**INSERT YOUR NAME AND ADDRESS HERE**

Date: INSERT DATE

Re: European Parliament vote due to take place on 27/28 April 2021 in respect of a regulation for the issuance, verification and acceptance of interoperable certificates for vaccination, testing and recovery to facilitate free movement during the COVID-19 pandemic (hereinafter referred to as the “**Regulation**”)

Dear MEP,

On 25 March 2021 you were asked to vote on accelerating the examination procedure for the Regulation, in this regard I am aware that the vote concluded as follows:

|  |  |  |
| --- | --- | --- |
| **MEP Name** | **Vote** | **Party** |
| Barry Andrews | Voted to accelerate  | Fianna Fail |
| Frances Fitzgerald | Voted to accelerate | Fine Gael |
| Colm Markey | Voted to accelerate | Fine Gael  |
| Maria Walsh | Voted to accelerate | Fine Gael |
| Deirdre Clune | Voted to accelerate | Fine Gael  |
| Billy Kelleher | Voted to accelerate | Fianna Fail |
| Sean Kelly | Voted to accelerate | Fine Gael |

|  |  |  |
| --- | --- | --- |
| Ciaran Cuffe | Voted against acceleration  | Green  |
| Clare Daly | Voted against acceleration  | Independents 4 Change |
| Luke Ming Flanagan | Voted against acceleration  | Independent  |
| Chris MacManus | Voted against acceleration | Sinn Fein |
| Grace O’ Sullivan  | Voted against acceleration  | Green |
| Mick Wallace | Voted against acceleration  | Independents 4 Change |

In circumstances where the Regulation is without doubt the most dangerous precedent around liberty and freedom of movement since the inception of the Irish free state, it is extremely worrisome that all Fine Gael and Fianna Fail Members of Parliament sought fit to vote to accelerate the examination procedure around this Regulation.

I previously advised you that I considered your vote as to whether you would agree to a fast-track review of this Regulation to be one of the most defining decisions you would make during your tenure as an Irish Representative within the European Parliament. I continue to hold this position.

I understand that the vote to pass or otherwise the Regulation has now been scheduled for 27/28 April 2021. Having considered the Regulation in detail, I urge you to **VOTE NO** to this Regulation for reasons which include the following:

***Vote ‘NO’ to the Regulation due to underlining critical aspects of the PCR Test***

1. The PCR test detects specific segments of genetic material present in SARS-CoV-2. However, a **PCR test cannot distinguish between live and dead viruses**. Therefore, a positive PCR test fails to provide any information about the infectiousness of an individual. Used in isolation, it does not prove that the person is actively infected, or sick, or can infect others ([Jefferson et al, 2020](https://www.medrxiv.org/content/10.1101/2020.08.04.20167932v4)).

2. People infected with SARS-CoV-2 can be infectious for a short period before the onset of symptoms of COVID-19 and for approximately eight days after the onset of symptoms. Due to the sensitivity of PCR tests, **inactive viral fragments can be detected** in nasal swabs for **up to 83 days from the onset of disease** ([Jefferson et al, 2020](https://www.medrxiv.org/content/10.1101/2020.08.04.20167932v4)).

3. It is **possible for a person to test positive for SARS-CoV-2 when they do *not* have the virus**, due to errors within the PCR test protocol. False positive results can also occur from contamination when taking the sample, when handling it in a laboratory, when testing asymptomatic individuals and due to equipment errors ([Craig](https://www.pandata.org/a-miscarriage-of-diagnosis/), 2021).

4. The “*primers*” (short genetic sequences) used in PCR tests may not accurately detect SARS-CoV-2, particularly when only a single primer is used ([Borger et al, 2020](https://cormandrostenreview.com/report/)). The **PCR test could confuse genetic material from the human genome or from other coronaviruses** for SARS-CoV-2 ([Craig](https://www.pandata.org/a-miscarriage-of-diagnosis/), 2021).

5. The “***cycle threshold***” - the number of times genetic material is amplified - **is important when interpreting PCR test results**. If the cycle threshold (Ct) value is low (e.g. below 25), this indicates that there is a lot of viral genetic material and therefore it is more likely that the virus is active. If the Ct value is high (e.g. above 30), it is more likely that the infection is no longer active ([Jefferson et al, 2020](https://www.medrxiv.org/content/10.1101/2020.08.04.20167932v4))

*If there is no active virus, a person is not infectious.*

In November 2020, a group of scientists conducted a review of the Corman-Drosten paper ([Corman et al.](https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.3.2000045), January 2020), which set the standard for global PCR testing for SARS-CoV-2,. The scientists who conducted the review concluded that *‘the Corman-Drosten paper is severely flawed with respect to its biomolecular and methodological design*’([Borger et al](https://cormandrostenreview.com/report/)., 2020). The concerns raised in this review have yet to be properly addressed by the authors. In January 2021, the World Health Organisation issued technical guidance for PCR testing which outlined the limitations of PCR testing and the risk of false positives ([WHO,](https://www.who.int/news/item/20-01-2021-who-information-notice-for-ivd-users-2020-05) 2021).

In light of the above considerations, the validity and usefulness of current PCR testing regimes, particularly when testing asymptomatic people, must be called into question. The scientific evidence clearly shows that the PCR test cannot provide reliable results about the Covid-19 infection. Therefore, the fundamental assumption of reliability for diagnosing Covid-19 on which a PCR test Green Digital Certificate would be based is incorrect and might lead to unfair and discriminatory treatment of the bearer, who would see their fundamental freedom of movement barred on a doubtful scientific basis.

***Vote ‘NO’ to the Regulation because it does not “facilitate” Free Movement but prevents it***

Conditioning the free movement on one’s health status is an unjustifiable restriction to this freedom. By introducing a uniform EU format to certify the fulfilment of this health condition, the Regulation anchors in EU law a barrier to the free movement and breaches the principle of free movement within the EU guaranteed in Article 45 of the Charter of Fundamental Rights of the European Union.

The **Free Movement Directive** (Directive 2004/38/CE) ***only* allows limitations to free movement in *individual cases*** where it also obliges authorities to notify the person about the reasons for which the restrictions are applied and ensure their access to judicial or administrative redress (Articles 29, 30 and 31). The Legislature visibly left **no legal ground for blanket decisions** allowing restrictions to the freedom of movement, such as the ones intended by this Regulation.

The inviolable respect for the Four Fundamental Freedoms of Movement in the Union - persons, goods, services and capital - is upheld by numerous decisions of the Court of Justice of the EU. **No less than 76 decisions (by 2016) witness to the inalienable nature of the free movement.** In none of them has the Court ruled in favour of any limitation to it and definitely not on health grounds.

Furthermore, it is also obvious that the Regulation is **reintroducing internal border controls in the Schengen area**. The existence of the Digital Green Certificate presupposes it, as its verification would be impossible in the absence of such checks**.**

Finally, and even more worryingly, the proposal around the Regulation **provides no guarantee that it cannot be used for further restrictions,** be it on the movement of people within or and across national borders, or any other infringement.

***Vote ‘NO’ to the Regulation because it lacks Clear Purpose and has no Legal Certainty***

**1. Purpose and Certainty**

European law must be clear, precise, and have foreseeable implications. It must have a certain purpose. While the “*Explanatory Memorandum*” alludes to "*facilitating free movement*", the operational part of the proposal contains no stated purpose.

**2. EU Court of Justice asked for objective evidence that the law pursues no other end than the one stated (Giuffrida v Commission [1976] ECR 1395 Case 105/75)**

While the proposal does not openly state the purpose of facilitating free movement, it provides clear, precise and objective language concerning restrictions to freedom of movement:

* Recital 6 refers to those movement restrictions which are “*necessary to safeguard public health”,* and which are considered a priori proportional and non-discriminatory.
* Recital 7 tells us that it would be unlawful to restrict movement of people who cannot infect others, as this would “*not be necessary to achieve the objective pursued.”*

The two above provisions seem to indicate other objectives than facilitating free movement, such as:

* ***Restrictions to the movement of healthy people***

 Although not explicitly recognised by the proposal, border guards must perform checks on all travellers, including those immune, so that they can verify the Green Digital Certificate. In the absence of such checks, the Green Digital Certificate would have no useful effect.

* ***Undue Harmonization of Health Policy***

 Although Article 168(7) TFEU prevents the EU from taking responsibility away from the Member States “*for the definition of their health policy and for the organization and delivery of health services and medical care,”* Articles 5(1), 6(1) and 7(1) of the Proposal de facto harmonize an aspect of health policy, namely the certification of vaccination, testing and recovery.

**3. Real Purposes of the Law**

The above standard set up by the Court of Justice is therefore not fulfilled, and the proposal seems to pursue two other purposes than the one seemingly intended**: restricting movement and interfering in health policy.**

The ambiguity thus created between the declared intention to *"facilitate free movement*" and the objectives transpiring from the operational provisions of the proposal **create legal uncertainty**.

The omission of purpose makes it difficult to determine the implications of this Regulation on the Fundamental Freedoms of citizens. **Further assessment and clarification are needed by the Legislator.**

Given that both these objectives breach the Treaties, it is hard to see how the EU could adopt such a law without being in breach of its own fundamental principles of law-making.

***Vote ‘NO’ to the Regulation – and NO to forced vaccination***

**1. Compulsory vaccination, as an involuntary medical intervention, constitutes an interference with the exercise of the right to the integrity of the person**

The Charter of Fundamental Rights of the European Union (Article 3) guarantees, in respect of medicine and biology, in particular:

* free and informed consent of the person concerned, according to the procedures laid down by law; and
* prohibition of eugenic practices.

**2. The Oviedo Convention** also upholds the principle that any medical intervention should be subject to a patient’s free and informed consent.

**3. Any mandatory measures in sensitive areas such as health must be strictly lawful and proportional** (EU Charter - Article 52)

Unjustified differences in the treatment of people based on their health status could ultimately lead to discrimination under both the EU Charter, European Convention of Human Rights and the European Social Charter.

**4. Protection of human health** – the Treaty on the Functioning of the European Union in its Article 168 provides that:

* A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.
* Union action (...) shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health.

**5. Vaccination CANNOT be mandatory (**Council of Europe - Resolution 2361 of 2021)

 “…*with respect to ensuring high vaccine uptake: ensure that citizens are informed that the vaccination is NOT mandatory and that no one is politically, socially, or otherwise pressured to get themselves vaccinated, if they do not wish to do so themselves; and ensure that no one is discriminated against for not having been vaccinated, due to possible health risks or not wanting to be vaccinated*”.

**6. Protection of body integrity**

The European Court of Human Rights has emphasized that a person’s bodily integrity concerns the most intimate aspects of one’s private life.

**7. The Regulation in effect encourages discrimination against those not vaccinated**

While the Regulation states that it “*cannot be interpreted as establishing an obligation or right to be vaccinated*” in fact, it promotes such practice. The Regulation encourages the exercise of discrimination against those who “*are not part of the target group for which the vaccine is currently recommended, such as children, or because they have not yet had the opportunity or do not wish to be vaccinated*”.

It also stipulates that the **right to free movement** should be subject to limitations against any such group, including but not limited to mandatory testing and quarantine.

**Compulsory medical intervention constitutes an interference with this Right.**

***Vote ‘NO’ to the Regulation – due to it being Bad Legislation***

The Regulation does not deserve to become law, based on its performance on **Better Regulation standards**:

**1.** **No impact assessment is backing the alleged NECESSITY for a Digital Green Certificate**

The proposal **lacks the usual accompanying Impact Assessment and Public Consultation**, and the “*Explanatory Memorandum”’* stops short at informing us that there was no time for it.

One would expect that if the evidence of necessity, efficiency and effectiveness, benefits for European policy and positive impact on the fundamental rights of the citizens were so inescapable, a brief analysis could easily have been provided in the proposal itself.

It is not sufficient to put “*green*” in a title of a Regulation in order to make it environmentally friendly. The environmental, social and economic impacts should have been properly analysed.

It is not because this Digital Green Certificate will cost the European Union “*only”* 49 million Euro, that the Legislator does not owe the citizens an explanation on the use of taxpayers’ money.

**2.** **No justification is brought to the PROPORTIONALITY of this action**

If the intended use of the Digital Green Certificate is for the seemingly limited period left of the Covid-19 pandemic, then its proportionality must be questioned.

This is not only about the “*only*” 49 million Euro supposedly needed for its implementation, but of the whole EU and national effort to adopt and implement a measure that is supposedly very short-lived.

**3.** **No respect for the DIVISION OF POWER under the Treaty – delegated powers**

The suspension of the application of the Digital Green Certificate is to take place via a Delegated Act (Article 190 TFEU). This procedure is strictly limited by the Treaty to **deciding on *“non-essential*” aspects** of laws.

In the proposal, the decision that the pandemic is over is an **ESSENTIAL** aspect. This provision further weakens the democratic accountability of the Regulation and makes its consequences arbitrary.

**4.** **The Regulation is marred by UNCERTAINTY and impossible to ascertain accountability**

The Regulation places important decisions onto doubtful bodies:

* **Health Security Committee** (HSC) which is an informal advisory group of the Member States’ Health Ministries and also includes representatives of observer states (Iceland, Liechtenstein, Norway, Serbia and Turkey). Such an informal group cannot be entrusted with responsibilities that directly impact EU citizens. (Article 3(6) and Article 7(1) of the Proposal).
* **WHO:** Most blatantly, the ultimate trigger of the decision to stop the application of this Regulation is the WHO. It must be underlined that WHO **is not part of the EU legal framework,** nor have its Director General’s decisions any direct legal implications on EU and its citizens.

5. **Uncertainty**

If the Director-General of the World Health Organization (WHO) declares an international emergency because of any infectious disease with epidemic potential, the European Commission will automatically reimpose the Digital Green Certificate, until the WHO dictates otherwise, with the Member States having nothing to say about it. Member States themselves seem to cede decision-making to the Certificate ‘framework’.

The WHO can declare such an emergency even if there are no deaths. Therefore, the WHO may condemn us to a perpetual global health alert.

The Parliamentary Assembly of the Council of Europe, draws attention to this anomaly in its report, “*The handling of the H1N1 pandemic: more transparency needed”,*7 June 2010. [*https://pace.coe.int/en/files/12463/html*](https://pace.coe.int/en/files/12463/html)

6. **No Effective Protection against arbitrary law**

The delegation of a permanent power conferred on the European Commission and indirectly on the WHO endangers the principles of legal certainty and of effective judicial protection across Europe. It will be impossible for a Member State by itself to contest the declaration of the WHO’s “*health emergency”* and therefore the implementation of the Digital Green Certificate.

Similarly, the probability that a citizen of an EU Member State being able to demonstrate in court that an infectious disease with “*epidemic potential*” which may have appeared on the other side of the world, is not sufficiently serious and that the implementation of the Digital Green Certificate is therefore useless and disproportionate in his regard, is practically nil a priori.

The European Commission has reaffirmed (September 9th, 2020) the following:

“*The rule of law includes (…) legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights (…). These principles have been recognized by the European Court of Justice and the European Court of Human Rights. (…)*

*The rule of law has a direct impact on the life of every citizen.*

*Effective national checks and balances upholding respect for the rule of law are key to ensuring that any such restrictions on our rights are limited to what is necessary and proportionate, limited in time and subject to oversight by national parliaments and courts.* “

[*https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602583951529&uri=CELEX%3A52020DC0580*](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602583951529&uri=CELEX%25253A52020DC0580)

**Conclusion**

In light of the unprecedented interference with fundamental freedoms which the Regulation will endorse including:

* The abolition of my inalienable **right to decide over my body**;
* The elimination of my other fundamental rights, including the **right to free choice, right to consent, right to a dignified life**;
* The eradication **Freedom of Movement within the European Union**;

coupled with the fact that the Regulation promotes discriminatory practises based on a person’s health status, I urge you to **VOTE NO** on the 27/28 April 2021.

As representatives elected by the people, for the people, it is essential for MEPs to maintain meaningful respect for fundamental rights and civil liberties, even when doing so presents challenges. For the avoidance of doubt, I confirm that when the next European or General Election takes place the paramount, decisive issue I will be concerned with is whether you voted for or against this Regulation. Not only will I not vote for any MEP who votes in favor of this Regulation, but I will **relentlessly** canvass against them.

I require a response to this letter, which must include confirmation on how you intend to vote.

I await hearing from you and shall follow up upon this communication.

Yours Sincerely

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INSERT YOUR NAME HERE