



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2022/0278 (COD)**

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**Brussels, 14 November 2023**

**WK 14963/2023 INIT**

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**NOTE**

From:	Presidency
To:	Delegations
Subject:	Presidency Flash

## **Flash Internal Market Working Party 16 and 17 November 2023**

Dear colleagues,  
¡Hola!

We are pleased to invite you to the next Internal Market Working Parties on 16 and 17 November (afternoon session only respectively) to continue discussions on the proposal on the Single Market Emergency Instrument (SMEI).

The main purpose of the meeting is to present delegations the results of the inter-institutional technical meetings that have taken place since our last Working Party on November 6. The latest version of the four-column document is regularly shared with delegations so that they can follow the work at technical level.

In view of the third and likely final trilogue, the Presidency would like to exchange views with delegations regarding:

A) the following articles of technical nature:

- Article 3: Definitions.
- Articles 6A and 7: Resilience measures: Voluntary crisis protocols and trainings and simulations.
- Articles 7A and 7B: Stress tests and mapping of strategic sectors.
- Articles 9 and 13: Criteria for activation.
- Articles 16 and 17: Free movement.
- Articles 34 and 39: Public Procurement.

B) the following articles of political nature, with different option proposals:

- Article 4, 4A, 9 and 14: Governance
- Article 24: Information requests
- Article 27: Priority rated orders
- Pending political elements: Strategic reserves, Notifications, Fast lanes.

The Spanish Presidency, with the support of the European Commission, the General Secretariat of the Council and its Legal Service, will continue to work on the remaining articles. In this regard, we remind delegations that any comments or suggestions would be most welcome.

## I. ANNEX I – Compromise proposals on technical elements.

### A. Article 3 – definitions.

#### 1. Approach.

Following the Working Party of 6 November, the Presidency took careful note of the elements which, for delegations, were of greatest importance. In line with this, and during the inter-institutional technical negotiations, the Presidency has sought to ensure three main principles in the drafting of Article 3: (i) a clear and limited scope, unambiguously reflecting the extraordinary nature of this instrument, (ii) consistency with the rest of the articles to avoid problems of interpretation and practical application once the Regulation enters into force, and (iii) simplification, to avoid unnecessary repetition and overly complex wording.

These principles are reflected in the following draft compromise texts which, after discussion with delegations, will be shared with the European Parliament for final negotiations.

- Definition of crisis:
  - The Presidency is in favour of retaining the adjective "sudden" together with "exceptional" and "extraordinary" to ensure that the scope of the Regulation is properly circumscribed. With regards to the addition of the adjective "unexpected", the Presidency propose its deletion. The Presidency has defended its inclusion but suggests to delete it because of the firm opposition by Parliament, and taking into consideration: (i) from a legal point of view its addition does not add nothing different to what the adjectives sudden, exceptional and extraordinary already do; and (ii) its assessment and application could pose legal interpretation problems in its assessment and application.
  - The Presidency considers that the references to "free movement" and "supply chains" can be deleted as long as these are introduced in the definition of emergency.
  - As regards the reference to "divergent national measures", the Parliament rejects this reference, considering that it imposes a prerequisite which is not necessary in practice and that there are no precedents which, on the legal basis of Article 114 TFEU, include a reference to divergent national measures in the operative part. The Presidency will continue to support its introduction but it seems legally more appropriate to do so in the definition of "internal market emergency".
- Internal market vigilance and emergency mode.
  - The content of these definitions should be read in conjunction with Articles 9 and 13 of the proposal (L. 150a-150d and 194), which set out the binding criteria for the activation of these modes.
  - Delegations may observe that references to free movement and supply chains have been removed from the definition of vigilance mode. This is because the potential for escalation to emergency mode, where such criteria are referred to, is legally sufficient.
- Critically important areas.
  - The reference to the "environment" has been a strong request of the Parliament. The Parliament considers that, given the possible environmental nature of future crises, it is

- important to include this element. The environment has been identified by the case law of the CJEU as an overriding reason, along with many other concepts.
- The Presidency considers that any environmental crisis will have by definition an impact on public order, security or health. Therefore, the Presidency considers that the inclusion of "environment" is not legally necessary and its implications could be reflected in a recital. Nevertheless, bearing in mind the political relevance for Parliament, the Presidency, based on the case law of the CJEU, could accept its inclusion as a trade-off with regards to other relevant references for the Council linked to the scope of the Regulation.
  - The reference to the vigilance is not strictly necessary from a legal point of view. It should be deleted in the interest of simplifying the wording.
- Goods and services of critical importance and crisis-relevant goods and services.
    - The wording has been adapted to ensure the link between free movement and supply chains. The main objective is to make it clear that an impact on supply chains alone is not sufficient to trigger the activation of the instrument.
    - The Presidency considers that the references to vigilance and emergency modes are not legally necessary. They should be deleted for the sake of clarity and simplification of the text.
  - Crisis-relevant persons.
    - Following the discussion at WP level and considering the relevance attached to this definition by the Parliament, the Presidency esteems that some flexibility by the Council would be advisable. As it stands, the content of this definition is directly determined by the wording of Article 17 (line 248) and the content of the blacklist. The addition of this new concept would also clarify and streamline the wording of Article 17. It would be a technical and formal amendment, which does not add any substantive or material change to the subject matter and scope of the proposal.

## 2. Wording proposal.

### Article 3

#### Definitions

(1) 'crisis' means an exceptional ~~unexpected and sudden~~, natural or man-made event of extraordinary nature and scale that takes place inside or outside of the Union which has or may have a severe negative impact on the functioning of the internal market.

(2) '~~Single~~Internal Market vigilance ~~mode~~' means a framework for addressing' refers to situation where there is a threat of a crisis with a leading to a significant disruption of the negative impact on the free movement of goods, services and persons or the leading to a significant disruption of the supply of goods and services of strategic critical importance and which has the potential to escalate into a Single~~internal~~ market emergency within the next six months;

(3) '~~Single~~Internal Market emergency' means a ~~wide-ranging impact of a crisis~~ crisis with significant negative impact on the ~~Single~~internal market that severely disrupts the free movement of goods, services and persons ~~on the Single internal market or the functioning of the supply chains that are~~

~~indispensable in the maintenance of vital societal or economic activities in the Single Market where such a disruption has been or is likely to be subject to divergent national measures.~~

(4) ‘~~strategically~~critically important areas’ means those areas with critical importance to the Union and its Member States, in that they are of systemic and vital importance for upholding public security, public safety, public order, public health or the environment, and if there is a ~~or public health, and the~~ disruption, failure, loss or destruction of which ~~would~~it can have a significant negative impact on the functioning of the Single internal market in times of a threat of a crisis. ~~as defined under the internal market vigilance;~~

(5) ‘goods and services of strategiecritical importance’ means goods and services that are non-substitutable, non-diversifiable or indispensable ~~for ensuring the~~in the maintenance of vital societal or economic activities as to ensure the proper functioning of the Single Internal Market ~~in strategically including the functioning of its supply chains in critically~~ important areas ~~and which cannot be substituted or diversified in times of a threat of a crisis as defined under the internal market vigilance;~~

(6) ‘crisis-relevant goods and services’ means goods and services that are non-substitutable, non-diversifiable and/or indispensable in the maintenance of vital or societal economic activities as to ensure the proper functioning of the internal market including the functioning of its supply chains and that are set out for responding to the crisis or for addressing the ~~impacts of the crisis~~significant negative impacts on the Single internal Market during a Single crisis ~~as defined under the internal market emergency;~~

(6a) ‘crisis-relevant persons’ means providers of crisis-relevant service, business representatives and workers involved in the production of crisis-relevant goods or in the provision of crisis-relevant services, or civil protection workers.

## B. Articles 6a and 7 – Resilience measures: Voluntary crisis protocols and trainings and simulations.

### 1. Approach.

Following the meeting of the Working Party on 6 November, where the Presidency already presented a draft of these articles, delegations made a number of comments and observations which have been duly taken into account in the final drafting of the articles.

The Presidency's main objective has been (i) to ensure the voluntary nature of these provisions and (ii) to pay particular attention to the creation of unnecessary administrative burdens for businesses and public administrations. The Presidency considers that the current drafting proposal ensures both elements and constitutes a good draft agreement.

Specifically, when it comes to the voluntary crisis protocols – article 6a (new) –, it is specifically established that it will be the economic operators who, on a voluntary basis, decide whether to adhere to them. In the case of training and simulation – article 7 – the article finally establishes that the COM will develop materials and content freely accessible to economic operators, who will not be obliged to actively participate in any programme, but will simply be able to benefit from the materials made available to them. In both cases, a reference to administrative burden will be included in a recital.

## 2. Wording proposal.

### Article 6a (new) Voluntary crisis protocols.

1. The Board, may initiate, encourage and facilitate may recommend the Commission to initiate the drawing up of voluntary crisis protocols by economic operators ~~in order to address internal market emergencies, strictly limited to extraordinary circumstances. The Commission may, where necessary and appropriate, also involve civil society organisations or other relevant organisations in drawing up the~~for addressing crisis under the emergency mode.

2. The Commission may encourage and facilitate the drawing up of those voluntary crisis protocols by economic operators. Economic operators may decide, on a voluntary basis, whether to participate or not in voluntary crisis protocols.

3. The voluntary crisis protocols shall set out:

(a) the specific parameters of the disruption that the voluntary crisis protocol seeks to address and the objectives it pursues;

(b) the role of each participant, under the voluntary crisis protocol and the preparatory measures they are to put in place ~~and their role~~ once the ~~crisis protocol~~internal market emergency mode has been activated;

~~—(c)—the procedure for determining when how~~ to mitigate and respond to the crisis ~~protocol will operate;~~

(c) a clear procedure for determining the moment of the activation and the period during which the measures to be taken once the crisis protocol has been activated are to be taken;

(d) actions to mitigate and respond to potential ~~internal market emergencies~~crisis under the emergency mode, strictly limited to what is necessary for addressing them;

~~—(e)—safeguards to address any negative effects on the free movement of goods, services and workers.~~

### Article 7 Trainings and simulations.

1. The Commission shall develop and regularly organise training on crisis preparation, coordination, cooperation, ~~communication~~ and information exchange ~~as~~ referred to in Article 6 for the staff of the designated central liaison offices ~~and economic operators~~. It shall organise simulations involving the staff of the central liaison offices ~~as well as other relevant actors, including economic operators, or bodies involved in the prevention of, preparedness for and response to internal~~from all Member States based on potential scenarios of internal market emergencies.

1a. In particular, the Commission shall develop and manage a training programme derived from lessons learnt from previous crises, including aspects of the entire emergency management cycle, in order to provide a rapid response to crises under the vigilance or emergency mode. That programme ~~shall~~may include, in particular:

(a) monitoring, analysing and evaluating all the relevant actions to facilitate the free movement of goods, services and persons;

(b) promoting the implementation of best practices at national and Union level, and, where appropriate, best practices, developed by third countries and international organisations;

- (c) developing guidance on knowledge dissemination and the implementation of different tasks at national and, where relevant, regional and local level;
- (d) encouraging the ~~introduction and~~ use of relevant new technologies and digital tools for the purpose of responding to internal market emergencies.

2. The Commission shall develop and make available training programmes and materials for stakeholders, including economic operators.

#### C. Articles 7a and 7b – Stress tests and mapping of strategic sectors.

With regard to the remaining resilience measures (stress tests and mapping of strategic sectors – Articles 7a and 7b) and taking into account the firm opposition shown by several delegations, the Presidency (given the limited room for negotiation on these issues) has not continued with discussions at technical level. However, due to the significant relevance of these measures to Parliament and in view of a final trilogue where the Council should focus its priorities on key political aspects, the Presidency would appreciate comments and written proposals for these articles 7A and 7B in order to analyse if there is some flexibility from delegations and enough room of manoeuvre at technical level in order to avoid a political discussions during the trilogue.

#### D. Articles 9 and 13 – Criteria for activation.

##### 1. Approach.

During the inter-institutional technical meetings, the Presidency has advocated the importance of binding criteria for the activation of the vigilance and emergency modes (Articles 9 and 13 respectively). The Parliament, which did not have these elements in its mandate, accepted their inclusion, but not without prior discussion.

As regards the criteria for the activation of the vigilance mode, in Article 9 (L. 150a to 150d), Parliament's initial proposal was to make a cross-reference to the criteria of Article 8(3). The Presidency, while understanding that the logic of this proposal was to simplify the wording, did not consider such a cross-reference appropriate. The criteria in Article 8 refer to single incidents, not to internal market crises, and are therefore different in nature and scope from the criteria required in Article 9. As a final solution, the possibility of including a new geographical criteria (mentioned in article 8(3)) in the list of criteria in Article 9 was accepted, which seems to the Presidency a reasonable draft compromise agreement.

As regards the criteria for the activation of the emergency mode – article 13 – , only formal changes have been introduced to allow a better understanding of the text and a clear view of how (i) the impact on free movement and (ii) the impact on supply chains are articulated when assessing the activation of the emergency. As regards the list of indicators associated with these criteria, delegations can refer to the text in four columns document (L. 194c to 203b) to analyse the minor changes introduced.



## 2. Wording proposal.

### Article 9 Activation

(...)

1a. When assessing whether the conditions laid down in Article 3(2) are fulfilled to qualify as internal market vigilance, the Commission [and the Council] shall, take into account at least the following criteria:

- (a) the anticipated time before the threat escalates into an internal market emergency;
- (b) the number or market position of economic operators expected to be affected by the crisis; and
- (c) the extent to which goods and services of critical importance are expected to be impacted by the crisis.
- (d) the geographic area expected to be impacted by the crisis, in particular the impact on border regions and outermost regions

### Article 13 Criteria for activation

1- When assessing whether the conditions laid down in Article 3(3) are fulfilled in order to determine the need to activate the internal~~the severity of a disruption for the purposes of ascertaining whether the impact of a crisis on the Single market qualifies as a Single Market emergency, the Commission~~emergency mode, [the Commission and the Council] shall, based on concrete and reliable evidence, assess whether the crisis creates one or more obstacles to the free movement of goods, services or persons, having an impact on~~taking into account~~ at least one sector of vital societal or economic activities in the internal market.

Where the crisis leads to a disruption to the functioning of supply chains, in addition to the criteria set out in the first subparagraph, the Commission [and the Council ] shall assess whether the goods, services or workers concerned can be diversified or substituted.~~the following indicators:~~

(...)

## E. Articles 16 and 17 – Free movement.

### 1. Approach.

The Presidency has defended its mandate according to two main premises: (i) the systematic, which means the need, from a formal point of view, to separate the content of the two articles and (ii) the legal nature of article 17, i.e. the importance of having a real "black list" that clearly establishes the restrictions prohibited in emergency mode.

The European Parliament, for its part, accepted both requests, albeit with minor drafting changes. The Presidency considers that the current text is adequate insofar as it reflects almost entirely the Council's general approach.



## 2. Wording proposal.

Delegations can consult the exact wording of the draft agreement in the latest version of the 4-column document (WK 14801/2023), lines 217 to 250.

### F. Articles 34 to 39 – Public procurement.

#### 1. Approach.

Given the connection with the Financial Regulation (under revision) and the public procurement Directives, the Presidency agreed with the Parliament to ask the Commission to draw up a preliminary proposal for an agreement on these articles.

Following the presentation of this proposal by the Commission, it is noted that the main elements to be assessed by delegations are: (i) the treatment of third countries in procurement procedures launched in the framework of SMEI, (ii) the new exclusivity clause, which replaces the original procurement ban and which reflects, in part, Member States' concerns raised by the Presidency during the negotiation.

The Presidency welcomes any written comments or input from delegations on this issue.

#### 2. Wording proposal.

Delegations can consult the exact wording of the draft agreement in the latest version of the 4-column document (WK 14801/2023), lines 382 to 389.

## II. ANNEX II – Option proposals regarding political elements.

Having analysed the purely technical elements of the proposal, the Presidency considers it necessary to open the debate on the more political elements on which the negotiation of the next and final trilogue will be based.

Of all the political elements, two issues are particularly sensitive for the Council and have yet to be discussed with the Parliament: strategic reserves and notifications. On these issues, the Presidency is waiting for Parliament to present alternative proposals which are as close as possible to the spirit of the Council text and which respond to its concerns and red lines. The Presidency's aim is to compromise as little as possible on these issues, but this means that the Council will have to make more substantial concessions on other issues.

On the remaining issues, and taking into account the proposal as a whole, the Presidency considers it particularly important to be able to have delegations' positions on three issues: governance, information requests and priority rated orders.

### A. Governance – articles 4, 4a, 9 and 14.

#### 1. Approach.

The governance package is composed of several articles that address various institutional, formal and material issues.

The main point of disagreement between the Council and the Parliament is the means by which the emergency mode should be activated. Parliament argues for the inclusion of a legislative act through the co-decision procedure on the grounds that (i) the act activating emergency mode is effectively an act of a legislative nature that would affect civil and political rights, (ii) it is an analogy to national constitutional frameworks where the legislature intervenes in constitutional states of emergency and (iii) it seeks to avoid the dynamics of the Covid crisis where, in Parliament's view, it was not sufficiently involved in decision-making.

The Council, for its part, understands (i) that this is a clearly executive act and excludes the possibility of resorting to a legislative act, (ii) that the speed and effectiveness required for activation are incompatible with Parliament's participation and (iii) that the bulk of the measures to be adopted will have impact on the Member States and that, therefore, it is the Council that should lead and monopolise the activation of the vigilance and emergency modes (always at the proposal of the COM, respecting its right of initiative).

Beyond this debate, there are other issues related to governance, such as: the institutional composition of the Board, the functions to be attributed to it or the provisions on transparency and communication of information to be established between the institutions.

In the course of the negotiations, the Presidency maintained a position based on the following elements:

- Maintenance of the activation of the vigilance and emergency modes by means of a Council implementing act, without prejudice to the transparency and reporting deemed appropriate. The activation by the Council is a red line that is not subject to negotiation.

- A smooth and efficient institutional structure of the Board, with the possibility of accepting the participation of a representative of the Parliament and the reinforcement of the tasks of the Board during the contingency planning.
- Extensive but proportionate transparency and reporting obligations. These measures include the possibility of a regular dialogue and information reporting from the Commission to the Parliament. However, the design of these transparency measures must be consistent with the role that the Parliament will eventually have in the Board, where it will have direct access to information.

## 2. Questions.

Taking into consideration the aforementioned:

**Question 1.** Could you support the approach and give some flexibility to the Presidency to continue negotiating within the framework above mentioned?

**Question 2.** Are there red lines for delegations – beyond activation – in the framework of the governance package?

## B. Information requests – article 24.

### 1. Approach.

As regards the Commission's information requests from economic operators, the mandates of the Parliament and the Council differ mainly on two elements:

- **Legal nature:** the mandatory or voluntary legal nature of this tool has been one of the main elements of debate at technical and political level. While the Parliament considers that it is an excessively burdensome measure and should therefore be voluntary, the Council argues that only by making it compulsory guarantees the practical effectiveness of the measure. The COM also support the Council on this. However, the legal nature of the instrument should be analysed together with the other elements, prerequisites and safeguards that may reduce its use as an instrument of last resort or, on the contrary, allow COM to have more frequent recourse to information requests.
- **Legal certainty, pre-conditions and safeguards:** as mentioned, the design and limitation of this instrument will also condition its practical enforcement. In this case, contrary to the legal nature, the Council has defended a much more cautious position, with several conditions and safeguards to ensure that the use of this measure by the COM is a last resort and to provide economic operators with sufficient guarantees that they will not be disproportionately affected by the information request. It also reduces the discretion of the COM in the exercise of these functions. In contrast, the Parliament's text, by not including these elements in the article, allows for a wider use of information requests without so many limitations.

## 2. Option proposal and questions.

In view of the trade-off between the elements analysed above, the Presidency has identified the following options for approaching the negotiation:

**OPTION 1:** Retain the legal nature of information requests in exchange for further strengthening its conditions and safeguards to make this measure an exceptional measure of last resort.

**OPTION 2:** Opt for a voluntary legal nature in exchange for reduced conditions and safeguards, thus leading to a greater applicability of this tool by the COM, which will have more discretion in its implementation.

**Question 3.** Could you support the approach?

**Question 4.** Which option do you prefer?

## C. Priority rated orders – article 27.

### 1. Approach.

The Presidency has consistently defended the absence of a mandate to negotiate on this issue, being aware that it is a controversial and sensitive subject for delegations. According to that, the Parliament has submitted to the Presidency an additional proposal on priority rated orders (which delegations will find in section 3) and which aims to bring positions closer to the Council's main concerns and red lines.

For the Parliament, the inclusion of this instrument is important for several reasons: (i) it allows to give more practical utility to other provisions of the Regulation, such as information requests or public procurement procedures; (ii) market impacts can be minimised if this tool is adequately framed; and (iii) following the lessons learned during Covid-19, it is an essential tool to deal with crises in the internal market protecting public interests.

From the reading of this new proposal, as well as from the numerous discussions that have taken place in the Council Working Party, the Presidency considers that the main sub-elements of this measure are the following:

- **Legal nature.** The mandatory or voluntary nature of this measure - as was the case with the information requests - is one of the main elements to be clarified. Parliament maintains its mandatory legal nature, with associated fines.
- **Legal certainty, pre-conditions and safeguards.** The Parliament has introduced more pre-conditions, caveats and safeguards to reduce the discretion of the COM in the exercise of its functions and to increase legal certainty and guarantees for economic operators.
- **National competences.** As expressed by delegations in the Council Working Party, this article should be articulated in a way that does not overlap with or detract from the exercise of similar national competences by Member States.

## 2. Option proposal and questions.

Taking into account the above, that there is no reference to priority rated orders in the Council's mandate and bearing in mind the whole picture of the negotiation (mainly the pressure coming from the Parliament on governance, strategic reserves and notifications), the Presidency is considering two different scenarios to face the negotiation:

**OPTION 1.** Delegations grant flexibility to the Presidency to negotiate on priority rated orders taking into account the aforementioned elements. This will be considered a concession to Parliament, which will have to be taken into account in the negotiation of the rest of the measures that are included in the proposal.

**OPTION 2.** Delegations do not allow any flexibility to the Presidency to negotiate on this issue. Consequently, the elimination of this tool will be considered a concession by Parliament, which will aspire to see it compensated by other concessions by the Council within the framework of the proposal.

**Question 5.** Could you support the approach?

**Question 6.** Which option would you prefer?

**Question 7.** Should any additional sub-element be included?

**Question 8.** On which sub-element would you have more flexibility?

## 3. Wording proposal.

### Article 27 Priority rated orders

*1. This Article shall be used as a last resort measure to address a crisis by the Commission only when the internal market emergency mode has been activated by means of a [an act adopted pursuant to Article 14], where:*

*(a) there is a severe and persistent shortage of crisis-relevant goods and*

*(b) where the production or supply of such goods could not be achieved by other measures in this Regulation, including those referred to in Article 33 or in Part V.*

2. The Commission may, *after consulting the Board, address an invitation to* one or more **relevant** economic operators ~~in crisis-relevant supply chains~~ established in the Union to accept and prioritise certain orders for the production or supply of crisis-relevant goods ('priority rated order'), *specifying all relevant information.*

*3. The relevant economic operator shall, within a reasonable period, indicate to the Commission whether:*

*(a) it is in a position to accept the priority rated order, or*

*b) it is not in a position to accept the priority rated order or does not consider it appropriate, in which case it shall provide to the Commission a substantiated justification.*

*4. In cases referred to in paragraph 3, or where the relevant economic operator has not responded within a reasonable period, the Commission may, on its own initiative or at the request of at least 14 Member States address an implementing act to the economic operator in accordance with applicable Union law, including the principles of non-discrimination and proportionality.*

*Before adopting the implementing act, the Commission shall assess the necessity and proportionality of such decision and shall take into due consideration the opinion of the board. Where the consideration of the Commission diverges from the opinion of the Board, the Commission shall provide a substantiated justification.*

4a. The Commission shall in particular base its implementing act on objective, factual, measurable and substantiated data, showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the ~~Single~~internal market, ~~as well as having regard to the circumstances of the case, in particular, the legitimate aims of the economic operator, the cost, effort and technical adjustments required for any change in production sequence.~~

*The implementing act shall specify:*

*(a) the legal basis of the priority-rated order;*

*(b) the goods and quantity;*

*(c) the time limits within which the priority-rated order is to be performed;*

*(d) the beneficiaries of the priority-rated order, and;*

*(e) the penalties provided for non-compliance with the priority rated order, in accordance with Article 28.*

*5. Before addressing the implementing act in accordance with paragraph 4, the Commission shall give the relevant economic operator the opportunity to be heard, in a appropriate period, on the feasibility and details of the order.*

*The Commission shall not adopt the implementing act, in particular, when:*

*(a) the relevant economic operator is unable to perform the priority-rated order on account of insufficient production capability or production capacity, or on technical grounds, even under preferential treatment of the order;*

*(b) acceptance of the priority-rated order would place an unreasonable economic burden and entail particular hardship for the relevant economic operator, including substantial risks relating to business continuity.*

6. The priority rated order shall be placed at a fair and reasonable price.

*7. The priority-rated order shall take precedence over any performance obligation, related to the product subject to priority rated order, under private or public law.* Where an economic operator *is required to accept and prioritise a priority rated order, it* shall not be liable for any breach of contractual obligations governed by the law of a Member State that is required to comply with the priority rated order. Liability shall be excluded only to the extent the violation of contractual obligations is necessary for compliance with the required prioritisation.

7a. When an economic operator established in the Union is subject to a measure of a third country which entails a priority rated order, it shall inform the Commission thereof.

8. The implementing acts referred to in paragraph 3 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 Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).~~

#### D. Pending political issues.

The Presidency considers that, together with the above-mentioned elements, there are still three main political issues on which Parliament will defend its position and that should be taken into account in order to assess the whole negotiation and possible flexibilities from the Council: strategic reserves, notifications and fast lanes..

- Strategic reserves

The Presidency has defended the Council's mandate. The Presidency has repeatedly conveyed to Parliament that no kind of mandatory provisions on the strategic reserves would be acceptable. The Parliament insist on its proposals, moving the provisions on strategic reserves from the vigilance mode to the contingency one. The Presidency has not received any alternative wording from the Parliament on this matter.

- Notifications

The Presidency has defended the Council's mandate. The Presidency has not received any alternative wording from the Parliament on this matter.

- Fast lanes

The Presidency considers that the Parliament's proposal, as it entails a new general and ordinary obligation of positive harmonization measures, goes beyond the scope of SMEI. The Presidency has not received any alternative wording from the Parliament on this matter. The Presidency will very much appreciate oral or written comments on this matter in order to react to the Parliament's position.