



Council of the  
European Union

Brussels, 7 September 2021  
(OR. en)

11560/21

**LIMITE**

<b>JUR 479</b>	<b>TRANS 522</b>
<b>JAI 954</b>	<b>COCON 67</b>
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<b>VISA 189</b>	<b>TOUR 71</b>
<b>MI 652</b>	<b>CODEC 1189</b>
<b>SAN 536</b>	

#### **INFORMATION NOTE**

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From: Legal Service

To: Permanent Representatives Committee (Part 2)

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Subject: Case before the General Court of the European Union  
Case T-527/21 R, *Abenante and others v Council and Parliament*

- Action for annulment of Regulation 2021/953 - "EU Digital Covid Certificate"

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**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (23.09.2021)**

1. On 1 September 2021, the Council was notified of an application seeking the partial or total annulment of Regulation 2021/953<sup>1</sup> pursuant to Article 263 TFEU. The applicants argue that the Regulation, and in particular Article 3(1)(a) and (b), effectively requires them to be either vaccinated or undertake a NAAT test or rapid antigenic test, thus requiring them to undergo "invasive medical treatments" without the applicants' consent, in order to exercise their fundamental right to free movement under the TFEU, and that the Regulation also infringes their rights<sup>2</sup> under the Charter of Fundamental Rights. They assert that the entire Regulation should be annulled or, in the alternative, that Article 3(1)(a) and (b) of the Regulation<sup>3</sup> should be annulled. They are also seeking an amendment of the Regulation, such that a different method to confirm positive Covid-19 cases would have to be used. The essence of the applicants' complaint is that they disagree with the basic science underpinning the vaccination campaign in the European Union.
2. On the same date, the Council was also notified of the applicants' request for interim measures, seeking the immediate suspension of Article 3(1)(a) and (b) of the Regulation. The Council has been set a deadline of 15 September 2021 in order to submit its observations on the applicants' request.
3. The Director-General of the Legal Service has appointed **DELETED** and **DELETED**, to represent the Council.

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<sup>1</sup> Regulation 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, corrected as regards the Italian language version in OJ L 236, 5.7.2021, p. 86 (recital 36).

<sup>2</sup> The applicants refer to Articles 20-21, 41-49, 35 and 54 of the Charter, read in the light of various resolutions of the Council of Europe.

<sup>3</sup> "1. *The EU Digital COVID Certificate framework shall allow for the issuance, cross-border verification and acceptance of any of the following certificates:*  
*(a) a certificate confirming that the holder has received a COVID-19 vaccine in the Member State issuing the certificate (vaccination certificate);*  
*(b) a certificate confirming that the holder has been subject to a NAAT test or a rapid antigen test listed in the common and updated list of COVID-19 rapid antigen tests established on the basis of the Council Recommendation of 21 January 2021 carried out by health professionals or by skilled testing personnel in the Member State issuing the certificate and indicating the type of test, the date on which it was carried out and the result of the test (test certificate); [...]"*