

Democracy in pandemic mode: the strange case of the COVID certificate

Analysis and commentary

Catherine Riva, Serena Tinari – Re-Check.ch

June 11, 2021

Is the introduction of COVID certificates in Switzerland just an inevitable step towards a return to normal life? Or is it a worrying social experiment involving sensitive data, which will lead to the stigmatization and exclusion of those who refuse the conditions necessary to obtain this “open sesame”? The vote on the COVID-19 Act of June 13, 2021 should have been the occasion for a fundamental debate on these questions. But this did not take place and citizens do not have certain essential information to make an informed decision.

What is this story about?

In Switzerland, a “COVID certificate” is to be introduced at the end of June 2021. But the legal basis for this certificate (COVID-19 Act) is subject of a referendum and the Swiss will vote on June 13, 2021 to decide whether they accept this and more provisions. We dug into the available information and asked many questions to the responsible institutions.

Main conclusions

There is a lot of confusion about the Swiss COVID certificate, its characteristics and the details of its implementation. This is due to a lack of transparency and to the fact that the Swiss citizens are not provided with complete information about the system, also because of a number of scheduling collisions. In fact, the conditions under which the imminent vote will take place will inevitably have limits. Our text offers a detailed overview of the issues and problems associated with the hasty introduction of a brand new intervention that presents significant risks, both ethical and technical.

In particular:

- The question on which the Swiss are about to vote in the June 13, 2021 referendum does not mention all the elements on which their vote will be based. In particular, the voting material does not mention the COVID certificate at all.
- Several timing conflicts have created a rather novel situation where citizens do not have complete information before the vote. These timing collisions also complicate the work of Parliament and the parliamentary committees.
- Tenders for the COVID certificate were awarded in a fast-track and non-transparent manner.
- While the COVID certificate clearly presents a potential for discrimination, since it will restrict access to certain categories of people, the debate was conducted under the sign of a *fait accompli* and without the in-depth elements of reflection that would have allowed citizens to form an informed opinion on the issues related to its introduction.
- In general, Parliament, the administration and the media have apparently not taken up the challenge, so that most people do not have the opportunity to understand what is going on.
- As underlined by a majority of researchers at the webinar on this topic recently organized by *The BMJ*, once the infrastructure for a digital technology of this kind has been deployed, it tends to stay in place. Unfortunately, its subsequent uses – potential abuses included – cannot be prevented by technical devices upstream.

Since the Federal Council officially [announced](#) that a “COVID certificate” would be available at the end of June 2021 for the entire Swiss population, the future domestic use of this novel device has been presented as a prerequisite for a «return to normality» (1, 2). Thanks to the COVID certificate, which will make it possible to [“document a vaccination, a cured infection or a negative test”](#), the authorities explained, [“selective access”](#) for vaccinated persons over 16 years of age, cured or recently tested negative, should be put in place during the 2nd phase, known as the “stabilization phase”.

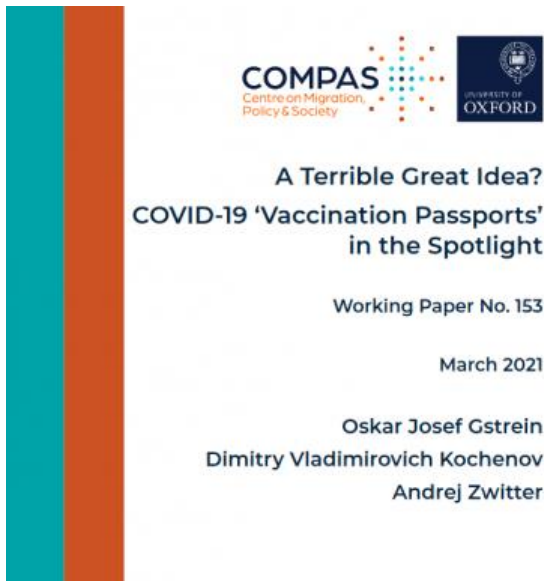


The idea is not new. Already in the spring of 2020, several countries had considered launching “passports” or “certificates” of immunity that would guarantee certain privileges to their holders, supposedly no longer contagious. This suggestion was met with much [skepticism](#) and the project was never implemented.

The advent of COVID vaccines has changed this situation and given new legitimacy to the introduction of such a scheme. Since the vaccination campaigns started in December 2020, the introduction of a certificate, either in paper or electronic form, is back on the table in industrialized countries, with promises of renewed normality and international mobility.

Ethical risks and technological challenges

Echoing the concerns already expressed in the spring of 2020 about the consequences of immunity certificates, various observers (3, 4, 5) have pointed out that adopting a COVID certificate or passport would “open a Pandora’s box of discrimination and stigmatization”. This is because the system would exclude non-holders of the “open sesame” from whole areas of life in society: cultural and sports events, travel, leisure activities, accessing meeting places such as restaurants, clubs, bars, etc.



In addition to these ethical questions, there are also questions about the choices made in terms of technology, data protection and privacy. The European Digital Rights association (EDRi) has expressed its concern about the [opacity](#) surrounding the [development](#) of these certificates in the EU.

In Switzerland too, in addition to the [risk of discrimination](#), several important problems have been pointed out since the end of April 2021: [inversion of the presumption of social harmlessness](#) which is the basis of our life in society, [impossible to anticipate reactions of the population and trivialization of the use of a surveillance technology](#). So many questions

which, according to the commentators, should not be decided by experts alone, but call for a wide society debate.

The [information](#) provided by the Federal Council on 19 May 2021 on the planned use of the COVID certificate in Switzerland did not dispel the unknowns or the concerns. On the contrary.

On this occasion, the federal government defined a “green area” (where the use of the certificate will be “excluded”), an «orange area» (where use will be “optional or to avoid closures”) and a “red area” (where use will be “required to allow flexibility”). This framework thus assigns different social actors to one or the other “domain”. In fact, it empowers [some of them](#) to assume a control function – the legitimacy of which is [questionable](#) to say the least. However, the executive has remained evasive on certain key elements: among others, the precise objective of the introduction of this certificate and the duration for which it would remain in force.

Democracy in pandemic mode

Among the major questions that arise is whether, in the current situation, this certificate constitutes an adequate and proportional response. Whether the Swiss people want to implement a device that may impact on society. Whether they find the terms in which the problem is [presented](#) to them acceptable: “Is it still justifiable to impose restrictions on vaccinated people?”. Or if, like Ulrike Guérot, professor of European politics and democracy studies at the Danube University in Krems (A), they believe that this idea of “giving rights back” to some and not to others would be tantamount to [breaking a democratic taboo](#): “As soon as citizens are no longer equal before the law, but fundamental rights are reserved for some, we are de facto no longer in a democracy,” says this political scientist, who considers such a scenario incompatible with the notion of fundamental rights, the very nature of which is to be inalienable.

Faced with such issues, the need for debate and maximum transparency on the part of the authorities is obvious. But it is clear that this important discussion [has never really emerged](#). It has been overshadowed by [questions of technical feasibility](#), implementation deadlines and international compatibility, such as “Will we be ready for the summer?” or “How does Switzerland compare internationally?”. As a result, the introduction of the COVID certificate

was most often presented as a *fait accompli*: by adopting this system, Switzerland would simply participate in the same movement as other countries.

However, the international picture is far from homogeneous. Israel has just [stopped](#) using its “[green passport](#)”. In [Estonia](#), a country regularly cited as an example for its «advance in the digital field», the government has not planned any domestic use of the COVID certificate. Neither has [Sweden](#). In [Britain](#), [sources](#) said the government is not willing to move in that direction. In the [United States](#), such a device is only being considered in the form of an international passport to allow Americans to travel to other countries, but domestic implementation has been ruled out and several [governors](#) have [banned](#) it.

Voting in pandemic mode

The vote on the federal law on the legal basis of the Federal Council’s ordinances to overcome the COVID-19 epidemic (“COVID-19 Act”) of June 13, 2021 could have been an opportunity to start thinking. It is indeed its [text](#) which provides, among others, for the introduction of the certificate (article 6a).

Art. 6a²¹ Vaccination, test and recovery certificates

1 The Federal Council shall stipulate the requirements for certifying that a person has received a COVID-19 vaccination or has recovered from COVID-19 or for certifying the result of a test for COVID-19.

2 The certificate shall be issued in response to an application.

3 The certificate must be personal, forgery-proof, verifiable while complying with data protection requirements and designed so that only decentralised or local verification of its authenticity and validity is possible and, if possible, so that it can be used when entering or leaving other countries.

4 The Federal Council may regulate who is to pay the cost of the certificate.

5 The Confederation may provide the cantons and third parties with a system for issuing certificates.

²¹ Inserted by No I of the FA of 19 March 2021 (Hardship Cases, Unemployment Insurance, Childcare, Creative Artists, Events), in force from 20 March 2021 to 31 Dec. 2022 (AS 2021 153; BB1 2021 285).

The question put to the sovereign may therefore seem clear. In reality, it is not. For citizens, as the vote approaches, the choice is rather becoming more and more of a jigsaw and the confusion is growing.

To begin with, neither the information brochure that accompanies the ballot nor the text submitted to the vote mentions the amendments to the COVID-19 Act adopted since September 25, 2020 – including Article 6a.



Loi COVID-19
admin.ch



Parlement - Loi Covid: divergences sur les aides aux ...
19g.ch



The reason for this unusual procedure, to say the least? “The subject of the vote formally consists of the law as passed in its original version on September 25, 2020,” reads the [website of the Federal Department of Home Affairs \(FDHA\)](#). “The separate amendments passed on December 18, 2020 and March 19, 2021 were each subject to referendum. In fact, if the law is rejected, the amendments passed and immediately put into effect by the Federal Assembly after September 25, 2020 would also lapse.”

In other words, the subject on which the Swiss are supposed to vote is not specified either in the question they are asked or in the information material they have received. The representatives of the [referendum committee](#) believe that by not including this information in the brochure, “the Federal Council is misleading the population by making incomplete information available to them”. The Federal Council and the Federal Chancellery [deny](#) this view, referring to the website of the Federal Department of Home Affairs dedicated to the COVID-19 Act, where complete information is indeed available.

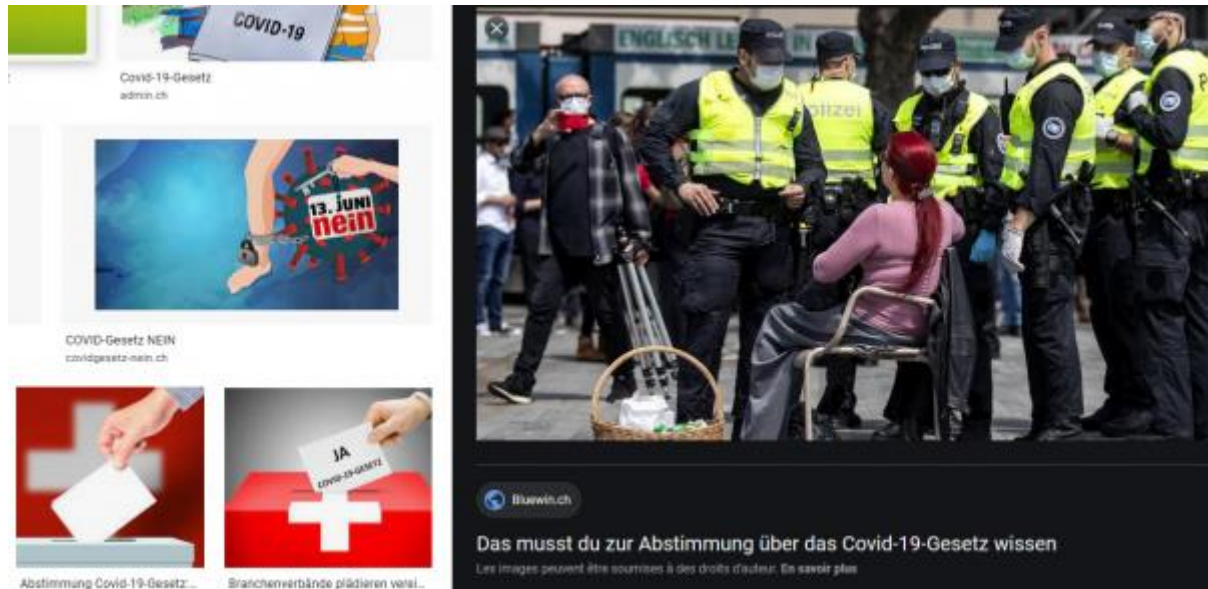
However, it can be argued that citizens who do not search the Internet before voting and rely on the Federal Chancellery to provide them with the necessary information may not share this interpretation.

An impossible timetable

Faced with these inconsistencies, 38 citizens of the canton of Schwyz have [filed an appeal](#) with their [cantonal government](#) and the Federal Court, asking for the suspension of the vote. Appeals were also filed in the canton of [Valais](#) and in the [canton](#) of [Thurgau](#). Obviously, even if these appeals were to be accepted, the clock is ticking as there are only a few days left before the vote.

In the meantime, a [new referendum](#) “against the amendment of 19 March 2021” of the COVID-19 Act has been launched. For it to succeed, 50,000 signatures will have to be collected by July 8, 2021. That is, after the vote.

But this collision of deadlines is not the only one to complicate the picture. On May 19, 2021, when it [presented](#) its three-color system, the Federal Council also articulated certain deadlines: “The precise framework and the corresponding adjustments to the ordinances will be put out to consultation on June 11, 2021. The decision will be made on June 18. The first certificates will be issued in stages from June 7, 2021, and available to the entire population by the end of June (...).”



In fact, the results of the consultation – a central mechanism of the Swiss political system – will also be known only after the vote and citizens will not be able to take them into account in their decision-making process.

On the other hand, discussions on the areas of use of the certificate in Switzerland continued in [Parliament](#) until a few days before the vote. The Federal Council announced that it would make its decision on this matter in [“mid-June”](#), i.e. after the vote.

All these dates and other calendar collisions create confusion. With such conflicting deadlines, citizens do not have complete information. They also complicate the work of the Parliament and the parliamentary committees.

Administration in pandemic mode

Another important problem is the lack of transparency shown by the authorities in recent weeks. Until the end of May, less than two weeks before the vote that should provide a legal basis for its introduction, the development of COVID certificates in Switzerland took place in almost complete opacity. The source code of the application was made public on May 31, 2021 when a public security test was launched. But it is not known when the exercise will end, as the National Center for Cyber Security (NCSC) has not set a date. However, one thing is certain: the results will not be known until after the vote.

On May 10, 2021, we began asking questions about the contracts between the federal administration and private companies in charge of technological developments and communication in connection with the COVID certificate. It was not until May 31 that these awards were published on the [SIMAP public procurement platform](#). Four contracts were awarded by mutual agreement, i.e. without a call for tenders. Despite repeated requests, we

were unable to obtain any information before this date. The Federal Office of Public Health (FOPH) took almost a month to answer all our questions after a detour through its legal department. The Federal Office of Information Technology and Telecommunications (FOITT) refused to answer our questions.

Von: [sonja.uhlmann](#) [redacted]
Gesendet: Mittwoch, 12. Mai 2021 18:35
An: [catherine.riva](#) [redacted]
Cc: Media@bag.admin.ch
Betreff: AW: Freier Journalist, Riva Catherine, Certificat vaccinal - appels d'offre DS SIMAP

Madame,


Veillez trouver la réponse de la part de l'OFIT à votre deuxième question ci-dessous.
Meilleures salutations,
Sonja Uhlmann

Sonja Uhlmann-Haenni
Responsable de l'État-major de direction et porte-parole de l'OFIT

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Magazine en ligne: www.bit.admin.ch/eisbrecher



2. Y a-t-il actuellement d'autres discussions/appels d'offre en cours avec des prestataires concernant le lancement, l'implémentation de ces certificats et la communication y relative ?
a/ Si c'est le cas, merci de m'indiquer les termes et les délais qui sont articulés pour toutes ces étapes et auxquels les offres qui vous parviennent doivent satisfaire
b/ Merci de me fournir aussi les documents qui sont transmis aux prestataires potentiels
c/ Si ce n'est pas le cas, merci de m'indiquer comment ces étapes doivent se dérouler
d/ Merci de m'indiquer les noms des personnes/sociétés/ institutions qui opéreront la sélection ainsi que les critères en fonction desquelles le choix définitif a été opéré
L'OFIT ne fournit pas d'informations sur ses adjudications prévues avant leur publication.

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L'OFIT ne fournit pas d'informations sur ses adjudications prévues avant leur publication.

Von: sonja.uhlmann [REDACTED]
 Gesendet: Freitag, 14. Mai 2021 16:25
 An: catherine.riva [REDACTED]
 Betreff: AW: Certificat vaccinal - appels d'offre DB SIMAP
 Priorität: Hoch

Chère Madame,

L'OFIT met en œuvre techniquement la solution de certificat COVID sur mandat de l'OFSP. Pour la mise en œuvre, l'OFIT explore les services de soutien possibles avec les différents partenaires existants. Il ne peut cependant pas fournir d'informations sur les procédures et les négociations en cours, mais seulement une fois que la coopération a été réglée. L'OFIT fournira par ailleurs des informations sur la solution du certificat COVID dans un prochain Point de Presse.

Meilleures salutations,
 Sonja Uhlmann

Von: Catherine Riva <catherine.riva [REDACTED]>
 Gesendet: Montag, 17. Mai 2021 12:52
 An: Uhlmann Sonja BIT <sonja.uhlmann [REDACTED]>
 Betreff: AW: Certificat vaccinal - appels d'offre DB SIMAP
 Priorität: Hoch

Chère Madame,

Merci de ces précisions.

Je reviens vers vous avec les questions suivantes :

A l'article 17, la loi sur les marchés publics définit les procédures suivantes : procédure ouverte, procédure sélective, procédure sur invitation ou procédure de gré à gré.

- De quel type de procédure s'agit-il dans le cas la «mise en œuvre de la solution de certificat COVID»?
- Si la procédure en question est une procédure dite de gré à gré, pouvez-vous m'indiquer la ou les condition(s) prévue(s) par l'article 21 à laquelle/auxquelles ladite procédure satisfait?

Je vous remercie et vous adresse mes meilleurs messages
 Catherine Riva

Von: Catherine Riva <catherine.riva [REDACTED]>
 Gesendet: Donnerstag, 20. Mai 2021 09:59
 An: Uhlmann Sonja BIT <sonja.uhlmann [REDACTED]>
 Betreff: WG: Certificat vaccinal - appels d'offre DB SIMAP
 Priorität: Hoch

Chère Madame,

Vous n'avez pas donné suite à mon mail du 18 mai (ci-dessous).
 Je vous prie de me communiquer votre réponse aujourd'hui d'ici 15 heures.
 En vous remerciant, je vous adresse mes meilleurs messages
 Catherine Riva

Von: sonja.uhlmann@bit.admin.ch <sonja.uhlmann [REDACTED]>
 Gesendet: Donnerstag, 20. Mai 2021 13:28
 An: catherine.riva [REDACTED]
 Betreff: AW: Certificat vaccinal - appels d'offre DB SIMAP

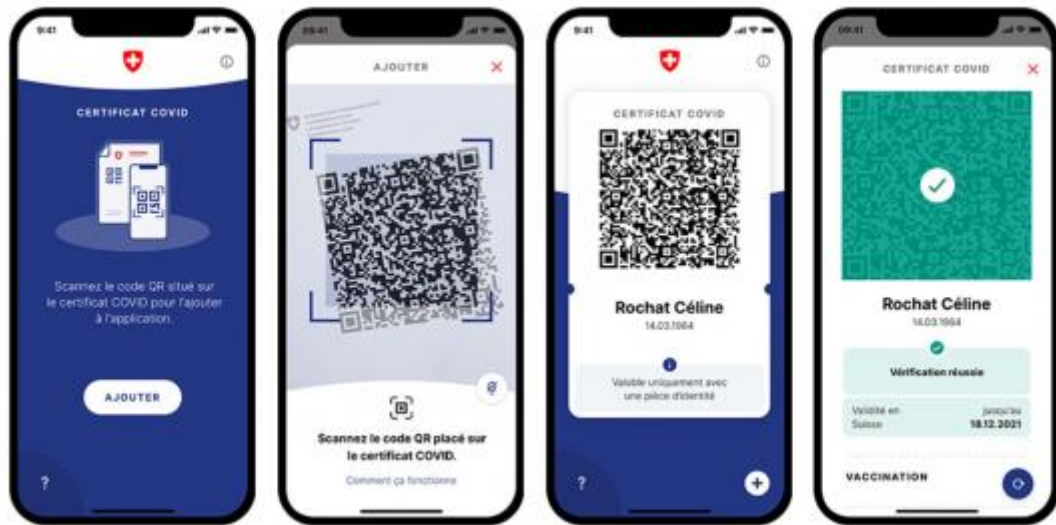
Chère Madame,

Nous n'avons rien à ajouter à nos réponses précédentes. L'OFIT fournira des informations détaillées sur les exigences techniques du certificat COVID en temps voulu. Cette réponse est concluante.

Meilleures salutations,
 Sonja Uhlmann

Since the beginning of the COVID crisis, this is not the first time that things have happened in this way, even though the mandate concerned is linked to a sensitive project. In May 2020, for example, the company Ubique was awarded the mandate to develop the [SwissCovid tracking application](#) for CHF 1.8 million in the context of such a procedure. The same company that has just been awarded the mandate to [develop the COVID certificate application](#) for 1.3 million francs. Two other technical mandates for CHF 1.6 million each were awarded to the companies Health Info Net (HIN) and ti&m. The communication mandate (“Public Relations Services”) was awarded to the Zurich-based company Creative Intelligence Society at a cost of just over CHF 800,000.

An additional last-minute event occurred on June 9, four days before the vote. While the media were announcing the race to see which canton would be the quickest to issue the first COVID certificates, the public learned that these certificates were “full” certificates intended primarily for travel and that the Confederation was in fact [planning](#) also a “light” COVID certificate for domestic use. This version, which is supposed to be available from July 12, 2021, should contain “less data” and only show the name of the holder, his/her date of birth and whether the certificate is valid or not. Why was the public not informed from the outset that the certificate would exist in two versions? Why were the different data disclosure requirements on the EU side not addressed from the outset?



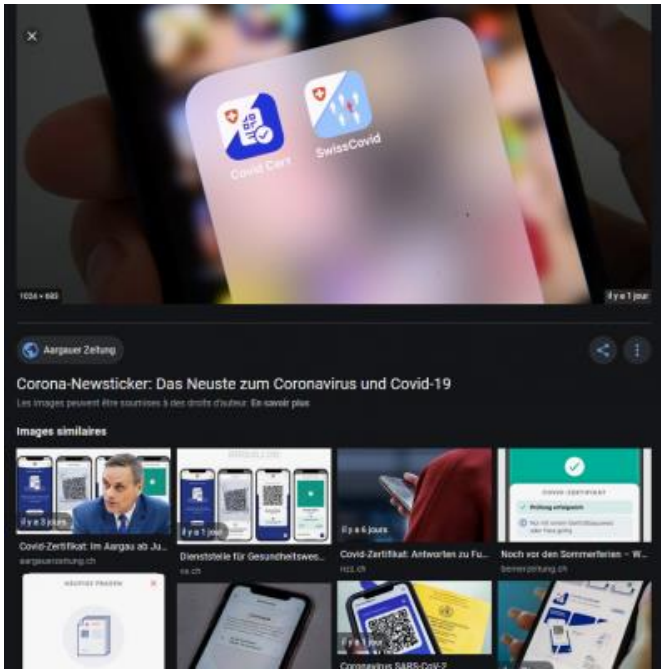
Generally speaking, the communication of the federal administration and the authorities is not up to the level of what the population could legitimately expect with regard to a device involving moreover sensitive data and which, if it is introduced, will have a major impact on their daily life.

Public interest and transparency

It should be remembered that even in the particular situation of Epidemic Act in which Switzerland currently finds itself, “the measures adopted must be justified by an overriding public interest, respect the principles of proportionality (art. 5 al. 2 Cst.), good faith (art. 5 al. 3 Cst.) and equal treatment (art. 8 Cst.), be in conformity with the Constitution and the law and respect fundamental rights,” as Frédéric Bernard, professor of public law at the University of Geneva, reminded us in his article [“Lutte contre le nouveau coronavirus et respect des droits fondamentaux”](#) published in March 2020 in the magazine *Sécurité & Droit*.

The COVID certificate (in “full” or “light” version) is precisely a measure that does not univocally satisfy these principles. Some may even consider that it violates them. In order to be able to measure the stakes and weigh up the interests at stake, correct, intelligible and well-founded information should be available. Unfortunately, this information is still lacking at all levels of official communication: on the real weight of the epidemic ([6](#) see under “Deaths in connection with COVID-19”, [7](#), [8](#), [9](#)) and the impact of measures already in place ([10](#), [11](#)), as well as on the degree of individual and collective protection that can be expected from vaccination ([12](#), [13](#), [14](#)).

Between withholding information and announcements that present the population with a fait accompli, the communication policy of the authorities and the federal administration appears all the more inadequate if we consider the recent debacle of the [mesvaccins.ch](#) platform and the [controversies](#) related to the SwissCovid app. But also certain problems recently highlighted in the case of the [French equivalent](#) of the COVID certificate, as well as in that of the [EU “green passport”](#) with which the Swiss certificate must be compatible.



A game-changing device that splits society in two

The question of how long the COVID certificate will be maintained is crucial, but not clarified either. For the SwissCovid app, the [answer from the Federal Office of Public Health](#) was and remains cryptic: “The SwissCovid app has been developed solely to contain the spread of the coronavirus. It will be discontinued as soon as it is no longer required for this purpose”. In June 2021, SwissCovid is still around and no one knows precisely what criteria must be met for it to be considered “no longer required.”

The temporary nature of the COVID certificate may end up being wishful thinking. On May 19, 2021, Johan Rochel, associate member of the Center for Ethics at the University of Zurich and author at the think tank foraus, [stressed](#): “We must avoid at all costs that this certificate becomes a part of our daily life”. Less than a month later, his warning no longer seems to be on the agenda if we consider the desire to perpetuate the use of this certificate that is already emerging. The Liberal Party (PLR) parliamentary group has [communicated](#) its intention to file a motion demanding that the use of the infrastructure for the COVID certificate should not be limited to a few months, but become permanent, with a view to the digitization of vaccine data and a “sustainable exploitation” of the investments made by the public authorities. This would mean that the certificate would be extended to all vaccinations: in particular, it would replace the mesvaccins.ch platform, which has proved to be deficient, and would be compatible with the future electronic patient file.

This scenario corresponds precisely to the fear expressed by a majority of researchers who participated on June 10, 2021, to the [webinar](#) organized by the medical journal *The BMJ*: once the infrastructure for a digital technology of this kind has been deployed, it tends to stay in place. Unfortunately, its subsequent uses – potential abuses included – cannot be prevented by technical devices upstream.



Moreover, the consequences of the lack of debate are already apparent. Like the fact that a public service media such as SRF can deliver an analysis entitled [“The end of the coronavirus is the beginning of inequalities”](#), where a parliamentary correspondent takes note of the inequalities that the COVID certificate will bring about as one would take note of the inescapable fallout of an uncontrollable natural phenomenon: “While concerns about the coronavirus are gradually fading for those who have been vaccinated, others must now get used to weekly tests – whether at work, at home or at the doctor’s office. When the COVID certificate is introduced (...), people will have to undergo more and more tests: to get into a concert or a soccer match, they will have to take a new test – whereas those who have been vaccinated or cured will have a COVID certificate valid for at least six months. Until the restrictions are lifted for everyone, vaccine skeptics will have to hang on. Until the era of coronavirus is definitely behind us, there are still one or two inequalities left to endure”.



News > Schweiz >

Bundesrat lockert massiv

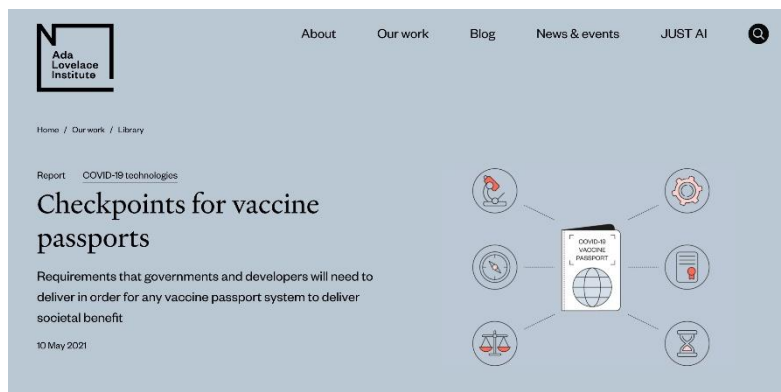
Das Ende von Corona ist der Anfang der Ungleichheiten

Eine Analyse von André Ruch
Mittwoch, 26.05.2021, 18:29 Uhr

The grey area between choice and blackmail

Today, many people get vaccinated not because they fear getting sick or because they feel invested with a mission of solidarity for which [evidence is still lacking](#), but because they feel they have no choice if they want to be able to «live normally again». When asked by *Le Quotidien Jurassien* about the reasons for his resignation as Head of the Cantonal Public Health Service, Nicolas Petrémand, “Mr. COVID” of the Canton of Jura, pointed out the shortcuts and misunderstandings that the current discourse induces: “There is no real reasoning anymore. People are given the impression that they need to be vaccinated to go to discos or to be able to travel freely, or at least that it will be less expensive. This is becoming incoherent and above all without scientific basis. The population is intelligent and will wake up one day, but with what consequences?”

This overview shows that on the eve of the vote on the COVID-19 Act, citizens still have to deal with incomplete information, unmanageable delays, last-minute announcements and a lessened freedom of choice. More than a year of uncertainty and constant regime changes have made it impossible to plan for the near future. Indeed, the desire for normality and the desire of many citizens to focus on organizing the months ahead are understandable and legitimate. But focusing only on these issues contributes to the impression that only the practical details remain to be worked out and that the time horizon is limited to the summer vacations.



The confusion and spin that have dominated the discussion in recent weeks have oversimplified it. The situation is reminiscent of the scenario the Ada Lovelace Institute’s [Checkpoints for vaccine passports](#) study warned against in May 2021: “false choices that impede understanding (e.g., ‘saving lives vs.

protecting privacy’)” and “a persuasive and simplistic narrative that these tools can help societies open up more quickly and securely.”

Currently, the information available to the Swiss does not seem to meet any of the six requirements that the authors of this work believe should be met by governments and companies involved in the development of such devices in order to potentially expect a benefit to society:

1. Scientific confidence in the impact on public health;
2. Clear, specific and delimited purpose;
3. Ethical consideration and clear legal guidance about permitted and restricted uses, and mechanisms to support rights and redress and tackle illegal use;
4. Sociotechnical system design, including operational infrastructure;
5. Public legitimacy;
6. Protection against future risks and mitigation strategies for global harms.

Swiss citizens are faced with the choice of whether to agree with the promoters of the referendum that the [“blank check”](#) they believe the COVID-19 Act gives the Federal Council should be “torn up” because it allows it to continue to exercise powers it does not normally have. Or, if they agree with the majority of the Parliament, that the Federal Council should continue to have the same [“room for maneuver”](#) – if necessary, until December 2031, since the validity of the COVID-19 Act for certain articles runs until that date.

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