

General Court of the European Union

**Action for annulment of
Regulation (EU) 2021/953 of the European Parliament and of the Council of June
14, 2021 on the 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
based on the provisions of article 263 of the Treaty on the Functioning of the European
Union**

Piperea Gheorghe, [■] I hereby make this request for cancellation in my personal name,
against the

European Parliament, with contact address, Rue Wiertz / Wiertzstraat, 60B-1047 Brussels,
Belgium, www.europarl.europa.eu, phone: +32 2 284 21 11, fax: +32 2 284 69 74;
and

European Union Council, with contact address, Rue de la Loi / Wetstraat 175
B-1048 Brussels, Belgium, www.consilium.europa.eu, phone: +32 2 281 61 11, fax: +32 2 281
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I mention that I have the status of lawyer registered with the Bucharest Bar and I have the right to defend conclusions before all courts, which is why it is not necessary to be represented by a lawyer, however if necessary I will be represented by lawyer [■] (A.1).

This application is drawn up for the annulment of Regulation (EU) 2021/953 of the European Parliament and of the Council of June 14, 2021 on the 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, hereinafter referred to as "EU COVID-19 Certificate Regulation" or the "Regulation".(A.2.),

➤ **The statement of circumstances justifying the right to draw up this action in accordance with article 263 TFEU and article 47 (1) of the EU Charter of Fundamental Rights.**

1. I, the undersigned, have been a lawyer registered with the Bucharest Bar since 1996 and an insolvency practitioner, and previously I had been a judge for two years. I obtained the title of "Doctor of Law" awarded by the Sorbonne I University, Paris and by the Faculty of Law, University of Bucharest with a maximum grade. My work in the field of law has also materialized by means of a substantial number of publications that have proven to be works of reference (A.3.). My professional activity was crowned by the didactic activity. I am a PhD Professor (Department of Private Law) at the University of Bucharest, Faculty of Law, holder of the courses of Romanian Commercial Law and Consumer Protection within the Faculty of Law of the University of Bucharest, as well as holder of the course of Insolvency Procedures within the master's degree programme in Business Law from the University of Bucharest. I am

also, since 2019, an arbitrator at the International Commercial Arbitration Court attached to the Romanian Chamber of Commerce and Industry.

2. The enactment of the EU COVID-19 Certificate Regulation paves the way for the neutralization of one of the most important freedoms on which the European Union is based: **the freedom of movement**, which leads to discrimination among European Union citizens. This is likely to directly affect the freedom of movement of the undersigned, which justifies the interest in drawing up this action for annulment. In addition, my activity as an arbitrator, professor and lawyer implies an increased mobility, as I have to make numerous trips for professional purposes, both inside and outside the national territory, and thus a number of fundamental rights and freedoms are restricted to me, as I will detail in the content of this action.
3. In accordance with the provisions of art. 263 of the Treaty on the Functioning of the European Union "*lays down a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic. This Regulation shall also contribute to facilitating the gradual lifting of restrictions to free movement put in place by the Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner*", as well as in accordance with the provisions of art. 47 (1) of the EU Charter of Fundamental Rights "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article* ", the undersigned I hereby justify an interest in requesting the annulment of the Regulation on the introduction of the EU COVID-19 Certificate.

➤ **Measures adopted by the EU COVID-19 Certificate Regulation**

• **Preliminary comments**

4. Regulation (EU) 2021/953 of the European Parliament and of the Council of June 14, 2021 on the framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates was published in the Official Journal of the European Union on June 14, 2021 to facilitate free movement during the COVID-19 pandemic.

• **Main measures adopted by the EU COVID-19 Certificate Regulation**

5. Article 1 of the Regulation on the EU COVID-19 Certificate "*lays down a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) for the purpose of facilitating the holders' exercise of their right to free movement during the COVID-19 pandemic. This Regulation shall also contribute to facilitating the gradual lifting of restrictions to free movement put in place by the Member States, in accordance with Union law, to limit the spread of SARS-CoV-2, in a coordinated manner.*"
6. In accordance with article 3 of the Regulation, the EU digital COVID certificate allows "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);

(c) a certificate confirming that, following a positive result of a NAAT test carried out by health professionals or by skilled testing personnel **the holder has recovered** from a SARS-CoV-2 infection (certificate of recovery)."

In this form, the Regulation seems to welcome the Member States of the Union and their citizens. In reality, the Regulation establishes a genuine means of infringement of the human rights recognized by the Charter of Fundamental Rights of the European Union and the basic principles of the functioning of the European Union.

➤ **Statement of reasons for unlawfulness**

• **Infringement of the principle of subsidiarity**

7. The enactment of the EU COVID-19 Certificate Regulation infringes one of the basic principles of the functioning of the European Union: **the principle of subsidiarity**.
8. At the level of the organization and functioning of the European Union, the principle of subsidiarity requires that, *in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level*¹.
9. Also, article 1 of Protocol no. 2 on the application of the principles of subsidiarity and proportionality shall provide that *each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union*.
10. As compared to the provisions adopted by the Regulation on the introduction of the EU Certificate COVID-19, in accordance with article 6 of the Treaty on the Functioning of the European Union², *in areas related to the protection and improvement of human health, the European Union can only support, coordinate or supplement the actions of the Member States*. In the field of protection and improvement of human health, the European Union has what the treaties call "*support competence*" and not "*shared competence*".
11. In other words, with regard to the protection and improvement of human health, the European Union can only support, coordinate or supplement the actions of the Member States, helping Member States' governments to achieve common goals, pool resources and overcome common challenges. **The Union cannot adopt regulations or interfere with the ability of member countries to do so**, as could be done in areas where the Union has "*shared competences*".

¹ Art.5 of the TEU: "(3). Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

²Art. 6 TFEU: *The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health;* "

12. On the other hand, the contested Regulation conditions a free and fundamental right, namely the right to free movement, conditional on the existence of a certificate / letter confirming that the holder has been vaccinated against COVID-19. Although the Regulation offers so-called alternatives, they do not cover the whole range of situations, and in the end people who have not been vaccinated or who have not been infected with the SARS-CoV-2 virus, in order to move "freely", are forced to bear the costs of a test to show that they are not infected with the SARS-CoV-2 virus. In this way, the right to move freely within the European Union is restricted for citizens who have not been vaccinated, because if they were "unlucky" and not infected with the SARS-CoV-2 virus they will have to bear additional costs for to travel. Instead, citizens who choose to be vaccinated will not incur any additional cost, as the vaccine is provided free of charge.
13. Finally, it is noted that through this Regulation, the European Union does nothing but intervene in the internal policy of the Member States by imposing measures that directly affect the health field.
14. In the presented context, it is worth mentioning that, since 2007, **a tendency of centralism of power at the level of the European Union** has been observed, by the Union taking over at Member State level an increasing number of competencies as a result of situations considered of 'crisis': terrorism, bank failures, immigrants, and finally the COVID-19 pandemic. All 4 types of crisis experienced since 2007 and until now, have been **opportunities to increase centralized power in the European Union, in breach of the founding principle of subsidiarity, to the detriment of Member States that have lost their autonomy to legislate in certain areas.**
15. Gradually, with each crisis that the European Union has gone through, Member States have been forced to cede to it the powers to regulate in areas where they have exclusivity, and which are not shared with the Union. This has allowed an infringement of the principle of subsidiarity, intended precisely to guarantee the regulatory sovereignty of the Member States, in the exclusive areas provided for by the Treaty on the Functioning of the European Union and by Protocol no. 2 on the application of the principles of subsidiarity and proportionality.
16. This breach is not unique in the context of the pandemic crisis caused by the SARS COV-2 virus, as the breaches of the principle of subsidiarity by the European Union bodies in this context are multiple. Through the actions carried out by its executive body, the European Commission, the Union has become involved **in the authorization of vaccines against COVID-19** considered experimental **without solid scientific evidence**. It has authorized the use of these vaccines within the European Union, although the adverse effects of such vaccines are not yet fully known, and their manufacturers have **immunity from civil and criminal liability for possible adverse and harmful reactions**. In addition, the European Commission has pre-purchased billions of doses of vaccine before ensuring that production and storage capacity exists. Analysing all these actions of the European Commission in the context of the COVID-19 pandemic, it is observed that they are part of the field of protection and improvement of human health, a field in which, according to article 6 of the TFEU, the European Union has only "*support competence*", the main competencies of legislation and action belonging to the Member States.
17. Repeated infringements of the principle of subsidiarity have resulted in a "weakening" thereof and allowed the adoption of the EU COVID-19 Certificate Regulation, contrary to the fact that the Union has no right to regulate in the field of protection and improvement of human health, reserved mainly to the Member States.

18. The principle of subsidiarity reaffirms that the European Union is a union of Member States, not a federation. Therefore, as long as the European Union does not become a federation, the principle of subsidiarity cannot be infringed.
19. The adoption of the Regulation on the EU COVID-19 Certificate is likely to affect the rights and freedoms of every citizen of the Union, since, in accordance with the principle of direct applicability of European regulations, provided by art.288 of the Treaty on the Functioning of the European Union³, the measures imposed by this Regulation will be applied directly in all Member States of the European Union. At the end of the document it is stated that "*it is mandatory in all its elements and shall apply directly in all Member States*", despite the fact that the European Union has no powers to legislate in the field of protection and improvement of human health, thus infringing the fundamental principle underlying the functioning and organization of the European Union, the **principle of subsidiarity**, which justifies the undersigned's request for annulment of the EU COVID-19 Certificate Regulation.

• **Infringement of fundamental rights and freedoms under the Charter of Fundamental Rights of the European Union**

20. The adoption of the EU COVID-19 Certificate Regulation infringes a number of fundamental rights and freedoms under the Charter of Fundamental Rights of the European Union.
21. The preamble to the Charter states that: *This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights.*
22. Given the importance of the rights and freedoms set out in the Charter, the infringement of the provisions of the EU COVID-19 Certificate Regulation is all the more serious as the Union has expressly assumed *recognition of the stated rights, freedoms and principles* in the contents of the Charter, and by adopting the Regulation, several rights in its contents are infringed.
23. Among the rights and freedoms provided for in the Charter and infringed by the EU COVID-19 Certificate Regulation are the right to life (provided by art. 2 of the Charter⁴); the right to integrity of the person (provided by art. of the Charter⁵); the right to liberty and security (provided by art. 6 of the Charter⁶); the right to non-discrimination (provided by art. 21 of the Charter⁷); the right to health protection (provided by art. 35 of the Charter⁸); the right to

³S. 288 TFEU: "*The Regulation has general applicability. It shall be binding in its entirety and directly applicable in all Member States.*"

⁴Art.2 of the Charter. The right to life: "(1) Everyone has the right to life. (2) No one shall be condemned to the death penalty, or executed."

⁵Art. 3 of the Charter. The right to integrity of the person: "(1) Everyone has the right to respect for his or her physical and mental integrity. (2) In the fields of medicine and biology, the following must be respected in particular: (a) the free and informed consent of the person concerned, according to the procedures laid down by law; (b) the prohibition of eugenics practices, in particular those aimed at the selection of persons; (c) the prohibition on making the human body and its parts as such a source of financial gain; (d)the prohibition of the reproductive cloning of human beings. "

⁶Art. 6 of the Charter. The right to liberty and security: "Everyone has the right to liberty and security of person."

⁷Art. 21 of the Charter. Non-discrimination: "1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of

freedom of movement and residence (provided by art. 45 of the Charter⁹). However, although the content of the Regulation states that, *'This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union'*, by the measures it imposes, the Regulation infringes a number of rights under the Charter, as I will show below.

24. First of all, regarding the **Right to life**, by its measures, the Regulation affects the right of persons who have a contraindication to be vaccinated against COVID-19 or who do not wish to be vaccinated against COVID-19 or to undergo a test for the detection of SARS COV-2 virus, but who must travel to other Member States of the European Union to be treated for medical conditions.
25. There are very frequent situations where people suffering from serious illnesses need to travel urgently to other Member States of the European Union in order to perform an intervention or be administered a treatment. In this context, where time is a key element in saving lives, travel bans and delays caused by measures imposed by the Regulation can make the difference between life and death. In this way, through the measures it establishes, the Regulation infringes the right to life provided for in the Charter of Fundamental Rights of the European Union.
26. As regards the **Right to freedom of movement and residence**, provided by art. 45 of the Charter of Fundamental Rights of the Union, the enactment of the Regulation on the EU COVID-19 Certificate restricts the freedom of movement of persons who do not fall into any of the situations provided for in the Regulation, in order to be issued an EU COVID-19 Certificate. Freedom of movement is guaranteed for every citizen of the European Union, but the adoption of the Regulation infringes the very purpose announced at the beginning of it, namely, *"Every citizen of the Union has the fundamental right to move and reside freely within the territory of the Member States"*.
27. The draft regulation also states that: *holding a vaccination certificate or holding a vaccination certificate indicating a vaccine against COVID-19 should not be a precondition for exercising the right to free movement or use of cross-border person transport services, such as airlines, trains, coaches, ferries or any other means of transport*. However, if a citizen of the Union does not fall into any of the situations provided for in the Regulation in order to be issued the EU COVID-19 Certificate, the consequence is precisely the one which should be avoided, namely, the restriction of freedom of movement guaranteed by art. 45 of the Charter of Fundamental Rights of the Union.
28. The fact that citizens have the opportunity to perform a test to prove that they are not infected with the SARS-CoV-2 virus is not an alternative to prevent the infringement of the right to free

a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited."

⁸Art. 35 of the Charter. Health protection: "Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities. "

⁹Art. 45 of the Charter. Freedom of movement and of residence: "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States. 2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State. "

movement as the costs of this test are borne by citizens. In this way, in order to enjoy the right to move freely, they are forced to resort to another way that does not involve additional costs on their part, namely, vaccination with substances recognized by the EU as experimental. Or, in this case a serious breach of the right to physical integrity, acknowledged by art. 3 of the Charter is caused. Although the Regulation states that it "*cannot be interpreted as establishing a right or an obligation to be vaccinated*", the fact that vaccination is the only way in which a citizen is issued the EU COVID-19 Certificate free of charge means that the Regulation indirectly requires vaccination.

29. Regarding the **Right to health protection**, provided by art. 35 of the Charter and the **Right to liberty and security**, provided by art. 6 of the Charter, by adopting the Regulation on the EU COVID-19 Certificate, a series of measures that limit the freedom of movement of persons who do not fall into any of the categories provided by the Regulation, measures based on insufficiently researched medical evidence and data are suggested. As it can be seen from the Regulation itself, the Union acknowledges that the measures imposed are based on incomplete studies and data. To date, no clear and complete understanding has been made of how this virus works or whether the vaccine is effective against the SARS-CoV-2 virus. In other words, the measure to impose the EU COVID-19 Certificate is based on uncertain and insufficiently researched scientific data, which breaches the Right to Health Protection provided by art. 35 of the Charter of Fundamental Rights of the European Union.
30. In addition, although it is argued that the adoption of the Regulation aims to create a safer framework for the free movement of persons, the Regulation also states that "Scientific evidence related to vaccination, testing and cure of COVID-19 continues to evolve, including in relation to new variants of the virus which cause concerns." Therefore, it is not certain that the measures suggested by the Regulation are effective and create a safer framework for travel, which the Regulation claims to pursue.
31. An example that confirms that the Regulation proposes ineffective measures is the situation in the United Kingdom. According to official information¹⁰, in this state a percentage of over 60% of the population was vaccinated. However, the current epidemiological situation caused by mutations in the SARS-Cov-2 virus is leading to a significant increase in the number of cases.¹¹, leading to the re-entry of this state into national lock-down. Analysing this particular case, one can observe the ineffectiveness of current vaccines against the SARS-CoV2 virus. Thus, the vaccination of persons does not guarantee the observance of the right to health protection provided by art. 35 of the Charter, as the efficacy of vaccines against new variants of the virus is not proven.
32. About the **Right to non-discrimination** provided by art. 21 of the Charter, although the Regulation provides that "*The issuance of certificates pursuant to paragraph 1 of this Article shall not lead to discrimination on the basis of the possession of a specific category of certificate as referred to in Article 5, 6 or 7*", by adopting the Regulation on the EU COVID-19 Certificate persons who have not been vaccinated against COVID-19, have not had COVID-19 disease or have not been tested for SARS COV-2 infection in accordance with the provisions of the Regulation are discriminated against. In addition, the Regulation only recognizes certain vaccines. namely, those authorized by it, a circumstance which leads to

¹⁰ See <https://ourworldindata.org/covid-vaccinations?country=GBR>

¹¹ See <https://www.worldometers.info/coronavirus/country/uk/>

discrimination against citizens who have carried out a vaccine from those recognized by countries outside the Union. The differentiation between the types of vaccine is totally unsupported by the Union because, as we have shown, the Regulation itself claims that there is not enough data to be able to state with certainty that a certain type of vaccine is effective.

33. Although the Regulation states that "*it is necessary to prevent direct or indirect discrimination against non-vaccinated persons*", the measures adopted are such as to lead to discrimination against non-vaccinated persons who and who were fortunate enough not to be infected with SARS-CoV-2. They have to bear the cost of tests to prove they are not infected. Instead, it is noted that all the costs of vaccination are borne by the states, not by the citizens who are vaccinated.
34. Although the Regulation stipulates that "*the possession of a vaccination certificate or the possession of a vaccination certificate indicating a vaccine against COVID-19 should not be a precondition for the exercise of the right of free movement or use of cross-border passenger transport services*", as some Member States have already organized and announced that they will continue to organize public events attended only by people vaccinated against COVID-19 or who submit a test for the detection of SARS COV-2 virus. The organization of such events is likely to restrict the right of unvaccinated persons or of those who have not performed a COVID-19 test to participate in those events, which is a case of discrimination, according to S. 21 of the Charter.
35. Last but not least, the Regulation does not provide stability. The Regulation acknowledges the right of Member States to impose additional travel restrictions on holders of an EU electronic COVID certificate, where they are necessary and proportionate for the protection of public health, without the Regulation providing a definition of the concept of "necessary and proportionate for the protection of public health". Therefore, we are in the situation where a citizen who has obtained the EU COVID-19 Certificate will not be able to move because the state on the territory of which he wants to reach imposes other restrictions. In other words, by that regulation, contrary to the reasoning for which the measures were imposed, the Union **annuls** the Regulation itself.

Therefore, in view of the serious infringements identified in this action for annulment, I, the undersigned, hereby request the admission thereof and the annulment of Regulation (EU) 2021/953 of the European Parliament and of the Council of June 14, 2021 on the 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.

Gheorghe Piperea

Date:

- **In support of this letter, I hereby submit the attached documents in accordance with the SCHEDULE:**

Doc. A.1.Lawyer cards: representative [■] and petitioner Gheorghe Piperea - 4 pages, first page of the action;

Doc.A.2. REGULATION (EU) 2021/953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of June 14, 2021 on the 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-22 pages, pages 5-26 of the annexes, first page of action;

Doc. A.3. Curriculum vitae Gheorghe Piperea - 6 pages, page 26-32 of the annexes, second page of the action.