EDPS

EUROPEAN DATA PROTECTION SUPERVISOR

EDPS OPINION ON THE DECISION OF THE EUROPEAN PARLIAMENT ON EXCEPTIONAL HEALTH AND SAFETY RULES GOVERNING ACCESS TO PARLIAMENT'S BUILDINGS (Verification of EU Digital COVID Certificates)

(Case 2021-0983)

1. INTRODUCTION

This Opinion relates to the European Parliament ('the Parliament', or 'EP') informed the EDPS pursuant to Article 41(1) of Regulation (EU) 2018/1725[1] ('the Regulation') of the draft Decision of the Bureau relating to security measures to limit the spread of Covid-19, as regards the **digital verification of the EU Digital COVID-19 Certificate of any person** entering the Parliament's buildings.

1. In accordance with the EDPS policy on Consultations and Authorisations in the field of Supervision and Enforcement,[2] the EDPS treats information under Article 41(1) of the Regulation as requests for consultation.

2. The EDPS issues this Opinion in accordance with Articles 57(1)(g) and 58(3)(c) of the Regulation. It covers the above-mentioned Decision adopted on 27 October, renewed on 26 January 2022.

3. The EDPS adopted the EDPS Guidance on Return to the Workplace and EUI's screening of COVID immunity or infection status ('the EDPS Guidance').[3]

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1 Regulation (EU) 2018/1725 of the European Parliament and 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, pp. 39-98.

2 Policy on Consultations and Authorisations in the Field of Supervision and Enforcement, 8 May 2020, available at https://edps.europa.eu/sites/edp/files/publication/20-05-08_policy_on_consultations_en.pdf.

3 Available on the EDPS website at https://edps.europa.eu/system/files/2021-08/21-08-09_guidance_return_workplace_en_0.pdf.

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2. FACTS

2.1 Health and safety rules governing access to the Parliament's buildings

Background

4. During the COVID-19 pandemic the Parliament adopted extraordinary measures pursuant to Title XIIIa of its Rules of Procedure (Extraordinary circumstances) in order to maintain its operational capacity, in particular its legislative and budgetary activity. Those extraordinary measures are limited in time and are only to be applied due to the exceptional and unforeseeable circumstances beyond Parliament's control.

5. In that same context, the exceptional 100% teleworking regime put in place in response to the COVID-19 pandemic was replaced as of 1 September 2021 by the Decision of the Secretary-General of 16 July 2021 on teleworking in the Parliament, according to which teleworking is to be exercised on a voluntary basis.

6. Under the epidemiological circumstances at stake, the Parliament's medical services in Brussels (Belgium) and Luxembourg, and the new Medical Preparedness and Crisis Management Unit, advised the Parliament's authorities that, from a medical point of view, the introduction of the EU Digital COVID Certificate ('EUDCC') issued in accordance with Regulation (EU) 2021/953 of the Parliament and of the Council[4] (EUDCC) as an entry requirement would allow to better protect the most vulnerable in our community whilst allowing the Parliament to guarantee its business continuity in the face of the increasing needs.[5] The EUDCC certifies that its holder is either vaccinated, or has recovered from COVID-19 or has a recent negative COVID-19 test result.[6]

EUDCC required for Parliaments' visitors

7. On 2 September 2021, the Parliament's President decided to re-establish certain parliamentary activities, including missions and delegations. Following the recommendations of the Parliament's Medical Service, it was decided to grant access to Parliament's buildings to visitors, local assistants, external speakers and interest representatives upon presentation of a valid EUDCC, or upon presentation of a certificate issued by a third country that, in accordance with Article 8 of Regulation (EU) 2021/953, is to be considered equivalent to a certificate issued by a Member State ('equivalent certificate').

Decision of 27 October 2021: EUCDD required for all persons entering the Parliament's buildings & digital verification as a rule

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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).

5 See Recitals of the Decision of 27 October 2021.

6 Article 3(1) of Regulation 2021/953.

8. On 14 October 2021, the President of the Parliament first updated the security measures limiting the spread of COVID-19. In the context of the epidemiological situation, the Parliament believed it was necessary to adopt additional risk-mitigating measures. In this regard, the Medical Service of the Parliament considered that the requirement of the EUDCC for all persons willing to access to the Parliament's buildings , including Members of the Parliament (MEPs), officials, accredited parliamentary assistants and other servants of Parliament, would reduce in a substantial manner the risks for all persons present in the buildings of the Parliament's three places of work and allow for Parliament's return to its normal procedures.[7] Moreover, since a manual verification of the EUDCC obliges the holder to disclose to the security staff medical information that is more than strictly necessary for the purpose pursued, the Parliament considered appropriate to put in place a system of digital verification of paper and digital EUDCC involving the scanning of a QR Code without storing the data they contain.[8]

9. The Parliament conducted a data protection impact assessment (DPIA) on the extension of the use of the EUDCC to all persons entering the Parliament's buildings, also touching upon the use of a scanning app to verify the EUDCC. The Parliament appended the DPIA to the information sent to the EDPS on 27 October 2021. The DPIA concludes that 'an extension of the obligation to present a valid EU Digital COVID Certificate to any person entering the Parliament's premises, would be carried out in full respect of the fundamental principles and freedoms of the data subjects - more particularly, that it would be lawful, necessary and proportionate - while implementing the necessary safeguards'.

10. The digital verification of EUDCC for **all persons** requesting access to the Parliament's buildings[9] is the subject matter of the Decision of the Bureau of the Parliament of 27 October 2021 relating to the 'exceptional health and safety rules governing access to the European Parliament's buildings in its three places of work' ('the Decision of 27 October 2021') communicated to the EDPS under Article 41(1) of the Regulation on the date of its adoption.

11. According to the Decision of 27 October 2021, the possession of a valid EUDCC or equivalent certificate is verified by automated means via the automated **scanning of the QR code** of the EUDCC or equivalent certificate (scanning process) or, in exceptional cases and only if strictly necessary, manually by means of a **visual check**.[10] Both digital and paper-based formats of EUDCC or equivalent certificates are accepted for the purposes of a verification.[11]

12. The Decision of 27 October 2021 includes the possibility of the Secretary-General granting in duly justified cases a derogation with regard to the presentation of a valid EUDCC.[12]

13. As regards the means for the verification of the EUDCC, the Parliament chose the

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7 Recital 10 of the Decision of 27 October 2021.
8 Recital 20 of the Decision of 27 October 2021.
9 However, the Decision does not apply to Parliament's buildings that are entirely occupied by other EUIs (Art .1(3) of the Decision of 27 October 2021).
10 Art. 3(1).
11 Art. 3(3).
12 Article 5(2).

Belgian QR reading application (hereinafter the 'CovidScanBE app'[13]), as being less intrusive than manual control, to process the operation in the three places of work of the Parliament. According to the EP[14], the CovidScanBE app processes the following personal data: name, surname, validity of the certificate and no further processing of the data takes place. According to the Parliament, the CovidScanBE app provides for the necessary guarantees and DG SAFE agents are trained to respect the confidentiality of any issue that may arise during the verification check of the EUDCC. According to the Parliament, the mobile application is developed and updated by the Belgian national authorities, which are subject to Regulation (EU) 2016/679, and thus subject to the same personal data protection principles as the European Institutions (including the security of the processing[15]).

14. Furthermore, DG SAFE security agents of the Parliament shall perform randomly 'manual spot checks' on the authenticity of the EUDCC presented, meaning that 'no digital reading of the QR code will take place in those cases'[16]. The documentation provided does not provide further details.

15. Finally, according to the information notice available on the Parliament's intranet[17], given the difficulties that the conversion of negative PCR test results into a EUDCC can create, **internal rules** for the implementation of the Decision of 27 October 2021[18]provide that the Parliament should accept **negative results of a PCR test** carried out in Belgium, Luxembourg or France also without EUDCC QR-code. Such a test shall be accepted as valid for 72 hours after it was carried out.

2.2 The ruling of the President of the Court of Justice of the European Union

16. By application lodged at the Court Registry on 4 November 2021, the applicants brought an action for annulment of the Parliament's rules regarding the digital verification of EUDCC. On 5 November 2021 the President of the General Court provisionally ordered that the applicants could enter Parliament's premises on the basis of a negative self-test. In case of a positive result, this test had to be followed by a PCR test. In the event of a positive result of the latter test, the Parliament could refuse the applicants' access to its premises. On 30 November 2021, the President of Court of Justice of the European Union (CJEU) ruled on this matter and dismissed the request for suspension of the Parliament's rules regarding the verification of the EUDCC[19].

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13 'CovidScanBE app' is the application published by the Belgian federal governmental agency e-Health following the technical specifications of the eHealth Network of the European Commission

14 Parliament's DPIA, page 8.

15 Security of the data, taking into account the nature of the data is one of the purposes of the technical specifications that aim to implement the trust framework of Regulation 2021/953 (see Article 9(1)(a) of the latter).

16 Parliament's DPIA, page 5.

17 Information notice of 28 October 2021: https://safenet.in.ep.europa.eu/files/live/sites/safenet/files/communication/Coronavirus/20211028_COVID%20PASS_EN.pdf
Information notice of 26 November 2021 (extending the validity of the test) : https://safenet.in.ep.europa.eu/files/live/sites/safenet/files/communication/Coronavirus/20111126_CORRaxsmeasures_EN..pdf

18 Adopted in accordance with Article 5 of the Decision of 27 October 2021.

19 Ordonnances du président du Tribunal dans les affaires T - 710/21 R Roos e.a. / Parlement et T - 711/21 R ID e.a./Parlement. Available at:

17. The CJEU ruled that the decision to make access to Parliament's buildings in its three places of work (e.g. Strasbourg, Brussels and Luxembourg) conditional to the presentation of an EUDCC or an equivalent certificate had neither the purpose nor the effect of calling into question the exercise of the mandates of MEPs or the exercise of the professional activities of the officials, accredited parliamentary assistants and other servants of the Parliament. The mere fact of having to comply with conditions for access to Parliament's buildings in three places of work, whether in terms of safety or public health, does not mean, that the obligation in question causes serious and irreparable damage to the applicants requiring the adoption of interim measures.

18. As regards the alleged direct detriment to the power of representation of MEPs and their ability to work in a useful and effective manner, the CJEU observes that the applicants do not put forward any specific argument capable of establishing that those persons are not in a position to comply in good time with the conditions of access imposed.

19. Lastly, the CJEU notes that, as regards those applicants who are neither vaccinated nor cured, none of the evidence submitted is capable of establishing that the nasopharyngeal samples, which are necessary to obtain a test certificate, pose serious risks to their health. Furthermore, it notes that the persons concerned have the opportunity to request a derogation and to set out in their application the reasons why, in their individual case, nasopharyngeal samples would cause serious risks to their health.

20. The CJEU has not yet ruled on the merits of the Parliament's rules regarding the action for annulment of the EP decision on the verification of the EUDCC, but decided not to preliminary suspend the Decision of 27 October 2021.

2.2 Extension of the validity of the Decision of 27 October 2021

21. On 20 January 2022, following the recommendations of the Parliament's medical advisor[20], the President of the Parliament decided to maintain the previous extraordinary measures, as well as health and security measures in view of the current epidemiological situation[21].

22. As a consequence, on 26 January 2022, the Bureau of the Parliament extended the validity of the Decision of 27 October 2021 **until 13 March 2022.**[22] The Decision refers to an update of the above-mentioned DPIA[23], more specifically on the need to prolong the requirement of a EUDCC to be admitted in the Parliament's building.

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https://curia.europa.eu/juris/document/document.jsf;jsessionid=080B9EDCA069E4DA8AA38EA0B05A56B3?text=&docid=250321&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=7930118

[20] Recital 10 of the Decision of 26 January 2022.

[21] The Decision of the President of 20 January 2022 is available on the Parliament's intranet (https://epintranet.in.ep.europa.eu/files/live/sites/epintranet/files/coronavirus-portal/decisions/president/2022/president-decision-20jan2022-security-measures.pdf)

[22] The Decision of the Bureau of 20 January 2022 is available on the Parliament's intranet https://epintranet.in.ep.europa.eu/SibData/01_Bureau/18_Communications/2022/01.22/bureau%20notice%2001-2022_en.pdf

[23] Recital 14 of the Decision of 26 January 2022. The EDPS has not received a copy of the updated DPIA.

23. Internal rules implementing the Decision of 27 October 2021 were also revised accordingly. The validity of the paper-based negative PCR test was reduced from 72 hours to 48 hours.

3. LEGAL ANALYSIS AND RECOMMENDATIONS

3.1 Scope of the Opinion

24. The mere **obligation to present an EUDCC** (either in a digital or paper-based format)[24] **for manual/visual verification** in order to enter into the Parliament's buildings is not per se a data processing operation within the scope of the Regulation. However, the requirement to share the confidential medical information available on EUDCC, particularly in an employment setting, constitutes an **interference with the right to privacy** guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), as it involves disclosure of information relating to private life, such as information on the vaccination status of an individual. For this reason, it is not subject to the Regulation, but is subject to a legality, proportionality and necessity assessment under Article 52 of the Charter. The Parliament should therefore undertake a careful assessment to gauge whether such an intrusion could be lawfully justified and regularly reassess the necessity and proportionality of the measure.[25]

25. The **digital verification of EUDCC involving the scanning of a QR code**, constitutes a **personal data processing** 'wholly or partly by automated means' as defined by Article 2(5) of the Regulation and, therefore, falls within the scope of the Regulation[26]. The EDPS considers that the processing in question interferes with the individuals' fundamental rights of privacy and to data protection enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union as it entails processing of personal data as well as collection of information relating to private life.

26. This EDPS Opinion relates mainly to the data processing operations performed by the Parliament under the Decision of 27 October 2021 (as extended by Decision of 20 January 2022), i.e. the digital verification of the EU Digital COVID Certificate involving the scanning of a QR Code. While doing so, the EDPS will also touch upon the underlying requirement of a valid EUDCC or equivalent certificate to be admitted in the Parliament's buildings. Within this scope, the EDPS highlights below his analysis and recommendations.

3.2 Lawfulness

27. The primary objective of the EUDCC is the facilitation of the free movement within the EU during the COVID-19 pandemic. For any other purpose, the EUDCC Regulation stipulates that a **national law** must explicitly provide a legal basis for data

[24] Or a negative PCR test (for cases where the latter is not yet available in the EUDCC - see description of facts above).
[25] See Sections 5.1. and Section 6.2. (scenario 3), of the EDPS Guidance on the Return to the Workplace.
[26] See Sections 6.2. and 6.3. of the EDPS Guidance on the Return to the Workplace.

processing.[27] In the case of EUIs, 'national law' should be interpreted as a legal basis in Union law.[28]

28. In the present case, the **legal basis** is the EP's Decision of 27 October 2021 (as renewed by Decision of 26 January 2022), in combination with Article 1e (2) of the Staff Regulations and the Conditions of Employment of Other Servants of the European Union[29], and in particular Articles 10(1), 80(4) and 126(2).

29. The Decision of 27 October 2021 grounds the **lawfulness** of such processing on Article 5(1)(a) of the Regulation, it being necessary for the performance of a task carried out in the public interest. Pursuant to Article 5(2) of the Regulation, the basis for such processing shall be laid down in Union law. Such a legal basis is provided by Article 1e(2) of the **Staff Regulations**. The Parliament acts as the data controller in the field of employment and social security and is obliged to draw measures to protect the health and safety of its staff members. This legal basis can equally apply to processing of personal data of staff and non-staff members of the Parliament. The Decision of 27 October 2021 further complements the aforementioned legal basis. Moreover, even though the digital verification at stake will *a priori* only display a green/valid or red/not valid result, the processing in question may reveal personal data concerning health, such as data relating to the vaccination status, test results or recovery from a COVID-19 infection. Health data is considered a special category of personal data, the processing of which is in principle prohibited under Article 10(1) of the Regulation. The processing of such data for the purpose of digital verification of EUDCC on the basis of the Decision of 27 October 2021 falls under the exceptions of Articles 10(2) (g) and (i) of the Regulation, particularly if **national legislation** and public health guidance mandate a more widespread use of the EUDCC beyond its primary objective to facilitate free movement within the EU.[30]

30. It however remains unclear to the EDPS if the Parliament has also assessed other legal provisions on their possible applicability: in view of the above, before considering the use of the digital verification of EUDCC at the entrance of its premises, the Parliament should assess the **specific legal framework applicable**. Specific headquarters or establishment agreements are concluded with the authorities of the host Member State. Exceptions from the applicability to EUIs of Member State law generally do not include rules on health and safety[31].

31. Thus, the Parliament should also carefully verify the **national laws** at stake, which may vary from one Member State to another[32], as well as the **arrangements** (headquarters or establishment agreements) concluded between the Parliament and the Belgian, French and Luxembourgish authorities **to check whether national rules on health and safety apply**.

32. The Parliament's medical services advised that '... from a medical point of view the introduction of the EU Digital COVID Certificate as an entry requirement would allow to better protect the most vulnerable in our community whilst allowing the EP to

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27 Recital 48 of Regulation (EU) 2021/953.
28 See Sections 6.1. of the EDPS Guidance on the Return to the Workplace
29 OJ L 56, 4.3.1968, p. 1.
30 Section 6.3. of the EDPS Guidance on the Return to the Workplace.
31 See Section 2 of the EDPS Guidance on the Return to the Workplace.
32 For example, the period of validity of PCR tests varies from one varies from one Member State to another.

guarantee its business continuity in the face of the increasing needs.'[33] It added that '...this is linked to the increasing and necessary contacts, the frequent travelling, the expatriated community, the many visitors characterising the Parliament's functioning'[34]. For that reason, the Parliament included international travelling as part of the risk assessment, due to the high number of visitors and the commuting of MEPs between their constituencies and places of work.

33. Recital 13 of the Decision of 27 October 2021 also mentions that considering being the Parliament an international organisation and a publicly accessible institution '... the Union-wide sanitary situation should be taken into account and not only the situation at the level of the Member States in which Parliament has its seat or its working places'.

34. Subsequently, if the rules adopted by the Parliament are in line with the applicable national rules on health and safety, the Parliament could also refer to the assessment conducted by national authorities as regards the said rules.[35]

35. As regards the digital verification, as a rule, of the EUDCC of all persons requesting access to the Parliament's building, the EDPS notes that the Parliament conducted its own DPIA (See below DPIA under Section 3.3 Necessity, Proportionality and appropriate safeguards)[36].

36. As regards the CovidScanBE app, as one source of information, the Parliament could also rely on the DPIA conducted by the Belgian authorities that developed the app[37] in compliance with the technical specifications and rules contained in the implementing acts adopted in accordance with Regulation 2021/953 to ensure interoperability of the issuance and verification of EUDCC and equivalent certificates.[38] It should also refer to national health guidance regarding the use of EUDCC in employment settings in France, Belgium and Luxembourg[39] and to the assessment by the Belgian supervisory authority on the CovidScanBE app[40].

37. Moreover, the Decision of 27 October 2021 (as extended by the Decision of 26 January 2022), provides for a manual/visual verification of the EUDCC in 'exceptional cases'. In this respect, the DPIA indicates that security agents may perform manual checks on the authenticity of the EUDCC presented[41]; it is not clear how this verification will take place and whether other situations of visual verification are envisaged. Moreover, the Decision provides that the Secretary-General lay down internal rules for the implementation of this Decision[42] (which include the possibility to exhibit a paper-

33 See Parliament's DPIA, p. 7.
34 Ibidem.
35 See EDPS Opinion of 29 November 2021 on additional specific health and safety rules for the Commission site of Ispra (https://edps.europa.eu/system/files/2021-12/21-11-29_edps_opinion_health_safety_ispra_en.pdf) and EDPS Opinion of 7 January 2022 on the verification of COVID-19 certificates in the Commission site in Luxembourg (https://edps.europa.eu/system/files/2022-01/22-01-07_edps_opinion_ec_draft_decision_covid_certificates_lux_en.pdf).
36 Recital 14 of the Decision of the Bureau of 26 January 2020 indicate that the DPIA was updated in light of the most recent developments.
37 https://www.covidscan.be/20211025-DPIA_CovidScan_v2.02.pdf
38 See Articles 4 and 9 of Regulation 2021/953.
39 See Section 6.1. of the EDPS Guidance on the Return to the Workplace.
40 See below Section 3.3.2.
41 DPIA, p. 5.
42 Article 5(1) of the Decision of 27 October 2021.

based negative PCR test) may grant a derogation to the requirement of a valid EUDCC 'in duly justified cases'[43]. In the latter case, the derogation would probably involve a processing of personal data falling within the scope of the Regulation, which the Parliament should further elaborate on.

Recommendation 1: The Parliament should assess whether national health and safety legislation is applicable, in line with the respective headquarters arrangements concluded with the Belgian, French and Luxembourgish authorities. If such arrangements govern the matter of restrictions of access to work premises for public health reasons, the Parliament could rely on the assessment conducted at national level, to the extent relevant. If there are no such applicable provisions, the Parliament should justify the necessity and proportionality of its own health and safety rules in view of their specificity. The Parliament should ensure that the assessment is duly reflected in the DPIA.

Recommendation 2: The Parliament should further clarify the circumstances and modalities in which a visual/manual verification of the EUDCC may take place under Article 3(1) of the Decision of 27 October 2021. The Parliament should also clarify the modalities of the derogation referred to in Article 5(2) of the same Decision. The Parliament should confirm that such manual verifications do not involve the processing of personal data.

3.3 Necessity, Proportionality and safeguards

38. Without prejudice of a final assessment of the possible applicable national law to the matter of checks for entering the premises, the EDPS assumes that it is likely that the Parliament was adopting the concerned measures under its own administrative autonomy. Indeed, it does not appear to the EDPS that the national legislations of Belgium, France and Luxembourg would all require equivalent measures to those at stake. Furthermore, the EP chose to perform its own DPIA and not rely on the impact assessment possibly performed in the context of adoption of national law within the meaning of Article 39(10) EUDPR. Only within this context, the EDPS therefore formulates the following remarks on the necessity and proportionality of the measures and on the safeguards for the protection of personal data being processed.

39. Article 52 (1) of the Charter provides that, subject to the principle of proportionality, limitations on the exercise of the fundamental rights and freedoms recognised by the Charter may be made only if they are necessary. 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 freedoms of others.

40. A limitation may be necessary if there is a need to adopt measures for the public interest objective pursued. Necessity also implies that the measures adopted must be less intrusive compared to other options for achieving the same goal. In case a measure is found to be necessary, its proportionality must be assessed as well. Proportionality means that the advantages resulting from the limitation should outweigh the disadvantages the latter causes on the exercise of fundamental rights at stake. To reduce disadvantages and risks to the enjoyment of the rights to privacy and data protection, it is important that limitations contain appropriate safeguards.

[43] Article 5(2) of the Decision of 27 October 2021.

41. The aim with the deployment of the rules in question, and in particular the digital verification of EUDCC, is to maintain the necessary high standards of health and safety to avoid or at least limit the spread of COVID-19, while allowing the use of Parliament's buildings.

42. Since the envisaged processing is of an exceptional and temporary nature, the EDPS welcomes that the Decision of 27 October 2021 includes a clause regarding the regular reassessment of the Decision in view of the evolution of the sanitary and regulatory situation (Article 6(3) of the Decision of 27 October 2021 as renewed on 26 January 2022)[44]. The EDPS also encourages the Parliament to rely on the specialised EUIs (ECDC and EMA) as to the efficiency of maintaining the measures to reach their objectives of protecting the life and health of all persons present on the Parliament's premises, ensuring the continuity of Parliament's core functions and mitigating the risk of workplace transmission of COVID-19).

43. The necessity and proportionality of the measures as well as the mitigating measures implemented by the Parliament are described in a DPIA.

The DPIA

44. The Parliament attached to its information letter to the EDPS a DPIA on the ***extension* of the obligation to present a valid EUDCC *to any person*** entering the Parliament's premises **and the use of a *scanning application*** to check the EUDCC[45]. The DPIA under Article 39 of the Regulation was triggered by the fact that new technologies are being used and health data are being processed. The DPIA then concludes that this extension of the verification 'would be carried out in full respect of the fundamental principles and freedoms of data subjects - more particularly, that it would be lawful, necessary and proportionate - while implementing the necessary safeguards'.

45. The Parliament identified in the DPIA the following risks to data subjects:
a) The risk of discrimination and stigmatisation;
b) The risk of intrusion to the private life;
c) The risk of being denied access to the workplace or, for Members of the Parliament, being denied the right to vote and to exercise their mandate;
d) The risk of disclosure of personal data, including data concerning health, of scanned visitors;
e) The risk of unavailability of the scanning system;
f) The risk of malicious QR code leading to propagation of malware or unavailability of service;
g) The risk of unexpected change to another national application (e.g. vulnerability, hidden or legitimate functionality)[46];
h) The risk of unavailability of a valid EU Digital COVID-19 Certificate based on different grounds (vaccination status, recovery from an illness or negative PCR test).

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44 EDPS Guidance for return to the workplace, page 11. Available at https://edps.europa.eu/system/files/2021-08/21-08-09_guidance_return_workplace_en_0.pdf

45 PE 698.291/BUR.

46 This risk covers the possibility of the chosen CovidScanBE app presenting a future vulnerability, not detect at the time being. The Parliament stated that to answer to that possibility, ITEC support can use a different scanning app.

46. For those who are neither vaccinated against, nor recovered from the virus, the DPIA underlines that the Parliament offers the possibility of having free PCR testing at all three places of work of the Parliament, the result of which will be uploaded by the national health authorities on the individuals' COVID-19 Certificate in accordance with Regulation 2021/953. In addition, the Parliament stated that physical distance between people ensures privacy at the moment of scanning the digital certificate. The Parliament added that the data is viewed in event-mode by the digital verification procedure ensuring data minimisation (red light/green light) and that there will be no storage of individual scanning results, nor a data export functionality.

47. In the DPIA, the Parliament considered other options than the use of a scanning app, such as the manual (visual) control, and concluded that the digital verification of certificates with a QR code is the least intrusive one[47]. In addition, the Parliament stresses that the proposed solution also ensures data minimisation, since it would not require any storage or transmission of personal data and would limit access to persons authorised to verify the validity and authenticity of the Certificates, without ever revealing whether the data subject has been vaccinated, tested, or recovered from a previous infection with COVID-19.

48. In this respect, the Parliament has decided to use the CovidScanBE app[48], which is an application developed by the Belgian federal governmental agency e-Health following the technical specifications of the eHealth Network of the European Commission[49] in all its sites (Brussels, Luxembourg and Strasbourg). The Parliament highlights that the verification of the authenticity of the certificates by this application includes the checking of the validity of the certificate and the validity of its type. The application visualises the data of the certificate's QR code and verifies its authenticity. The application also checks whether a specific certificate is suspended or not. Although the Parliament's DPIA stated that the verification is done locally in the device and without an online connection, that statement is not accurate. In order to check if data subjects have a valid QR code that is not suspended, the application requires an online connection to the national databases holding that information. When the verification process is completed, personal data are automatically deleted and nothing is stored in the application or transferred by any other means.

49. According to the information provided by the Parliament[50], the scanning app is designed to function offline to overcome any unavailability of an Internet connection. The scanning devices are not connected to the internal Parliament's network, but only to the Parliament's private Wi-Fi network. The Parliament puts forward that in case of issues with the scanning system, ITEC support can use a different scanning app. The Parliament said it will monitor the scanning apps to detect any negative impact, such as vulnerability or hidden functionality.

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47 Parliament's DPIA, page 8: '... from a safety and legal - certainty perspective, the scan of the QR code of an EU Digital COVID Certificate presents various advantages in comparison to a manual verification , as it offers a faster verification process, diminishing the extent of the queues at entrances which would increase the risk of infections for anyone entering the buildings as well as for DG SAFE agents , and because using the EU Digital COVID Certificates helps preventing the use of fake Certificates and is readable in the working languages English and French, which are mostly used by Parliament's security staff'.

48 https://www.covidscan.be/en/

49 https://ec.europa.eu/health/sites/default/files/ehealth/docs/digital-green-certificates_v4_en.pdf

50 DPIA, pp. 13-14.

50. In this regard, the EDPS notes that the Parliament's DPIA did not include the possibility of developing its own scanning application with the purpose of verifying the validity of EUDCC. The EDPS believes that the Parliament should take into consideration the advantages of such possibility, namely regarding a better control over the processing operation and the possibility to adapt to the national rules in the different locations of the Parliament, in order to have a complete panorama over the risks and its mitigation measures. However, this does not mean that a scanning application developed by the Parliament is automatically the only, or best solution, but simply that such a possibility should be considered by the Parliament, in the Parliament's DPIA. In light of the accountability principle and as the controller of this processing operation, (Articles 4(2) and 26 of the Regulation), the Parliament should take into account the nature, scope, context and purposes of the data processing, as well as the risks to data subjects when implementing the appropriate technical and organisation measures.

51. The EDPS highlights that the Parliament, as the controller of this processing operation, is responsible for complying with the data protection principles and for demonstrating that compliance, in line with Article 4(2) of the Regulation.

52. The DPIA performed by the Parliament did not identify any high risks to the data subjects and assessed the risks as low with the implementation of mitigation measures.[51]

53. The risks regarding discrimination, stigmatisation, intrusion to the private life and the risk of denying access to the workplace or, as regards Members, to be denied the right to vote, have been addressed by the Parliament. The Parliament makes available free PCR testing in the Parliament's testing facilities.

54. Regarding the *risk of disclosure* of personal data of scanned visitors, the Parliament will use dedicated scanning devices and the event-mode display as mitigation measures.

55. The Parliament stated that the *risk of unavailability* of the scanning system is addressed through the scanning app design to function offline. If needed, the ITEC support can use a different app by reconfiguring the scanning devices.

56. To address the *risk of malicious QR code* leading to propagation of malware or unavailability of service, the Parliament indicates that the scanning devices are not connected to the internal network of the Parliament, but only to the Parliament's Wi-Fi network and that the CovidScanBE app is checking the QR format before processing it.

57. The *risk of unexpected change to national application* (e.g. vulnerability, hidden or legitimate functionality) was tackled thanks to the scanning devices not being connected to the internal Parliament's network, but only to the Parliament's Private Wi-Fi network. In addition, access to the Parliament's Private network is limited only to authorised devices (a digital Certificate from the Parliament Public Key Infrastructure is required to access). Furthermore, only outgoing data flows are possible from the Parliament's Private network, and no incoming connection is allowed from outside. Moreover, the Parliament will monitor the evolution of the

[51] DPIA, pp. 17-20.

scanning apps used in its premises to detect any negative impact on the risk assessment.

58. As regards the internet connection, already mentioned, the Parliament stated that the scanning app is designed to function offline to overcome any unavailability of an Internet connection. In this respect, the EDPS underlines that the Belgian DPA is currently investigating a potential security issue regarding the validation and reading of digital certificates through the CovidScanBE app[52]. In this context the Belgian DPA highlighted that for vaccinated persons, the application checks upon each scan if the person is in the Belgian quarantine database, in which case the QR is disabled. Therefore this check requires an internet connection, as well as the transmission of data to conduct the check. The Parliament should clarify these elements and, where needed, adapt the DPIA, the record and the Privacy Statement accordingly.

59. As above-mentioned, the Parliament can rely on the assessment by national authorities that developed the app or by the Belgian Data Protection Authority (DPA) regarding the CovidScanBE app or of other national data protection authorities regarding any other national apps that it would use. If there is no assessment from a DPA, the Parliament should perform its own assessment. If the investigation of the Belgian DPA concludes that the CovidScanBE app does not meet the data protection requirements, the Parliament should consider alternatives to the use of the application.

60. The risk of unavailability of a digital verification of the EUDCC can be surpassed through a visual check of the EUDCC or the exhibition of a recent negative PCR paper-based test. In this respect, the EP refers to the free PCR testing possibility given at all three places of work of the Parliament.

61. The EDPS notes that the Parliament has **updated** the DPIA before renewing the measures provided in the Decision of 27 October 2021, in light of the most recent developments. From the recitals of the Decision of 26 January 2022[53], the EDPS understand that the update focuses on the extension of the verification of the EUDCC for any persons entering the Parliament's building and not about the reassessment of the use of the CovidScanBE app. The updated version of the assessment concludes that a prolongation of the obligation to present a certificate for any person is lawful, necessary and proportionate. The Parliament underlines in particular that the remote working conditions cannot be applied to staff in essential functions who have to be present on-site at all times and that certain MEPs have to be present on Parliament's premise to ensure the effective functioning of the Parliament. The Parliament also stresses that MEPs travel frequently between their constituencies and Parliament's places of work and that essential staff have to travel between these places as well. Therefore, the risk profile of the Parliament is significantly higher than of other EUIs. Finally, the Parliament, through its members, continues to receive important visitors for the purpose of guaranteeing an open and transparent democracy in close contact with key parts of civil society and interest representatives.

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52 https://www.autoriteprotectiondonnees.be/citoyen/lapd-se-penche-sur-la-potentielle-faille-de-securite-de-lapplication-covidscan

53 The EDPS has not received the updated version. A summary of the assessment's conclusion is included Recitals 14-17 of the Decision of 26 January 2022.

Recommendation 3: The Parliament should:
3.1. Rely on the analyses of specialised health-related EUIs (ECDC and EMA) as to the efficiency of maintaining the Decision of 27 October 2021 to reach its objectives of protecting the life and health of all persons present on the Parliament's premises, ensuring the continuity of Parliament's core functions and mitigating the risk of workplace transmission of COVID-19;
3.2. Clarify the verification process of the validity of the EUDCC, including in relation to the need of an internet connection as regards a possible quarantine and the transmission of personal data to conduct the checks; adapt its records and Privacy Statement accordingly;
3.3. Implement any updates from public authorities that develop the app on this matter to ensure that it is compliant with data protection rules;
3.4. Follow closely any assessment of the CovidScanBE app of the Belgian DPA;
3.5. Take these analyses, updates and assessments into account and update the DPIA accordingly, also in line with the requirements of data protection by design and by default, as well as data minimisation principle.

Recommendation 4: The EDPS recommends that the Parliament verify if the appropriate technical and organisational measures were implemented to ensure and to be able to demonstrate that the verification process of the validity of the EUDCC is performed in accordance with the Regulation.

3.4. Additional recommendations

62. In line with the principle of **transparency**[54], information about the processing should be given to the individual before the processing starts, and it should also be readily accessible to them during the processing. The Parliament informed that a Record of the processing activity, together with a Privacy Statement are available via the European Parliament Data Protection Central Register, and in paper - version at the entrances of the European Parliament. However, the Privacy Statement[55] does not include the possibility to allow access to those in possession of a paper-based negative PCR test.

63. To allow for proper allocation of data protection obligations, such as regular security updates to the mobile app and its cloud components, the Parliament should clarify and document its role as well as the **roles of the app developers and cloud service providers** in the digital verification processing. The privacy policy published on the mobile app website lacks information with regard to the identification of the controller and responsible data protection authority.[56] In the EDPS view, the app developers at national level are data controllers under the GDPR for the issuance of the EUDCC and the update of the data on each holder[57], whereas EUIs that use the app are separate controllers under the Regulation.

54 Articles 4(1)(a) and 15-17 of the Regulation.
55 https://www.europarl.europa.eu/data-protect/reportPdf/printPrivacyStatement.do;jsessionid=03F9271390F4DEFDF4432D430B199DE9?prefix=V3&nr=464
56 https://edpb.europa.eu/system/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasurestransferstools_en.pdf
57 Article 10(6) of Regulation 2021/953.

Recommendation 5: In order to facilitate data subject right to information regarding the processing of their personal data, the Parliament should include data protection notices in the transit zone, where MEPs, staff and visitors will be having their certificates checked, for e.g. by means of posters on the walls or any other surface, visible to them. This will allow visitors to know in advance how verification will take place, what data will be processed, who will have access to it, and where to direct any queries or objections regarding the processing. The obligation to provide the relevant information to the data subjects should be reflected in the Decision of 27 October 2021. In addition, the Privacy Statement regarding this processing operation should include the possibility that the Parliament acknowledged in the Decision of 27 October 2021 of accepting **negative results of a PCR test** carried out in Belgium, Luxembourg or France as an alternative to presenting a EUDCC.

Recommendation 6: The Parliament should clarify the allocation of roles of app developers, cloud service to check for positive test results, firebase (mentioned in the privacy policy), cloud service to update the software and cloud service to update the recognised certification authorities that can issue certificates.

4. CONCLUSION

64. In this Opinion, the EDPSs makes several recommendations to the Parliament to ensure compliance of the processing, i.e. the digital verification of COVID-19 certificates of all persons requesting access to the Parliament's buildings, with the Regulation.

65. In light of the accountability principle, the EDPS expects the Parliament to implement the above recommendations accordingly and has decided to **close the case**.

Done at Brussels on 1st March 2022

[e-signed]

Wojciech Rafał WIEWIÓROWSKI