Council of the
European Union

Brussels, 16 December 2022
(OR. en)

16154/22

Interinstitutional File:
2022/0278(COD)

MI 959
COMPET 1047
IND 565
CODEC 2048

COVER NOTE

From:	European Economic and Social Committee (EESC)
date of receipt:	14 December 2022
To:	General Secretariat of the Council
Subject:	Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council establishing a Single Market Emergency Instrument and repealing Council Regulation [COM(2022) 459 final][1]

Delegations will find attached the above document.

Encl.: INT/997 Single Market Emergency Instrument.

[1] Other linguistic versions are available on the following website: https://dmsearch.eesc.europa.eu/search/opinion

European Economic and Social Committee

OPINION

European Economic and Social Committee

Single Market Emergency Instrument

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a) 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 – 2022/0278 (COD)]

b) 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 – 2022/0279 (COD)]

c) 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 – 2022/0280 (COD)]

INT/997

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Referral	a) European Parliament, 09/11/2022 a) Council of the European Union, 11/11/2022 b) European Parliament, 21/11/2022 b) Council of the European Union, 24/11/2022 c) European Parliament, 21/11/2022 c) Council of the European Union, 30/11/2022
Legal basis	a) Articles 114, 21, 45 and 304 of the Treaty on the Functioning of the European Union b) Articles 114 and 304 of the Treaty on the Functioning of the European Union c) Articles 91, 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	10/11/2022
Adopted at plenary	14/12/2022
Plenary session No	574
Outcome of vote (for/against/abstentions)	207/0/1

1. Conclusions and recommendations

1.1 The EESC supports the Commission's aim to establish a Single Market Emergency Instrument (hereinafter SMEI) to combat future crises that might affect the functioning of the Single Market and its businesses, as well as the welfare of the EU's citizens. The EESC supports the measures to ensure the free movement of goods, services, and persons and prevent intra-EU restrictions also during a crisis. The SMEI should prioritise information-sharing, cooperation, communication, and solidarity among Member States. Better administrative cooperation and transparency measures for Member States are essential, but the EESC regrets that there are no consequences in the event that Member States do not meet the requirements.

1.2 A crisis response must be fast, temporary, properly targeted and coordinated at the EU level to ensure a common approach. It should consider the effects of a crisis on businesses and the welfare of the EU's citizens, and establish conditions for a more resilient society and economy in the future. The focus should be clearly on the free movement of goods, services and persons in times of crisis, and on mitigating the crisis's effects on people's welfare, rather than intervention in producing and providing goods and services and in their supply chains.

1.3 Crisis mitigation requires a clear legal framework to avoid divergent interpretations, fragmented measures and unnecessary litigation. The EESC finds that the definitions of the terms "crisis", "strategically important areas", "goods and services of strategic importance" and "crisis-relevant goods and services" are too vague to address these concerns and recommends that the Commission define them further.

1.4 Emergency measures should not infringe on the fundamental rights of European citizens, nor should the exercise of those rights, including the right to strike, in any sector, warrant a crisis response. The Commission should make it clear that, if a strike or other industrial action is undertaken under national legislation, it cannot constitute a crisis under the SMEI. Similarly, all crisis-mitigation measures must meet the principles of necessity and proportionality where companies are concerned, which is not the case in the proposal. Moreover, the autonomy of the social partners must be respected. The measures risk creating unnecessary further barriers, restrictions, and burdens, which need to be avoided, especially in times of crisis. The Single Market should be kept accessible, with safeguards against social and fiscal dumping.

1.5 The EESC believes that an emergency requires a fast and efficient response. Therefore, the EESC recommends that the Commission reconsider the proposal in view of an appropriately fast and effective approach to tackling a crisis. The EESC is concerned that the step-by-step approach proposed may be too burdened by administration to be effective.

1.6 The EESC recommends establishing close cooperation between the SMEI Advisory Group and existing EU strategic foresight instruments, with the purpose of foreseeing crisis events based on the continuous monitoring and risk assessment of global and regional events. Civil society representatives should be closely involved in this process, to channel their insights and the results of their work into the EU's foresight activities.

1.7 The EESC proposes that representatives of the social partners and a relevant civil society organisation be included as observers of the SMEI Advisory Group. The EESC also calls for clarification of the role of the proposed Advisory Group, especially in relation to other bodies of a similar nature.

1.8 The delegation of powers to the Commission under the proposal should be reconsidered, in order to strike a balance between effective crisis response and the inclusion of Member States in the decision-making process.

1.9 There is a danger that the interventionist powers granted to the Commission in the proposal, such as the prioritisation of orders and the contract-override clause that can be targeted at specific businesses, could prove detrimental to the functioning of the Single Market. By their very existence, they introduce an element of unpredictability. The EESC therefore recommends that the Commission carefully reconsider the proposal, also in light of the question of which companies would be targeted and who would bear the costs of a potential reorganisation of production lines.

1.10 It is vital to limit the collection of data from companies by the Commission or the Member States by following principles of extreme necessity and proportionality. Some of the proposals pose risks to the level playing field, such as establishing lists of "the most relevant economic operators" before an emergency is announced. The EESC is concerned about the signals this may send to the market and the overall impact on competition.

1.11 Swift, easy-to-understand and open communication for the public, businesses and other actors is a key for Single Market crisis management. A dedicated online information interface should be immediately operational in the event of a crisis.

2. Basis for the opinion

2.1 A well-functioning Single Market is one of the greatest assets of the EU and is vital for its economy and for "improving welfare through socio-economic convergence and ensuring that social imbalances do not end up becoming serious obstacles to European integration."[1]

2.2 Recent crises, such as the COVID-19 pandemic and Russia's invasion of Ukraine, have demonstrated a degree of vulnerability in the Single Market and its supply chains in the event of unforeseen disruptions. The lockdown during the pandemic stopped many businesses operating, borders were closed, supply chains were interrupted, demand was disrupted and workers and service providers were unable to move across Europe, reminding people that the free movement of persons is highly interlinked to the free movement of goods and services. Often, a crisis impacts MSMEs and low-income households in particular.

2.3 A lack of transparency in the measures that various Member States undertook to combat crises caused uncertainty about their justification and proportionality. This weakened mutual trust and solidarity and presented obstacles to the functioning of the Single Market. On the other hand,

1 OJ C 364, 28.10.2020, p. 108.

the importance of cooperation, openness and dialogue between the Member States and the value of diversified value chains was clearly shown. A coordinated response to ensure that EU internal borders remain open via "green lane" border crossings has proven to be key to avoiding disruptions to essential travel and supply chains.

2.4 The SMEI complements other EU legislative measures or proposals for crisis management that concern, for example, health, semiconductors, food security and the EU Civil Protection Mechanism.

3. General comments

3.1 The EESC welcomes the Commission's effort to introduce the SMEI to combat the negative effects of existing and potential crises on the Single Market, its people and businesses, and appreciates the confirmation that the SMEI will apply without prejudice to existing crisis management instruments, which will be treated as *lex speciali*.

3.2 The EESC underlines that the SMEI should ensure better coordination of measures between Member States, enhance solidarity, uphold the effectiveness of the four freedoms and leverage the Single Market to address urgent and unexpected crises. The Committee points out that a well-functioning single market is an efficient tool and an asset for preparedness and for addressing crises.

3.3 A crisis that can affect the functioning of the Single Market can inhibit businesses but also greatly affect people's lives across the EU. The proposed measures to combat any crisis should therefore consider both perspectives and take into account a path forward to the digital, green and fair transition to better prepare the Single Market for future shocks and crises. The future Single Market can only be based on marrying a sound economic basis with a strong social dimension[2].

3.4 The EESC points out that a crisis response must be fast, temporary, proportionate and properly targeted, setting the stage for a more resilient society and economy in the future. It must also be coordinated at the EU level to prevent divergent national measures, which could impede the functioning of the Single Market.

3.5 The EU will face new challenges in future crises. Crisis-mitigation measures should be transparent and readily available – within a limited scope and following strict criteria – and swiftly applied, which requires a clear legal framework at the EU level. The instrument should protect the businesses and residents of the EU and the freedoms of the Single Market in the event of a widespread and serious crisis, should control national and EU anti-crisis measures to meet the basic principles of necessity, proportionality and non-discrimination and should ensure real-time administrative cooperation and access to information for businesses and individuals.

2 OJ C 311, 18.9.2020, p. 19.

3.6 The EESC is concerned that a step-by-step crisis response procedure, as set out under the SMEI, will take too much time and slow down the decision-making process, instead of responding quickly to the crisis.

3.7 It is impossible to foresee the scope and type of a particular future crisis. At the same time, a crisis response is most effective and least invasive if it is triggered in the early stages of a crisis. The EESC stresses the importance of strategic foresight in the EU and continues to strongly welcome the inclusion of the foresight methodology in the EU's policy-making process. The instruments proposed in the SMEI should be complemented by close cooperation between the Advisory group and the existing EU strategic foresight mechanisms in order to foresee future crises based on ongoing global and regional events that have the ability to greatly disrupt the working of a Single Market in a way that cannot be considered to be a normal functioning of a market. The Advisory Group should not only be tasked with the assessment of incidents that the Member States alert the Commission to, but should continuously cooperate with the EU's strategic foresight executors in the task of carrying out the monitoring and risk-assessment of global and regional incidents. As Strategic Foresight is a participatory process, the EESC expects both synergies and the structural involvement of all EU institutions, including the EESC, to prosper on this basis[3].

3.8 The proposal aims to cover all significant crises affecting the single market and its supply chains, with a few exceptions, for which the EU has or is preparing its own measures. The broad scope causes significant challenges. The EESC highlights that the SMEI requires a clearer definition of a crisis, which must not be subject to divergent interpretations. Also, the definitions of "strategically important areas", "goods and services of strategic importance" and "crisis-relevant goods and services" are very broad. The EESC is of the opinion that these definitions should be unequivocal, to ensure the proportionality and proper targeting of the emergency measures. The lack of clear and precise definitions risks creating legal uncertainty and litigation within the Single Market.

3.9 Any definition and crisis response under the SMEI must be proportionate and must not lead to unnecessary administrative burdens. In particular, the instrument should only be triggered when there is an urgent and temporary crisis in the Single Market, including regional crises that affect the four freedoms. Correspondingly, use of the instrument should be limited in time and not allowed to become permanent in nature. The proposal gives the Commission delegated powers regarding the crisis protocols, which should be carefully reconsidered and a balance sought between an effective crisis response and a full commitment to joint measures by the Member States.

3.10 The ability to recognise that a situation requires a crisis response and to properly target the issues arising from emergencies is crucial. Any emergency measures should not impede the fundamental rights of European citizens, especially those recognised in international agreements and conventions. Even in times of crisis, the EU must remain committed to upholding fundamental human rights. Similarly, all crisis-mitigation measures must meet the basic

3 OJ C 290, 29.7.2022, p. 35.

principles of necessity and proportionality where companies are concerned, which is not the case in the proposal.

3.11 The recognition and regulation of crisis-relevant goods can itself create uncertainties in the Single Market that limit its functioning, since it is impossible to know what the crisis-relevant goods will be in any future crisis. The EESC understands the intent of delegating certain powers to the Commission as part of the proposal, but at the same time must express concern at the interventionist Commission powers set out in the proposal, including the disclosure of commercially sensitive information and the prioritisation of orders, including the contract-overriding clause. The production and provision of goods and services and their supply chains are mainly a matter for market players and part of regular contingency planning and preparedness by companies and governments.

3.12 The EESC is convinced that the introduction of intra-EU barriers and restrictions in times of crisis must be avoided. To succeed in this, the instrument should guarantee more information-sharing, coordination and solidarity between the Member States when adopting crisis-related measures, while respecting national competencies. The EESC fully supports listing prohibited restrictions to the freedoms of the Single Market. However, the EESC regrets that there are no clear consequences in cases when Member States do not meet the requirements.

3.13 The production and supply of specific goods that might be essential in combating any given crisis are unevenly distributed across the Single Market. Depending on the crisis, businesses and individuals across the EU might also be impacted with differing degrees of severity, even in the case of an EU-wide crisis. When dealing with such situations, solidarity between Member States is crucial. The crisis-response toolbox should therefore aim to discourage protectionism, which would fragment the Single Market and impede the flow of critical goods and services to the businesses and residents of the EU.

3.14 The EESC recommends that the Commission evaluate the lessons learned from recent crises to use them as a blueprint for the future. During the pandemic, the introduction of "green lanes" alleviated many costly bottlenecks related to the intra-EU flow of goods in particular, but also of services. In addition, the relatively swift adoption of the common EU Digital COVID-19 Certificate helped restore mobility within the Single Market for cross-border service providers, migrant workers and business travellers. The technical assistance provided by the EU has also helped ensure a more uniform implementation of measures.

3.15 The EESC agrees with the Commission that the measures at the EU level should be coordinated together with the Member States. A common approach must be applied throughout the Member States wherever possible. A fragmented approach would present additional barriers to the Single Market, hindering innovation, investment and job creation, as well as social cohesion and quality of life. Even in times of crisis, it is important to keep the Single Market accessible to all, with effective safeguards against social and fiscal dumping[4].

4 See footnote 2.

3.16 Businesses and individuals should also be given incentives to adapt the way they operate to the post-crisis reality of higher energy costs and the effects of climate change as much as possible. Any emergency measure should be in line with the EU's climate objectives and the path towards climate neutrality and, when applied, should set a path towards achieving them, as well as making the Single Market more resilient. An emergency response must also bear in mind that there is always a chance of a crisis resulting in differences between EU countries in terms of economic development, social guarantees, and levels of prosperity[5], and must be designed to avoid such effects.

3.17 Swift, easy-to-understand and open communication for the public, businesses and other actors is a key part of Single Market crisis management. To help actors on the ground, the EESC recommends that a common dedicated online information interface should be immediately operational when a crisis strikes, updated regularly and include reliable information on the crisis and the measures taken. The instrument should ensure transparency for people and businesses regarding measures across the Member States to support their continued free movement. Any emergency measures should be clearly communicated in order not to cause confusion or additional obstacles to the functioning of the Single Market. The EESC believes that the social partners and civil society could play an important role in this.

3.18 Close cooperation with stakeholders is also necessary for the implementation of the instrument, considering that it is in practice civil society actors who carry out the measures. They also have the best knowledge of the measures and procedures that work. Single Market governance infrastructure must be reinforced, with the proactive inclusion of organised bodies representing citizens, consumers and enterprises[6]. The EESC calls on the Commission to include the social partners, civil society organisations and experts in the processes of risk assessment and monitoring, as well as in the development and coordination of crisis measures.

4. Specific comments

4.1 The measures should build on existing instruments as much as possible regarding notifications, standards, etc. They should focus on clarifying and facilitating their swift and efficient use for preserving the functioning of the Single Market whenever a crisis erupts.

4.2 The instrument should consider fast-track conformity assessment, coordination of public procurement and market surveillance for goods and services that are critical to that crisis. However, it should also consider that existing EU directives already offer several options that allow for very rapid procurement in emergencies.

4.3 Emergency measures should not be allowed to limit the fundamental rights of the citizens of the EU, nor should the exercise of those rights, including the right to strike, in any sector, represent a circumstance warranting a crisis response under the SMEI. The EESC is convinced that the legal regulation of strikes falls within the jurisdiction of Member States, and that if a strike or

5 OJ C 364, 28.10.2020, p. 116.

6 See footnote 2.

other industrial action is undertaken under national legislation it cannot constitute a crisis under the terms of the SMEI.

4.4 It is vital to limit the collection of data from companies by the Commission or Member States by adhering to the principles of extreme necessity and proportionality. Mandatory obligations on businesses to disclose commercially sensitive information, the prioritisation of orders and the contract-override clause, must not be adopted, as they are counterproductive to proactive action to find solutions for addressing the crises. Some of the proposals pose risks to the level playing field, such as establishing lists of "the most relevant economic operators" before an emergency is announced. The EESC is concerned about the signals this may send to the market and the overall impact on competition.

4.5 The EESC believes that the advisory group, as set out in Article 3 of the proposal, should make full use of the knowledge and experience of the social partners and a relevant civil society organisation, who are most in touch with the daily "on the ground" conditions in the Single Market. While it is important that the Advisory Group comprise all relevant EU and Member State-level policymakers, competent authorities and agencies, the EESC believes that the social partners are inextricably linked to the Single Market and should be included as observers in the advisory group by default, together with a relevant civil society organisation such as a consumers' organisation to advise on, implement and monitor the practical measures undertaken under the SMEI.

4.6 In accordance with Article 13, the EESC believes that it is necessary to establish solidarity between Member States, for example when securing strategic reserves. Therefore, the EESC supports the Commission's recommendation that the Member States distribute strategic reserves in a targeted way, where possible.

4.7 The EESC calls on the Commission to reconsider the possibility of restricting the free movement of workers proposed in Article 17 when it comes to frontier workers, as limiting their free movement may have adverse effects on the Single Market, as has already been pointed out.

4.8 The EESC believes that the interplay between the Advisory group in the proposal and the already established crisis-management groups, such as the Single Market Enforcement Task Force, the Single Market Information Tool and food crisis platforms is not clearly set out in the proposal. The Commission should avoid any duplication in the jurisdictions of different crisis-management bodies, which would create unnecessary administration and slow down a crisis response.

Brussels, 14 December 2022

Christa SCHWENG
The president of the European Economic and Social Committee