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COVER NOTE

From:	European Committee of the Regions	
date of receipt:	23 February 2023	
To:	General Secretariat of the Council	
Subject:	Opinion of the European Committee of the Regions on 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 as regard emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency [COM (2022) 462]	

Delegations will find attached the above document.

Encl.:ECON-VII/027

diM/ech COMPET.1



ECON-VII/027

153rd plenary session, 8-9 February 2023

OPINION

Single Market Emergency Instrument

THE EUROPEAN COMMITTEE OF THE REGIONS

- welcomes the Commission's proposal for a Single Market Emergency Instrument to ensure the functioning of the single market, together with the free movement of people, in future crisis situations, as well as the proposed traffic light system with the three phases of contingency planning, single market surveillance and single market emergency for better crisis prevention, preparedness and management;
- reiterates its view that the free movement of goods, people and services in particular must be protected against crises; stresses the specific role of border regions for the functioning of the single market;
- calls on the European Commission to give partial priority to the free movement rules of the Single Market Emergency Instrument over the Schengen Borders Code in order to ensure the free movement of persons, services and goods in times of crisis;
- calls for representatives of the European Committee of the Regions to have a permanent seat on the advisory group and for local and regional authorities to be involved in the design of the central liaison offices and for equal access to national single points of contact and the single point of contact at EU level;
- stresses the need to clarify individual definitions in order to achieve legal certainty and make clear under which conditions and circumstances and in which crises the emergency instrument will be used; points out the need for a due process that guarantees the involvement not only of the Member States and the European Parliament, but of national and regional parliaments too;
- calls for a review of the necessity and proportionality of monitoring supply chains, of collecting
 information from businesses and of the obligation to comply with priority-rated orders; in times
 of crisis additional burdens on businesses, especially small and medium-sized enterprises,
 should be kept to a minimum;

Rapporteur

Muhterem Aras (DE/Greens), President of the State Parliament of Baden-Württemberg

Reference documents

Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98 COM(2022) 459 final

Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/424, (EU) 2016/425, (EU) 2016/426, (EU) 2019/1009 and (EU) No 305/2011 as regards emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency COM(2022) 461 final

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 as regard emergency procedures for the conformity assessment, adoption of common specifications and market surveillance due to a Single Market emergency COM(2022) 462 final

Opinion of the European Committee of the Regions – Single Market Emergency Instrument

I. RECOMMENDATIONS FOR AMENDMENTS

Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98

COM(2022) 459 final

Amendment 1

Amendment to Recital 33

Text proposed by the European Commission	CoR amendment
Furthermore, to ensure availability of crisis-	Furthermore, to ensure availability of crisis-
relevant goods during the Single Market	relevant goods during the Single Market
emergency, the Commission may recommend	emergency, the Commission may recommend
that Member States distribute strategic reserves,	that Member States distribute strategic reserves,
having with due regard to the principles of	having with due regard to the principles of
solidarity, necessity and proportionality.	solidarity, necessity and proportionality. This
	must take into account the different local and
	regional needs such as those of the outermost
	regions, densely populated cities, rural areas
	and border regions.

	Reason
Self-explanatory.	

Amendment 2

Amendment to Article 1(3)

Text proposed by the European Commission	CoR amendment
Member States shall regularly exchange	Member States shall regularly exchange
information on all matters falling within the	information on all matters falling within the
scope of this Regulation among themselves and	scope of this Regulation among themselves and
with the Commission.	with the Commission, the European Parliament,
	the European Committee of the Regions and the
	European Economic and Social Committee.

Reason

Local and regional authorities are asked to implement many of the measures activated under the SMEI. Therefore, they should at least be kept informed via the CoR.

Amendment 3

Amendment to Article 2(8)

Text proposed by the European Commission	CoR amendment
This Regulation is without prejudice to the	This Regulation is without prejudice to the
responsibility of the Member States to safeguard	general responsibility of the Member States to
national security or their power to safeguard	safeguard national security or their power to
essential state functions, including ensuring the	safeguard essential state functions, including
territorial integrity of the State and maintaining	ensuring the territorial integrity of the State and
law and order.	maintaining law and order.

Reason

The word "general" should be added for clarification in order to preserve the free movement rules in Article 16 et seq.

Amendment 4

Amendment and addition to Article 4(3)

Text proposed by the European Commission

The Commission shall chair the advisory group and ensure its secretariat. The Commission may invite *a representative of the European Parliament*, representatives of EFTA States that are contracting parties to the Agreement on the European Economic Area 49, representatives of economic operators, stakeholder organisations, social partners and experts, to attend meetings of the advisory group as observers. It shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the advisory group.

CoR amendment

The Commission shall chair the advisory group and ensure its secretariat. Permanent members advisory group of also representatives of the European Parliament and the European Committee of the Regions. The Commission may invite representatives of EFTA States that are contracting parties to the Agreement on the European Economic Area 49, representatives of economic operators, stakeholder organisations, social partners and experts, to attend meetings of the advisory group as observers. It shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the advisory group.

Reason

The European Parliament and the European Committee of the Regions must be represented with permanent seats on the advisory group in order to ensure parliamentary scrutiny and to involve local and regional authorities (LRAs) implementing EU legislation on the ground. LRAs are also directly exposed to the problems and impacts of crises and are able to report first-hand. LRAs' interests can be represented on the advisory group via the European Committee of the Regions.

Amendment 5

Amendment to Article 5(1)

Text proposed by the European Commission	CoR amendment
Member States shall designate central liaison	Member States shall designate, together with
offices responsible for contacts, coordination and	local and regional authorities, central liaison
information exchange with the central liaison	offices responsible for contacts, coordination and
offices of other Member States and Union level	information exchange with the central liaison
central liaison office under this Regulation. Such	offices of other Member States and Union level
liaison offices shall coordinate and compile the	central liaison office under this Regulation. Such
inputs from relevant national competent	liaison offices shall coordinate and compile the
authorities.	inputs from relevant national, regional and local
	competent authorities.

Reason

It is important to involve local and regional authorities, as national liaison offices alone cannot ensure the exchange of information. It would make sense, depending on the political and constitutional structure of the Member States, to involve regional and local offices upstream.

Amendment 6

Amendment to Article 6(1)(a)

Text proposed by the European Commission	CoR amendment
(a) cooperation between national and Union	(a) cooperation between competent authorities <i>at</i>
level competent authorities for the management	local, regional, national and Union level for the
of the Single Market vigilance and emergency	management of the Single Market vigilance and
modes in vigilance and emergency modes across	emergency modes in vigilance and emergency
the sectors of the Single Market;	modes across the sectors of the Single Market;

Reason

It is important to involve the local and regional level.

Amendment 7

Amendment to Article 6(2)(a)

Text proposed by the European Commission	CoR amendment
an inventory of relevant national competent	an inventory of relevant national as well as local
authorities, the central liaison offices designated	and regional competent authorities, the central
in accordance with Article 5 and single points of	liaison offices designated in accordance with
contact referred to in Article 21, their contact	Article 5 and single points of contact referred to
details, assigned roles and responsibilities during	in Article 21, their contact details, assigned roles
the vigilance and emergency modes of this	and responsibilities during the vigilance and
Regulation under national law;	emergency modes of this Regulation under
	national law;

Reason

It is important to involve the local and regional level, depending on the structure of the Member States.

Amendment 8

Addition and amendment to Article 8(3)(c)

Text proposed by the European Commission	CoR amendment
the geographical area; the proportion of the	the geographical area; the proportion of the
Single Market affected by the disruption or	Single Market affected by the disruption or
potential disruption; the impact on specific	potential disruption; the impact on specific
geographical areas particularly vulnerable or	geographical areas particularly vulnerable or
exposed to supply chain disruptions including the	exposed to supply chain disruptions including the
EU outermost regions;	EU's border and outermost regions;

	Reason
Self-explanatory.	

Amendment 9

Amendment to Article 9(1)(a)

Text proposed by the European Commission	CoR amendment
Where the Commission, taking into consideration	Where the Commission, taking into consideration
the opinion provided by the advisory group,	the opinion provided by the advisory group,
considers that the threat referred to in Article 3(2)	considers that the threat referred to in Article 3(2)
is present, it shall activate the vigilance mode for	is present, it shall activate the vigilance mode for
a maximum duration of six months by means of	a maximum duration of six months by means of
an implementing act. Such an implementing act	an implementing act. Such an implementing act
shall contain the following:	shall contain the following:
(a) an assessment of the potential impact of the	(a) an assessment of the potential impact of the
crisis;	crisis, including the specific situation of border
	regions;

Reason
Self-explanatory.

Amendment 10

Amendment to Article 11(5)

Text proposed by the European Commission	CoR amendment
National competent authorities shall have due	National competent authorities shall have due
regard to the administrative burden on economic	regard to the administrative burden on economic
operators and in particular SMEs, which may be	operators and in particular SMEs, which may be
associated with requests for information and	associated with requests for information and
ensure it is kept to a minimum.	ensure that the content of requests is

proportionate	and	strictly	limited	to	what	is
necessary to co	mply	with Ar	ticle 9.			

Reason

Avoiding unnecessary red tape for businesses.

Amendment 11

Amendment to Article 12(2)(a)

Text proposed by the European Commission	CoR amendment
The Commission may require, by means of	The Commission may require, by means of
implementing acts, that the Member States	implementing acts, that the Member States
provide information on the goods listed in an	provide information on the goods listed in an
implementing act adopted pursuant to Article	implementing act adopted pursuant to Article
9(1), as regards all of the following:	9(1), as regards all of the following:
a) the current stock in their territory;	a) the current stock <i>and sites</i> in their territory;

Reason

It is important to check where Member States store crisis-relevant goods so that, in the event of an emergency, they can also be distributed to remote areas in a timely manner.

Amendment 12

Amendment to Article 12(3)

Text proposed by the European Commission	CoR amendment
Taking due account of stocks held or being built	Taking due account of stocks held or being built
up by economic operators on their territory,	up by economic operators on their territory and
Member States shall deploy their best efforts to	of territorial balance, with particular regard to
build up strategic reserves of the goods of	island, mountainous and other remote areas,
strategic importance identified in accordance	Member States shall deploy their best efforts to
with paragraph 1. The Commission shall provide	build up strategic reserves of the goods of
support to Member States to coordinate and	strategic importance identified in accordance
streamline their efforts.	with paragraph 1. The Commission shall provide
	support to Member States to coordinate and
	streamline their efforts.

Reason
Self-explanatory.

Amendment 13

Amendment to Article 15(1)

Text proposed by the European Commission	CoR amendment
Where the Commission considers, taking into	Where the Commission considers, taking into
consideration the opinion provided by the	consideration the opinion provided by the advisory

advisory group, that an extension of the Single Market emergency mode is necessary, it shall propose to the Council to extend the Single Market emergency mode. Subject to urgent and exceptional changes in circumstances, the Commission shall endeavour to do so no later than 30 days before the expiry of the period for which the Single Market emergency mode has been activated. The Council may extend the Single Market emergency mode by no more than six months at a time by means of an implementing act.

group, that an extension of the Single Market emergency mode is necessary, it shall propose to the Council to extend the Single Market emergency mode. Subject to urgent and exceptional changes in circumstances, the Commission shall endeavour to do so no later than 30 days before the expiry of the period for which the Single Market emergency mode has been activated. The Council may extend the Single Market emergency mode by no more than six months at a time by means of an implementing act. *Unless it is extended, the Single Market emergency mode will automatically expire.*

Reason

Emergency measures must always be time-limited and end automatically in order to prevent abuse. This is mentioned in Article 14(3) on activation, but not in the article on deactivation, therefore clarification is provided.

Amendment 14

Amendment to Article 16(1)

Text proposed by the European Commission	CoR amendment
When adopting and applying national measures	When adopting and applying national measures
in response to a Single Market emergency and the	in response to a Single Market emergency and the
underlying crisis, Member States shall ensure that	underlying crisis, Member States shall ensure that
their actions fully comply with the Treaty and	their actions fully comply with the Treaty and
Union law and, in particular, with the	Union law and, in particular, with the <i>priority</i>
requirements laid down in this Article.	requirements laid down in this Article, especially
	as regards measures under the Schengen
	Borders Code.

Reason

In order for the free movement rules of the SMEI to be effective, they must take partial priority over the Schengen Borders Code, otherwise Member States could introduce unilateral and uncoordinated border controls which could by their very nature amount to border closures.

Amendment 15

Amendment to Article 16(2)

Text proposed by the European Commission	CoR amendment
Any restriction shall be limited in time and	Any restriction shall be limited in time, <i>reviewed</i>
removed as soon as the situation allows it.	regularly and removed as soon as the situation
Additionally, any restriction should take into	allows. Additionally, any restriction should take
account the situation of border regions.	into account the situation of border regions.

Reason

Self-explanatory.

Amendment 16

Amendment and addition to Article 16(5)

Text proposed by the European Commission

Member States shall ensure that all affected stakeholders are informed of measures restricting free movement of goods, services and persons, including workers and service providers, before their entry into force. Member States shall ensure a continuous dialogue with stakeholders, including communication with social partners and international partners.

CoR amendment

Member States shall ensure that all affected stakeholders as well as local and regional authorities are informed of measures restricting free movement of goods, services and persons, including workers and service providers, before their entry into force. Member States shall ensure a continuous dialogue with stakeholders, including communication with the European Committee of the Regions, social partners and international partners.

Reason

To ensure the involvement of local and regional authorities.

Amendment 17

Amendment to Article 19(2)

Text proposed by the European Commission

Member States shall provide to the Commission a statement of the reasons which make the enactment of such measure justified and proportionate, where those reasons have not already been made clear in the notified measure. Member States shall communicate to the Commission the full text of the *national legislative or regulatory provisions* which *contain* or *are* modified by the measure.

CoR amendment

Member States shall provide to the Commission a statement of the reasons which make the enactment of such measure justified and proportionate, where those reasons have not already been made clear in the notified measure. Member States shall communicate to the Commission the full text of the *relevant applicable legislation in their Member State* which *contains* or *is* modified by the measure.

Reason

In some Member States, regions can adopt their own or additional rules, meaning that not only should national legislation be mentioned, but all legislation applicable in the Member State concerned.

Amendment 18

Amendment to Article 21(2)

Text proposed by the European Commission	CoR amendment
Text proposed by the European Commission	CON amenament
Member States shall ensure that it is possible for	Member States shall ensure that it is possible for
citizens, consumers, economic operators and	citizens, consumers, local and regional
workers and their representatives to receive, at	authorities, economic operators and workers and
their request and via the respective single points	their representatives to receive, at their request
of contact, information from the competent	and via the respective single points of contact,
authorities on the way in which the respective	information from the competent authorities on the
national crisis response measures are generally	way in which the respective national crisis
interpreted and applied. Where appropriate, such	response measures are generally interpreted and
information shall include a step-by-step guide.	applied. Where appropriate, such information
The information shall be provided in clear,	shall include a step-by-step guide. The
understandable and intelligible language. It shall	information shall be provided in clear,
be easily accessible at a distance and by	understandable and intelligible language. It shall
electronic means and shall be kept up to date.	be easily accessible at a distance and by
	electronic means and shall be kept up to date.

Reason

Everyone should have access to Member States' single points of contact. This can be facilitated by the regional level. This is particularly important in border regions and peripheral areas.

Amendment 19

Amendment to Article 22(2)

Text proposed by the European Commission	CoR amendment
The Union level single point of contact shall	The Union level single point of contact shall
provide citizens, consumers, economic operators,	provide citizens, consumers, local and regional
workers and their representatives with the	authorities, economic operators, workers and
following assistance []	their representatives with the following assistance
	[]

Reason

To ensure the involvement of local and regional authorities.

Amendment 20

Amendment to Article 24(1)

Text proposed by the European Commission	CoR amendment
Where there is a severe crisis-related shortages or	Where there is a severe crisis-related shortages or
an immediate threat thereof, the Commission	an immediate threat thereof, the Commission
may invite representative organisations or	may invite representative organisations or
economic operators in crisis-relevant supply	economic operators in crisis-relevant supply
chains to transmit on a voluntary basis, within a	chains to transmit on a voluntary basis, within a

set time limit, specific information to the Commission on the production capacities and possible existing stocks of crisis-relevant goods and components thereof in Union production facilities and third country facilities which it operates, contracts or purchases supply from, as well as information on any relevant supply chain disruptions within a given deadline.

set time limit, specific information to the Commission on the production capacities and possible existing stocks of crisis-relevant goods and components thereof in Union production facilities and third country facilities which it operates, contracts or purchases supply from, as well as information on any relevant supply chain disruptions within a given deadline. The Commission shall ensure that the administrative and commercial burden on economic operators, particularly SMEs, is kept to a minimum, that the deadlines for replying are realistic and that the content of the requirements is proportionate and limited to what is strictly necessary.

Reason

Avoiding unnecessary red tape for businesses.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

- 1. welcomes the Commission's proposal for a Single Market Emergency Instrument to ensure the functioning of the single market, together with the free movement of people, in future crisis situations:
- 2. underlines how coordinated EU action enabled single market freedoms to be restored during the COVID-19 pandemic and how Russia's war of aggression against Ukraine, in breach of international law, has revealed the speed with which a new crisis can emerge;
- 3. highlights how crises can have serious repercussions for the single market; stresses the importance of needs-based measures in order to address crisis-related divergences at European, national, regional and local level, and of a needs-based cohesion policy which, by following the same objectives, can enhance the ability to withstand crises;
- 4. reiterates its view that the free movement of goods, people and services in particular must be protected against crises; stresses the specific role of border regions for the functioning of the single market;
- 5. stresses that the areas covered by Article 174 of the Treaty on the Functioning of the European Union are particularly affected by the impact of crises, as they are already facing challenges resulting from their situation;
- 6. sees, therefore, the need for a robust overall EU crisis framework for the single market that complements existing and planned sector-specific rules;

Border management in the Single Market Emergency Instrument

- 7. underlines that border regions suffer in particular from crisis-related and, especially, from unilateral and short-term border closures; this affects all cross-border cooperation in areas such as education, health and energy, as well as transport of goods, cross-border commuters, service providers, but also families and other interpersonal relations;
- 8. points out, in particular, that border controls are close in nature to border closures, given that they involve congestion stretching back kilometres at border crossings;
- 9. calls, therefore, on the European Commission to give partial priority to the free movement rules of the Single Market Emergency Instrument over the Schengen Borders Code in order to ensure the free movement of persons, services and goods in times of crisis;
- 10. calls on the Council, following the entry into force of the regulation, to start negotiations with third countries at the EU's external borders in order to enforce such free movement rules;
- 11. highlights, in this regard, its opinion on *Revised Schengen Area Governance*¹, which calls for internal border controls to be strictly limited to a maximum of 24 months and an explanation of why alternative measures are not appropriate;
- 12. urges the Council to also lift its opposition to the creation of the European Cross-Border Mechanism (ECBM) so that straightforward intergovernmental solutions can be put in place along borders;

The Single Market Emergency Instrument from a regional perspective

- 13. welcomes in general the proposal's place-based approach and its focus on travel and business activities; at the same time, calls for the emergency instrument to have a stronger territorial focus to ensure that it is effective on the ground;
- 14. building on this, calls for representatives of the European Committee of the Regions to have a permanent seat on the advisory group;
- 15. further calls for local and regional authorities to be involved in the design of the central liaison offices and for equal access to national single points of contact and the single point of contact at EU level;
- 16. points out that goods that are (potentially) relevant in crises are unevenly distributed across the single market; stresses the vital need for European solidarity in action to ensure that such goods can be distributed to heavily affected areas; welcomes the ban on export restrictions in this regard;

COR-2022-01129-00-01

17. proposes that the relevant definitions and criteria be made more consistent throughout the proposal and that, in this connection, regional concerns be given greater consideration;

Governance of the Single Market Emergency Instrument

- 18. stresses, in this context, the need to clarify individual definitions in order to achieve legal certainty and make clear under which conditions and circumstances and in which crises the emergency instrument will be used;
- 19. welcomes the proposed traffic light system with the three phases of contingency planning, single market surveillance and single market emergency for better crisis prevention, preparedness and management;
- 20. strongly welcomes the focus on information exchange, communication and coordination between Member States and suggests that a common online information interface for future crises be set up, along the lines of "Re-open EU" created during the COVID-19 pandemic;
- 21. underlines the need to ensure complementarity and consistency with sector-specific and other general rules, particularly the Schengen Borders Code, so as not to generate greater legal uncertainty;
- 22. underlines the principles of subsidiarity and proportionality and notes that the Commission's proposal is very far-reaching; stresses, therefore, the importance of ensuring sufficient scrutiny and transparency in the way that the instrument is implemented, not least in order to review and compensate for the potentially wide-ranging extension of the powers conferred on the Commission; points out that this can only be achieved through clear and unambiguous criteria and quantifiable thresholds combined with a due process that guarantees the involvement not only of the Member States and the European Parliament, but of national and regional parliaments too;
- 23. stresses that any emergency measure must effectively enforce and fully respect labour laws and fundamental rights, including social, workers' and trade union rights;
- 24. calls for a review of the necessity and proportionality of monitoring supply chains, of collecting information from businesses and of the obligation to comply with priority-rated orders; it is precisely in times of crisis that additional burdens on businesses, especially small and medium-sized enterprises, should be kept to a minimum; at the very least, tight deadlines for replying should be extended;
- 25. welcomes the fact that conformity assessments of strategically important products have been stepped up; suggests extending this to other product groups too;
- 26. calls on the European Commission to make joint procurement transparent and to draw lessons from the failures surrounding the conclusion of contracts with COVID-19 vaccine manufacturers;

27. finally, welcomes the recent debates on strengthening European strategic autonomy independently of crises and looks forward to the European Commission's draft legislation on critical raw materials; in this regard, asks the European Commission to include the proposals made in the CoR opinion on the Action Plan for Critical Raw Materials² in its draft legislation.

Brussels, 8 February 2023

The President of the European Committee of the Regions

Vasco Alves Cordeiro

The Secretary-General of the European Committee of the Regions

Petr Blížkovský

² COR-2020-04292-00-01.

III. PROCEDURE

Title	Single Market Emergency Instrument
Reference document(s)	COM(2022) 459, COM(2022) 461, COM(2022) 462
Legal basis	Articles 114, 21 and 45 of the Treaty on the
	Functioning of the European Union
Procedural basis	Rule 41(a) RoP
Date of Commission letter	19 September 2022
Date of Bureau/President's decision	14 October
Commission responsible	Commission for Economic Policy (ECON)
Rapporteur	Muhterem Aras (DE/Greens)
Analysis	21 July 2022/10 October 2022
Discussed in commission	22 September 2022
Date adopted by commission	7 December 2022
Result of the vote	Unanimous
in commission	
Adopted at plenary	8-9 February 2023
Previous Committee opinions	Updating the 2020 New Industrial Strategy: Building
	a stronger Single Market for Europe's recovery
	ECON-VII/017, COR-2021-02688-00-00
	Single Market Barriers Report and Single Market
	Enforcement Action Plan, ECON-VII/006,
	COR-2020-02355-00-00
Date of subsidiarity monitoring	N/A
consultation	

COR-2022-04234-00-00-AC-TRA (EN) 14/1