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⁽¹⁾ Text with EEA relevance.

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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2022/719

of 10 May 2022

refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 18(5) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on foods are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority ('the Authority'), for a scientific assessment, as well as to the Commission and the Member States for information.
- (3) The Authority is to deliver an opinion on the health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from DuPont Nutrition Biosciences ApS, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on the scientific substantiation of a health claim related *Bifidobacterium animalis* subsp. *lactis* Bi-07 (Bi-07) and the contribution to increasing lactose digestion (Question No EFSA-Q-2020-00024). The claim proposed by the applicant was worded as follows: '*Bifidobacterium animalis* subsp. *lactis* Bi-07 contributes to the improvement of lactose digestion in individuals who have difficulty digesting lactose'.
- (6) The Commission, the Member States and the applicant received the scientific opinion ⁽²⁾ on that claim from the Authority, which concluded that, on the basis of the data presented, a cause and effect relationship has not been established between the consumption of *Bifidobacterium animalis* subsp. *lactis* Bi-07 and a beneficial physiological effect (i.e. the improvement of symptoms of lactose maldigestion) in individuals with lactose maldigestion. Accordingly, as the health claim does not comply with the requirements of Regulation (EC) No 1924/2006 for the inclusion in the Union list of permitted claims, it should not be authorised.

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ EFSA Journal 2020;18(7):6198.

- (7) Following an application from Tchibo GmbH, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on the scientific substantiation of a health claim related to Coffee C21 and the protection of DNA from strand breaks (Question No EFSA-Q-2019-00423). The claim proposed by the applicant was worded as follows: 'regular consumption of Coffee C21 contributes to the maintenance of DNA integrity in cells of the body'.
- (8) The Commission, the Member States and the applicant received the scientific opinion ⁽³⁾ on that claim from the Authority, which concluded that, on the basis of the data presented, a cause and effect relationship has not been established between the consumption of Coffee C21 and the protection of DNA from strand breaks. Accordingly, as the health claim does not comply with the requirements of Regulation (EC) No 1924/2006 for the inclusion in the Union list of permitted claims, it should not be authorised.
- (9) Following an application from NattoPharma ASA, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on the scientific substantiation of a health claim related to MenaQ7[®] and the maintenance of the elastic properties of the arteries (Question No EFSA-Q-2019-00229). The claim proposed by the applicant was worded as follows: 'MenaQ7[®], vitamin K2 as menaquinone-7, improves arterial stiffness'.
- (10) The Commission, the Member States and the applicant received the scientific opinion ⁽⁴⁾ on that claim from the Authority, which concluded that, on the basis of the data presented, a cause and effect relationship has not been established between the consumption of MenaQ7[®] and the maintenance of the elastic properties of the arteries. Accordingly, as the health claim does not comply with the requirements of Regulation (EC) No 1924/2006 for the inclusion in the Union list of permitted claims, it should not be authorised.
- (11) The comments from DuPont Nutrition Biosciences ApS and Tchibo GmbH received by the Commission pursuant to Article 16(6) of Regulation (EC) No 1924/2006, have been considered when adopting this Regulation.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The health claims listed in the Annex to this Regulation shall not be included in the Union list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

⁽³⁾ EFSA Journal 2020;18(3):6055.

⁽⁴⁾ EFSA Journal 2020;18(1):5949.

ANNEX

Rejected health claims

Application – Relevant provisions of Regulation (EC) No 1924/2006	Nutrient, substance, food or food category	Claim	EFSA opinion reference
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	<i>Bifidobacterium animalis</i> subsp. <i>lactis</i> Bi-07 (Bi-07)	<i>Bifidobacterium animalis</i> subsp. <i>lactis</i> Bi-07 contributes to the improvement of lactose digestion in individuals who have difficulty digesting lactose	Q-2020-00024
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Coffee C21, a blend of pure Arabica roast coffees (<i>Coffea arabica</i> L.) without any non-coffee ingredients	Regular consumption of Coffee C21 contributes to the maintenance of DNA integrity in cells of the body	Q-2019-00423
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	MenaQ7 [®] , vitamin K2 as menaquinone-7	MenaQ7 [®] , vitamin K2 as menaquinone-7, improves arterial stiffness	Q-2019-00229

COMMISSION REGULATION (EU) 2022/720**of 10 May 2022****on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices ⁽¹⁾, and in particular Article 1 thereof,

Having published a draft of this Regulation ⁽²⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty.
- (2) Commission Regulation (EU) No 330/2010 ⁽³⁾ defines a category of vertical agreements that the Commission regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty. Experience with the application of Regulation (EU) No 330/2010, which expires on 31 May 2022, has been positive overall, as shown by the evaluation of that Regulation. Taking into account that experience as well as new market developments, such as the growth of e-commerce, and new or more prevalent types of vertical agreements, it is appropriate to adopt a new block exemption regulation.
- (3) The category of agreements which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty includes vertical agreements for the purchase or sale of goods or services where those agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term 'vertical agreements' should be understood to include the corresponding concerted practices.
- (4) For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those vertical agreements which are capable of falling within Article 101(1) of the Treaty. In the individual assessment of agreements under Article 101(1) of the Treaty, account has to be taken of several factors, in particular the market structure on the supply and purchase side.
- (5) The benefit of the block exemption established by this Regulation should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.
- (6) Certain types of vertical agreements can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings. In particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.

⁽¹⁾ OJ 36, 6.3.1965.

⁽²⁾ OJ C 359, 7.9.2021, p. 1.

⁽³⁾ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

- (7) The likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements depends on the degree of market power of the parties to the agreement and, in particular, on the extent to which those undertakings face competition from other suppliers of goods or services regarded by their customers as interchangeable or substitutable for one another, by reason of the products' characteristics, their prices and their intended use.
- (8) It can be presumed that, where the market share held by each of the undertakings party to the agreement on the relevant market does not exceed 30%, vertical agreements which do not contain certain types of severe restrictions of competition generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits.
- (9) Above the market share threshold of 30 %, there can be no presumption that vertical agreements falling within the scope of Article 101(1) of the Treaty will usually give rise to objective advantages of such a character and size as to compensate for the disadvantages that they create for competition. At the same time, there is no presumption that those vertical agreements are either caught by Article 101(1) of the Treaty or that they fail to satisfy the conditions of Article 101(3) of the Treaty.
- (10) The online platform economy plays an increasingly important role in the distribution of goods and services. Undertakings active in the online platform economy make it possible to do business in new ways, some of which are not easy to categorise using concepts associated with vertical agreements in the traditional economy. In particular, online intermediation services allow undertakings to offer goods or services to other undertakings or to final consumers, with a view to facilitating the initiation of direct transactions between undertakings or between undertakings and final consumers. Agreements relating to the provision of online intermediation services are vertical agreements and should therefore be able to benefit from the block exemption established by this Regulation, subject to the conditions set out in this Regulation.
- (11) The definition of online intermediation services used in Regulation (EU) 2019/1150 of the European Parliament and of the Council (*) should be adapted for the purpose of the present Regulation. In particular, to reflect the scope of Article 101 of the Treaty, the definition used in the present Regulation should refer to undertakings. It should also include online intermediation services that facilitate the initiation of direct transactions between undertakings, as well as those that facilitate the initiation of direct transactions between undertakings and final consumers.
- (12) Dual distribution refers to the scenario where a supplier sells goods or services not only at the upstream level but also at the downstream level, thereby competing with its independent distributors. In that scenario, in the absence of hardcore restrictions, and provided that the buyer does not compete with the supplier at the upstream level, the potential negative impact of the vertical agreement on the competitive relationship between the supplier and buyer at the downstream level is less important than the potential positive impact of the vertical agreement on competition in general at the upstream or downstream level. This Regulation should therefore exempt vertical agreements entered into in such scenarios of dual distribution.
- (13) The exchange of information between a supplier and buyer can contribute to the pro-competitive effects of vertical agreements, in particular the optimisation of production and distribution processes. However, in dual distribution, the exchange of certain types of information may raise horizontal concerns. Therefore, this Regulation should only exempt information exchange between a supplier and a buyer in a dual distribution scenario where the information exchange is both directly related to the implementation of the vertical agreement and necessary to improve the production or distribution of the contract goods or services.
- (14) The rationale for exempting vertical agreements in scenarios of dual distribution does not apply to vertical agreements relating to the provision of online intermediation services where the provider of the online intermediation services is also a competing undertaking on the relevant market for the sale of the intermediated

(*) Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

goods or services. Providers of online intermediation services that have such a hybrid function may have the ability and the incentive to influence the outcome of competition on the relevant market for the sale of the intermediated goods or services. This Regulation should therefore not exempt such vertical agreements.

- (15) This Regulation should not exempt vertical agreements containing restrictions which are likely to restrict competition and harm consumers or which are not indispensable to the attainment of the efficiency-enhancing effects. In particular, the benefit of the block exemption established by this Regulation should not apply to vertical agreements containing certain types of severe restrictions of competition, such as minimum and fixed resale prices and certain types of territorial protection, including the prevention of the effective use of the internet to sell or certain restrictions of online advertising. Accordingly, restrictions of online sales and online advertising should benefit from the block exemption established by this Regulation, provided that they do not, directly or indirectly, in isolation or in combination with other factors controlled by the parties, have the object of preventing the effective use of the internet by the buyer or its customers to sell the contract goods or services to particular territories or customers, or of preventing the use of an entire online advertising channel, such as price comparison services or search engine advertising. For instance, online sales restrictions should not benefit from the block exemption established by this Regulation where their objective is to significantly diminish the aggregate volume of online sales of the contract goods or services in the relevant market or the possibility for consumers to buy the contract goods or services online. The categorisation of a restriction as hardcore within the meaning of Article 4, point (e) may take into account the content and context of the restriction, but should not depend on market-specific circumstances or the individual characteristics of the parties.
- (16) This Regulation should not exempt restrictions for which it cannot be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty. In particular, to ensure access to and to prevent collusion on the relevant market, certain conditions should be attached to the block exemption. To this end, the exemption of non-compete obligations should be limited to obligations which do not exceed a duration of five years. Obligations causing the members of a selective distribution system not to sell the brands of particular competing suppliers should likewise be excluded from the benefit of this Regulation. The benefit of this Regulation should not apply to retail parity obligations causing buyers of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services.
- (17) The market share limitation, the non-exemption of certain vertical agreements and the conditions provided for in this Regulation generally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the goods or services in question.
- (18) The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of Council Regulation (EC) No 1/2003 ⁽⁵⁾, where it finds in a particular case that an agreement to which the block exemption established by this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty. The competition authority of a Member State may withdraw the benefit of this Regulation where the conditions of Article 29(2) of Regulation (EC) No 1/2003 are fulfilled.
- (19) Where the Commission or the competition authority of a Member State withdraws the benefit of this Regulation, it has the burden of proving that the vertical agreement in question falls within the scope of Article 101(1) of the Treaty, and that the agreement fails to fulfil at least one of the four conditions of Article 101(3) of the Treaty.
- (20) In determining whether the benefit of this Regulation should be withdrawn pursuant to Article 29 of Regulation (EC) No 1/2003, the anti-competitive effects that may derive from the existence of parallel networks of vertical agreements that have similar effects, which significantly restrict access to a relevant market or competition therein, are of particular importance. Such cumulative effects may in particular arise in the case of exclusive distribution, exclusive supply, selective distribution, parity obligations or non-compete obligations.

⁽⁵⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

- (21) In order to strengthen the supervision of parallel networks of vertical agreements which have similar anti-competitive effects and which cover more than 50% of a given market, the Commission may by regulation declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 101 of the Treaty to such agreements,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
- (a) 'vertical agreement' means an agreement or concerted practice between two or more undertakings, each of which operates, for the purposes of the agreement or the concerted practice, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services;
 - (b) 'vertical restraint' means a restriction of competition in a vertical agreement falling within the scope of Article 101(1) of the Treaty;
 - (c) 'competing undertaking' means an actual or potential competitor; 'actual competitor' means an undertaking that is active on the same relevant market; 'potential competitor' means an undertaking that, in the absence of the vertical agreement, would, on realistic grounds and not just as a mere theoretical possibility, be likely, within a short period of time, to make the necessary additional investments or incur other necessary costs to enter the relevant market;
 - (d) 'supplier' includes an undertaking that provides online intermediation services;
 - (e) 'online intermediation services' means information society services within the meaning of Article 1(1), point (b), of Directive (EU) 2015/1535 of the European Parliament and of the Council ⁽⁹⁾ which allow undertakings to offer goods or services:
 - (i) to other undertakings, with a view to facilitating the initiating of direct transactions between those undertakings, or
 - (ii) to final consumers, with a view to facilitating the initiating of direct transactions between those undertakings and final consumers,irrespective of whether and where the transactions are ultimately concluded;
 - (f) 'non-compete obligation' means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80% of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value or, where such is standard industry practice, the volume of its purchases in the preceding calendar year;
 - (g) 'selective distribution system' means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors within the territory reserved by the supplier to operate that system;
 - (h) 'exclusive distribution system' means a distribution system where the supplier allocates a territory or group of customers exclusively to itself or to a maximum of five buyers and restricts all its other buyers from actively selling into the exclusive territory or to the exclusive customer group;

⁽⁹⁾ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (i) 'intellectual property rights' includes industrial property rights, know-how, copyright and neighbouring rights;
- (j) 'know-how' means a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified; 'secret' means that the know-how is not generally known or easily accessible; 'substantial' means that the know-how is significant and useful to the buyer for the use, sale or resale of the contract goods or services; 'identified' means that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;
- (k) 'buyer' includes an undertaking which, under an agreement falling within Article 101(1) of the Treaty, sells goods or services on behalf of another undertaking;
- (l) 'active sales' means actively targeting customers by visits, letters, emails, calls or other means of direct communication or through targeted advertising and promotion, offline or online, for instance by means of print or digital media, including online media, price comparison services or advertising on search engines targeting customers in particular territories or customer groups, operating a website with a top-level domain corresponding to particular territories, or offering on a website languages that are commonly used in particular territories, where such languages are different from the ones commonly used in the territory in which the buyer is established;
- (m) 'passive sales' means sales made in response to unsolicited requests from individual customers, including delivery of goods or services to the customer, without the sale having been initiated by actively targeting the particular customer, customer group or territory, and including sales resulting from participating in public procurement or responding to private invitations to tender.

2. For the purposes of this Regulation, the terms 'undertaking', 'supplier' and 'buyer' shall include their respective connected undertakings.

'Connected undertakings' means:

- (a) undertakings in which a party to the agreement, directly or indirectly:
 - (i) has the power to exercise more than half the voting rights, or
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking's affairs; or
- (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in point (a); or
- (c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers listed in point (a); or
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in point (a); or
- (e) undertakings in which the rights or the powers listed in point (a) are jointly held by:
 - (i) parties to the agreement or their respective connected undertakings referred to in points (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.

Article 2

Exemption

1. Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 101(1) of the Treaty shall not apply to vertical agreements. This exemption shall apply to the extent that such agreements contain vertical restraints.

2. The exemption provided for in paragraph 1 shall apply to vertical agreements entered into between an association of undertakings and an individual member, or between such an association and an individual supplier, only if all the members of the association are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million. Vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 101 of the Treaty to horizontal agreements concluded between the members of the association or decisions adopted by the association.

3. The exemption provided for in paragraph 1 shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption applies on the condition that, in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object as vertical restraints which are not exempted under this Regulation.

4. The exemption provided for in paragraph 1 shall not apply to vertical agreements entered into between competing undertakings. However, that exemption shall apply where competing undertakings enter into a non-reciprocal vertical agreement and one of the following applies:

- (a) the supplier is active at an upstream level as a manufacturer, importer, or wholesaler and at a downstream level as an importer, wholesaler, or retailer of goods, while the buyer is an importer, wholesaler, or retailer at the downstream level and not a competing undertaking at the upstream level where it buys the contract goods; or
- (b) the supplier is a provider of services at several levels of trade, while the buyer provides its services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services.

5. The exceptions set out in paragraph 4, points (a) and (b) shall not apply to the exchange of information between the supplier and the buyer that is either not directly related to the implementation of the vertical agreement or is not necessary to improve the production or distribution of the contract goods or services, or which fulfils neither of those two conditions.

6. The exceptions set out in paragraph 4, points (a) and (b) shall not apply to vertical agreements relating to the provision of online intermediation services where the provider of the online intermediation services is a competing undertaking on the relevant market for the sale of the intermediated goods or services.

7. This Regulation shall not apply to vertical agreements the subject matter of which falls within the scope of any other block exemption regulation, unless otherwise provided for in such a regulation.

Article 3

Market share threshold

1. The exemption provided for in Article 2 shall apply on condition that the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services.

2. For the purposes of paragraph 1, where in a multi-party agreement an undertaking buys the contract goods or services from one undertaking that is a party to the agreement and sells the contract goods or services to another undertaking that is also a party to the agreement, the market share of the first undertaking must respect the market share threshold provided for in that paragraph both as a buyer and a supplier in order for the exemption provided for in Article 2 to apply.

*Article 4***Restrictions that remove the benefit of the block exemption - hardcore restrictions**

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) where the supplier operates an exclusive distribution system, the restriction of the territory into which, or of the customers to whom, the exclusive distributor may actively or passively sell the contract goods or services, except:
 - (i) the restriction of active sales by the exclusive distributor and its direct customers, into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five other exclusive distributors;
 - (ii) the restriction of active or passive sales by the exclusive distributor and its customers to unauthorised distributors located in a territory where the supplier operates a selective distribution system for the contract goods or services;
 - (iii) the restriction of the exclusive distributor's place of establishment;
 - (iv) the restriction of active or passive sales to end users by an exclusive distributor operating at the wholesale level of trade;
 - (v) the restriction of the exclusive distributor's ability to actively or passively sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (c) where the supplier operates a selective distribution system,
 - (i) the restriction of the territory into which, or of the customers to whom, the members of the selective distribution system may actively or passively sell the contract goods or services, except:
 - (1) the restriction of active sales by the members of the selective distribution system and their direct customers, into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five exclusive distributors;
 - (2) the restriction of active or passive sales by the members of the selective distribution system and their customers to unauthorised distributors located within the territory where the selective distribution system is operated;
 - (3) the restriction of the place of establishment of the members of the selective distribution system;
 - (4) the restriction of active or passive sales to end users by members of the selective distribution system operating at the wholesale level of trade;
 - (5) the restriction of the ability to actively or passively sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
 - (ii) the restriction of cross-supplies between the members of the selective distribution system operating at the same or different levels of trade;
 - (iii) the restriction of active or passive sales to end users by members of the selective distribution system operating at the retail level of trade, without prejudice to points (c)(i)(1) and (3);

- (d) where the supplier operates neither an exclusive distribution system nor a selective distribution system, the restriction of the territory into which, or of the customers to whom, the buyer may actively or passively sell the contract goods or services, except:
- (i) the restriction of active sales by the buyer and its direct customers into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five exclusive distributors;
 - (ii) the restriction of active or passive sales by the buyer and its customers to unauthorised distributors located in a territory where the supplier operates a selective distribution system for the contract goods or services;
 - (iii) the restriction of the buyer's place of establishment;
 - (iv) the restriction of active or passive sales to end users by a buyer operating at the wholesale level of trade;
 - (v) the restriction of the buyer's ability to actively or passively sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (e) the prevention of the effective use of the internet by the buyer or its customers to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold within the meaning of points (b), (c) or (d), without prejudice to the possibility of imposing on the buyer:
- (i) other restrictions of online sales; or
 - (ii) restrictions of online advertising that do not have the object of preventing the use of an entire online advertising channel;
- (f) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end users or to repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Article 5

Excluded restrictions

1. The exemption provided for in Article 2 shall not apply to the following obligations contained in vertical agreements:
 - (a) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds 5 years;
 - (b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services;
 - (c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers;
 - (d) any direct or indirect obligation causing a buyer of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services;
2. By way of derogation from paragraph 1, point (a), the time limitation of five years shall not apply where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer.
3. By way of derogation from paragraph 1, point (b), the exemption provided for in Article 2 shall apply to any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services where all of the following conditions are fulfilled:
 - (a) the obligation relates to goods or services which compete with the contract goods or services;

- (b) the obligation is limited to the premises and land from which the buyer has operated during the contract period;
- (c) the obligation is indispensable to protect know-how transferred by the supplier to the buyer;
- (d) the duration of the obligation is limited to a period of one year after termination of the agreement.

Paragraph 1, point (b) shall be without prejudice to the possibility of imposing a restriction which is unlimited in time on the use and disclosure of know-how which has not entered the public domain.

Article 6

Withdrawal in individual cases

1. The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of Regulation (EC) No 1/2003, where it finds in any particular case that a vertical agreement to which the exemption provided for in Article 2 of this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty. Such effects may occur, for example, where the relevant market for the supply of online intermediation services is highly concentrated and competition between the providers of such services is restricted by the cumulative effect of parallel networks of similar agreements that restrict buyers of the online intermediation services from offering, selling or reselling goods or services to end users under more favourable conditions on their direct sales channels.
2. The competition authority of a Member State may withdraw the benefit of this Regulation where the conditions of Article 29(2) of Regulation (EC) No 1/2003 are fulfilled.

Article 7

Non-application of this Regulation

Pursuant to Article 1a of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50% of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

Article 8

Application of the market share threshold

For the purposes of applying the market share thresholds provided for in Article 3 the following rules shall apply:

- (a) the market share of the supplier shall be calculated on the basis of market sales value data and the market share of the buyer shall be calculated on the basis of market purchase value data. If market sales value or market purchase value data are not available, estimates based on other reliable market information, including market sales and purchase volumes, may be used to establish the market share of the undertaking concerned;
- (b) the market shares shall be calculated on the basis of data relating to the preceding calendar year;
- (c) the market share of the supplier shall include any goods or services supplied to vertically integrated distributors for the purposes of sale;
- (d) if a market share is initially not more than 30 %, but subsequently rises above that level, the exemption provided for in Article 2 shall continue to apply for a period of two consecutive calendar years following the year in which the 30 % threshold was first exceeded;
- (e) the market share held by the undertakings referred to in Article 1(2), second subparagraph, point (e) shall be apportioned equally to each undertaking having the rights or the powers listed in point (a) of that subparagraph.

*Article 9***Application of the turnover threshold**

1. For the purpose of calculating total annual turnover within the meaning of Article 2(2), the turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services, excluding all taxes and other duties, shall be added together. For this purpose, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.
2. The exemption provided for in Article 2 shall remain applicable where, for any period of two consecutive financial years, the total annual turnover threshold is exceeded by no more than 10 %.

*Article 10***Transitional period**

The prohibition laid down in Article 101(1) of the Treaty shall not apply during the period from 1 June 2022 to 31 May 2023 in respect of agreements already in force on 31 May 2022 which do not satisfy the conditions for exemption provided for in this Regulation but which, on 31 May 2022, satisfied the conditions for exemption provided for in Regulation (EU) No 330/2010.

*Article 11***Period of validity**

This Regulation shall enter into force on 1 June 2022.

It shall expire on 31 May 2034.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/721**of 10 May 2022****correcting the Czech language version of the Annex to Regulation (EU) No 1300/2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union ⁽¹⁾, and in particular Article 5(11) thereof,

Whereas:

- (1) The Czech language version of the Annex to Commission Regulation (EU) No 1300/2014 ⁽²⁾ contains errors in Chapter 7, Section 7.2, subsection 7.2.1, point 7.2.1.1.2, the first paragraph, point (1), and the second paragraph that alter the meaning of the provisions.
- (2) The Czech language version of Regulation (EU) No 1300/2014 should therefore be corrected accordingly. The other language versions are not affected.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 51(1) of Directive (EU) 2016/797,

HAS ADOPTED THIS REGULATION:

*Article 1**(does not concern the English language)**Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁾ OJ L 138, 26.5.2016, p. 44.

⁽²⁾ Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (OJ L 356, 12.12.2014, p. 110).

DECISIONS

COUNCIL DECISION (EU) 2022/722

of 5 April 2022

authorising Member States to sign, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 and Article 82(1), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 6 June 2019, the Council authorised the Commission to participate, on behalf of the Union, in the negotiations on a Second Additional Protocol to the Council of Europe Convention on Cybercrime (CETS No 185) ('the Convention on Cybercrime').
- (2) The Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence ('the Protocol') was adopted by the Committee of Ministers of the Council of Europe on 17 November 2021 and is envisaged to be opened for signature on 12 May 2022.
- (3) The provisions of the Protocol fall within an area covered to a large extent by common rules within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (TFEU), including instruments facilitating judicial cooperation in criminal matters, ensuring minimum standards of procedural rights as well as data protection and privacy safeguards.
- (4) The Commission has also submitted legislative proposals for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings, introducing binding cross-border European Production and Preservation Orders to be addressed directly to a representative of a service provider in another Member State.
- (5) With its participation in the negotiations on the Protocol, the Commission ensured its compatibility with the relevant common Union rules.
- (6) A number of reservations, declarations, notifications and communications in relation to the Protocol are necessary to ensure compatibility of the Protocol with Union law and policies. Others are relevant to ensure the uniform application of the Protocol by Union Member States that are Parties to the Protocol ('Member State Parties') in their relation with third countries that are Parties to the Protocol ('third-country Parties'), as well as the effective application of the Protocol.
- (7) The reservations, declarations, notifications and communications on which guidance is given to the Member States in the Annex to this Decision, are without prejudice to any other reservations or declarations that they might wish to make individually where the Protocol so permits.
- (8) Member States which do not make reservations, declarations, notifications and communications in accordance with the Annex to this Decision at the time of signature should do so when they deposit their instrument of ratification, acceptance or approval of the Protocol.
- (9) Following the signature and the ratification, acceptance or approval of the Protocol, the Member States should, in addition, observe the indications set out in the Annex to this Decision.

- (10) The Protocol provides for swift procedures that improve cross-border access to electronic evidence and a high level of safeguards. Therefore, its entry into force will contribute to the fight against cybercrime and other forms of crime at global level by facilitating cooperation between Member State Parties and third-country Parties, ensure a high level of protection of individuals, and address conflicts of law.
- (11) The Protocol provides for appropriate safeguards in line with the requirements for international transfers of personal data under Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾ and Directive (EU) 2016/680 of the European Parliament and of the Council ⁽²⁾. Therefore, its entry into force will contribute to the promotion of Union data protection standards at global level, facilitate data flows between Member State Parties and third-country Parties, and ensure compliance of Member State Parties with their obligations under Union data protection rules.
- (12) The swift entry into force of the Protocol will furthermore confirm the position of the Convention on Cybercrime as the main multilateral framework for the fight against cybercrime.
- (13) The Union cannot sign the Protocol, as only states can be parties thereto.
- (14) Member States should therefore be authorised to sign the Protocol, acting jointly in the interests of the Union.
- (15) Member States are encouraged to sign the Protocol during the signing ceremony, or at the earliest possible date thereafter.
- (16) The European Data Protection Supervisor was consulted in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽³⁾ and delivered an opinion on 21 January 2022.
- (17) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (19) The authentic versions of the Protocol are the English and French versions of the text, adopted by the Committee of Ministers of the Council of Europe on 17 November 2021,

HAS ADOPTED THIS DECISION:

Article 1

The Member States are hereby authorised to sign, in the interest of the Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence ('the Protocol') ⁽⁴⁾.

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽²⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁽³⁾ 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).

⁽⁴⁾ The text of the Protocol will be published together with the decision authorising its ratification.

Article 2

1. When signing the Protocol, Member States may make reservations, declarations, notifications or communications in accordance with Sections 1 to 3 of the Annex to this Decision.
2. Member States signing the Protocol which do not make reservations, declarations, notifications or communications as referred to in paragraph 1 at the time of signature of the Protocol, shall do so when they deposit their instrument of ratification, acceptance or approval of the Protocol.
3. Following the signature and the ratification, acceptance or approval of the Protocol, the Member States shall, in addition, observe the indications set out in Section 4 of the Annex to this Decision.

Article 3

This Decision shall enter into force on the date of its adoption.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Article 5

This Decision is addressed to the Member States.

Done at Luxembourg, 5 April 2022.

For the Council
The President
B. LE MAIRE

ANNEX

This Annex sets out the reservations, declarations, notifications, communications and indications referred to in Article 2.

1. Reservations

Pursuant to Article 19, paragraph 1, of the Protocol, a Party may declare that it avails itself of one or more of the reservations provided for in certain articles of the Protocol.

Pursuant to Article 7, paragraph 9.a, of the Protocol, a Party may reserve the right not to apply Article 7 (Disclosure of subscriber information). Member States shall refrain from making such a reservation.

Pursuant to Article 7, paragraph 9.b, of the Protocol, a Party may, subject to the conditions therein, reserve the right not to apply Article 7 to certain types of access numbers. Member States may make such a reservation, but only in relation to access numbers other than those necessary for the sole purpose of identifying the user.

Pursuant to Article 8, paragraph 13, of the Protocol, a Party may reserve the right not to apply Article 8 (Giving effect to orders from another Party for expedited production of subscriber information and traffic data) to traffic data. Member States are encouraged to refrain from making such a reservation.

Where Article 19, paragraph 1, provides a basis for other reservations, Member States are authorised to consider and make such reservations.

2. Declarations

Pursuant to Article 19, paragraph 2, of the Protocol, a Party may make the declarations identified in certain articles of the Protocol.

Pursuant to Article 7, paragraph 2.b, of the Protocol, a Party may, with respect to orders issued to service providers in its territory, make the following declaration:

'The order under Article 7, paragraph 1, must be issued by, or under the supervision of, a prosecutor or other judicial authority, or otherwise be issued under independent supervision.'

Member States shall, with respect to orders issued to service providers in their territory, make the declaration set out in the second paragraph of this Section.

Pursuant to Article 9 (Expedited disclosure of stored computer data in an emergency), paragraph 1.b, of the Protocol, a Party may declare that it will not execute requests under paragraph 1.a of that Article, seeking only the disclosure of subscriber information. Member States are encouraged to refrain from making such a declaration.

Where Article 19, paragraph 2, provides a basis for other declarations, Member States are authorised to consider and make such declarations.

3. Declarations, notifications or communications

Pursuant to Article 19, paragraph 3, of the Protocol, a Party is to make any declarations, notifications or communications identified in certain articles of the Protocol according to the terms specified therein.

Pursuant to Article 7, paragraph 5.a, of the Protocol, a Party may notify the Secretary General of the Council of Europe that when an order is issued under paragraph 1 of that Article to a service provider in its territory, that Party requires, in every case or in identified circumstances, simultaneous notification of the order, the supplemental information and a summary of the facts related to the investigation or proceeding. Accordingly, Member States shall make the following notification to the Secretary General of the Council of Europe:

'When an order is issued under Article 7, paragraph 1, to a service provider in the territory of [Member State], [Member State] requires in every case simultaneous notification of the order, the supplemental information and a summary of the facts related to the investigation or proceeding.'

In accordance with Article 7, paragraph 5.e, of the Protocol, Member States shall designate a single competent authority to receive the notification under Article 7, paragraph 5.a, of the Protocol, and perform the actions described in Article 7, paragraphs 5.b, 5.c and 5.d, of the Protocol, and shall, when the notification to the Secretary General of the Council of Europe under Article 7, paragraph 5.a, of the Protocol is first given, communicate to the Secretary General of the Council of Europe the contact information of that authority.

Pursuant to Article 8, paragraph 4, of the Protocol, a Party may declare that additional supporting information is required to give effect to orders under paragraph 1 of that Article. Accordingly, Member States shall make the following declaration:

'Additional supporting information is required to give effect to orders under Article 8, paragraph 1. The additional supporting information required will depend on the circumstances of the order and the related investigation or proceeding.'

In accordance with Article 8, paragraphs 10.a and 10.b, of the Protocol, Member States shall communicate and keep up to date the contact information of the authorities designated to submit an order under Article 8, and of the authorities designated to receive an order under Article 8, respectively. The Member States that participate in the enhanced cooperation established by Council Regulation (EU) 2017/1939 ⁽¹⁾, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), shall include the EPPO, within the limits of the exercise of its competences as provided for in Articles 22, 23 and 25 of that Regulation, among the authorities communicated under Article 8, paragraphs 10.a and 10.b, of the Protocol, and do so in a coordinated manner.

Accordingly, Member States shall make the following declaration:

'In accordance with Article 8, paragraph 10, [Member State], as a Member State of the European Union participating in the enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), designates the EPPO, in the exercise of its competences, as provided for in Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), as a competent authority.'

In accordance with Article 14, paragraph 7.c, of the Protocol, Member States shall communicate to the Secretary General of the Council of Europe the authority or authorities to be notified under Article 14, paragraph 7.b, of the Protocol, for the purposes of Chapter II, Section 2, of the Protocol, in relation to a security incident.

In accordance with Article 14, paragraph 10.b, of the Protocol, Member States shall communicate to the Secretary General of the Council of Europe the authority or authorities to provide authorisation for the purposes of Chapter II, Section 2, of the Protocol, in relation to the onward transfer to another State or international organisation of data received under the Protocol.

Where Article 19, paragraph 3, of the Protocol provides a basis for other declarations, notifications or communications, Member States are authorised to consider and make such declarations, notifications or communications.

4. Other indications

Member States that participate in the enhanced cooperation established by Regulation (EU) 2017/1939 shall ensure that the EPPO can, in the exercise of its competences as provided for in Articles 22, 23 and 25 of that Regulation, seek cooperation under the Protocol in the same way as national prosecutors of those Member States.

With regard to the application of Article 7, in particular in relation to certain types of access numbers, Member States may subject an order under that Article to the scrutiny of a prosecutor or other judicial authority when their competent authority receives a simultaneous notification of the order prior to the disclosure of the requested information by the provider.

In accordance with Article 14, paragraph 11.c, of the Protocol, Member States shall ensure that, when they transfer data for the purposes of the Protocol, the receiving Party is informed that their domestic legal framework requires giving personal notice to the individual whose data is provided.

With regard to international transfers on the basis of the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences ⁽²⁾ ('the Umbrella Agreement'), Member States shall, for the purposes of Article 14, paragraph 1.b, of the Protocol, communicate to the competent authorities of the United States that the Umbrella Agreement applies to the reciprocal transfers of personal data under the Protocol between competent authorities.

⁽¹⁾ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁽²⁾ OJ L 336, 10.12.2016, p. 3.

However, Member States shall take into account that the Umbrella Agreement should be complemented with additional safeguards that take into account the unique requirements of the transfer of electronic evidence directly by service providers rather than between authorities as provided for under the Protocol. Accordingly, Member States shall make the following communication to the competent authorities of the United States:

'For the purposes of Article 14, paragraph 1.b, of the Second Additional Protocol to the Council of Europe Convention on Cybercrime ("the Protocol"), [Member State] considers that the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences ("the Umbrella Agreement") applies to the reciprocal transfers of personal data under the Protocol between competent authorities. For transfers between service providers and authorities under the Protocol, the Umbrella Agreement applies only in combination with a further, specific agreement within the meaning of Article 3, paragraph 1, of the Umbrella Agreement that addresses the unique requirements of the transfer of electronic evidence directly by service providers rather than between authorities. In the absence of such a specific transfer agreement, such transfers may take place under the Protocol, in which case, Article 14, paragraph 1.a, in conjunction with Article 14, paragraphs 2 to 15, of the Protocol apply.'

Member States shall ensure that they apply Article 14, paragraph 1.c, of the Protocol, only if the European Commission has adopted an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽³⁾ or Article 36 of Directive (EU) 2016/680 of the European Parliament and of the Council ⁽⁴⁾ for the third country concerned that covers the respective data transfers, or on the basis of another agreement that ensures appropriate data protection safeguards pursuant to Article 46(2), point a, of Regulation (EU) 2016/679 or Article 37(1), point a, of Directive (EU) 2016/680.

⁽³⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁴⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

COMMISSION IMPLEMENTING DECISION (EU) 2022/723**of 10 May 2022****amending Implementing Decision (EU) 2020/2201 on the appointment of certain members and their alternates of the Network Management Board and of the European Aviation Crisis Coordination Cell for the air traffic management network functions****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽¹⁾, and in particular Article 6(4) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2019/123 ⁽²⁾ establishes a Network Management Board to monitor and steer the execution of air traffic management network functions. It also establishes a European Aviation Crisis Coordination Cell to ensure effective crisis management at network level.
- (2) Pursuant to Article 18(7) and Article 19(2) of Implementing Regulation (EU) 2019/123, the Commission shall appoint members and their alternates of the Board and the Cell upon proposals from their organisations, EDA or Eurocontrol.
- (3) The chairperson, vice-chairpersons, members of the Network Management Board and their alternates and the members of the European Aviation Crisis Coordination Cell and their alternates have been appointed for the period from 2020 to 2024 by Commission Implementing Decision (EU) 2019/2168 ⁽³⁾.
- (4) In 2020, Commission Implementing Decision (EU) 2020/2201 ⁽⁴⁾ took into account a number of proposals by the designated authorities identified in Article 18(7) and Article 19(2) of Implementing Regulation (EU) 2019/123 for appointments for both the Network Management Board and the European Aviation Crisis Coordination Cell
- (5) After the entry into force of Implementing Decision (EU) 2020/2201, the Commission received a number of proposals for new appointments for both the Network Management Board and the European Aviation Crisis Coordination Cell.
- (6) Proposals received included one from Eurocontrol nominating four representatives of Air Navigation Service Providers of associated countries for 2022 and 2023. The Commission should accept these nominations only for 2022 in order to allow rotation of representatives of associated countries in the following years, as provided for in Article 18(7) of Implementing Regulation (EU) 2019/123.

⁽¹⁾ OJ L 96, 31.3.2004, p. 20.

⁽²⁾ Commission Implementing Regulation (EU) 2019/123 of 24 January 2019 laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011 (OJ L 28, 31.1.2019, p. 1).

⁽³⁾ Commission Implementing Decision (EU) 2019/2168 of 17 December 2019 on the appointment of the chairperson and the members and their alternates of the Network Management Board and of the members and their alternates of the European Aviation Crisis Coordination Cell for the air traffic management network functions for the third reference period 2020-2024 (OJ L 328, 18.12.2019, p. 90).

⁽⁴⁾ Commission Implementing Decision (EU) 2020/2201 of 22 December 2020 on the appointment of certain members and their alternatives of the Network Management Board and of the European Aviation Crisis Coordination Cell for the air traffic management network functions (OJ L 434, 23.12.2020, p. 59).

- (7) A proposal from airspace users for a new voting member and vice-chairperson representing airspace users only partially fulfils the necessary qualifications required for this post since operational experience is required. This appointment shall therefore be limited to 31 December 2022 to give airspace users more time to provide for a proposal of a representative as from 1 January 2023 that better meets the requirements for this post.
- (8) All persons proposed for appointment should replace, as from the entry into force of this Decision, the persons appointed by Implementing Decision (EU) 2019/2168 as amended by Implementing Decision (EU) 2020/2201.
- (9) This Decision should enter into force as a matter of urgency to allow new appointments to be able to join the Network management board for its next meeting.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS DECISION:

Article 1

The persons listed in Annex I shall be appointed upon the entry into force of this decision until 31 December 2024 as members and alternates of the Network Management Board, in the respective capacities referred to in that Annex. Where the Annex specifies a shorter time period, that time period shall apply.

The current mandates covered by the appointments referred to in the first paragraph shall expire upon the entry into force of this Decision.

Article 2

The persons listed in Annex II shall be appointed for the period from the entry into force of this decision until 31 December 2024 as the members and alternates of the European Aviation Crisis Coordination Cell, in the respective capacities referred to in that Annex. Where the Annex specifies a shorter time period, that time period shall apply.

The current mandates covered by the appointments referred to in the first paragraph shall expire upon the entry into force of this Decision.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

**APPOINTMENTS OF VOTING AND NON-VOTING MEMBERS AND THEIR ALTERNATES OF THE NETWORK
MANAGEMENT BOARD**

Chairperson:	No new appointment* ⁽¹⁾
1st Vice-Chairperson:	Mr Thomas REYNAERT, Managing Director A4E (until 31 December 2022)
2nd Vice-Chairperson:	No new appointment*

⁽¹⁾ Representatives marked with an * in the Annexes I and II were appointed by Commission Implementation Decision (EU) 2019/2168, which remains in force.

Airspace users

	Voting members	Alternates
AIRE/ERA	Mr Maciej Wilk, COO/Accountable Manager, LOT (AIRE) (Until 31 December 2024)	Mr Peter Sandgren, Director of Ground Operations, Nova Airlines AB (ERA) (Until 31 December 2024)
A4E	Mr Thomas Reynaert, Managing Director A4E (until 31 December 2022)	Mr Matthew Krasa, Head of Public Affairs, Ryanair
IATA	No new appointment*	No new appointment*
EBAA/IAOPA/EAS	No new appointment*	No new appointment*

Air navigation service providers per functional airspace block

	Voting members	Alternates
BALTIC	No new appointment*	No new appointment*
BLUEMED	Mr Maurizio Pagetti, Chief Operating Officer, ENAV (Until 31 December 2024)	Mr Claude Mallia, Chief Executive Officer, MATS (Until 31 December 2024)
DANUBE	No new appointment*	Mr Adrian Florea, Operational Director (ROMATSA) (Until 31 December 2024)
DK-SE	No new appointment*	Mr Thorsten Elkjaer, COO, NAVIAIR (Until 31 December 2024)
FABCE	Mr Gabor Menrath Director ATM HungaroControl (until 31 December 2024)	Mr Alexander Hanslik Director Austrocontrol (Until 31 December 2024)

Air navigation service providers per functional airspace block

FABEC	Mr Dirk Mahns, COO Deutsche Flugsicherung GmbH (DFS)	Mr Florian Guillermet, Director, DSNA (Until 31 December 2024)
		No new appointment*
NEFAB	Mr Tormod Rangnes, Director of Operations, Avinor (Until 31 December 2024)	Mr Janis Lapins, Deputy Head ATM, LGS (Until 31 December 2024)
SOUTH-WEST	No new appointment*	No new appointment*
IRELAND	No new appointment*	Mr Joe Ryan, Irish Aviation Authority

Airport operators

	Voting members	Alternates
	No new appointment*	Mr Ivan Bassato, Airport Management Director, Aeroporto di Roma Fiumicino (Roma)
	No new appointment*	Ms Isabelle Baumelle, Chief Operating officer & Airline Marketing Director, Aeroports de la Cote d'Azur, Nice, France

Military

	Voting members	Alternates
Military air navigation service providers	No new appointment*	Lt Col Matthias Löwa, ATM Director, Military Aviation Authority, Germany (Until 31 December 2024)
Military airspace users	No new appointment*	Colonel Yann Pichavant, ATM representative, Ministère de la Défense, France

Chairperson of the Network Management Board

	Non-voting member	Alternate
	No new appointment*	Mr Thomas Reynaert, Managing Director A4E (until 31 December 2022)
		No new appointment*

European Commission

	Non-voting member	Alternate
	Ms Christine Berg, Head of Unit, Single European Sky DG Move, European Commission	Mr Staffan Ekwall, Policy officer, DG Move, European Commission

EFTA Surveillance Authority

	Non-voting member	Alternate
	No new appointment*	Ms Valgerdur Gudmundsdottir, Deputy Director, EFTA Surveillance Authority

Network Manager

	Non-voting member	Alternate
	No new appointment*	No new appointment*

Chairperson of the working group on operations (NDOP)

	Non-voting member	Alternate
	No new appointment*	Mr Jozsef Bakos, Head of ATS HungaroControl

Representatives of air navigation service providers of associated countries

	Non-voting members	Alternates
Until 31 December 2022.	Ms Juliet Kennedy, Operations Director, NATS, UK	Mr Martin Donnan, director enroute ATM, NATS UK
Until 31 December 2022	Mr Sitki Kagan Ertas, Air Navigation Service Provider of Turkey (DHMI)	Ms Sevda Turhan, Air Navigation Service Provider of Turkey (DHMI)

Eurocontrol

	Non-voting member	Alternate
	No new appointment*	No new appointment*

ANNEX II

**APPOINTMENTS OF PERMANENT MEMBERS AND THEIR ALTERNATES OF THE EUROPEAN AVIATION
COORDINATION CRISIS CELL**

Member States

	Member	Alternate
	No new appointment*	No new appointment*

EFTA States

	Member	Alternate
	No new appointment*	No new appointment*

European Commission

	Member	Alternate
	Ms Christine Berg, Head of Unit, Single European Sky DG Move, European Commission	Mr Staffan Ekwall, Policy officer, DG Move, European Commission

Agency

	Member	Alternate
	Mr Fabio Grasso – ATM Standards and Implementation Section Manager (Until 31 December 2024)	No new appointment*

Eurocontrol

	Member	Alternate
	No new appointment*	No new appointment*

Network Manager

	Member	Alternate
	No new appointment*	Mr Steven Moore EACCC Operations Manager Directorate Network Manager Eurocontrol

Military

	Member	Alternate
	Lieutenant –Colonel Frank Hosten German Military Aviation Authority	Colonel Yann Pichavant, Ministere de la Defence, France

Air navigation service providers

	Member	Alternate
	No new appointment*	No new appointment*

Airport operators

	Member	Alternate
	Mr Aidan Flanagan, Safety Manager, ACI – Europe (Until 31 December 2024)	No new appointment*

Airspace users

	Member	Alternate
	No new appointment*	No new appointment*

COMMISSION IMPLEMENTING DECISION (EU) 2022/724**of 10 May 2022****establishing the equivalence, for the purpose of facilitating the right of free movement within the Union, of COVID-19 certificates issued by the Republic of Seychelles to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 8(2) thereof,

Whereas:

- (1) Regulation (EU) 2021/953 lays down a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates ('EU Digital COVID Certificate') for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic. It is also to contribute to facilitating the gradual lifting of restrictions to free movement put in place by Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner.
- (2) Regulation (EU) 2021/953 allows for the acceptance of COVID-19 certificates issued by third countries to Union citizens and their family members where the Commission finds that those COVID-19 certificates are issued in accordance with standards that are to be considered as equivalent to those established pursuant to that Regulation. Furthermore, in accordance with Regulation (EU) 2021/954 of the European Parliament and of the Council ⁽²⁾, Member States are to apply the rules laid down in Regulation (EU) 2021/953 to third-country nationals who do not fall within the scope of that Regulation, but who are legally staying or residing in their territory and who are entitled to travel to other Member States in accordance with Union law. Therefore, any equivalence findings laid down in this Decision should apply to COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles to Union citizens and their family members. Similarly, on the basis of Regulation (EU) 2021/954, such equivalence findings should also apply to COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles to third-country nationals legally staying or residing in the territory of the Member States under the conditions laid down in that Regulation.
- (3) On 8 February 2022 the Republic of Seychelles provided the Commission with detailed information on the issuance of interoperable COVID-19 vaccination, test and recovery certificates under the system entitled 'Travizory Health Credential'. The Republic of Seychelles informed the Commission that it considered that its COVID-19 certificates are being issued in accordance with a standard and a technological system, that are interoperable with the trust framework established by Regulation (EU) 2021/953 and that allow for the verification of the authenticity, validity and integrity of the certificates. In this regard, the Republic of Seychelles informed the Commission that COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles in accordance with the 'Travizory Health Credential' system contain the data set out in the Annex to Regulation (EU) 2021/953.

⁽¹⁾ OJ L 211, 15.6.2021, p. 1.

⁽²⁾ Regulation (EU) 2021/954 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) with regard to third country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 24).

- (4) The Republic of Seychelles also informed the Commission that it accepts vaccination, test and recovery certificates issued by the Member States and EEA countries in accordance with Regulation (EU) 2021/953.
- (5) On 5 April 2022, following a request by the Republic of Seychelles, the Commission carried out technical tests that demonstrated that the COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles are in accordance with the 'Travizory Health Credential' system that is interoperable with the trust framework established by Regulation (EU) 2021/953, and allows for the verification of the authenticity, validity and integrity of the certificates. The Commission also confirmed that the COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles in accordance with the 'Travizory Health Credential' system contain the necessary data.
- (6) In addition, the Republic of Seychelles informed the Commission that it issues interoperable vaccination certificates for COVID-19 vaccines. Those vaccines currently include Comirnaty, Spikevax, Covishield, COVID-19 Vaccine Janssen, Sputnik V, and BBIBP-CorV.
- (7) The Republic of Seychelles also informed the Commission that it issues interoperable test certificates for nucleic acid amplification tests and for rapid antigen tests listed in the common and updated list of COVID-19 rapid antigen tests agreed by the Health Security Committee, established by Article 17 of Decision No 1082/2013/EU of the European Parliament and of the Council ⁽³⁾, on the basis of the Council Recommendation of 21 January 2021 ⁽⁴⁾.
- (8) Furthermore, the Republic of Seychelles informed the Commission that it issues interoperable certificates of recovery. Those certificates are valid for not more than 180 days after the date of the first positive test.
- (9) In addition, the Republic of Seychelles informed the Commission that when verifiers in Seychelles verify certificates, the personal data included in them will be processed only to verify and confirm the holder's vaccination, test result or recovery status and will not be retained afterwards.
- (10) The necessary elements for establishing that COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles in accordance with the 'Travizory Health Credential' system are to be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953 are thus fulfilled.
- (11) Therefore, COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles in accordance with the 'Travizory Health Credential' system should be accepted under the conditions referred to in Article 5(5), Article 6(5) and Article 7(8) of Regulation (EU) 2021/953.
- (12) In order for this Decision to be operational, the Republic of Seychelles should be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.
- (13) In order to protect the Union's interests, in particular in the area of public health, the Commission may use its powers to suspend application of this Decision or repeal it, if the conditions of Article 8(2) of Regulation (EU) 2021/953 are no longer met.
- (14) In order to connect the Republic of Seychelles to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953 as rapidly as possible, this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 14 of Regulation (EU) 2021/953,

⁽³⁾ Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).

⁽⁴⁾ Council Recommendation of 21 January 2021 on a common framework for the use and validation of rapid antigen tests and the mutual recognition of COVID-19 test results in the EU (OJ C 24, 22.1.2021, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

COVID-19 vaccination, test and recovery certificates issued by the Republic of Seychelles in accordance with the 'Travizory Health Credential' system shall, for the purpose of facilitating the right of free movement within the Union, be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953.

Article 2

The Republic of Seychelles shall be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2022/725**of 10 May 2022****establishing the equivalence, for the purpose of facilitating the right of free movement within the Union, of COVID-19 certificates issued by the Socialist Republic of Viet Nam to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 8(2) thereof,

Whereas:

- (1) Regulation (EU) 2021/953 lays down a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates ('EU Digital COVID Certificate') for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic. It is also to contribute to facilitating the gradual lifting of restrictions to free movement put in place by Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner.
- (2) Regulation (EU) 2021/953 allows for the acceptance of COVID-19 certificates issued by third countries to Union citizens and their family members where the Commission finds that those COVID-19 certificates are issued in accordance with standards that are to be considered as equivalent to those established pursuant to that Regulation. Furthermore, in accordance with Regulation (EU) 2021/954 of the European Parliament and of the Council ⁽²⁾, Member States are to apply the rules laid down in Regulation (EU) 2021/953 to third-country nationals who do not fall within the scope of that Regulation, but who are legally staying or residing in their territory and who are entitled to travel to other Member States in accordance with Union law. Therefore, any equivalence findings laid down in this Decision should apply to COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam to Union citizens and their family members. Similarly, on the basis of Regulation (EU) 2021/954, such equivalence findings should also apply to COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam to third-country nationals legally staying or residing in the territory of the Member States under the conditions laid down in that Regulation.
- (3) On 22 October 2021 the Socialist Republic of Viet Nam provided the Commission with detailed information on the issuance of interoperable COVID-19 vaccination, test and recovery certificates under the system entitled 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM'. The Socialist Republic of Viet Nam informed the Commission that it considered that its COVID-19 certificates are being issued in accordance with a standard and a technological system, that are interoperable with the trust framework established by Regulation (EU) 2021/953 and that allow for the verification of the authenticity, validity and integrity of the certificates. In this regard, the Socialist Republic of Viet Nam informed the Commission that COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam in accordance with the 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM' system contain the data set out in the Annex to Regulation (EU) 2021/953.

⁽¹⁾ OJ L 211, 15.6.2021, p. 1.

⁽²⁾ Regulation (EU) 2021/954 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) with regard to third country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 24).

- (4) The Socialist Republic of Viet Nam also informed the Commission that it accepts vaccination, nucleic acid amplification test and recovery certificates issued by the Member States and EEA countries in accordance with Regulation (EU) 2021/953.
- (5) On 14 April 2022, following a request by the Socialist Republic of Viet Nam, the Commission carried out technical tests that demonstrated that the COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam are in accordance with the 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM' system that is interoperable with the trust framework established by Regulation (EU) 2021/953, and allows for the verification of the authenticity, validity and integrity of the certificates. The Commission also confirmed that the COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam in accordance with the 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM' system contain the necessary data.
- (6) In addition, the Socialist Republic of Viet Nam informed the Commission that it issues interoperable vaccination certificates for COVID-19 vaccines. Those vaccines currently include Comirnaty, Spikevax, BBIBR COV-V, Vaccine Abdala, Hayat-Vax, COVID-19 Vaccine Janssen, Sputnik V, and Vaxzevria.
- (7) The Socialist Republic of Viet Nam also informed the Commission that it issues interoperable test certificates for nucleic acid amplification tests but not for rapid antigen tests.
- (8) Furthermore, the Socialist Republic of Viet Nam informed the Commission that it issues interoperable certificates of recovery. Those certificates are valid for not more than 180 days after the date of the first positive test.
- (9) In addition, the Socialist Republic of Viet Nam informed the Commission that when verifiers in Viet Nam verify certificates, the personal data included in them will be processed only to verify and confirm the holder's vaccination, test result or recovery status and will not be retained afterwards.
- (10) The necessary elements for establishing that COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam in accordance with the 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM' system are to be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953 are thus fulfilled.
- (11) Therefore, COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam in accordance with the 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM' system should be accepted under the conditions referred to in Article 5(5), Article 6(5) and Article 7(8) of Regulation (EU) 2021/953.
- (12) In order for this Decision to be operational, the Socialist Republic of Viet Nam should be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.
- (13) In order to protect the Union's interests, in particular in the area of public health, the Commission may use its powers to suspend application of this Decision or repeal it, if the conditions of Article 8(2) of Regulation (EU) 2021/953 are no longer met.
- (14) In order to connect the Socialist Republic of Viet Nam to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953 as rapidly as possible, this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 14 of Regulation (EU) 2021/953,

HAS ADOPTED THIS DECISION:

Article 1

COVID-19 vaccination, test and recovery certificates issued by the Socialist Republic of Viet Nam in accordance with the 'CHỨNG NHẬN ĐIỆN TỬ ĐÃ TIÊM VACCINE COVID-19 CỦA VIỆT NAM' system shall, for the purpose of facilitating the right of free movement within the Union, be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953.

Article 2

The Socialist Republic of Viet Nam shall be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2022/726**of 10 May 2022****establishing the equivalence, for the purpose of facilitating the right of free movement within the Union, of COVID-19 certificates issued by the Republic of Indonesia to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 8(2) thereof,

Whereas:

- (1) Regulation (EU) 2021/953 lays down a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates ('EU Digital COVID Certificate') for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic. It is also to contribute to facilitating the gradual lifting of restrictions to free movement put in place by Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner.
- (2) Regulation (EU) 2021/953 allows for the acceptance of COVID-19 certificates issued by third countries to Union citizens and their family members where the Commission finds that those COVID-19 certificates are issued in accordance with standards that are to be considered as equivalent to those established pursuant to that Regulation. Furthermore, in accordance with Regulation (EU) 2021/954 of the European Parliament and of the Council ⁽²⁾, Member States are to apply the rules laid down in Regulation (EU) 2021/953 to third-country nationals who do not fall within the scope of that Regulation, but who are legally staying or residing in their territory and who are entitled to travel to other Member States in accordance with Union law. Therefore, any equivalence findings laid down in this Decision should apply to COVID-19 vaccination certificates issued by the Republic of Indonesia to Union citizens and their family members. Similarly, on the basis of Regulation (EU) 2021/954, such equivalence findings should also apply to COVID-19 vaccination certificates issued by the Republic of Indonesia to third-country nationals legally staying or residing in the territory of the Member States under the conditions laid down in that Regulation.
- (3) On 24 November 2021 the Republic of Indonesia provided the Commission with detailed information on the issuance of interoperable COVID-19 vaccination certificates under the system entitled 'DIVOC'. The Republic of Indonesia informed the Commission that it considered that its COVID-19 certificates are being issued in accordance with a standard and a technological system, that are interoperable with the trust framework established by Regulation (EU) 2021/953 and that allow for the verification of the authenticity, validity and integrity of the certificates. In this regard, the Republic of Indonesia informed the Commission that COVID-19 vaccination certificates issued by the Republic of Indonesia in accordance with the 'DIVOC' system contain the data set out in the Annex to Regulation (EU) 2021/953.
- (4) The Republic of Indonesia also informed the Commission that it accepts vaccination, test and recovery certificates issued by the Member States and EEA countries in accordance with Regulation (EU) 2021/953.

⁽¹⁾ OJ L 211, 15.6.2021, p. 1.

⁽²⁾ Regulation (EU) 2021/954 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) with regard to third country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 24).

- (5) On 12 April 2022, following a request by the Republic of Indonesia, the Commission carried out technical tests that demonstrated that the COVID-19 vaccination certificates issued by the Republic of Indonesia are in accordance with the 'DIVOC' system that is interoperable with the trust framework established by Regulation (EU) 2021/953, and allows for the verification of the authenticity, validity and integrity of the certificates. The Commission also confirmed that the COVID-19 vaccination certificates issued by the Republic of Indonesia in accordance with the 'DIVOC' system contain the necessary data.
- (6) In addition, the Republic of Indonesia informed the Commission that it issues interoperable vaccination certificates for COVID-19 vaccines. Those vaccines currently include Comirnaty, Spikevax, CoronaVac, Vaxzevria and BBIBP-CorV.
- (7) The Republic of Indonesia also informed the Commission that it does not issue interoperable test certificates for nucleic acid amplification tests or for rapid antigen tests.
- (8) Furthermore, the Republic of Indonesia informed the Commission that it does not issue interoperable certificates of recovery.
- (9) In addition, the Republic of Indonesia informed the Commission that when verifiers in Indonesia verify certificates, the personal data included in them will be processed only to verify and confirm the holder's vaccination, test result or recovery status and will not be retained afterwards.
- (10) The necessary elements for establishing that COVID-19 vaccination certificates issued by the Republic of Indonesia in accordance with the 'DIVOC' system are to be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953 are thus fulfilled.
- (11) Therefore, COVID-19 vaccination certificates issued by the Republic of Indonesia in accordance with the 'DIVOC' system should be accepted under the conditions referred to in Article 5(5) of Regulation (EU) 2021/953.
- (12) In order for this Decision to be operational, the Republic of Indonesia should be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.
- (13) In order to protect the Union's interests, in particular in the area of public health, the Commission may use its powers to suspend application of this Decision or repeal it, if the conditions of Article 8(2) of Regulation (EU) 2021/953 are no longer met.
- (14) In order to connect the Republic of Indonesia to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953 as rapidly as possible, this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 14 of Regulation (EU) 2021/953,

HAS ADOPTED THIS DECISION:

Article 1

COVID-19 vaccination certificates issued by the Republic of Indonesia in accordance with the 'DIVOC' system shall, for the purpose of facilitating the right of free movement within the Union, be considered as equivalent to those issued in accordance with Regulation (EU) 2021/953.

Article 2

The Republic of Indonesia shall be connected to the EU Digital COVID Certificate trust framework established by Regulation (EU) 2021/953.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

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