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Subject:	Regulation on the Single Market Emergency Instrument Regulation amending Regulations (EU) 2016/424, (EU) 2016/425, (EU) 2016/426, (EU) 2019/1009 and (EU) No 305/2011 as regards emergency procedures due to a Single Market emergency Directive 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 regards emergency procedures due to a Single Market emergency. - Preparation for the trilogue

INTRODUCTION

1. On 19 September 2022, the Commission adopted a proposal for a Regulation of the European Parliament and the Council establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98¹. The Commission Proposal is based on Articles 114, 21 and 45 of the Treaty on the Functioning of the European Union (TFEU).
2. The Single Market emergency instrument (SMEI Regulation) proposal is aimed at anticipating, preparing for and responding to the impacts of crisis. It builds on the Union's lessons learnt by ensuring a continuous monitoring on possible upcoming crises, by entering into a vigilance or emergency modes whenever a threat becomes clear and by strengthening the involvement, responsibility and commitment of both economic operators and public authorities. The Commission proposal also put in place a governance structures allowing Member States to coordinate decision-making.
3. On 19 September 2022, the Commission also submitted to the Council and the European Parliament 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 emergency² and the 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 emergency³. The Commission proposal for the Regulation is based on Article 114 of the TFEU and the proposal for the Directive is based on Articles 91 and 114 of the TFEU.

¹ 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, doc. ST 12573/22 + ADD 1-5.

² ST 12572/22 + ADD 1-5.

³ ST 12576/22 + ADD 1-5

4. The two proposals (SMEI Omnibus) aim at complementing the SMEI Regulation proposal and seek to ensure that the crisis-relevant goods referred to in the SMEI Regulation may be swiftly placed on the Union market to contribute to addressing and mitigating the disruptions.
5. The SMEI Regulation proposal was discussed at the Competitiveness Council on 29 September 2022.
6. The Council Legal Service issued its opinion on the legal basis and proportionality of the SMEI Regulation proposal on 4 April 2023⁴.
7. On 7 June 2023 the Permanent Representatives Committee endorsed the compromise text of the SMEI Regulation proposal and instructed the Presidency to start negotiations with the European Parliament as soon as possible, in order to reach an agreement at first reading on this basis.
8. On 11 October 2023 the Permanent Representatives Committee endorsed the compromise texts of the SMEI Omnibus proposals and instructed the Presidency to start negotiations with the European Parliament as soon as possible, in order to reach an agreement at first reading on this basis.
9. On 16 December 2022, the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) appointed Mr Andreas Schwab (EPP, DE) as rapporteur for the three proposals.
10. The Parliament adopted its position on the three proposals on 13 September 2023.
11. The European Economic and Social Committee gave an opinion on the three proposals on 14 December 2022.

⁴ ST 7515/23 + COR 1 (EN version)

I. INTERINSTITUTIONAL NEGOTIATIONS – STATE OF PLAY

12. Following the adoption of the positions of both co-legislators, the interinstitutional negotiations started with the first informal trilogue on 20 September 2023 on the SMEI Regulation proposal followed by the second informal trilogue on 25 October 2023, when the negotiations on the SMEI Omnibus proposals also started. The third informal trilogue took place on 7 December 2023.
13. The informal trilogues on 20 September 2023 and 25 October 2023 gave a broad mandate to the technical level to come up with compromise proposals on the various diverging points between the Parliament and the Council with a view to further agreement at political level. 18 technical meetings were organised until now.
14. The delegations were debriefed about the progress made at technical level at the Competitiveness and Growth Working Party (Internal Market) on 16 October 2023; 6, 16, 17, 23 November 2023, and 25 January 2024 and at the Technical Harmonisation Working Party (SMEI Omnibus) on 20 November 2023.
15. Most of the negotiations were conducted during the Spanish Presidency who followed the mandates given to them by Coreper. As no agreement could be reached at the third informal trilogue, the Belgian Presidency continued the negotiations with the Parliament at technical meetings on 22 and 23 January 2024. Based on delegations' positions reflected in December 2023, the Presidency tried to see where additional flexibilities could be found in order to reach a political agreement with the Parliament.
16. During the Competitiveness and Growth Working Party on 25 January 2024, the delegations expressed that most of the additional demands from the European Parliament went beyond the flexibilities that the Member States could provide.
17. In view of the fourth informal trilogue, which will take place on 1 February 2024, the Presidency is inviting delegations to confirm their positions on the following points to be negotiated with the European Parliament:

Subject matter, Scope, Definitions and Governance

a) Scope: subject matter and objectives (Article 1), Scope (Article 2) and definitions (Article 3)

18. The Presidency suggests sticking to the wording of Article 1(1) (row 59) as reflected in the latest 4-column document.
19. Following the discussions in the Working Party on 25 January, the Presidency will request the reinsertion of the reference to the Integrated Political Crisis Response (IPCR) in Article 2(4) (row 78), as well as in Article 44(2), point c (row 410c), as in the Council's mandate.
20. The Presidency suggests sticking to the Councils wording concerning Article 3(3) (row 89) as regards the reference to "divergent national measures", in order to reinforce a clear link with the internal market and other criteria of Article 114 TFEU. In exchange, the Presidency invites delegations to consider their flexibility to delete the word "unexpected" in Article 3(1) (row 87) and clarify the definition of "crisis" in recital (5) as reflected in the Annex to this note (point a).

b) Governance: Board and activation procedures: Article 4, Article 4a (EP), Article 4a (CNL), Article 4b, Article 9(1), Article 14, (+ technical amendments in Articles 10, 13, 15)

21. In exchange of keeping the Council's text for activation (Articles 9, 10, 13, 14, 15), the Presidency proposes to grant a role of permanent observer in the Board to the Parliament (rows 97-98), together with the current proposal on information obligations (rows 117a-c) and the stakeholder platform (rows 117g-117i). At the same time, the Presidency suggests deleting Article 4b (Information sharing between the Member State and the Commission) of the Council's mandate (rows 117d-f), as the content of this Article is already covered in other provisions in the SMEI Regulation.
22. As an additional flexibility, the Presidency invites delegations to consider additional wording to be added in Article 4a (Emergency and resilience dialogue) (row 117b), as reflected in the Annex to this note (point b). This additional wording has already been included in other Union acts (in Regulations 2023/2675 and 2021/241).

c) The availability of crisis-relevant goods and services: (Articles 2(8b), 4b, 8a, 11)

23. The Parliament's mandate aimed at reinforcing the crisis preparedness by obliging the delegations to build up strategic reserves. The Presidency is determined to firmly stick to the mandate ensuring that no provision on stockpiling of mandatory nature would be included in the final compromise, including rejecting the last Parliament's proposal on building-up of stockpiles.
24. In an attempt to find a political agreement on the whole SMEI package, the Presidency invites delegations to consider the wording as reflected in the Annex to this note to be inserted in Article 8a (row 143b).
25. Such wording would be accompanied by a new recital clarifying that the Member States' obligation to assess their level of supply of goods and services does not entail any reporting nor information sharing obligations, as reflected in the Annex to this note (point c).
26. In order for the Parliament to accept the Council's wording in line Article 2(8b) (row 84b) on the fact that SMEI Regulation does not affect Member States' own emergency stocks and compulsory stockpiling, the Presidency suggests slightly amending that provision, as reflected in the Annex to this note.
27. In addition, this flexibility is conditional to the deletion of any other references to strategic reserves or stockpiling in the rest of the Regulation, in particular in Articles 3, 4, 8a(2) and 11.

d) Information requests: (Articles 24, 28-31)

28. The Presidency proposes to stick to the general approach and maintain the wording currently in the 4-column document. Furthermore, the Presidency suggests deleting all provisions linked to fines for the economic operators (Articles 28-31).

e) Priority rated requests: (Articles 27, 28-31)

29. Based on the discussions in Coreper in December 2023 and in the Working Party on 25 January 2024, the Presidency suggest including Article 27 as reflected in the Annex to this note (point d).
30. Furthermore, the Presidency suggests inserting a recital, as reflected in the Annex to this note (point d), explaining the possible consequences if the economic operator that accepted the priority-rated request, does not comply with it.
31. The Presidency also suggests deleting all provisions linked to fines for the economic operators (Articles 28-31).

f) Public procurement: Consultation and coordination regarding individual procurement by the Member States (Article 38) and exclusivity clause (Article 39)

32. Following the discussions in Coreper in December 2023 and in the Working party on 25 January, the Presidency suggests:
- accepting the compromise wording of Article 38 as reflected in the Annex to this note (point e).
 - defending the Council's mandate as regards the exclusivity clause (Article 39).

Free movement of goods, services and persons

g) Mitigation measures: Articles 4a, 6, 18 and 41b

33. The Parliament wants to include an obligation to create and use single digital forms to facilitate free movement, in particular for workers. Previous discussions at Working Party and Coreper level showed that such inclusion would be very difficult for the Council to accept.
34. In the spirit of compromise, the Presidency proposes the additions to Articles 4a, 6 and 18 as reflected in the Annex to this note (point f) to accommodate the Parliament, whilst ensuring that Member States' concerns are duly taken into account. This proposal is conditional to the deletion of Article 41b on fast lanes and any other mentioning of fast lanes in the Regulation.

35. In addition to the proposed amendments in the Articles, the Parliament has asked for a statement by the Commission committing to facilitating free movement and fast lanes by establishing digital forms.

h) Transparency: Articles 19, 20

36. The Parliament asks for the reinsertion of Article 19, which was deleted in the Council's mandate, into the text. Following the previous discussions at the Working Party and Coreper level, the Presidency proposes to adapt the latest compromise wording, as reflected in the Annex to this note (point g), to accommodate some requests of the Parliament, whilst maintaining the Council's red lines. The wording is conditional on the deletion of Article 20.

Date of application, SMEI Omnibus

i) Date of application

37. Following the previous discussions at Coreper and Working Party level, the Presidency suggests sticking to the Council's mandate and defend the date of application of 18 months for both SMEI Regulation and SMEI Omnibuses.

j) SMEI Omnibus - scope

38. Following discussions at the Working Party on 25 January 2024, the Presidency deduces that the Council would prefer not to include the General Product Safety Regulation (GPSR) into the scope of the Omnibus Regulation.
39. Delegations will be invited to express if they have any additional flexibilities on SMEI Omnibus.

II. CONCLUSION

40. In light of the above, the Permanent Representatives Committee is invited **to:**
- a) **provide political guidance** to the Presidency on the possible flexibilities mentioned above.
 - b) take note of the latest versions of the four-column tables.
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Delegations find here below wording suggestions reflecting the requested revised mandate. Additional changes proposed by the Presidency and compared to the texts discussed at the Working Party on 25 January 2024 are marked in **bold underlined** text for additions and ~~striketrough underlined~~ text for deletions.

a) Scope: definitions (Article 3)

Recital (5) (row 15)

- (5) These recent events have also highlighted the need for the Union to be better prepared and coordinated for possible future crises, especially as we consider the continuing effects of climate change and resulting natural disasters as well as global economic and geopolitical instabilities. Other crises, which could require a quicker response to prevent barriers to the free movement in the Single Market and avoid severe disruptions of supply chains that are indispensable in the maintenance of activities in the Single Market, include for example forest fires, earthquakes or large-scale cyber attacks. **The fact that all those crises constitute exceptional and sudden events of extraordinary nature and scale, implies that those events are reasonably unexpected. Since the unexpected nature of a crisis may considerably vary depending on the nature of the crisis and may be difficult to objectively assess with certainty, such an assessment should not made separately from the other elements of the definition of a crisis.** Given the fact that it is not known which kind of crises could come up next and produce severe impacts on the Single Market and its supply chains in the future, it is necessary to provide for an instrument that would apply with regards to impacts on the Single Market of a wide range of crises.

- b) *Governance: Board and activation procedures: Article 4, Article 4a (EP), Article 4a (CNL), Article 4b, Article 9(1), Article 14, (+ technical amendments in Articles 10, 13, 15)*

Article 4a (row 117a-c)

Emergency and Resilience Dialogue

1. In order to enhance the dialogue between the institutions of the Union in the context of the Internal Market Emergency Instrument, and to ensure greater transparency, accountability and coordination, the competent committee of the European Parliament may invite the Commission in its capacity as Chair of the [Internal Market Emergency and Resilience Board] to appear before the committee to provide information on all matters falling within the scope of this regulation, in particular, after each meeting of the Board and after each deactivation of the vigilance or emergency modes.
- 2. The European Parliament shall be informed of any Council implementing acts proposed or adopted pursuant to this Regulation.**
- 3. The Commission shall take into account any elements arising from the views expressed through the emergency and resilience dialogue, including the resolutions from the European Parliament if provided.**
- ~~2. The European Parliament may invite Member States' representatives to participate in the dialogue referred to in paragraph 1.~~

c) *Strategic reserves and availability of crisis-relevant goods and services: Articles 2(8b), 4b, 8a, 11*

Article 8a (rows 143a-143i)

Resilience and availability of goods and services

Member States **shall assess ~~verify~~**, in accordance with Member State law, **if the** level of supply within their territory of goods or services that they consider indispensable for ensuring the maintenance of vital societal or economic activities **is sufficient**, taking into account the availability of alternative means for the provision of those goods or services. The Commission shall promote the coordination of best practices between competent authorities, in particular those that aim to prevent shortages in critical sectors.

Article 2(8b) (row 84b)

“This Regulation does not affect Member States’ own emergency stocks and compulsory stockpiling **which may be** subject to national strategic documents.”

Recital (...new))

“(...new) The obligation for Member States under this Regulation to assess if the level of supply within their territory of goods or services that they consider indispensable for ensuring the maintenance of vital societal or economic activities is sufficient, should not be interpreted as entailing any reporting nor information sharing obligations.”

d) Priority rated requests: Articles 27

Article 27 (rows 314-323)

Priority-rated requests

1. The Commission may, after consulting the Member State(s) in which the economic operators are established **and taking utmost account of its/their view(s)**, address a request to one or more economic operators established in the Union to accept and prioritise certain **orders requests** for the production of crisis-relevant goods ('priority rated requests') when:
 - a) there is a severe and persistent shortage of the crisis-relevant goods subject to the request and
 - b) the production or supply of such goods could not be achieved by other measures provided for in this Regulation, including those referred to in Article 33 or in Part V.
2. The Commission shall base its request on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Internal market, as well as having regard to the legitimate interests of the economic operator and the cost and effort required for any change in the supply chain. **The Commission's request shall explicitly indicate that the economic operator remains free to refuse the request.**
3. Where the economic operator to which the request referred to in paragraph 1 is addressed has expressly accepted the request to prioritise the requests, the Commission shall adopt an implementing act providing for:
 - a. the legal basis of the priority rated requests which has to be complied with by the economic operator;
 - b. the goods subject to the **PPRs priority-rated requests** and quantity in which they are to be supplied;
 - c. the time limits within which the priority-rated order is to be completed;
 - d. the beneficiaries of the priority-rated requests, **and**
 - e. **the waiver of contractual liability under the conditions laid down in paragraph 3b.**

- 3a. The priority rated requests shall be placed at a fair and reasonable price adequately taking into account the economic operator's opportunity costs when fulfilling the priority rated requests vis-à-vis existing contractual obligations. The priority-rated requests shall take precedence over any prior private or public contractual obligation related to the goods subject to the priority-rated ~~order~~ **request** under private or public law.
- 3b. The economic operator subject to that priority-rated request shall not be liable for any breach of contractual obligation that is governed by the law of a Member State, only to the extent that
- (a) the breach of contractual obligations is necessary for compliance with the required prioritization,
 - (b) the implementing act referred to in paragraph 3 has been ~~fully~~ complied with and
 - (c) the acceptance of the priority rated **request order** was not solely made with a view to unduly avoiding a prior performance obligation.
4. The priority-rated requests shall not include goods or services the supply of which would be contrary to the essential interests of Member States' national security or defense.
5. The Commission shall adopt the implementing act referred to in paragraph 3 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law.
6. The implementing act referred to in paragraph 3 shall be adopted in accordance with the examination procedure referred to in Article 42(2).

Recital (... (new)):

(...(new)) Where the economic operator has expressly accepted a priority rated request and the Commission has adopted an implementing act following such an acceptance, the economic operator should comply with all the conditions of that implementing act. In cases where a non-compliance occurs, the economic operator would lose the benefit of a waiver of contractual liability under the conditions laid down in this Regulation, without prejudice to general enforcement actions.

e) Public procurement: Consultation and coordination regarding individual procurement by the Member States (Article 38)

Article 38 (rows 386-387)

Consultation and coordination regarding individual procurement by the Member States

When the internal Market emergency mode has been activated pursuant to Article 14, Member States, shall make best efforts to inform each other and the Commission about the ongoing procurement procedures of crisis-relevant goods and services listed in an implementing act adopted pursuant to Article 14(3).

Prior to launching any new procurement procedures in accordance with Directive 2014/24/EU of the European Parliament and of the Council¹, Member States shall:

- (a) inform each other about the intention to launch procurement of such crisis-relevant goods and services by any of their contracting authorities or contracting entities;
- (b) consult the other Member States and the Commission about the most appropriate manner of procurement and
- (c) coordinate their procurement actions at the time of internal market emergency in the spirit of solidarity between the Member States.

f) Mitigation measures: Articles 4a, 6 and 18

Article 4a(5) point (ea) (row 107a)

“(ea) establishing, where appropriate, a list of providers of crisis-relevant services providers for whom it is necessary to establish common templates and forms which can be used by the Member States on a voluntary basis;”

Article 6(3a) (row 133a)

“3a. In order to promote and facilitate the free movement of goods and services during a Single Market emergency mode, the Commission shall assist Member States and coordinate their efforts in laying down single digital forms for the purpose of declaration, registration or authorization for cross-border activities between Member States.”

Article 18 (rows 252-254c)

Article 18

Mitigation measures for the free movement of persons

1. During the Internal market emergency mode and for the purpose of facilitating free movement of persons under which are referred to in points e, f, g and h of Article 17(1), the Commission may, by means of implementing acts, adopt administrative arrangements or put at the disposal of the Member States digital tools to facilitate the identification of the categories of persons and verification of the facts referred to in those provisions by the Member States in cooperation with the other relevant Member States and the Commission.
2. During the Internal market emergency mode, where the Commission establishes that Member States have put in place templates for attesting that the an individual or economic operator accomplish with fulfills the general requirements stemming from national emergency measures or belongs to a category of persons referred to in points e, f, g and h of Article 17(1), and it considers that the use of different templates by each Member State is an obstacle to the free movement of those persons and their equipment, the Commission may issue, by means of implementing acts, templates which *may be used* by all Member States.

- 2a. Without prejudice to relevant Union law and applicable national law and procedures, Member States shall prioritize declaration, registration or authorisation procedures for the service providers **of crisis relevant services** listed in an implementing act adopted pursuant to Article [14(3)].
- 2b. The Commission shall, if necessary, among the service providers **of crisis relevant services** listed in an implementing act, adopted pursuant to Article [14(3)], identify those for which it is necessary to facilitate the free movement of such services by establishing **by means of implementing acts**, after consultation of the Board, templates as referred to in paragraph 2 of this Article which can be used by the Member States on a voluntary basis.
3. The implementing acts referred to in paragraphs 1, 2 and 2b shall be adopted in accordance with the examination procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Internal market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).
- 3b. Where, in duly justified cases and in accordance with relevant Union law, Member States have introduced restrictions on **travel between Member States**, the Commission shall coordinate the information exchange between Member States with the aim to make this information, including, where possible, real-time information, publicly available.
- 3c. The Commission shall make information on supportive measures publicly available on a dedicated website.

g) Transparency: Article 19

Article 19 (rows 256-273b)

Transparency

1. Where the internal market emergency mode has been activated in accordance with article 14(3), Member States shall communicate to the Commission and other Member States via the Union level liaison office any emergency measures in response to the crisis introducing restrictions on the exercise of the right to free movement of persons between Member States, where such measure is not already covered by an information or notification mechanism provided for by existing Union legislation, **without delay** after their adoption, together with:
 - (a) the reasons for such measures, including reasons demonstrating that the draft measure is justified and proportionate, as well as any underlying scientific or other data supporting their adoption;
 - (b) the scope of such measures;
 - (c) the expected date of adoption and duration of those measures.
2. The Communication referred to in paragraph 1 shall not prevent Member States from adopting the measures in question;
3. Member States may inform the Commission and the other Member States via the Union level liaison office any draft measures referred in paragraph 1 before their adoption with the information referred to in points a) to c) of paragraph 1.
4. Member States shall provide the public with clear, comprehensive and timely information explaining the measures referred to in paragraph 1. Member States shall endeavour to make such information publicly available **as soon as possible** and shall provide that information to the Commission at the same time.
5. The Commission shall publish on a dedicated website, available in all official languages of the Union, relevant information on restrictions on the exercise of the right to free movement, based on the information received, pursuant to this article, including information on the scope and duration of national measures. The dedicated website may include an interactive map with relevant real-time information on those measures.

6. The Commission shall make the information received pursuant to paragraphs 1 and 4 available to the Board.
 7. The information referred to in paragraphs 1 and 4 shall be transmitted via a secure tool provided by the Commission.
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