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**CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION
OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING
OF PERSONAL DATA**

CONVENTION 108

STATEMENT

Covid-19 vaccination, attestations and data protection

The worldwide health crisis caused by the Covid-19 pandemic has affected all areas of society, forcing States to respond with scientific, economic, legal and technical measures to address the challenges this virus poses to individuals and their health.

Today, more than a year since the onset of this unprecedented crisis, technology continues to play a major role, particularly in terms of finding a way out of the current situation. The rollout of the first vaccines reignited the debate on how to strike a balance between protecting fundamental rights and freedoms¹, notably the right to private life and risks to public health arising from the pandemic². The need to uphold the right to protection of personal data while enabling an effective pandemic response is one of the elements at the crux of the debate which encompasses several ethical and societal issues³.

Several digital tools have emerged as part of national efforts to limit infection (mobile applications enabling to trace the contamination chain, self-diagnosis tools, etc.⁴). In the light of recent developments, these digital tools now focus on two main areas: setting up a system enabling to store and provide health-related data on Covid-19 (e.g. about vaccination, evidence of past infection, tests' results) and creating information systems for the organisation and monitoring of vaccination campaigns.

It is crucial to recall from the outset that no unjustified discrimination can occur based on the fact that a person has not been vaccinated, due to possible health risks or due to not wanting to be vaccinated⁵. Therefore, all measures introduced must be in accordance with the principles of necessity, proportionality and non-discrimination. Keeping in mind the importance of combatting the pandemic, it should also be recalled that alternatives to the use of such digital tools need to be made available, and that their use cannot be made mandatory.

In addition, in order to ensure their proportionality, it is necessary that these digital tools are of a temporary nature and form part of a comprehensive and coherent health strategy.

It is furthermore necessary to reiterate applicable data protection principles to guide national authorities in developing and using digital tools related to vaccination campaigns and designed to attest of a reduction in the risk of transmission of the virus.

¹ See the document on the Protection of human rights and the "vaccine pass" SG/Inf (2021)11 <https://rm.coe.int/protection-of-human-rights-and-the-vaccine-pass/1680a1fac4>

² It is important to recall that data protection can in no manner be an obstacle to saving lives and that the applicable principles allow for a balancing of the interests at stake. Possibilities to allow access for research purposes should for instance be seized, in full compliance with data protection requirements, in order to unlock the potential of the data in combatting the pandemic.

³ See also the statement adopted by the Committee of Bioethics (DH-BIO) statement on human rights considerations regarding the "vaccine pass" at and related documents.

⁴ See the report on Digital Solutions to fight the Covid-19 at: <https://rm.coe.int/prems-120820-gbr-2051-digital-solutions-to-fight-covid-19-text-a4-web-/16809fe49c>

⁵ Resolution 2361(2021) on "Covid-19 vaccines: ethical, legal and practical considerations" adopted by the Parliamentary Assembly of the Council of Europe on 27 January 2021: <https://pace.coe.int/en/files/29004/html#> and see also the Statement adopted by the Committee on Bioethics on 22 January 2021 on ensuring equitable access to vaccination: <https://rm.coe.int/dh-bio-statement-vaccines-f-1/1680a127a3>

1. National information systems supporting vaccination programmes

National information systems can play a key role in monitoring vaccinations (e.g. keeping track of dose administration, the occurrence of side effects, data on vaccine efficiency, etc.) and aim at facilitating vaccination programmes in terms of organisation and cost. The necessity of the creation of a central national information system will have to be carefully examined in light of the sensitivity and potential vulnerability of such systems, assessing the likely impact of the intended data processing on the rights and fundamental freedoms of the persons concerned.

Central solutions should be avoided where possible, and alternatives, such as decentralised solutions (e.g. storage by vaccination centres or local health authorities), minimising the amount of centrally stored health data, should be considered as well as all mechanisms of data security and data protection by default and design.

It is essential to consider the issues involved in handling such a large amount of data, the type of data concerned and the balance which must be struck between the legitimate purpose underlying data processing in this instance (ensuring a more effective response to the urgent need for vaccination) and upholding fundamental rights.

Any information system for managing vaccination programmes must be based on fair and transparent processing, as well as on a law that defines in particular the data to be processed and that regulates which authority, persons and public or private bodies can access the data with strong and specific safeguards in place. An assessment of the likely impact of the processing of data on data subjects' fundamental rights and freedoms must be carried out when deploying such systems that have to be developed to prevent and minimise risks to these rights and freedoms, and ensure in particular data security. They must encompass data protection by design for all stages of the processing. Moreover, data subjects must be informed of the processing of personal data relating to them.

It is important to remember that the purposes for which personal data may be collected must be explicit, specified and legitimate (it could notably include in such a case organising vaccination, vaccine monitoring and supply or calculating indicators), and that the data collected must be adequate, relevant and not excessive in relation to these purposes. Accordingly, when establishing national information systems for vaccination, the collected data will, in compliance with the data minimisation principle, be limited to what is necessary.

Organisational and technical measures, such as encryption, must be implemented to ensure that only expressly authorised persons and staff can have access to the data. The anonymisation or pseudonymisation of data will where appropriate enable statistical and analytical research to be carried out.

Finally, storage periods for personal data should also be a key concern. It is indeed important to avoid the longer-term use of a system initially set up to meet an urgent and limited in time need.

Developing and using tools related to vaccination requires all public and private stakeholders to act with the utmost diligence and accountability while ensuring full respect of the data protection requirements provided by Convention 108+.

The emergency of response actions related to the pandemic and the longer-term consequences of using such tools require that the greatest attention be paid to effectively upholding human rights and fundamental freedoms, and in particular the right to respect for private life, dignity and non-discrimination. In this context, the use of privacy-friendly digital technologies should be encouraged.

2. Attestation of vaccination, negative tests' results or past Covid-19 infection

From the very start of the health crisis, the issue of being able to certify alleged immunity to Covid-19 has been a subject of much debate. With the introduction of the first vaccines, the idea of “vaccination passports”⁶ began to emerge, with diverse options and possible designations: health or green pass, vaccine passport or even digital health certificate. In all cases, the aim is to be able to provide proof that, because of the vaccine one has received, negative tests' results or a past infection, there is a reduction of the risk of transmitting Covid-19.

Vaccine certificates prove that a vaccination has been administered to a specific individual. The use of such certificates for public health purposes is not new, nor is requiring people to carry them to prevent epidemics spreading via travel. Their use in the context of the current health crisis is acknowledged, particularly when monitoring the strategy for fighting the pandemic while enabling individuals' movements. To facilitate co-operation and efficiency in this strategy, the work carried out to enable these certificates to be harmonised and interoperable at European⁷ and international level must be welcomed.

On the other hand, using such certificates for non-medical purposes, particularly for accessing services with no relation to prevention, health protection and pandemic management, raises human rights issues which should be carefully considered, notably regarding the right to data protection and the principle of non-discrimination.

The statement of results of a negative test as well as of a past Covid-19 infection are also among the pieces of information likely to be registered in attestations.

The setting up of such an attestation must be provided for by law. The processing must be necessary and proportionate to the aim pursued and the specified legitimate purposes of the data processing, such as for instance the exercise of freedom of movement, must be defined. The law should specify the occurrence and circumstances in which the attestation can be demanded. The range of persons, authorities and public and private bodies allowed to access the data contained in the

⁶ Although the term “vaccine passport” is widely used, it raises questions about the document's scope (a passport is an official document designed to allow international travel) and status.

⁷ EDPB-EDPS Joint Opinion, 04/2021 on the Proposal for a Regulation of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable certificates on vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (Digital Green Certificate), 31 March 2021,

https://edps.europa.eu/system/files/2021-04/21-03-31_edpb_edps_joint_opinion_digital_green_certificate_en_0.pdf

attestation (and defining the categories of data concerned) could be clearly specified, as well as the scope of the access authorisations.

It is crucial to recall that the processing of health-related data which belong to the special categories of data set forth by Article 6 of Convention 108+⁸, is only allowed where appropriate safeguards⁹ are provided by law, supplementing those defined by Convention 108+, in particular in order to prevent risks of discrimination. These risks of discrimination are all the more worrying as they can lead to infringements of individual freedoms, such as freedom of movement.

Whether it is a question of mobile applications for presenting the attestation, barcodes or QR (Quick Response) codes which can also provide a means of tracing users, or digital wallet systems of any kind containing a unique identifier, upholding data protection principles must be central to all such tools because of their privacy-invasive nature. Particular emphasis should be put on proportionality and notably on the minimisation of processed data. As with the information systems supporting vaccination programmes, decentralised solutions (e.g. storage of data on users' mobile devices) should be preferred.

Any technology used for such attestations must meet the requirements of Convention 108+. In this regard, it is crucial that data subjects are informed of the processing of personal data related to them; that processing of personal data is carried out only if necessary and proportionate to the explicit, specified and legitimate purpose pursued; that an impact assessment is carried out prior to the start of the processing; including in respect of the efficiency of the intended processing and the possibility of resorting to less intrusive measures; that privacy by design is ensured and appropriate measures are adopted to protect the security of data, in particular when related to special categories of data such as health-related data; and having in mind the risks of possible manipulation and falsification of the attestations; that the data are deleted when the specified storage period has expired (personal data should not be retained for longer than the period for which the use of attestations to facilitate the exercise of the freedom of movement is authorised); that data subjects can exercise their rights and that data protection authorities effectively monitor the adherence to data protection requirements.

The steady increase of knowledge about Covid-19, the effects of vaccination and the duration of immunity of people having been infected require that great care be taken to ensure that any data collected are accurate and regularly updated.

The extent of the number of people concerned by the processing of personal data relating to vaccination and to a digital health attestation is considerable. Therefore, transparency is of utmost importance and requires effective communication by data controllers. The information provided must be commensurate with the issues raised

⁸ "The processing of: genetic data; personal data relating to offences, criminal proceedings and convictions, and related security measures; biometric data uniquely identifying a person; personal data for the information they reveal relating to racial or ethnic origin, political opinions, trade-union membership, religious or other beliefs, health or sexual life, shall only be allowed where appropriate safeguards are enshrined in law, complementing those of this Convention".

⁹ See Recommendation CM/Rec(2019)2 of the Committee of Ministers to member States on the protection of health-related data.

by such data processing and the confidence in the system must be enhanced through specific measures, including through assessment of the efficiency of the system.