



## THE (DIGITAL) VACCINATION CERTIFICATE: BACK TO THE (NEW) NORMAL?

After the third coronavirus lockdown, Israel has largely returned to normal due to the most advanced implementation of the vaccination strategy worldwide in connection with a recently introduced electronic vaccination certificate – the “Green Pass”. Many public institutions and business premises are thus only open to those who have been vaccinated against the coronavirus or have been proven to have had Covid-19. There are now also increasing demands in other countries to loosen the lockdown for immunised individuals.

### **Will the EU vaccination certificate be available soon?**

The EU Commission wants the digital European vaccination certificate ("Digital Green Certificate") to be implemented by 1 June.

In addition to the vaccination status, this should also document the results of PCR and rapid tests as well as recovered corona infections.

However, the demands for an EU vaccination certificate have so far been criticised by some EU member states as hasty. In particular, it was pointed out that only a small portion of the population is currently vaccinated or even has the option to be vaccinated.

The focus of the debate is therefore the creation of a transnational approach and the clarification of the question of what the "vaccinated person(s)" status means for freedom of travel

within the EU. EU member states that are heavily dependent on tourism in particular have long argued in favour of allowing proven immunised persons to travel again as quickly as possible. This is not about creating privileges for some people, but the elimination of restrictions on fundamental rights for those who have already formed antibodies, either due to vaccination or recovery from the disease.

### **Are special rights permitted for immunised persons?**

The answer to this fundamental question lies essentially in the assessment of the preliminary question as to whether and to what extent restrictions on fundamental rights are permissible for a group of people who are demonstrably already immunised. This is because it is not about granting special rights for this group of people, but rather about the question of compliance with the standard of proportionality: Should restrictions be maintained with regard to the group of people who no longer require protection due to vaccination or previous illness resulting from the restrictions imposed in general? So far, various regulations have been largely rejected in government institutions, because not everyone has had the opportunity to get vaccinated. In the case of private providers who have the contractual freedom to participate, such as concert organisers, airlines, restaurant owners or hotel operators, there will probably be no



legal objections if access or participation restrictions that grant access only to immunised persons are imposed. Some airlines and tour operators, for example, have already made corresponding announcements.

An open medical question is whether and to what extent immunised persons could (still) be carriers of coronaviruses. However, as long as immunisation by vaccination or after recovery from previous illness prevents at least a so-called severe progression requiring hospitalisation, the medical question will probably be decisive in the context of the constitutionally required proportionality check as to whether this group of people can still be the cause of infection that jeopardises the protective functioning of the public health care system. If this is the case, then wearing mouth and nose protection will probably continue to be necessary. Further restrictions are unlikely to be proportionate.

The procedures and measures in individual countries are still very different. For this reason, we have summarised a status report for you below on the topics of vaccination regulations, vaccination certificates and special rights for immunised persons from our alliance countries.

## AUSTRIA

### How is the vaccination sequence regulated in Austria?

The Austrian vaccination plan provides for prioritisation according to risk groups and is divided into three phases:

#### Phase 1:

- Residents of retirement homes and nursing homes
- Persons  $\geq$  80 years old
- Personnel in the health sector
- Particularly high risk persons (regardless of age) with pre-existing conditions

#### Phase 2:

- Persons aged 65 to 79 years, classified according to age and health risks
- Persons at high risk under 65 years of age with pre-existing conditions
- Persons in close contact with pregnant women
- Personnel in schools and childcare facilities
- Selected employees with direct contact with people

#### Phase 3:

- Residents in cramped/precarious living conditions
- Persons with absolutely necessary cross-border travel activity due to family/professional obligations
- Personnel in employment relationships or fields of activity that favours virus transmission
- Personnel for maintaining public administration and jurisdiction, public security and order
- Persons with regular contact with customers or people

Phase 3 is completed with the vaccination of all persons in Austria who would like to be vaccinated. Austria is currently in phase 2.

### Should there be special rights for "vaccinated persons" in Austria?

For a long time, the Austrian government has stood against conferring any type of special rights on immunised persons. However, constitutional lawyers have pointed out for some time that the legal basis for special rights would be given only when it is ensured that vaccinations protect against transmissions. In the amendment of the Covid-19 Measures Act and the Law on Epidemics, it is now stated for the first time that a vaccination can also be "evidence of only a low epidemiological risk". This has been the case until now exclusively for tested persons and also for those who have already had a COVID-19 infection. With this amendment, freedom for vaccinated persons



could come soon from a purely legal perspective.

### **Is the (digital) vaccination certificate coming to Austria?**

Austria wants to introduce a vaccination certificate even before the European model. As recently announced, this will already be implemented nationwide beginning in April 2021. In a first phase, the digital "Green Pass" should only be used to document PCR tests. In stage two, vaccinated and recovered persons should then also be able to prove their immunisation by means of a QR code.

## **BULGARIA**

### **How is the vaccination sequence regulated in Bulgaria?**

The vaccination campaign was launched in Bulgaria on 27.12.2020 in accordance with the respective order of the Minister of Health. With the national vaccination plan, some vaccination phases were determined according to risk levels: A. Medical personnel; B. Personnel of social institutions, educators, etc.; C. Personnel whose work is associated with the functioning of basic social life activities (military, etc.); D. Elderly persons 65 years of age or older and persons with other diseases; E. Population groups who are at risk due to their living conditions. The opening of temporary vaccination centres in the country was regulated by further regulations. 302,151 vaccine doses were used as of 10 March. The Health Act did not assume COVID vaccines to be voluntary and free of charge. The cost-free nature of the recommended vaccinations was incorporated in the vaccination regulation on the act.

### **Should there be special rights for "vaccinated persons" in Bulgaria?**

At the state level, there are no regulations against measures taken by individuals (including employers), which include access or

other restrictions for non-vaccinated persons (employees). However, many general principles of the fundamental rights regulations indicate that such restrictions and exceptions will be highly controversial from a legal perspective, unless they are enshrined by law. Thus, the latter would probably be practicable until the Bulgarian courts issue an explicit counterstatement in any court proceedings that places such restrictions on the subject matter of the dispute. This topic is not yet discussed very intensively from a legal point of view, but it is clear that the option to vaccinate is not a legal but a practical obligation in view of the expected restrictions.

### **Is the (digital) vaccination certificate coming to Bulgaria?**

There is still no legal discussion on the introduction of a vaccination certificate in Bulgaria. According to the verbal statement of the Bulgarian Prime Minister, which was made at the end of February 2021, Bulgaria would support the introduction of vaccination certificates. Currently, there is no specific data available on the sentiment regarding the introduction of a vaccination certificate.

## **CHINA**

### **How is the vaccination sequence regulated in China?**

Since 15.12.2020, China has officially started vaccinating persons from the "key group" against the COVID-19 virus. According to official figures, so far approximately 7.5 million vaccinations have been administered to persons from the "key group" on a voluntary basis throughout the country. In addition, approx. 1.6 million doses were administered to persons from "high-risk groups". The "key group" includes, among others, workforce from the seaport, airport, public transport, medical epidemic control and other areas in which there is a high risk of infection in China. The "high-



risk group" includes persons with relevant pre-existing conditions.

### **Should there be special rights for "vaccinated persons" in China?**

In China, there are currently no specific "advantages" for vaccinated persons. It is also not to be assumed that such benefits will be granted anytime soon. In this respect, vaccinated persons must continue to comply with existing state Covid-19 measures (carrying out a nucleic acid test in case of risk contact, wearing a mask on public transport, compliance with the quarantine provisions when entering from abroad).

### **Is the (digital) vaccination certificate coming to China?**

On 08.03.2021, the Chinese government introduced the Chinese version of the "International Travel Health Certificate", which shows the results of the nucleic acid and IgM antibody test as well as the immunisation status of the holder. This health certificate contains an encrypted QR code for competent authorities to review personal data. Due to the success of the Chinese government in combating the pandemic, which has led to a complete restoration of public life since mid-2020, the acceptance of the measures within the country is very high.

## **FRANCE**

### **How is the vaccination sequence regulated in France?**

The French government aims to vaccinate 30 million people by the summer. This corresponds to 2/3 of the French population over 18 years of age. The following vaccines are advertised as available: Comirnaty®, Moderna® and AstraZeneca®. At the end of December, the vaccination was aimed at residents of retirement homes and persons with disabilities requiring

protection. Accordingly, it was aimed at all persons aged 75 years and above (18 January); very high risk, vulnerable persons (18 January); everyone belonging to the healthcare and firefighting professions who are 50 years and older or suffer from comorbidities (6 February); people aged 50 to 64 years with comorbidities (2 March).

### **Should there be special rights for "vaccinated persons" in France?**

There is currently no discussion in France on special rights for immunised persons.

### **Is the (digital) vaccination certificate coming to France?**

In an interview on 09.03.2021, the Israeli Prime Minister mentioned the establishment of a bilateral agreement with Paris in the form of "health certificates". The Elysée Palace responded to this: "France does not currently intend to regulate the issue bilaterally. If a health certificate is to be introduced, it will be decided at the European level, on the mandate issued to the European Commission". The French president considers the question of such a certificate to be "premature", especially because there are still unknown factors with regard to the vaccination, for example, regarding the infectious ability of vaccinated persons.

## **GERMANY**

### **How is the vaccination sequence regulated in Germany?**

The vaccination sequence is determined by the regulation of the Federal Ministry of Health dated 08.02.2021 on the right to vaccination against the SARS-CoV-2 coronavirus. The regulation is based on a recommendation of the permanent vaccination committee at the Robert Koch Institute (RKI). Accordingly, when distributing available vaccines, the federal



states must distinguish between persons with the highest, high and increased priority as well as all other beneficiaries. Here, the distinction is made in particular according to age and any pre-existing conditions of the person concerned. In addition, persons working in healthcare and nursing professions are also prioritised in the distribution of vaccines. As of 08.03.2021, 10.4 million vaccine doses were delivered to the federal states. The average of the daily vaccine doses is over 200,000.

### **Should there be special rights for "vaccinated persons" in Germany?**

Whether exceptions to the existing restrictions should apply to vaccinated persons is an ongoing controversial discussion. The German Ethics Committee spoke out against such exceptions if an infection of these persons cannot be ruled out in an ad-hoc recommendation. Exemptions for vaccinated persons can only be permissible if these persons do not pose a risk of infection or at least pose only a low risk of infection. Exceptions can also only be introduced due to the principle of equality, if the vaccine is available to every person willing to be vaccinated. This is also clear from a draft of the research services of the German Bundestag. However, it has also been established that measures restricting freedom can only be justified if necessary for protecting the health of the population. The restrictions must be lifted if this is not the case. Private autonomy also allows private companies to freely decide whether they make access to their company dependent on existing immunisation.

### **Is the (digital) vaccination certificate coming to Germany?**

On 21.01.2021, the European Council agreed on the introduction of a digital vaccination certificate. In Germany, this is taking place in addition to the analogous vaccination certificate. The program is being developed under the leadership of IBM and should be available by the end of the second quarter of

2021. At the European level, the EU Commission wants to submit a draft law on the introduction of a "digital green vaccination certificate" on 17.03.2021, in which the vaccination status and test results can be recorded. This is intended to simplify EU international travel. However, the WHO criticised this project, since it is still unclear whether and to what extent immunisation of vaccinated persons exists.

## **HUNGARY**

### **How is the vaccination sequence regulated in Hungary?**

Vaccination is voluntary and is done by those who want to take advantage of the vaccination based on prior registration. There is no predefined vaccination schedule in Hungary. This changes constantly according to prevailing circumstances. Registered elderly persons are currently being vaccinated at the vaccination sites with Pfizer, Sputnik and Sinopharm vaccines. General practitioners are vaccinating patients under 60 of age who have chronic diseases with the AstraZeneca vaccine. There are currently five vaccines available in Hungary: BioNTech/Pfizer, Moderna, AstraZeneca, Sputnik V, as well as Sinopharm.

Persons who have registered for vaccination will be informed at the vaccination sites of the vaccines currently available. If they decide to purchase other vaccines, they must wait until they are informed of their availability.

### **Should there be special rights for "vaccinated persons" in Hungary?**

The government has not yet decided on the easements to be granted by a vaccination certificate.

### **Is the (digital) vaccination certificate coming to Hungary?**



The Prime Minister has announced the decision of his government to consult people in a so-called "national consultation" according to his preferred schedule for revoking the coronavirus emergency measures. Among other things, it should also be a question of whether Hungary agrees to the introduction of a "vaccination certificate" or whether persons who have already been vaccinated should be able to travel.

A statement is also requested as to whether persons with immunity certificates should be exempted from certain restrictions and whether foreigners may only enter the country if they can present proof of vaccination or an immunity certificate.

The vaccination certificate should be given to those who have already been vaccinated or have already recovered.

The new vaccination certificate contains the following information:

- For those who have received the corona vaccination, the time of the second vaccination;
- For those who have already recovered, the day of the negative test or the tenth day after the first positive test or the day on which they left the hospital;
- For those who do not test positive but have antibodies, the day of the blood sample that confirms the presence of antibodies.

In the first and second case, the issuance of the certificate is free of charge, and in the last case, a fee is payable

## ITALY

### **How is the vaccination sequence regulated in Italy?**

In Italy, the functionality of the structures is prioritised. Accordingly, vaccination of staff employed in public and private hospitals is the first priority. This is followed by vaccination of persons employed in retirement homes and

accommodated as guests. Only then is the "normal" population vaccinated in descending order in terms of age. At the same time, the teaching staff at schools and universities are vaccinated with the vaccine manufactured by AstraZeneca, which has only been approved for persons up to 65 years of age.

Availability is still affected by supply bottlenecks; however, there are plans to vaccinate the entire population by summer, i.e. vaccination should speed up significantly beginning in April. As of 8 March, a total of 5,417,678 doses were administered, with complete vaccination of 1,652,031 persons.

### **Should there be special rights for "vaccinated persons" in Italy?**

In Italy, the topic is discussed on the basis of a trade-off between individual freedom and prohibition of discrimination, with special emphasis also on the consideration that the fact of vaccination in the current status of the vaccination campaign is not necessarily in the hands of the individual. In this context, on the other hand, it is also stated that there is no general obligation to vaccinate, but preferential treatment for vaccinated persons would de facto be seen as the introduction of a vaccination obligation. In the opinion of the Italian data protection authority, any type of use of personal vaccination data also requires a clear (national) data protection regulation and specific permission. Specific measures have not yet been implemented.

### **Is the (digital) vaccination certificate coming to Italy?**

The prevailing sentiment of the population and politics in Italy is likely to return to normalcy soon, even if temporarily only for the already vaccinated portion of the population. Against this background and in the absence of a uniform national or EU-wide regulation, there is an increase in initiatives by the individual regional governments to introduce regionally limited



vaccination certificates. In view of this, however, reference is often made to the need for at least uniform national and preferably EU-wide regulations. Overall, the discussion is still underway, and there is still no concrete legislative act in this regard.

To date, the vaccination certification has been discussed primarily in light of the cancellation of travel restrictions. With regard to access to private services, it is rather implicitly accepted as a given fact that selections will be made, which is hardly discussed from a legal point of view.

## POLAND

### **How is the vaccination sequence regulated in Poland?**

The vaccination sequence is currently regulated in the regulation of the Polish Ministerial Council of 26.02.2021 on the introduction of certain restrictions, orders and prohibitions in connection with the appearance of the epidemic status. The Regulation will be changed from time to time, and a new Regulation will be issued which regulates the current restrictions. The national vaccination programme was divided into four phases. The first vaccination doses are being given to persons at the highest risk, such as healthcare professionals, nursing home residents and patients in nursing facilities, people over 60 years of age, police and military, teachers. Phase 0 of the vaccination is currently in progress, and phase I has begun. The availability of vaccines depends on deliveries, and these are not being carried out in the required quantity.

### **Should there be special rights for "vaccinated persons" in Poland?**

There is currently no public discussion on this topic. The aforementioned regulation introduces privileges for vaccinated persons. Vaccinated persons are, among other things, exempt from mandatory quarantine after

contact with an infected person or after returning from abroad. Persons vaccinated will not be included in the maximum number of participants at private meetings.

### **Is the (digital) vaccination certificate coming to Poland?**

According to press releases, Poland is one of the countries advocating vaccination certificates. However, there is no official declaration by the Polish government in this regard. The opinions among business owners are divided. Some opine that the introduction of such certificates will not change much, but on the contrary could be a factor inhibiting tourist traffic. On the other hand, other business owners claim that it is the right step to standardise travel information regarding the COVID-19 pandemic. But for the time being, these are only speculations.

## ROMANIA

### **How is the vaccination sequence regulated in Romania?**

In Romania, vaccination against COVID-19 is free and voluntary and is carried out in three phases:

#### Phase 1:

The population group includes employees in healthcare services as well as social workers from the public and private system.

#### Phase 2:

It includes the endangered population and employees who carry out activities in important, essential areas, for example, employees who are active in the national defence institutions, public law and order, national security and justice, bailiffs, interpreters and translators authorised by the Ministry of Justice, lawyers registered in the bar association.

Phase 3 (planned to begin April 2021): includes the general population.



Approximately 1,800,000 vaccine doses have been administered in Romania to date.

### **Should there be special rights for "vaccinated persons" in Romania?**

There is no initiative at all regarding the admissibility of granting exceptions to vaccinated persons. The decision makers and the people are currently categorically rejecting such an exception. There is no legal basis for ensuring that private access restrictions can be set out for unvaccinated persons.

### **Is the (digital) vaccination certificate coming to Romania?**

The vaccination certificate is viewed sceptically in Romania, even though the willingness to be vaccinated is very high among the population. President Klaus Iohannis expressed personal reservations against the idea and stressed that “this would create a framework for discrimination that is simply unacceptable.” The vaccination certificate should only be used for medical reasons; any other use is not recommended. This view is currently represented unanimously by decision makers. There are currently no relevant opposing voices in politics and science that support the introduction of such a vaccine certificate.

## **SPAIN**

### **How is the vaccination sequence regulated in Spain?**

Vaccines are purchased by the central government in accordance with the agreement with the European Commission dated 20.07.2020. They are then distributed to the autonomous communities that manage the distribution of vaccines, and this distribution was divided into three phases. Currently, mainly healthcare personnel, personnel with an essential social function and who the population is the most dependent on have been vaccinated. Current legislation stipulates that vaccination is not mandatory. However, in the case of

epidemics, it could be made an obligation by various laws on the basis of urgent health reasons. If voluntary vaccination does not reach the level required for group immunity, or if the course of the pandemic were to change, the central government could legally determine the vaccination obligation.

### **Should there be special rights for "vaccinated persons" in Spain?**

There are currently no exceptions to the current restrictions in relation to COVID-19 in favour of vaccinated persons, except in exceptional cases that are expressly regulated. The legal well-being of public health takes precedence over individual freedoms or other fundamental rights that are affected by the current situation in order to combat COVID-19 in the most effective way, as is evident from the position of the central and regional governments and their current legal provisions.

At the moment, there is no specific regulation that prohibits individuals/companies from setting restrictions and preventive measures that go beyond state or regional precautions to prevent the spread of COVID-19, so both the vaccinated as well as the unvaccinated persons must comply with the legal provisions applicable in this matter in the same way.

### **Is the (digital) vaccination certificate coming to Spain?**

The vaccination strategy of the Spanish Ministry of Health provides that every person receives a vaccination certificate after vaccination indicating the type of vaccine administered, the batch number, date of the first dose of the vaccine and the expected date (if applicable) for the administration of the second dose, as well as information in case of suspected side effects and an emergency telephone number that can be called if side effects which are not listed in the package insert occur. The Ministry of Industry, Trade and Tourism supports the vaccination certificate in order to





reactivate tourism and contribute to mobility within the EU.

## **TURKEY**

### **How is the vaccination sequence regulated in Turkey?**

Chinese manufacturer Sinovac's vaccine "CoronaVac" is being administered in all hospitals and healthcare centres. In the first phase, employees in the healthcare sector, persons living in nursing homes and all persons over 65 were vaccinated. After vaccination of this group, primarily employees are vaccinated in ministries, prisons, the education and transport sectors, as well as all persons between 50 and 64 years of age. In the last phase, those who are younger than 50 years of age and have chronic diseases will first be vaccinated, and then all other groups will be vaccinated one after the other. The vaccine is administered in two doses at 28-day intervals; there are currently no known shortages in vaccine supply.

### **Should there be special rights for "vaccinated persons" in Turkey?**

There is currently no regulation in Turkey which excludes vaccinated people from restrictions. The Turkish Physicians' Association has mutually recommended maintaining the precautionary measures, since the vaccine does not offer 100% protection against the disease. The measurement of the antibody level of the vaccinated persons could be a criterion for the exemption of restrictions, but this topic is not currently on the agenda, since the vaccinated persons make up a very small portion of the population.

The admissibility of access easements for vaccinated persons is currently not seriously debated in Turkey. In view of the fact that this would result in discrimination against those who have not yet been vaccinated due to the vaccination sequence, such a disadvantage is rejected for ethical reasons. However, it is

possible that the vaccination will become a prerequisite or preference criterion for hiring new employees.

### **Is the (digital) vaccination certificate coming to Turkey?**

So far, there is no demand for a vaccination certificate. In addition, the vaccination certificate is criticised from the medical, legal and ethical perspective, since the vaccine does not offer 100% protection; it is not certain how long the immunity lasts and whether the vaccine prevents others from being infected; reasons of data security speak against a vaccination certificate; and there is a risk of further deepening inequality and discrimination within society. However, every person living in Turkey must generate a HES code (this is generated electronically via mobile application) and show it, for example, in order to be able to enter public transport, offices and authorities, shopping malls, etc. or to book a flight ticket. The HES code indicates whether a person was reported as infected or vaccinated.



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