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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2021/954 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
- Outcome of the European Parliament's first reading
(Brussels, 22 to 23 June 2022)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), Juan Fernando LOPEZ AGUILAR (S&D, ES), presented on behalf of the Committee a compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation. This amendment had been agreed during the informal contacts referred to above. In addition, the ID group tabled one amendment (amendment number 1).

II. VOTE

When it voted on 23 June 2022, the plenary adopted the compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

P9_TA(2022)0253

EU Digital COVID Certificate - third-country nationals *I**

European Parliament legislative resolution of 23 June 2022 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2021/954 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 (COM(2022)0055 – C9-0032/2022 – 2022/0030(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0055),
 - having regard to Article 294(2) and Article 77(2), point (c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0032/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union, having regard to the undertaking given by the Council representative by letter of 15 June 2022 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union;
 - having regard to Rules 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Transport and Tourism,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0137/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2022)0030

Position of the European Parliament adopted at first reading on 23 June 2022 with a view to the adoption of Regulation (EU) 2022/... of the European Parliament and of the Council amending Regulation (EU) 2021/954 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), point (c) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure³,

³ Position of the European Parliament of 23 June 2022.

Whereas:

- (1) Under the Schengen *acquis*, in particular Regulation (EU) 2016/399 of the European Parliament and of the Council⁴ (the Schengen Borders Code), third-country nationals legally staying or residing in the Union and third-country nationals who have legally entered the territory of a Member State may move freely within the territories of all other Member States during a period of 90 days in any 180-day period.
- (2) The EU Digital COVID Certificate was established by Regulation (EU) 2021/953 of the European Parliament and the Council⁵, which set out a common framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test or recovery certificates to facilitate the exercise of the right to free movement of Union citizens and their family members during the COVID-19 pandemic. That Regulation was accompanied by Regulation (EU) 2021/954 of the European Parliament and of the Council⁶, which extended the EU Digital COVID Certificate framework to third-country nationals who are legally staying or residing in the territories of Member States and who are entitled to travel to other Member States in accordance with Union law.

⁴ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

⁵ 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 (OJ L 211, 15.6.2021, p. 1).

⁶ 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).

- (3) Regulations (EU) 2021/953 and (EU) 2021/954 are due to expire on 30 June 2022. However, the COVID-19 pandemic is still ongoing and outbreaks of variants of concern may continue to have a negative impact on travel within the Union. Consequently, the period of application of those Regulations should be extended so that the EU Digital COVID Certificate can continue to be used.
- (4) The period of application of Regulation (EU) 2021/953 is to be extended by 12 months. Since the objective of Regulation (EU) 2021/954 is to extend the application of Regulation (EU) 2021/953 to certain categories of third-country nationals legally staying or residing in the Union, the duration of its application should be directly linked to that of Regulation (EU) 2021/953. Regulation (EU) 2021/954 should therefore be amended accordingly.

- (5) This Regulation should not be understood as facilitating or encouraging the adoption of travel restrictions in response to the COVID-19 pandemic. In addition, any requirement for verification of certificates established by Regulation (EU) 2021/953 does not as such justify the temporary reintroduction of border control at internal borders. Checks at internal borders should remain a measure of last resort, subject to specific rules set out in the Schengen Borders Code.
- (6) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

- (7) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁷; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. In order to allow Member States to accept, under the conditions set out in Regulation (EU) 2021/953, COVID-19 certificates issued by Ireland to third-country nationals legally staying or residing in its territory for the purposes of facilitating travel within the territories of the Member States, Ireland should issue those third-country nationals with COVID-19 certificates that comply with the requirements of the EU Digital COVID Certificate trust framework. Ireland and the other Member States should accept certificates issued to third-country nationals covered by this Regulation on a reciprocal basis.
- (8) As regards Cyprus, Bulgaria, Romania and Croatia, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.

⁷ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

- (9) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*⁸ which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC⁹.
- (10) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁰ which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹¹.

⁸ OJ L 176, 10.7.1999, p. 36.

⁹ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

¹⁰ OJ L 53, 27.2.2008, p. 52.

¹¹ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

- (11) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹² which fall within the area referred to in Article 1 point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹³.

¹² OJ L 160, 18.6.2011, p. 21.

¹³ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

- (12) Regulation (EU) 2021/954 should therefore be amended accordingly.
- (13) Since the objective of this Regulation, namely to facilitate the travel of third-country nationals legally staying or residing in the territories of the Member States during the COVID-19 pandemic by establishing a framework for the issuance, verification and acceptance of interoperable COVID-19 certificates on a person's COVID-19 vaccination, test result or recovery, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (14) ***In order to allow for its prompt and timely application to ensure the continuity of EU Digital COVID Certificate***, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42(1) and (2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁴ and delivered a joint opinion on 14 March 2022¹⁵,

HAVE ADOPTED THIS REGULATION:

¹⁴ 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).

¹⁵ Not yet published in OJ.

Article 1

Article 3 of Regulation (EU) 2021/954 is replaced by the following:

‘Article 3

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

It shall apply from 1 July 2021 for as long as Regulation (EU) 2021/953 is applicable.’.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

The President

For the Council

The President