



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

1. Introduction

- The following comments concern 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** (‘the Proposal’), together with its Annexes.
- These comments are provided in reply to the request by the Commission of 21 June 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 the Regulation (EU) 2021/953 of the European Parliament and of the Council (‘the EU Digital COVID Certificate Regulation’) sets out a framework for the **issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic**. The EU Digital COVID Certificate should serve as a proof that a person has received a COVID-19 vaccine, a negative test result or recovered from infection².
- The aim of the Proposal is **to establish technical specifications and rules** to:
 - securely issue and verify the digital COVID certificates and populate them;
 - ensure the protection of personal data; and
 - lay down the common structure of the unique certificate identifier and issue a valid, secure and interoperable barcode.

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 draft Proposal.

The trust framework also sets the premises for seeking to ensure interoperability with international standards and technological systems, and, as such, could provide the model for cooperation at global level and with third countries³.

- Moreover, the Proposal specifies that, complementary to the technical specifications for format and trust management of the EU Digital COVID Certificate, it should also **establish general rules for the purpose of populating the certificates referred to in Article 3(1) of the EU Digital COVID Certificate Regulation** to be used for coded values in the content of the EU Digital COVID Certificate⁴.

2. EDPS comments

2.1 General comments

- The EDPS welcomes recital 6 of the Proposal, clearly stating that “*[t]he security, authenticity, validity and integrity of the certificates comprising the EU Digital COVID Certificate and their compliance with Union data protection law are key to their acceptance in all Member States.*” In the EDPB-EDPS Joint Opinion on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (‘the Joint Opinion’), the EDPB and the EDPS have indeed clearly recalled that “*(...) data protection does not constitute an obstacle for fighting the current pandemic*” and that compliance with data protection law would help citizens’ trust towards the framework created by Proposal⁵.
- Moreover, the EDPS welcomes the clear reference to the principles of data minimisation and data protection by design in recital 7 of the draft Proposal, according to which “*[t]he Decision allows to make the requirements of Regulation (EU) 2021/953 operational in a way that minimises the processing of personal data to what is really necessary to make the EU Digital COVID Certificate operational and contributes to an implementation by the final controllers that respects data protection by design.*”

2.2 Specific comments

2.2.1 Identification of controllers and processors

³ Recital (2) of the draft Proposal.

⁴ Recital (3) of the draft Proposal.

⁵ EDPB-EDPS Joint Opinion 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate).

- The EDPS notes that recital 8 of the Proposal clearly states that the authorities or other designated bodies responsible for issuing the certificates are controllers pursuant to Article 4(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council⁶ ('GDPR'). Moreover, the same recital explains that, as this is a choice of Member States, where there are multiple authorities or other designated bodies, the Member States shall ensure that their respective responsibilities are clearly allocated, independently of whether they are separate or joint controllers.
- In this regard, the EDPS recalls paragraph 48 of the Joint Opinion, in which the EDPB and the EDPS make reference to Article 8(g) (now Article 9(g) of the EU Digital COVID Certificate Regulation) of the EU Digital COVID Certificate Proposal stating that the Commission 'shall adopt implementing acts containing the technical specifications and rules to allocate responsibilities amongst controllers and as regards processors'. While the EDPS acknowledges that the Proposal in object concerns the technical specifications in relation to the EU Digital COVID Certificate, we also note that, as mentioned above, the same Proposal states that Member States shall ensure that their respective responsibilities, duties and roles are clearly identified and allocated, independently of whether they are separate or joint controllers. For this reason, **the EDPS recommends clarifying whether a forthcoming Implementing Act on the allocation of responsibilities amongst controllers and processors is envisaged, as per article 9(g) of the EU Digital COVID Certificate Regulation.** Should this be the case, the EDPS recalls the legal obligation to be consulted on such Implementing Act.
- Moreover, the EDPS notes that recital 9 of the Proposal explains that *"[t]here is no processing of personal data through the EU Digital COVID Certificate gateway, as the gateway only contains the public keys of the signing authorities. Those keys relate to the signing authorities and do not allow either direct or indirect re-identification of a natural person to whom a certificate has been issued. In its role as the manager of the gateway, the Commission should thus be neither a controller nor processor of personal data."* **The EDPS agrees that, insofar as there is no processing of processing of personal data at the level of the EU Digital COVID certificate gateway, the Commission should not be considered either a controller or a processor in its role as manager of the gateway.**

2.2.2 Data minimisation and reuse of QR codes

- The EDPS emphasizes that the categories of personal data encoded in QR codes must remain limited to what is necessary for the specific use case. In particular, in

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

accordance with **the principle of data minimisation for purposes other than the freedom of movement, the necessary categories of personal data included in the QR code must be reassessed.** In this regard, the EDPS 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.*”

- In sum, to the extent Member States envisage to use the EU Digital COVID Certificate for purposes other than free movement covered by the Proposal, the EDPS invites the Commission to assist in developing technical specifications for QR codes containing fewer categories of personal data and in a given context, to be made available to Member States without delay.

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(*e-signed*)