Commission adopted the Commission Implementing Decision (EU) 2021/1073, which lays down technical specifications and rules to populate, securely issue and verify EU Digital COVID Certificates, ensure the protection of personal data, lay down the common structure of the unique certificate identifier and issue a valid, secure and interoperable barcode³.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018.

² Recital (1) of the Proposal.

³ Recital (2) of the Proposal.



- The objective of the Proposal is to adopt uniform rules as to 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 vaccine doses”⁴.

2. EDPS comments

- According to recital 3 of the Proposal, many Member States have announced or have already started to administer COVID-19 vaccine doses additional to the standard primary vaccination series, in particular to persons who may not have responded adequately to the primary vaccination series, and are considering ‘booster’ doses for people who responded adequately to primary vaccination.
- In this regard, as mentioned in recital 6 of the Proposal, Article 5(2)(b) of the Regulation provides that the Digital COVID vaccination certificate shall contain “(...) *information about the COVID-19 vaccine and the number of doses administered to the holder*”. Moreover, the Annex to the Regulation specifies that the data fields to be included in the vaccination certificate include the number in a series of doses as well as the overall number of doses in the series. Finally, the EDPS also takes note of Article 5(1) of the Regulation, providing that “[e]ach Member State shall, automatically or upon request by the persons concerned, issue the vaccination certificates (...) to persons to whom a COVID-19 vaccine has been administered”.
- Recital 8 of the Proposal highlights that specific, “(...) *attention should be paid to the situation of vulnerable groups who may receive additional doses as a matter of priority.*” In particular, “[i]f a Member State decides to administer additional doses only to specific sub-groups of the population, it could consider issuing vaccination certificates indicating the administration of such additional doses only upon request and not automatically, given that Article 5(1) of Regulation (EU) 2021/953 offers Member States the possibility to choose between these two options.”
- Recital 8 of the Proposal further specifies that “[a]s long as additional doses are administered only to a specific sub-group of the population, persons belonging to that sub-group should not be required to produce the certificate indicating the administration of an additional dose when exercising their right to free movement during the COVID-19 pandemic, and could instead make use of the certificate received following the completing of the primary vaccination series.”
- On the other hand, recital 9 of the Proposal specifies that, taking into consideration the legal requirements imposed by the Regulation, all persons have the right to receive a vaccination certificate, indicating the number of doses administered to them, after the administration of each dose. Moreover, the recital explains that “(...) *Member States may*

⁴ Recital (5) of the Proposal.

eventually limit the duration of acceptance, for the purposes of free movement, of vaccination certificates issued following the completion of the primary vaccination series, if scientific evidence becomes available that the protection afforded by the primary vaccination series wanes below a certain level after a certain period.” **The EDPS considers that recital 9 of the Proposal clearly motivates why the two options**, namely the possibility for a person to be issued the Digital COVID Certificate automatically or upon request but also the right for a person to possess a Digital COVID Certificate with the correct amount of vaccination doses received, **should be guaranteed.**

- The EDPS welcomes the Commission’s concern of mitigating the risk of unwanted disclosure of personal data, particularly when this concerns the most vulnerable. At the same time, **the EDPS recalls that the agreed minimum Certificate datasets (such as vaccination country, date and administered vaccine) may already allow for inferences on vulnerabilities**⁵. The EDPS also notes that inadvertent disclosure of additional personal data may be of particular concern in other contexts where verification of the Digital COVID Certificate may be required by national legislation.
- The EDPS recalls that the categories of personal data encoded in QR codes must remain limited to what is necessary for the specific use case⁶. The EDPS further recalls paragraph 39 of the Joint Opinion, in which the EDPB and the EDPS note that “(...) *an approach supporting differently comprehensive data sets and QR codes can improve data minimisation in different use cases.*” Should the Digital COVID Certificate recording the third dose be used for purposes other than the freedom of movement, the necessary categories of personal data included in the QR code must be reassessed and different technical solutions improving data minimisation in different use cases may be needed. The EDPS therefore again invites the Commission to assist the Member States in developing such technical specifications.

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(e-signed)

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⁶ Formal comments of the EDPS on the draft Commission Implementing Decision (EU) 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, 22 June 2021, Section 2.2.2. https://edps.europa.eu/system/files/2021-06/21-06-22_2021-0642_d1405_formal_comments_en.pdf.

