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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

European Committee of the Regions

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;

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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-relevant goods during the Single Market emergency, the Commission may recommend that Member States distribute strategic reserves, having with due regard to the principles of solidarity, necessity and proportionality.	Furthermore, to ensure availability of crisis-relevant goods during the Single Market emergency, the Commission may recommend that Member States distribute strategic reserves, having with due regard to the principles of 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 information on all matters falling within the scope of this Regulation among themselves and with the Commission.	Member States shall regularly exchange information on all matters falling within the scope of this Regulation among themselves and 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 responsibility of the Member States to safeguard national security or their power to safeguard essential state functions, including ensuring the territorial integrity of the State and maintaining law and order.	This Regulation is without prejudice to the ***general*** responsibility of the Member States to safeguard national security or their power to safeguard essential state functions, including ensuring the territorial integrity of the State and 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	*CoR amendment*
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.	The Commission shall chair the advisory group and ensure its secretariat. ***Permanent members of the advisory group also include 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 offices responsible for contacts, coordination and information exchange with the central liaison offices of other Member States and Union level central liaison office under this Regulation. Such liaison offices shall coordinate and compile the inputs from relevant national competent authorities.	Member States shall designate***, together with local and regional authorities,*** central liaison offices responsible for contacts, coordination and information exchange with the central liaison offices of other Member States and Union level central liaison office under this Regulation. Such liaison offices shall coordinate and compile the 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 level*** competent authorities for the management of the Single Market vigilance and emergency modes in vigilance and emergency modes across the sectors of the Single Market;	(a) cooperation between competent authorities ***at local, regional, national and Union level*** for the management of the Single Market vigilance and emergency modes in vigilance and emergency 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 authorities, the central liaison offices designated in accordance with Article 5 and single points of contact referred to in Article 21, their contact details, assigned roles and responsibilities during the vigilance and emergency modes of this Regulation under national law;	an inventory of relevant national ***as well as local and regional*** competent authorities, the central liaison offices designated in accordance with Article 5 and single points of contact referred to in Article 21, their contact details, assigned roles and responsibilities during the vigilance and 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 Single Market affected by the disruption or potential disruption; the impact on specific geographical areas particularly vulnerable or exposed to supply chain disruptions including the ***EU*** outermost regions;	the geographical area; the proportion of the Single Market affected by the disruption or potential disruption; the impact on specific geographical areas particularly vulnerable or exposed to supply chain disruptions including the ***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 the opinion provided by the advisory group, considers that the threat referred to in Article 3(2) is present, it shall activate the vigilance mode for a maximum duration of six months by means of an implementing act. Such an implementing act shall contain the following: (a) an assessment of the potential impact of the crisis;	Where the Commission, taking into consideration the opinion provided by the advisory group, considers that the threat referred to in Article 3(2) is present, it shall activate the vigilance mode for a maximum duration of six months by means of an implementing act. Such an implementing act shall contain the following: (a) an assessment of the potential impact of the 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 regard to the administrative burden on economic operators and in particular SMEs, which may be associated with requests for information and ensure ***it is kept to a minimum***.	National competent authorities shall have due regard to the administrative burden on economic operators and in particular SMEs, which may be associated with requests for information and ensure ***that the content of requests is***

	proportionate and strictly limited to what is necessary to comply with Article 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 implementing acts, that the Member States provide information on the goods listed in an implementing act adopted pursuant to Article 9(1), as regards all of the following: a) the current stock in their territory;	The Commission may require, by means of implementing acts, that the Member States provide information on the goods listed in an implementing act adopted pursuant to Article 9(1), as regards all of the following: a) the current stock ***and sites*** 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 up by economic operators on their territory, Member States shall deploy their best efforts to build up strategic reserves of the goods of strategic importance identified in accordance with paragraph 1. The Commission shall provide support to Member States to coordinate and streamline their efforts.	Taking due account of stocks held or being built up by economic operators on their territory ***and of territorial balance, with particular regard to island, mountainous and other remote areas***, Member States shall deploy their best efforts to build up strategic reserves of the goods of strategic importance identified in accordance 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 consideration the opinion provided by the	Where the Commission considers, taking into 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 in response to a Single Market emergency and the underlying crisis, Member States shall ensure that their actions fully comply with the Treaty and Union law and, in particular, with the requirements laid down in this Article.	When adopting and applying national measures in response to a Single Market emergency and the underlying crisis, Member States shall ensure that their actions fully comply with the Treaty and Union law and, in particular, with the ***priority*** 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 removed as soon as the situation allows it. Additionally, any restriction should take into account the situation of border regions.	Any restriction shall be limited in time***, reviewed regularly*** and removed as soon as the situation allows. Additionally, any restriction should take 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	***CoR amendment***
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.	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	***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 ***national legislative or regulatory provisions*** which ***contain*** or ***are*** modified by the measure.	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*
Member States shall ensure that it is possible for citizens, consumers, economic operators and workers and their representatives to receive, at their request and via the respective single points of contact, information from the competent authorities on the way in which the respective national crisis response measures are generally interpreted and applied. Where appropriate, such information shall include a step-by-step guide. The information shall be provided in clear, understandable and intelligible language. It shall be easily accessible at a distance and by electronic means and shall be kept up to date.	Member States shall ensure that it is possible for citizens, consumers, ***local and regional authorities,*** economic operators and workers and their representatives to receive, at their request and via the respective single points of contact, information from the competent authorities on the way in which the respective national crisis response measures are generally interpreted and applied. Where appropriate, such information shall include a step-by-step guide. The information shall be provided in clear, understandable and intelligible language. It shall 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 provide citizens, consumers, economic operators, workers and their representatives with the following assistance [...]	The Union level single point of contact shall provide citizens, consumers, ***local and regional authorities,*** economic operators, workers and 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 an immediate threat thereof, the Commission may invite representative organisations or economic operators in crisis-relevant supply chains to transmit on a voluntary basis, within a	Where there is a severe crisis-related shortages or an immediate threat thereof, the Commission may invite representative organisations or economic operators in crisis-relevant supply 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;

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1 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 Materials[2] 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 in commission	Unanimous
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 consultation	N/A