



Paris, 29 March 2023

## **POLITICAL OPINION ON THE SINGLE MARKET EMERGENCY INSTRUMENT**

The Senate European Affairs Committee,

Having regard to Articles 4, 21, 26, 36, 45 and 114 of the Treaty on the Functioning of the European Union,

Having regard to Articles 7, 8, 16, 17 and 28 of the Charter of Fundamental Rights of the European Union,

Having regard to the Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled "Building a stronger Single Market for Europe's recovery", (COM (2021) 350 final),

Having regard to the Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 October 2021, presenting its work programme for 2022, entitled "Making Europe stronger together", (COM (2021) 645 final),

Having regard to the conclusions on building preparedness, response capacity and resilience to future crises adopted by the General Affairs Council at its meeting on 23 November 2021,

Having regard to the Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market Emergency Instrument and repealing Council Regulation

(EC) No 2679/98, presented by the European Commission on 19 September 2022, (COM(2022) 459 final),

Having regard to the Proposal for a Regulation of the European Parliament and of the Council establishing measures to facilitate the supply of crisis-relevant goods in an emergency for the Single Market, and amending Regulation (EU) 2016/424, Regulation (EU) 2016/425, Regulation (EU) 2016/426 and Regulation (EU) 2019/1009, presented by the European Commission on 19 September 2022, (COM(2022) 461 final),

Having regard to the Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/14/EC, 2006/42/EC, 2010/35/EU, 2013/29/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU 2014/53/EU and 2014/68/EU, and introducing emergency procedures for conformity assessment, and the adoption of common specifications and market surveillance due to a Single Market emergency, presented by the European Commission on 19 September 2022, (COM(2022) 462 final),

*On the establishment of a Single Market Emergency Instrument*

Whereas the Single Market is an important asset for the European Union in global economic competition and benefits consumers, workers and businesses in the European Union;

Whereas, during the COVID-19 crisis, restrictions on the free movement of persons, goods and services in the internal market, put in place unilaterally by Member States, had significant consequences, particularly on supply chains, service provision and cross-border travel;

Endorses the principle of creating an emergency instrument at European level to enable the European Union to anticipate, prepare for and address the impacts of crises on the Single Market in a coordinated, coherent and mutually supportive manner; observes in this regard the specific mention that any restrictions should take account of the situation of border regions;

Considers, however, that it is essential to clarify the definition of the concept of crisis presented in Article 3 of COM(2022) 459, especially in order to describe its scope;

Observes in this respect that Recital 36 of the said text specifies that "this Regulation respects fundamental rights", particularly "the right to collective bargaining and action protected by Article 28 of the Charter of Fundamental Rights of the European Union", and that the implementation of this right cannot constitute an emergency situation falling within this scope;

Agrees that it is essential to ensure the availability of essential goods and services in the event of a crisis, but considers that the definitions of "strategically important goods and services" and "crisis-relevant goods and services" should be clarified, and that criteria for assessing their strategic nature should be established;

Notes, in general, the vagueness of the definition of several key concepts in the proposed regulation and of certain obligations that may be imposed upon Member States;

Calls, therefore, for clarifications and further details to improve the legal certainty and predictability of the proposed mechanism;

Stresses that measures taken in the event of a crisis must respect fundamental rights and freedoms and be proportionate to the gravity of the situation;

#### *On the three-tier crisis management architecture*

Whereas the European Commission proposes a Single Market crisis management mechanism with three levels: a contingency planning framework, a vigilance mode and an emergency mode;

Whereas this crisis management architecture is intended to enable coordinated crisis management at European level in order to safeguard the proper functioning of the Single Market, in particular the free movement of goods, services and persons, and to ensure access for Europeans and businesses to essential goods and services;

Supports the principle of a coordinated, graduated and reversible approach to minimise the impact of crises on the internal market;

Endorses the priority given to preserving the free movement of goods, services and persons;

Stresses that the Single Market Emergency Instrument is not intended to address structural dependencies, which are covered by the EU's industrial strategy;

Considers that it is essential to define the links between the proposed mechanism and other European emergency mechanisms, such as the EU Civil Protection Mechanism and existing or pending sectoral crisis mechanisms, e.g. for semi-conductors, medicines, medical instruments and strategic raw materials, in order to avoid duplication, but also the links with the Integrated Political Crisis Response (IPCR) arrangements;

Whereas the implementation of an emergency prevention framework, including crisis and crisis communication protocols, training, simulations and early warning systems, has been proposed on a permanent basis;

Recommends that this prevention framework should provide for the establishment of national and European points of contact and a common information system to enable their immediate operational implementation in a crisis situation;

Calls for this framework to define a harmonised architecture for the collection and transmission, by Member States and economic operators, of the data required for responses to crises in order to enable the processing, aggregation and interoperability thereof;

Whereas in an emergency situation for the internal market, it is expected to be possible to activate the vigilance or emergency modes for limited periods of time, thereby enabling targeted measures to be implemented in response to the crisis;

Considers that a threat of sufficient gravity to justify the activation of the vigilance or emergency mode should be measured against criteria that can be used to assess the potential or actual consequences of the threat, and that these criteria should be defined by the Regulation;

*On the governance of the Single Market Emergency Instrument*

Whereas the governance of the Emergency Instrument would be entrusted to the European Commission, under the guidance of an Advisory Group of Member States' representatives under its chairmanship;

Urges the clarification of the arrangements for the Advisory Group's functioning and decision-making, especially with regard to the majority rules;

Recommends that social partners, trade unions and businesses, with which Member States will be required to maintain a permanent dialogue on measures restricting the free movement of persons, goods and services in a crisis situation, should be involved in the Advisory Group's activities in order to inform its discussions on the relevance, impact and feasibility of the measures envisaged;

Considers that the Commission should be provided with an appropriate and adaptable organisational system and resources capable of ensuring the governance of the emergency instrument,

Whereas the Commission is likely to have sole competence for activating the vigilance mode by means of an implementing act listing strategically important products and services and defining the measures that Member States should implement in terms of monitoring supply chains, identifying the most relevant economic operators based on their territory, requesting information from the most affected operators, and establishing strategic reserves of goods, possibly accompanied by individual objectives;

Whereas the emergency mode would be activated by the Council, by qualified majority following a proposal from the Commission (known as the "dual activation" mechanism), but with the Commission having sole competence for establishing a list of crisis-relevant goods and services by adopting implementing acts and implementing new measures;

Considers that the role assigned to the European Commission in the governance of the Single Market Emergency Instrument should not deny Member States the opportunity to request the activation, extension or deactivation of the vigilance mode, or to

take the initiative to decide upon the activation, extension or deactivation of the emergency mode;

*On the obligations of economic operators*

Whereas, in the event of the activation of the vigilance mode, Member States could be called upon by the Commission to ask the economic operators based on their territory and most affected by the crisis throughout the supply chains for strategic goods and services, to provide them with information, especially concerning the status of their stocks, on a voluntary basis;

Reiterates that economic operators are directly affected in crisis situations – particularly in the event of supply, transport and market-access difficulties – and that it is important to enable them to keep operating without placing an unnecessary burden upon them;

Therefore recommends a proportionate approach in order to avoid imposing excessive administrative burdens upon economic operators, especially small and medium-sized enterprises (SMEs);

Also draws attention to the need to protect the business secrecy (industrial and commercial secrecy) of economic operators, notably by regulating access to the information they transmit, the arrangements for disseminating such information, and the length of time it is kept;

Whereas in emergency mode, the Commission could ask one or more economic operators involved in critical supply chains to accept priority orders and in the event of their refusal, the reasons given by the operator could be made public and fines imposed;

Calls for the prioritisation of orders to be governed by precise criteria and to take account of contracts already concluded by companies, in particular with third countries;

Whereas it is proposed that in emergency mode, the harmonised rules for products required for crisis management may be temporarily eased in 14 sectors, thereby enabling them to benefit from a temporary marketing authorisation;

Reiterates that any derogation must be justified and that the flexibility authorised in this way should not reduce the levels of health and environmental protection;

*On reporting and reviews*

Whereas the Commission is required to report every five years on the functioning of emergency planning measures, and of the Single Market response system;

Whereas this report should include an assessment of the Advisory Group's activities in the emergency context and its links with other relevant crisis-management bodies at EU level;

Considers it necessary to provide for an ex post evaluation of the effectiveness and relevance of the emergency instrument whenever the vigilance or emergency mode has been activated.