

Report of the European Ombudsman closing a query from the Catalan Ombudsman concerning the issuing of EU Digital COVID Certificates for those who are not vaccinated against COVID-19 for medical reasons (Q1/2022/TM)

Decision

Case Q1/2022/TM - Opened on 11/03/2022 - Decision on 08/06/2022

Background

1. National and regional ombudsmen in the European Network of Ombudsmen may ask the European Ombudsman for written answers to queries about EU law and its interpretation, including those which arise in their handling of specific cases.
2. On 25 January 2022, the Catalan Ombudsman [1] submitted a query, concerning Regulation (EU) 2021/953 on the EU Digital COVID Certificate [2] .
3. The EU Digital COVID Certificate was established to ensure the right to free movement between Member States during the COVID-19 pandemic. Those in possession of a valid Certificate should be able to travel between EU Member States without any additional restrictions. The Certificate can be accessed with a validity of nine months by those having received a COVID-19 vaccine or in possession of a certificate of recovery following a SARS-CoV-2 infection, and accessed with a short duration validity on the basis of a negative SARS-CoV-2 test result [3] .
4. The Catalan Ombudsman raised concerns regarding access to the EU Digital COVID Certificate for persons who, for medical reasons, are unable to take COVID-19 vaccines. People in this situation can get an EU Digital COVID Certificate only on the basis of a certificate of recovery or, for a short duration, on the basis of a negative SARS-CoV-2 test result.
5. The European Ombudsman considered it useful to consult the Commission on the issues raised by the Catalan Ombudsman and asked it to reply on 11 March 2022. The Commission replied on 31 March 2022. The Catalan Ombudsman provided comments on the Commission's reply on 16 May 2022.



The questions addressed to the Commission

6. Based on the query, the Ombudsman asked the Commission the following questions:

- In the context of the drafting of Regulation 2021/953 on the EU Digital COVID Certificate, did the Commission take into account the situation of those who have a medical exemption from COVID-19 vaccines in terms of accessing the EU Digital COVID Certificate?
- Has the Commission provided any guidance to the Member States on how to deal with persons who currently cannot obtain an EU Digital COVID certificate because they are unable to take COVID-19 vaccines for medical reasons?
- Does the Commission foresee this situation being addressed in subsequent updates of the Regulation?

The Commission's reply

7. Regulation 2021/953 sets out a common framework for the issuance, verification and acceptance of interoperable certificates for COVID-19 vaccination, test or recovery certificates to facilitate free movement. All Member States have to issue the three different types of certificates.

8. Persons who cannot be vaccinated, for example for medical reasons, can access an EU Digital COVID Certificate, for the intended purpose of travelling within the EU, with a negative SARS-CoV-2 test result. If they have received a positive test result, they will be able to obtain a certificate of recovery once they recover. To help ensure that tests are affordable for all citizens, the Commission has put EUR 95 million at the disposal of Member States to provide for tests that qualify for the issuance of an EU Digital COVID Certificate.

9. The EU Digital COVID Certificate Regulation does not oblige Member States to require proof of vaccination, test or recovery status in the context of the exercise of free movement. However, where they do have such requirements, they are obliged to accept the EU Digital COVID Certificate.

10. The Commission continues to urge Member States to waive any restrictions to the free movement of persons within the EU adopted in response to the COVID-19 pandemic, as soon as the epidemiological situation allows. Based on the epidemiological situation, more and more Member States are indeed lifting such requirements. This is why the Commission did not include any amendments in this regard in its proposal to extend the EU Digital COVID Certificate Regulation until 30 June 2023.

11. The domestic use of COVID-19 certificates or passes for other purposes than facilitating free movement within the EU falls outside the scope of the EU Digital COVID Certificate.



The European Ombudsman's conclusion

12. The Catalan Ombudsman did not seek further clarifications concerning the questions put forward to the Commission. However, the Catalan Ombudsman emphasised the need to ensure that persons who cannot be vaccinated for medical reasons should have appropriate access to an EU Digital COVID Certificate. In this regard, they should be able to access free SARS-CoV-2 tests in order to ensure non-discrimination, according to the Catalan Ombudsman.

13. Having obtained the Commission's reply and the comments from the Catalan Ombudsman, the European Ombudsman closes the query.

14. The Catalan Ombudsman and the Commission will be informed of this report.

Rosita Hickey Director of Inquiries

Strasbourg, 08/06/2022

[1] Síndic de Greuges de Catalunya.

[2] 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, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0953> [Link]

[3] Article 3(1) of Regulation 2021/953.