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COMMISSION DECISION

of 14.1.2022

**amending Decision C(2020) 5973 as regards the requirement for all persons to exhibit a
COVID-19 certificate to access the Commission premises in Luxembourg**

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THE EUROPEAN COMMISSION,

Having regard to the Staff Regulations of Officials of the European Union¹, and in particular Article 1e(2) thereof, and the Conditions of Employment of Other Servants of the European Union², and in particular Articles 10(1) and 80(4) thereof,

Having regard to Commission Decision C(2006) 1623/3 of 26 April 2006 establishing a harmonised policy for health and safety at work for all Commission staff³, and in particular Article 3(1), point (a) thereof,

Whereas:

- (1) On 16 December 2021, the Luxembourgish authorities adopted a law⁴ amending the law of 17 July 2020 on the measures to fight the COVID-19 pandemic⁵. The law of 17 July 2020, as amended, provides for additional measures necessary to deal with the latest developments linked to the COVID-19 pandemic.
- (2) As outlined in the explanatory memorandum to that law, almost one in four residents in Luxembourg over the age of 12 are not fully vaccinated against COVID-19. This

¹ OJ L 56, 4.3.1968, p. 1.

² Ibid.

³ PV(2006) 1742, point 11.

⁴ Loi du 16 décembre 2021 portant modification : 1° de la loi modifiée du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19 ; 2° de la loi modifiée du 6 janvier 1995 relative à la distribution en gros des médicaments ; 3° de la loi modifiée du 20 juin 2020 portant 1° dérogation temporaire à certaines dispositions en matière de droit du travail en relation avec l'état de crise lié au Covid-19 ; 2° modification du Code du travail ; 4° de la loi modifiée du 24 juin 2020 portant introduction de mesures temporaires relatives à la loi communale modifiée du 13 décembre 1988 et à la loi modifiée du 27 mars 2018 portant organisation de la sécurité civile dans le cadre de la lutte contre le Covid-19 ; 5° de la loi modifiée du 24 juin 2020 portant introduction d'une mesure temporaire relative à l'application de l'article 12 de la loi modifiée du 19 juillet 2004 concernant l'aménagement communal et le développement urbain dans le cadre de la lutte contre le Covid-19 ; 6° de la loi modifiée du 24 juin 2020 concernant la célébration du mariage dans un édifice communal autre que la maison communale dans le cadre de la lutte contre la pandémie Covid-19 ; 7° de la loi du 24 juillet 2020 portant dérogation temporaire aux articles L. 524-1, L. 524-2, L. 524-5, L. 541-1 et L. 541-2 du Code du travail ; 8° de la loi modifiée du 19 décembre 2020 portant dérogation temporaire à l'article L. 121-6 du Code du travail ; 9° de la loi modifiée du 19 décembre 2020 ayant pour objet la mise en place d'une contribution temporaire de l'État aux coûts non couverts de certaines entreprises ; 10° de la loi modifiée du 19 décembre 2020 ayant pour objet la mise en place d'une nouvelle aide de relance ; 11° de la loi modifiée du 22 janvier 2021 portant : 1° modification des articles L. 234-51, L. 234-52 et L. 234-53 du Code du travail ; 2° dérogation temporaire aux dispositions des articles L. 234-51, L. 234-52 et L. 234-53 du Code du travail. Journal Officiel du Grand-Duché de Luxembourg N° 875 du 16 décembre 2021.

⁵ Loi du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 et modifiant : 1° la loi modifiée du 25 novembre 1975 concernant la délivrance au public des médicaments ; 2° la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments. Journal Officiel du Grand-Duché de Luxembourg N° 624 du 17 juillet 2020.

involves a two-fold risk. First, the risk for individuals themselves of being infected by the virus and of falling ill, some so seriously that they may need to be hospitalised. Second, the risk of infecting others, including vulnerable people who may become seriously ill, even if they have been vaccinated. In both cases, this could lead to the postponement of normal medico-surgical activity and, consequently, to the risk that the Luxembourgish health system and the provision of healthcare be compromised.

- (3) Because of the arrival of the Omicron variant, which seems more contagious than the Delta variant, the Luxembourgish authorities consider it necessary to speed up the vaccination of the population. At the same time, new health measures need to be taken to ensure the safety of all people, including those who have not been vaccinated and those who have been fully vaccinated, but remain vulnerable because of age or disease or both. The new health measures also have to ensure the sustainability of the Luxembourgish health system.
- (4) In accordance with Article 3septies, paragraph 1, of the law of 17 July 2020, as amended, all employees must present a COVID-19 certificate in order to access their workplace. Three types of certificates are accepted, namely negative test certificates, recovery certificates and vaccination certificates. An employer may also decide to extend the same obligation to other persons accessing its premises.
- (5) Persons to whom the competent Luxembourgish authorities have issued a certificate pursuant to Article 3bis, paragraph 5, of the same law, stating that there is a counter-indication to their vaccination, have to present a negative test certificate in order to access their workplace. That negative test may be a molecular nucleic acid amplification test ('NAAT'), a rapid antigen test ('RAT') or a self-diagnostic test done on the spot.
- (6) Pursuant to Article 3septies, paragraph 7, of the law of 17 July 2020, as amended, the employer must verify the identity of the holders of COVID-19 certificates, if necessary by examining their identity documents.
- (7) Article 3quater, paragraph 4, of the law of 17 July 2020, as amended, provides that the validity of a test certificate be reduced to 48 hours, in the event of a NAAT, and to 24 hours, in the event of a RAT.
- (8) On 8 December 2021, the national data protection authority (*Commission nationale pour la protection des données*) rendered its opinion on the draft law⁶. On 10 December 2021, the authority rendered a supplementary opinion on the draft law as amended by the Government on 9 December 2021⁷. In neither of those opinions did the authority raise any concerns as regards the obligation incumbent upon all employees to exhibit a COVID-19 certificate in order to access their workplaces.
- (9) On 14 December 2021, the Council of State of Luxembourg (*Conseil d'État*) rendered a supplementary opinion on the draft law, which states that the measures laid down in Article 3septies, as amended, do not constitute a disproportionate interference with individual freedoms, since those measures are proportionate to the needs arising from the protection of public health⁸.
- (10) Commission Decision C(2020) 5973, as amended by Commission Decisions C(2021) 6669 and C(2021) 7699, lays down specific health and safety rules for the Commission sites of Brussels and Luxembourg to prevent the further spread of SARS-

⁶ Délibération n° 53/AV31/2021 du 8 décembre 2021.

⁷ Délibération n° 54/AV32/2021 du 10 décembre 2021.

⁸ Avis complémentaire 60.857 du 14 décembre 2021.

CoV-2 and to protect staff, while ensuring business continuity and adopting solutions for staff to enable them to perform their work efficiently and effectively. In particular, Decision C(2020) 5973 provides that visitors to Commission sites in Brussels and Luxembourg must exhibit a COVID-19 certificate which must, in principle, be verified digitally by means of a mobile application.

- (11) Article 1 of the Decision of the Director-General of Personnel and Administration of 22 April 2008 (D(2008) 3248) provides that the Commission sites of Brussels and Luxembourg should, to the extent that they comply with Union law and the Protocol on Privileges and Immunities, apply the relevant provisions of national law pertaining to health and safety at work.
- (12) In view of the additional measures introduced by the Luxembourgish authorities on 16 December 2021, it is accordingly appropriate to amend Decision C(2020) 5973 in order to require not only visitors, but also staff members to exhibit a COVID-19 certificate to access the Commission premises in Luxembourg. The Commission should also consider any guidance issued by the competent national authorities on the implementation of the law adopted on 16 December 2021, provided that such guidance complies with Union law and the Protocol on Privileges and Immunities.
- (13) Furthermore, to ensure an adequate level of protection, the Commission as data controller carried out an assessment and concluded that it is also necessary and proportionate to apply the same health and safety rules to individuals who are neither staff members of the Commission nor visitors within the meaning of Article 2a of Decision C(2020) 5973, such as staff members of other Union institutions in possession of a valid access pass. Such a measure is fully in line with national law, according to which employers may decide to extend the requirement of a COVID-19 certificate to persons other than their employees.
- (14) This extension in the categories of data subjects concerned is necessary to achieve the aim of protecting staff members' health and ensure business continuity. In light of the numerous interactions between staff members of the Union institutions, restricting the application of the health and safety rules in question only to the staff of the Commission would jeopardise the effectiveness of the measures. In addition, many of the other Union institutions operating in Luxembourg have already applied or are planning to apply similar health and safety measures, which require all persons to exhibit a COVID-19 certificate to access their premises. Furthermore, since the Commission does not possess data concerning the vaccination status of staff members of other Union institutions, it is not possible to rely on alternative and less privacy intrusive measures.
- (15) Unlike visitors, staff members of the Union institutions usually access the Commission's premises by showing an access pass issued by their respective institution. Hence, Articles 2c and 2d of Decision C(2020) 5973 should be amended in such a way that, when verifying that they are the person to whom the COVID-19 certificate they exhibit has been issued, it is possible to compare the data included in that certificate with their access pass.
- (16) On 21 December 2021, the Commission adopted Delegated Regulation (EU) 2021/2288⁹ amending the Annex to Regulation (EU) 2021/953 of the European

⁹ Commission Delegated Regulation (EU) 2021/2288 of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series (OJ L 458, 22.12.2021, p. 459).

Parliament and of the Council¹⁰ as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series. That Delegated Regulation established an acceptance period of 270 days for vaccination certificates indicating the completion of the primary vaccination series. The Delegated Regulation did not lay down an acceptance period for vaccination certificates issued after a booster jab. Whereas the Delegated Regulation established the acceptance period for the purposes of the free movement of persons between Member States, on 11 January 2022, Luxembourg decided that the acceptance period of 270 days for vaccination certificates linked to the completion of the primary vaccination series would apply for all purposes for which vaccination certificates may be used under national law¹¹. At the same time, the validity of vaccination certificates issued after a booster dose remains unlimited. It is therefore appropriate to amend Article 2b of Decision C(2020) 5973 to include the same acceptance periods for vaccination certificates.

- (17) Article 2b of Decision C(2020) 5973 should be amended to include the possibility for persons to whom the competent national authorities have issued a certificate stating that they have a counter-indication to be vaccinated against COVID-19 to do a self-diagnostic test on the spot. That provision should also be amended to reduce the validity of test certificates in line with Article 3^{quater}, paragraph 4, of the law of 17 July 2020, as amended. At the same time, the rules applicable in Brussels should remain unchanged in that respect.
- (18) At the Commission sites in Luxembourg, COVID-19 certificates should, to the extent possible, continue to be verified digitally by means of the mobile application CovidCheck.lu in accordance with the specific protocol adopted by the Director-General for Human Resources and Security with a view to minimising the risk of fraud. The only data visible during the verification via the CovidCheck.lu application are a green or red quadrant, depending on the validity of the scanned certificate, and the name and surname of the person to whom the certificate was issued.
- (19) The digital verification of certificates involving the scanning of the QR code on the document constitutes processing of personal data within the meaning of Article 2(5) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹².
- (20) Pursuant to Article 5(1), point (a) of Regulation (EU) 2018/1725, processing of personal data is lawful if it is necessary for the performance of a task carried out in the public interest. Pursuant to Article 5(2) of Regulation (EU) 2018/1725, the basis for such processing should be laid down by Union law. Decision C(2020) 5973, as amended, provides for such basis.
- (21) The processing of personal data may reveal personal data concerning health, such as data relating to the vaccination status, test results or recovery from a SARS-CoV-2

¹⁰ 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).

¹¹ Loi du 11 janvier 2022 portant modification de la loi modifiée du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19. Journal Officiel du Grand-Duché de Luxembourg N° 16 du 11 janvier 2022.

¹² 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, p. 39).

infection. Health data is considered a special category of personal data, the processing of which is, in principle, prohibited under Article 10(1) of Regulation (EU) 2018/1725. The processing of such data for the purpose of digital verification of COVID-19 certificates on the basis of this Decision falls under the exceptions provided for in Article 10(2), points (b), (g) and (i) of Regulation (EU) 2018/1725. As this Decision constitutes a measure intended to protect health and safety of staff members, the Commission acts as data controller in the field of employment and social security as laid down in Article 1e(2) of the Staff Regulations. The reasons for substantial public interest and public interest in the area of public health are linked to the current COVID-19 pandemic, which requires the Commission to adopt specific health and safety measures for the Commission sites in order to prevent the spread of the SARS-CoV-2 virus and to protect staff members.

- (22) Certificates issued by the Luxembourgish authorities pursuant to Article 3*bis*, paragraph 5, of the law of 17 July 2020, as amended, do not contain a QR code that would be recognised by the mobile application CovidCheck.lu. Accordingly, such certificates should be verified manually by means of a visual check. In addition, the results of the self-diagnostic test done on the spot should also be verified manually. That verification should be carried out in accordance with a specific protocol adopted by the Director-General for Human Resources and Security.
- (23) Decision C(2020) 5973 should therefore be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

Decision C(2020) 5973 is amended as follows:

- (1) Article 2b is replaced by the following:

“Article 2b

1. Visitors to the Commission sites in Brussels and all persons entering the Commission sites in Luxembourg shall exhibit one of the following certificates:
- (a) a certificate issued in accordance with points (a), (b) or (c) of Article 3(1) of Regulation (EU) 2021/953 of the European Parliament and of the Council*;
- * 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).
- (b) a COVID-19 certificate issued by a third country in respect of which the Commission has adopted an implementing act pursuant to Article 3(10) or Article 8(2) of Regulation (EU) 2021/953;
- (c) another certificate issued by a Member State or a third country containing at least the name and date of birth of the person concerned and confirming alternatively that:
- (i) the person has received a COVID-19 vaccine in the Member State or third country issuing the certificate;
- (ii) the person has been subject to a molecular nucleic acid amplification test (‘NAAT’) or a rapid antigen test (‘RAT’) carried out by health professionals or

by skilled testing personnel in the Member State or third country issuing the certificate and indicating the type of test, the date on which it was carried out and the result of the test;

(iii) following a positive result of a NAAT carried out by health professionals or by skilled testing personnel, the person has recovered from a SARS-CoV-2 infection.

2. By way of derogation from paragraph 1, persons accessing the Commission sites in Luxembourg to whom the Luxembourgish authorities have issued a certificate in accordance with Article 3*bis*, paragraph 5, of the law of 17 July 2020** may also exhibit the negative result of a self-diagnostic test for SARS-CoV-2 done on the spot.

** Loi du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 et modifiant : 1° la loi modifiée du 25 novembre 1975 concernant la délivrance au public des médicaments ; 2° la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments. Journal Officiel du Grand-Duché de Luxembourg N° 624 du 17 juillet 2020.

3. Access to the Commission sites in Brussels shall be denied to any visitor who does not exhibit one of the certificates referred to in paragraph 1.

Access to the Commission sites in Luxembourg shall be denied to any person who does not exhibit one of the certificates referred to in paragraph 1 or a negative result of a self-diagnostic test as referred to in paragraph 2.

4. Vaccination certificates within the meaning of Article 3(1), point (a) of Regulation (EU) 2021/953 and vaccination certificates referred to in paragraph 1, point (c)(i) of this Article shall only be accepted if:

- (a) they were issued for a COVID-19 vaccine that has been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council***, or that has been granted a marketing authorisation by the competent authority of Belgium or Luxembourg, respectively, pursuant to Directive 2001/83/EC of the European Parliament and of the Council****, or the distribution of which has been temporarily authorised by the respective Member State pursuant to Article 5(2) of that Directive, or, with respect to the Commission sites in Luxembourg, that has completed the WHO emergency use listing procedure and fulfils the requirements laid down in Article 1, point 23, of the 17 July 2020;

*** Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1).

**** Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

- (b) at least 14 days have passed since full vaccination;
- (c) the acceptance period set out in point 1(h) of the Annex to Regulation (EU) 2021/953 has not yet elapsed.

5. For the purposes of paragraph 4, full vaccination shall be understood as:

- (a) having received the second dose in a two-dose series;
- (b) having received a single-dose vaccine;

- (c) having received a single dose of a two-dose vaccine after having previously been infected with SARS-CoV-2.
6. Test certificates within the meaning of Article 3(1), point (b) of Regulation (EU) 2021/953 and test certificates referred to in paragraph 1, point (c)(ii) of this Article shall only be accepted if they indicate a negative result obtained, alternatively:
- (a) not more than 72 hours before entering the Commission sites in Brussels and not more than 48 hours before entering the Commission sites in Luxembourg, in case of a NAAT;
 - (b) not more than 48 hours before entering the Commission sites in Brussels and not more than 24 hours before entering the Commission sites in Luxembourg, in case of a RAT.
7. Certificates of recovery within the meaning of Article 3(1), point (c) of Regulation (EU) 2021/953 and certificates of recovery referred to in paragraph 1, point (c)(iii) of this Article shall only be accepted if they indicate that less than 180 days have passed since the date of the first positive test result.
8. This Article shall not apply to children under the age of 12 nor to any children accessing childcare facilities.”

(2) In Article 2c, paragraph (3) is replaced by the following:

“3. The name and surname showed on the mobile application shall be compared with the data included in the certificate holder’s identity documents, such as passport or identity card, or access pass issued by a Union institution, office, body or agency and recognised by the Commission.”

(3) Article 2d is replaced by the following:

“Article 2d

1. A certificate referred to in Article 2b(1), point (c), and any other COVID-19 certificate not recognised by the mobile applications shall be verified manually by means of a visual check. The manual verification of certificates shall be carried out in accordance with the protocol on manual verification of COVID-19 certificates adopted by the Director-General for Human Resources and Security.
2. The name and surname mentioned in the certificate shall be compared with the data included in the certificate holder’s identity documents, such as passport or identity card, or access pass issued by a Union institution, office, body or agency and recognised by the Commission.
3. The name of the certificate holder, the content of the certificate and the result of the manual verification shall not be stored, transferred or further processed in any way.”

(4) the following Article 2f is inserted:

“Article 2f

1. A certificate referred to in Article 2b(2) and the results of a self-diagnostic test for SARS-CoV-2 done on the spot shall be verified manually by means of a visual check. The manual verification shall be carried out in accordance with the protocol on manual verification of counter-indication certificates and self-diagnostic tests adopted by the Director-General for Human Resources and Security.

2. The name and surname mentioned in the certificate shall be compared with the data included in the certificate holder's identity documents, such as passport or identity card, or access pass issued by a Union institution, office, body or agency and recognised by the Commission.
3. The name of the certificate holder, the content of the certificate and the results of the self-diagnostic test and of the manual verification shall not be stored, transferred or further processed in any way."

Article 2

This Decision shall enter into force on 15 January 2022.

Done at Brussels, 14.1.2022

For the Commission
Gertrud Ingestad
Director-General for Human Resources and
Security