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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2000/14/EC, 2006/42/EC, 2010/35/EU, 2014/29/EU, 2014/30/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU and 2014/68/EU as regards emergency procedures for the conformity assessment, presumption of conformity, adoption of common specifications and market surveillance due to an internal market emergency (**first reading**) - Adoption of the legislative act = Statement

Statement by the Grand Duchy of Luxembourg

Luxembourg strongly supports any initiative designed to improve the functioning of the internal market by means of common rules that strengthen legal certainty, encourage cross-border activities and prevent the emergence of new obstacles.

Unfortunately, Luxembourg has serious doubts as to whether the 'Single Market Emergency Instrument' (SMEI) will live up to these principles. At a time when the EU needs to strengthen the integration and resilience of the internal market, an instrument like the SMEI runs the risk of allowing Member States to impose additional restrictions in a crisis situation.

The lessons learned following the numerous restrictions introduced by Member States during the pandemic show that obstacles must be addressed at source and in accordance with the Treaties. However, the SMEI – or IMERA (Internal Market Emergency and Resilience Act) – merely treats symptoms rather than causes, while adding new layers of bureaucracy likely to hamper crisis management.

Luxembourg supports the establishment of a blacklist of practices prohibited in times of emergency. However, the benefits of such a list are likely to be cancelled out since the SMEI also allows Member States to introduce mitigation measures if the blacklist is not complied with – for instance, digital forms that would be applied to selected cross-border activities identified as critical by the Commission. In doing so, the SMEI would appear not only to validate, but even to encourage the introduction of restrictions to free movement by providing for additional procedures, instead of addressing the underlying problem.

The very broad and unclearly defined scope of the SMEI is likely to hinder the adoption of targeted and effective measures to support industry, unlike the EU Chips Act, the Net-Zero Industry Act, the Critical Raw Materials Act or the Temporary Crisis and Transition Framework. The horizontal and 'one size fits all' nature of the SMEI risks creating disproportionate and inappropriate measures, resulting in a burden for economic operators instead of offering them the support that they need.

Lastly, all regulations need to contain clear rules to allow for operational clarity. Yet, the SMEI is based on vague and unclearly defined concepts, cumbersome bureaucratic procedures and complex governance, raising important legal and practical questions about its relationship with other existing instruments. The result is a lack of legal certainty that has the potential to lead to confusion in a crisis-management situation.

For these reasons, Luxembourg cannot support the adoption of the Single Market Emergency Instrument (SMEI).

Luxembourg invites the Commission to step up its efforts to ensure greater harmonisation and mutual recognition in all EU legislation in order to promote good quality rules and protect fundamental freedoms at all times, including during crises.