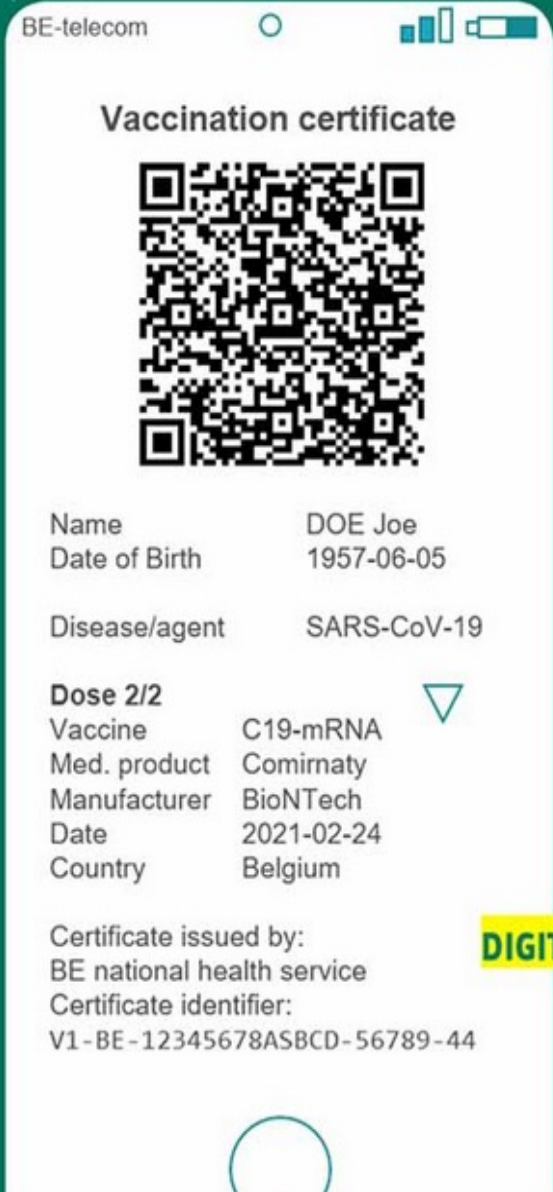


The EU's Digital Green Certificate Proposal: Privacy and Data Protection Issues

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DIGITAL VERSION



The Commission's Proposal On A Digital Green Certificate

Requires processing personal data...

- Personal data (necessary for verification purposes)
- Health data (sensitive data that needs to be protected against potential data misuses and informational harms against the individuals)
- Discriminatory uses of health data needs to be prevented

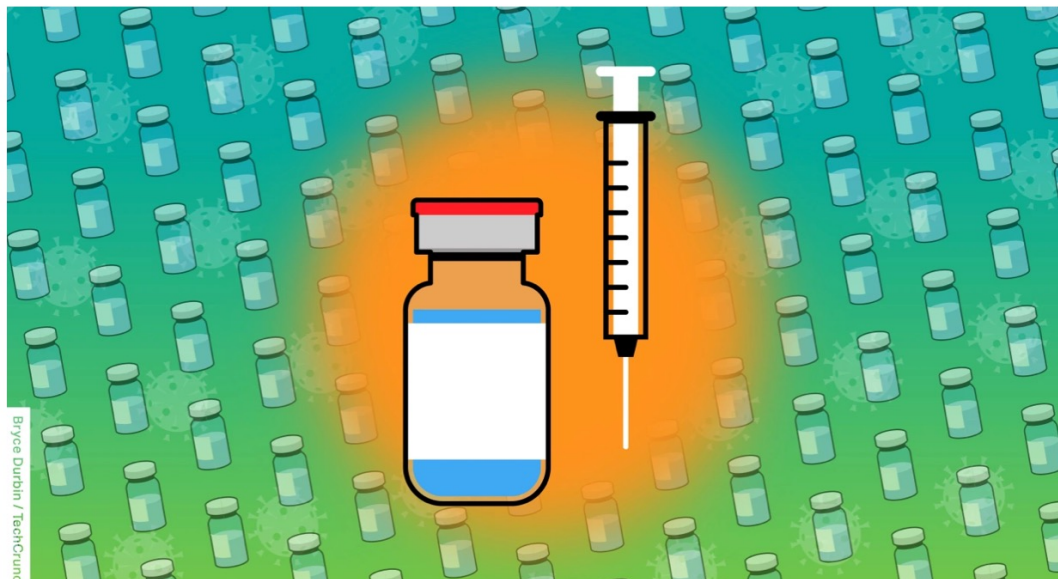
Privacy concerns...

✕

Europe's rush for a COVID-19 'digital pass' stirs concerns

Natasha Lomas @riptari / 1:36 AM GMT+1 • March 18, 2021

Comment



Belgium will test privacy aspects of EU vaccination certificates

Wednesday, 17 March 2021



Credit: Belga

Belgium welcomes the European Commission's proposal for a 'Digital Green Certificate' for safe travel in the EU during the pandemic, but will carefully test its privacy aspects.

Privacy & Data Protection



Privacy

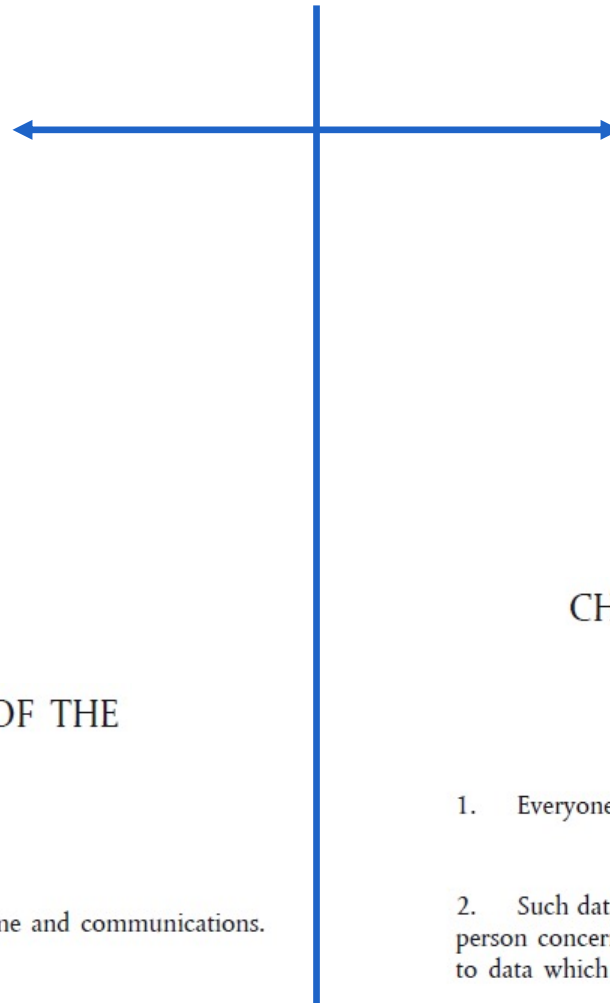
“right to be left alone”

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.



Personal data protection

Balance exercise: free flow of data and protection (e.g. cyber security) – risks

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 5 GDPR: personal data processing principles



Lawfulness of data processing

Vaccination as health data – two separate legal basis necessary



Lawfulness of personal data processing

Article 6 GDPR

Consent	Contract	Compliance with legal obligation
Vital interests	Public interest & official authority	Legitimate interest

Health data as a special category of data under [article 9 GDPR](#)

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of **genetic data**, biometric data for the purpose of uniquely identifying a natural person, **data concerning health or data concerning a natural person's sex life or sexual orientation** shall be **prohibited**.

Exception to prohibition of health data processing

Article 9(2)(g):
necessary for reasons of substantial public interest

Article 6 GDPR: Lawfulness Clarification

“This Regulation establishes the legal ground for processing of personal data, within the meaning of Articles 6 (1) (c) and 9 (2) (g) of Regulation (EU) 2016/679, necessary for the issuance and verification of the interoperable certificates provided for in this Regulation”
Recital 37, the Proposal



Guidance pending

Proposal:

(47) The European Data Protection Supervisor has been consulted pursuant to Article 42(1) of Regulation (EU) 2018/1725²⁰,

Data Protection Safeguards

Vaccination as health data – two separate legal basis necessary

Digital Green Certificate Regulation Proposal

Article 6(3) GDPR:

The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:

- (a) **Union law**; or
- (b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the **public interest** or in the exercise of official authority vested in the controller. That legal basis may contain **specific provisions** to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific

9 (2) (g)

Processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

Data Protection Safeguards

Digital Green Certificate Regulation Proposal

Article 9 *Protection of personal data*

1. The personal data contained in the certificates issued in accordance with this Regulation shall be processed for the purpose of accessing and verifying the information included in the certificate in order to facilitate the exercise of the right of free movement within the Union during the COVID-19 pandemic.
2. The personal data included in the certificates referred to in Article 3 shall be processed by the competent authorities of the Member State of destination, or by the cross-border passenger transport services operators required by national law to implement certain public health measures during the COVID-19 pandemic, to confirm and verify the holder's vaccination, testing or recovery status. For this purpose, the personal data shall be limited to what is strictly necessary. The personal data accessed pursuant to this paragraph shall not be retained.
3. The personal data processed for the purpose of issuing the certificates referred to in Article 3, including the issuance of a new certificate, shall not be retained longer than is necessary for its purpose and in no case longer than the period for which the certificates may be used to exercise the right to free movement.
4. The authorities responsible for issuing the certificates referred to in Article 3 shall be considered as controllers referred to in Article 4(7) of Regulation (EU) 2016/679.

See also recitals 37- 40 and 46- 47

Compare: Personal Data Processing Principles



→ Further defined in the Proposal

Examples Of Safeguards In The Proposal

ANNEX Certificate datasets

Data fields to be included in the vaccination certificate:

- (a) name: surname(s) and forename(s), in that order;
- (b) date of birth;
- (c) disease or agent targeted;
- (d) vaccine/prophylaxis;
- (e) vaccine medicinal product;
- (f) vaccine marketing authorization holder or manufacturer;
- (g) number in a series of vaccinations/doses;
- (h) date of vaccination, indicating the date of the latest dose received;
- (i) Member State of vaccination;
- (j) certificate issuer;
- (k) a unique certificate identifier.

Data minimisation

The personal data contained in the certificates issued in accordance with this Regulation shall be processed for the **purpose** of accessing and verifying the information included in the certificate in order to facilitate the exercise of the right of free movement within the Union during the COVID-19 pandemic.

Purpose limitation

The personal data processed for the purpose of issuing the certificates referred to in Article 3, including the issuance of a new certificate, **shall not be retained longer** than is necessary for its purpose and in no case longer than the period for which the certificates may be used to exercise the right to free movement.

Storage limitation

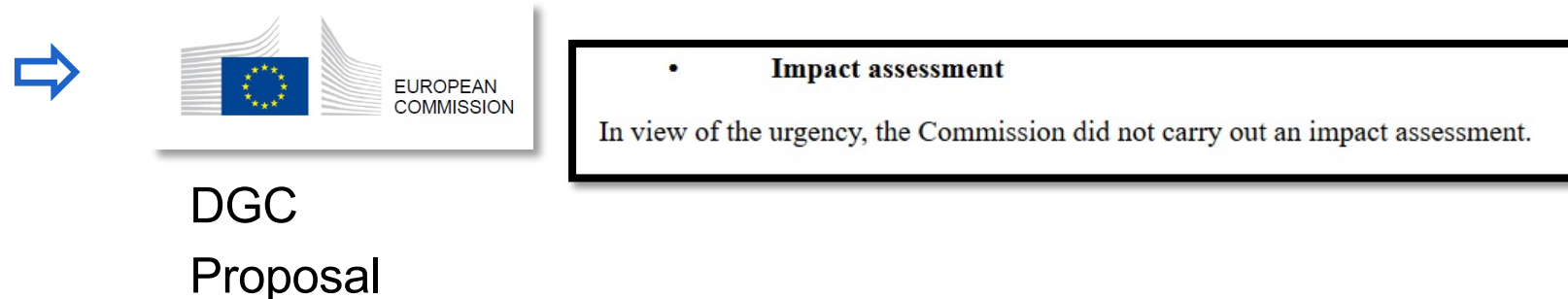
- (a) securely issue and verify the certificates referred to Article 3;
- (b) ensure the **security** of the personal data, taking into account the nature of the data;
- (c) populate the certificates referred to Article 3, including the coding system and any other relevant elements;
- (d) lay down the common structure of the unique certificate identifier;
- (e) issue a valid, secure and interoperable barcode;
- (f) ensure interoperability with international standards and/or **technological** systems;
- (g) allocate responsibilities amongst controllers and as regards processors.

Integrity & confidentiality

Data Protection Impact Assessment?

Necessary? Yes, cfr. Article 35 GDPR, because vaccination data is health related

3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
 - (a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
 - (b) processing on a large scale of **special categories of data** referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or
 - (c) a systematic monitoring of a publicly accessible area on a large scale.



Data Protection Impact Assessment?

- No DPIA at this point - Proposal's technical information clarifies this will be **up to the individual member states** – reason: implementation will take place across MS
- The explanatory memorandum of the Proposal indicates that the 'Digital Green Certificate' framework does not establish a database at EU level. Instead, it provides for the decentralised verification of digitally signed interoperable certificates through a trust framework.

Concluding Remarks

- Importance of adopting robust technical safeguards

Depending on the design choices , at this moment has been largely left to the Member States

- Importance of conducting DPIA and publishing the reports to ensure transparency
- To ensure purpose limitations (uncertainty about the use cases)
- Clarifying the roles of the involved parties (who is data controllers, who is data processor, etc)
- Developing adequate governance framework (currently trust framework)

Acknowledgments

Pieter De Smet (PhD student at UGent)