

Comments of the Commission on a request for information from the European Ombudsman
- Query by the Catalan Ombudsman, ref. Q2/2021/OAM

I. BACKGROUND

To allow for a gradual lifting of restrictions to free movement put in place to limit the spread of COVID-19, the European Parliament and the Council adopted, on 14 June 2021, the Regulation on the EU Digital COVID Certificate¹. It consists on a common framework for the issuance, verification and acceptance of interoperable certificates for COVID-19 vaccination, test or recovery certificates to facilitate free movement.

Article 7(1) of Regulation (EU) 2021/953 sets out how certificates of recovery should be issued. It specifies:

“[...] Certificates of recovery shall be issued at the earliest 11 days after the date on which a person was first subject to a NAAT test which produced a positive result. [...]”

Certificates of recovery should thus only be issued following a positive nucleic acid amplification test (NAAT) such as RT-PCR test. However, Article 7(4) of Regulation (EU) 2021/953 foresees the possibility for the Commission to reassess the situation at a later stage and decide by means of a delegated act to allow the issuance of recovery certificates on the basis of a positive rapid antigen test, an antibody test, including a serological test for antibodies against SARS-CoV-2, or any other scientifically validated method:

“On the basis of guidance received pursuant to Article 3(11), the Commission is empowered to adopt delegated acts in accordance with Article 12 to amend paragraph 1 of this Article and point (c) of Article 3(1) to allow for the issuance of the certificate of recovery on the basis of a positive rapid antigen test, antibody test, including a serological test for antibodies against SARS-CoV-2, or any other scientifically validated method. [...]”

II. THE QUERY

The Catalan Ombudsman raises concerns that there are people who have passed a COVID-19 infection less than 6 months ago, but that cannot receive a recovery certificate, because at the time they were not diagnosed with a PCR test but with a rapid antigen test.

The Catalan Ombudsman therefore proposes for the Commission to make use of its power to adopt a delegated act that would allow for the issuance of a recovery certificate based on a rapid antigen test, antibody test, or any other scientifically validated method.

¹ 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:32021R0953>)

III. THE COMMISSION'S COMMENTS

The Commission continues to seek scientific guidance from relevant expert bodies, such as the Health Security Committee, the European Centre for Disease Prevention and Control (ECDC) or European Medicines Agency (EMA), to inform its decision-making, including whether to use its power to adopt delegated acts based on Regulation (EU) 2021/953.

As far as the issuance of a certificate of recovery based on a positive rapid antigen test is concerned, the Commission notes that this possibility was originally foreseen in its proposal². However, the co-legislators decided to remove this possibility during the legislative negotiations, mainly in view of the higher number of false positives resulting from rapid antigen tests. At the time, ECDC considered that the performance of rapid antigen tests was sufficient for issuance of (short-lived) test certificates based on a negative result, but not for issuing (long-term) recovery certificates based on positive test results, due to insufficient specificity levels of this testing method.

In May 2021, the ECDC also issued a technical note to inform the discussions on the possible use of antibody tests in the context of the EU Digital COVID Certificate³. This note explained that the detection and quantification of antibodies could not be used as a direct indication of protective immunity, and that there was no EU-wide benchmarking and comparison between different antibody tests.

At the same time, the ECDC continues to monitor these topics. The Commission will take any new developments into account when considering whether to adopt a delegated act on the issuance of certificates of recovery based on tests other than NAAT.

It is also important to note that, by including vaccination, test and recovery certificates, Regulation (EU) 2021/953 ensures that as many persons as possible are able to obtain an EU Digital COVID Certificate in order to facilitate their right to free movement. This means that a person who has recovered and who has not done a PCR test at the time of infection can of course still travel. Where an EU Digital COVID Certificate is needed to avoid quarantine or testing requirements upon arrival, he or she can travel based on a vaccination certificate or a negative test certificate.

² COM(2021) 130 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A0130%3AFIN>

³ <https://www.ecdc.europa.eu/sites/default/files/documents/Use-of-antibody-tests-for-SARS-COV-2-in-the-context-of-Digital-Green-Certificates.pdf>