



Council of the
European Union

Brussels, 19 September 2022
(OR. en)

Interinstitutional Files:
2022/0280(COD)
2022/0279(COD)
2022/0278(COD)

12573/22
ADD 1

MI 672
COMPET 717
IND 349
IA 138
CODEC 1320

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	19 September 2022
To:	General Secretariat of the Council
No. Cion doc.:	SWD(2022) 288 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the documents REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL for a Single Market Emergency Instrument 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 and 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

Delegations will find attached document SWD(2022) 288 final.

Encl.: SWD(2022) 288 final



EUROPEAN
COMMISSION

Brussels, 19.9.2022
SWD(2022) 288 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the documents

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

for a Single Market Emergency Instrument

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

and 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) 459 final} - {SEC(2022) 323 final} - {SWD(2022) 289 final} -
{SWD(2022) 290 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The proposal is based on Article 114 of the Treaty on the Functioning of the European Union. Within the context of a crisis, the Single Market can be impacted both by the appearance of the specific disruptions and shortages inherent to the said crisis, as well as by the possible intra-EU restrictions to the free movement of goods, services and persons, which may emerge in an attempt to address the said crisis. The general objective of the initiative is to lay down the mechanisms and procedures, which would allow to prepare for and to address potential crises and disruptions to the proper functioning of the Single Market. Such measures are also aimed to minimise the intra-EU obstacles to the free movement in times of crisis. More specifically, in the case of a crisis, the measures have to be taken to address any identified shortages and to safeguard the availability of crisis-critical goods and services across the entire EU.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
The Union's competence is shared.
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
- Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
As outlined in Annex 2 to the Impact Assessment accompanying this proposal, stakeholder consultation activities were conducted between October 2021 and May 2022. The consultation activities included: a call for evidence published on the "Have your say" portal and open from 13 April to 11 May 2022, a public consultation conducted via a questionnaire published on the same portal for the same dates, a stakeholder workshop on 6 May 2022, a Member State survey in May 2022 and targeted consultations conducted by means of meetings with Member States and specific stakeholders. The explanatory memorandum and the impact assessment (Section 3) contain a section on the principle of subsidiarity, see question 2.2 below.
2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

principle of subsidiarity?
The principle of subsidiarity is addressed in Section 3 of the impact assessment and in the explanatory memorandum accompanying the proposal. The economic activities across the Single Market are deeply integrated. Interaction between companies, service providers, clients, consumers and workers located in different Member States that rely on their free movement rights, is increasingly common. The experience of the past crisis has shown that often the distribution of production capacities across the EU is uneven. In parallel, in the case of a crisis, the demand for crisis-relevant goods or services across the EU territory may also be uneven. The objective of ensuring the smooth and undisrupted functioning of the Single Market cannot be achieved by means of unilateral national measures. Moreover, even if measures adopted by the Member States individually may be able to address to a certain extent the deficiencies resulting from a crisis at the national level, they are in fact more likely to further exacerbate the said crisis across the EU by adding further obstacles to the free movement and/or additional strain on products already impacted by shortages.
2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?
The objectives of this Regulation cannot be sufficiently achieved by the Member States, by reason of the EU-wide nature of the problem addressed. Thus, the objectives can be better achieved at Union level, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
The purpose of the initiative is to provide immediate solutions to ensure that the Single Market works as it should during crises. Recent crises have demonstrated how fragile the Single Market can be in case of unforeseen disruptions and at the same time, how much the European economy and all its stakeholders rely on a well-functioning Single Market. The impact of a crisis on the Single Market can be two-fold. On the one hand, a crisis can lead to the appearance of obstacles to free movement within the Single Market, thus disrupting its normal functioning. On the other hand, a crisis can amplify the shortages of crisis-relevant goods and services if the Single Market is fragmented and is not functioning. The problems tackled are inherently of a transnational/cross-border nature.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?
Lack of an EU-wide framework and the absence of a Union initiative coordinating the actions at national level would compromise the attainment of the overall objective of ensuring the functioning of the Single Market during crises.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
While Member States can enact national crisis response measures, the objective of ensuring the functioning of the Single Market during crises is best achieved at the Union level.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

across the national, regional and local levels of the EU?
Easing free movement of persons will have a significant social impact on cross-border workers and their communities, by providing better opportunities to maintain their social connections. Outermost regions can be disproportionately affected by obstacles to free movement, worsening the economic and social situation of vulnerable communities, therefore less obstacles to free movement will result in better social outcomes for outermost regions.
(e) Is the problem widespread across the EU or limited to a few Member States?
When the Single Market does not work as it should, it affects all Member States as all Member States form part of the Single Market.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No. The proposal is based on an in-depth assessment of different policy options and their respective impacts. As analysed in detail in the impact assessment, Member States will incur recurrent costs linked to the Advisory Group meetings and specific costs during vigilance and emergency modes linked to specific measures activated in those modes. These costs would be proportionate to the objectives being achieved.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
The European Council in its Conclusions of 1-2 October 2020 stated that the EU will draw the lessons from the COVID-19 pandemic and address remaining fragmentation, barriers and weaknesses of the Single Market in facing emergency situations. In the Update of the Industrial Strategy Communication, the Commission announced an instrument to ensure the free movement of persons, goods and services, as well as greater transparency and coordination in times of crisis. The European Parliament welcomed the Commission's plan to present a Single Market Emergency Instrument and called on the Commission to develop it as a legally binding structural tool to ensure the free movement of persons, goods and services in case of future crises. In the framework of the consultation activities, Member States including national, regional and local authorities have expressed support for the proposal.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
The general objective to enhance the Single Market's vigilance for, response to and its smooth functioning in times of crisis can be best achieved at Union level. The economic activities across the Single Market are deeply integrated and the objective of ensuring the smooth and undisrupted functioning of the Single Market cannot be achieved by means of unilateral national measures.
(a) Are there clear benefits from EU level action?
Yes, as the economic activities across the Single Market are deeply integrated and the objective of ensuring the smooth and undisrupted functioning of the Single Market cannot be achieved by means of unilateral national measures.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
Yes, the objective of the proposal is to enhance the functioning of the Single Market and this objective can be met more efficiently at EU level.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
The general objective of the proposal is to enhance the Single Market's vigilance for, response to and its smooth functioning in times of crisis. To this end, it will equip the EU with a well-calibrated crisis toolbox that permits a rapid and effective response to any future crisis that threatens to hamper the functioning of the Single Market, complementing other existing EU mechanisms, including through better coordination, transparency and speed. The objective is to strengthen the functioning of the Single Market and provide quick and practical solutions to issues of free movement of goods, services and persons and of supply in times of crisis.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
Yes, as the objective of ensuring the smooth and uninterrupted functioning of the Single Market cannot be achieved by means of unilateral national measures.
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes, as it is a new measure applying to the whole Single Market. It will provide a clear governance structure with the Single Market as its focus and it will provide greater legal clarity for those implementing it.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
The proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objective of ensuring the good functioning of the Single Market during crises. The emergency instrument would only be deployed with the objective of ensuring a coordinated approach to respond to crises that have important cross-border effects and threaten the functioning of the Single Market, and where no EU instrument already exists or where the existing instruments do not lay down crisis-relevant provisions. Putting in place contingency and vigilance measures across the Single Market can facilitate the coordination of the response measures in the case of a crisis. Furthermore, such measures can be complemented by effective and efficient coordination and cooperation amongst the Commission and Member States during the crisis in order to ensure that the most appropriate measures to address the crisis are taken. The toolbox of targeted EU-level measures would be proportionately used in response to a specific crisis. Prior risk assessment, based on a well-defined set of criteria and involving closely the Member States, will be systematically conducted before specific measures are deployed at EU level. The various tools may be activated and deployed by themselves or in different combinations depending on the specific emergency circumstances.
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
The proposal addresses the objectives of the initiative and does not go beyond what is necessary to ensure the resilience and functioning of the Single Market in times of crisis.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes. The EU added value of this instrument would be to lay down the mechanisms for a swift and structured way of communication between the Commission and Member States, coordination and information exchange when the Single Market is put under strain, and to be able to take necessary measures in a transparent way – speeding up existing mechanisms as well as adding new targeted tools for emergency situations. It will also ensure transparency across the internal market, ensuring that businesses and citizens that rely on their free movement rights have at their disposal appropriate information about the applicable measures across all the Member States.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The Single Market Emergency Instrument initiative takes the form of a Proposal for a Regulation of the European Parliament and of the Council. Considering that in the case of provisions laid down in a Regulation, there is no need for the Member States to transpose them into their respective national legislation, this specific legal instrument would allow to ensure that the provisions are applied in a consistent manner. The proposed Regulation will introduce procedures which are complementary the Single Market Transparency Directive or the Services Directive and are to be applied in the emergency mode. The Regulation clarifies the relationship between the relevant legal frameworks but without amending the respective legal frameworks.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
The Single Market Emergency Instrument is not intended to lay down a detailed set of EU level provisions which should be exclusively relied upon in the case of crisis. Instead, the instrument is intended to lay down and ensure the coherent application of possible combinations between provisions taken at EU level together with rules on the coordination of the measures taken at the level of the Member States. In this respect, the emergency measures which may be taken at EU level on the basis of the Single Market Emergency Instrument would be coordinated with and complement the emergency response measures adopted by the Member States. In order to allow for such coordination and complementarity, the Single Market Emergency Instrument would set out specific measures which the Member States should refrain from imposing once a Single Market emergency has been activated at EU level.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The costs are detailed in Section 6 of the impact assessment. The Single Market Emergency Instrument provides a toolbox of measures to address Single Market emergency, consisting of a set of measures applicable at all times as well as certain measures only applicable in vigilance or emergency modes, to be separately activated. There are no administrative costs for businesses and citizens that would apply with immediate effect and during the normal functioning of the Single Market. The measures foreseen in the emergency and vigilance modes would be used in very exceptional circumstances. Their initiation would be subject to conditions and a triggering procedure upon the advice of the governance body. Some of these measures could lead to costs for businesses.

Member States will incur recurrent costs linked to the Advisory Group meetings and specific costs during vigilance and emergency modes linked to specific measures activated in those modes. For the Union, the costs related to the proposal fall under three categories. The recurrent costs, which derive from human resources within the Commission for training activities and the necessary extension of the IT tool for the notification system, would be covered either under the heading “Administrative costs” or under the Single Market Programme. The costs related to procurement would not imply an impact on the EU budget, as they would be born entirely by the Member States. The costs related to the occurrence of a crisis would be covered either under the heading “Administrative costs” or via internal redeployment of Union resources.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Yes, as part of the impact assessment the Commission analysis reflected, to the extent possible, the economic and industrial circumstances of individual Member States, taking into account their views collected via the consultation activities, including targeted consultations and the Member States’ survey.