

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.



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