



Council of the European Union
General Secretariat

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

Brussels, 08 March 2023

WK 2970/2023 REV 4

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NOTE

From:	Presidency
To:	Delegations

Subject:	SMEI: Consolidated comments on articles 27-33
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Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
2022/0278 (COD)		
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		
(Text with EEA relevance)		
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114, 21 and 45 thereof,		BE (Comments): BE questions the proposed legal basis and would like the Commission to explain its decision to choose those articles and waits for the Council Legal Service to give its opinion on it.
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to		

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the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee ¹ ,		
Having regard to the opinion of the Committee of the Regions ² ,		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		
(1) Past crises, especially the early days of the COVID-19 pandemic, have shown that the internal market (also referred to as the Single Market and its supply chains can be severely affected by such crises, and appropriate crisis management tools and coordination mechanisms are either lacking, do not cover all aspects of the Single market or do not allow for a timely response to such impacts.	BE (Drafting): (1) Past crises, especially the early days of the COVID-19 pandemic, have shown that the internal market (also referred to as the Single Market) and its supply chains can be severely affected by such crises, particularly at cross-border level, and appropriate crisis management tools and coordination mechanisms are either lacking, do not cover all aspects of the Single market or do not allow for a timely response to	BE (Comments): The most obvious difficulties during the COVID crisis were cross-border and are not reflected in the text. DK (Comments): Typo

¹ OJ C , , p. .

² OJ C , , p. .

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	such impacts. DK (Drafting): (1) Past crises, especially the early days of the COVID-19 pandemic, have shown that the internal market (also referred to as the Single Market) and its supply chains can be severely affected by such crises, and appropriate crisis management tools and coordination mechanisms are either lacking, do not cover all aspects of the Single market or do not allow for a timely response to such impacts.	
(2) The Union was not sufficiently prepared to ensure efficient manufacturing, procurement and distribution of crisis-relevant non-medical goods such as personal protective equipment, especially in the early phase of the COVID-19 pandemic and the ad-hoc measures taken by the Commission in order to re-establish the functioning of the Single Market and to ensure the availability of crisis-relevant non-medical goods during the COVID-19 pandemic were necessarily reactive. The pandemic also revealed insufficient overview of manufacturing capacities across the Union as well as vulnerabilities related to the global supply chains.		

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(3) Actions by the Commission were delayed by several weeks due to the lack of any Union wide contingency planning measures and of clarity as to which part of the national administration to contact to find rapid solutions to the impact on the Single Market being caused by the crisis. In addition it became clear that uncoordinated restrictive actions taken by the Member States would further aggravate the impacts of the crisis on the Single market. It emerged that there is a need for arrangements between the Member States and Union authorities as regards contingency planning, technical level coordination and cooperation and information exchange.		
(4) Representative organisations of economic operators have suggested that economic operators did not have sufficient information on the crisis response measures of the Member States during the pandemics, partly due to not knowing where to obtain such information, partly due to language constraints and the administrative burden implied in making repeated inquiries in all the Member States, especially in a constantly changing regulatory environment. This prevented them from making informed business decisions as to what extent they may rely on their free movement rights or		

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continue cross-border business operations during the crisis. It is necessary to improve the availability of information on national and Union level crisis response measures		
(5) These recent events have also highlighted the need for the Union to be better prepared 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. 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.		
(6) The impact of a crisis on the Single Market can be two-fold. On the one hand, a crisis can lead to obstacles to free movement within the Single Market, thus disrupting its normal functioning. On the other hand, a crisis can amplify shortages of crisis-relevant goods and services on the Single Market. The Regulation should address both types of impacts on the Single Market.		

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(7) Since any specific aspects of future crises that would impact the Single Market and its supply chains are hard to predict, this Regulation should provide for a general framework for anticipating, preparing for, mitigating and minimising the negative impacts which any crisis may cause on the Single Market and its supply chains. .	DK (Drafting): (7) Since any specific aspects of future crises that would impact the Single Market and its supply chains are hard to predict, this Regulation should provide for a general framework for anticipating, preparing for, mitigating and minimising the negative impacts which any crisis may cause on the Single Market and its supply chains. ã	DK (Comments): Typo.
(8) The framework of measures set out under this Regulation should be deployed in a coherent, transparent, efficient, proportionate and timely manner, having due regard to the need to maintain vital societal functions, meaning including public security, safety, public order, or public health respecting, the responsibility of the Member States to safeguard national security and their power to safeguard other essential state functions, including ensuring the territorial integrity of the State and maintaining law and order.		
(9) To this end, this Regulation provides:		

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– the necessary means to ensure the continued functioning of the Single Market, the businesses that operate on the Single Market and its strategic supply chains, including the free circulation of goods, services and persons in times of crisis and the availability of crisis relevant goods and services to citizens, businesses and public authorities at the time of crisis;		
– a forum for adequate coordination, cooperation and exchange of information; and		
– the means for the timely accessibility and availability of the information which is needed for a targeted response and adequate market behaviour by businesses and citizens during a crisis.		
(10) Where possible, this Regulation should allow for anticipation of events and crises, building on on-going analysis concerning strategically important areas of the Single Market economy and the Union's continuous foresight work.	DK (Drafting): (10) Where possible, this Regulation should allow for anticipation of events and crises, building on on-going analysis concerning strategically critically important areas of the Single Market economy and the Union's continuous foresight work.	DK (Comments): Amended following proposed changes in Article 3.

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		BE (Comments): BE recalls the importance of consistency between this new proposal and pre-existing or future instruments, especially sectorial emergency instruments, as well as ongoing initiatives. A specific provision should be inserted in the text, notably in the recitals, specifying the articulation between the SMEI and the other emergency instruments.
(11) This Regulation should not duplicate the existing framework for medicinal products, medical devices or other medical counter-measures under the EU Health Security Framework, including Regulation (EU) .../... on serious cross-border health threats [SCBTH Regulation (COM/2020/727)], Council Regulation (EU) .../... on a framework of measures for ensuring the supply of crisis-relevant medical counter-measures [Emergency Framework Regulation (COM/2021/577)], Regulation (EU) .../... on the extended mandate of the ECDC [ECDC Regulation (COM/2020/726)] and Regulation (EU) 2022/123 on the extended mandate of the EMA [EMA Regulation]. Therefore, medicinal products, medical devices or other medical counter-measures, when they have been placed on the list referred to in Article 6(1) of the Emergency Framework Regulation, shall be		BE (Comments): Recitals 11 to 15 do not really clarify the SMEI's relationship with pre-existing and future EU emergency mechanisms, such as the Green Lanes Initiative, the Solidarity Corridors, the Chips Act, and the Raw Materials Act. BE would like to see a specific reference to coherence with both pre-existing and future mechanisms in the text and would welcome further clarifications in this regard in the recitals. For example, is it possible to build up semiconductor reserves on the basis of the SMEI when this is not foreseen by the Chips Act?

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excluded from the scope of this Regulation, except in relation to the provisions relating to free movement during the Single Market emergency, and in particular those designed to re-establish and facilitate free movement as well as the notification mechanism.		
(12) This Regulation should complement the Integrated Political Crisis Response mechanism operated by the Council under Council Implementing Decision (EU) 2018/1993 as regards its work on Single Market impacts of cross-sectoral crises that require political decision-making.		BE (Comments): BE would like to see a specific reference to coherence with both pre-existing and future mechanisms in the text and would welcome further clarifications in this regard in the recitals. For more details, see full comment on recital 11.
(13) This Regulation should be without prejudice to the Union Civil Protection Mechanism ('UCPM'). This Regulation should be in complementarity with the UCPM and should support it, where necessary, as regards availability of critical goods and free movement of civil protection workers, including their equipment, for crises that fall into the remit of that mechanism.		BE (Comments): BE would like to see a specific reference to coherence with both pre-existing and future mechanisms in the text and would welcome further clarifications in this regard in the recitals. For more details, see full comment on recital 11.
(14) This Regulation should be without prejudice to Articles 55 to 57 of Regulation		BE (Comments): BE would like to see a specific reference to

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(EC) No 178/2002 on the general plan on crisis management in the area of food and feed, implemented by Commission Decision (EU) 2019/300.		coherence with both pre-existing and future mechanisms in the text and would welcome further clarifications in this regard in the recitals. For more details, see full comment on recital 11.
(15) The Regulation should be without prejudice to the European Food Security Crisis preparedness and response Mechanism (EFSCM). Nevertheless, food products should be governed by the provisions of this Regulation, including those concerning the notification mechanism and concerning restrictions to free movement rights . The measures concerning food products notified under this Regulation may be also reviewed for their compliance with any other relevant provisions of EU law.		BE (Comments): BE would like to see a specific reference to coherence with both pre-existing and future mechanisms in the text and would welcome further clarifications in this regard in the recitals. For more details, see full comment on recital 11.
(16) In order to account for the exceptional nature of and potential far-reaching consequences for the fundamental operation of the Singe Market of a Single Market emergency, implementing powers should exceptionally be conferred on the Council for the activation of Single Market emergency mode pursuant to Article 281(2) of the Treaty on the Functioning of the European Union.	BE (Drafting): (16) In order to account for the exceptional nature of Single Market emergency and potential far-reaching consequences for the fundamental operation of the Singe Market, implementing powers should exceptionally be conferred on the Council for the activation of Single Market vigilance and emergency modes pursuant to Article 281(2) of the Treaty on the	BE (Comments): To ensure that the Member States are adequately involved in important decisions, BE considers there is a need for a Council Implementing Decision in order to activate the vigilance mode and delineate its scope. Such a Council Implementing Decision can be also objectively justified on the basis of the far-reaching consequences of the vigilance mode

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	Functioning of the European Union. DK (Drafting): (16) In order to account for the exceptional nature of and potential far-reaching consequences for the fundamental operation of the Single Market of a Single Market emergency, implementing powers should exceptionally be conferred on the Council for the activation of Single Market <u>vigilance and</u> emergency mode pursuant to Article 298(2) of the Treaty on the Functioning of the European Union.	with regard to strategic reserves (Article 12). DK (Comments): Recital on Council implementing acts updated to reflect suggestions on the activation of vigilance mode in article 9(1) – 9(1a). Proposal references wrong TFEU article.
(17) Article 21 TFEU lays down the right of EU citizens to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect. The detailed conditions and limitations are laid down in Directive 2004/38/EC. This Directive sets out the general principles applicable to these limitations and the grounds that may be used to justify such measures. These grounds are public policy, public security or public health. In this context, restrictions to freedom of movement can be justified if they are proportionate and non-discriminatory. This Regulation is not intended to provide for additional grounds for the limitation of the right to free movement of persons beyond those		

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provided for in Chapter VI of Directive 2004/38/EC.		
(18) As regards the measures for re-establishing and facilitating free movement of persons and any other measures affecting the free movement of persons provided under this Regulation, they are based on Article 21 TFEU and complement Directive 2004/38/EC without affecting its application at the time of Single Market emergencies. Such measures should not result in authorising or justifying restrictions to free movement contrary to the Treaties or other provisions of Union law.		
(19) Article 45 TFEU lays down the right to free movement of workers, subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect. This Regulation contains provisions which complement the existing measures in order to reinforce free movement of persons, increase transparency and provide administrative assistance during Single Market emergencies. Such measures include setting up and making available of the single points of contact to workers and their representatives in the Member States and at Union level during the		BE (Comments): Recital 19 is the only recital dealing with the Single Point of Contact and seems to only target workers and their representatives. BE would like the Single Point of Contact to be available also for service providers, consumers and citizen.

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Single Market vigilance and emergency modes under this regulation.		
(20) If Member States adopt measures affecting free movement of goods or persons, goods or the freedom to provide services in preparation for and during Single Market emergencies, they should limit such measures to what is necessary and remove them as soon as the situation allows it. Such measures should respect the principles of proportionality and non-discrimination and should take into consideration the particular situation of border regions.		
(21) The activation of the Single Market emergency mode should trigger an obligation for the Member States to notify crisis-relevant free movement restrictions.		
(22) When examining the compatibility of any notified draft or adopted measures with the principle of proportionality, the Commission should pay due regard to the evolving crisis situation and often limited information that is at the disposal of the Member States when they seek to reduce the emerging risks in the context of the crisis. Where justified and necessary in		

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the circumstances, the Commission may consider based on any available information, including specialised or scientific information, the merits of Member State arguments relying on the precautionary principle as a reason for adoption of free movement of persons restrictions. It is the task of the Commission to ensure that such measures comply with Union law and do not create unjustified obstacles to the functioning of the Single Market. The Commission should react to the notifications of Member States as quickly as possible, taking into account the circumstances of the particular crisis, and at the latest within the time-limits set out by this Regulation.		
(23) In order to ensure that the specific Single Market emergency measures provided for in this Regulation are used only where this is indispensable for responding to a particular Single Market emergency, such measures should require individual activation by means of Commission implementing acts, which indicate the reasons for such activation and the crisis-relevant goods or services that such measures apply to.		
(24) Furthermore, in order to ensure the		

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proportionality of the implementing acts and due respect for the role of economic operators in crisis management, the Commission should only resort to the activation of the Single Market emergency mode, where economic operators are not able to provide a solution on a voluntary basis within a reasonable time. Why this is the case should be indicated in each such act, and in relation to all particular aspects of a crisis.		
(25) Information requests to economic operators should be used by the Commission only where the information which is necessary for responding adequately to the Single Market emergency, such as information necessary for procurement by the Commission on behalf of the Member States or estimating the production capacities of manufacturers of crisis-relevant goods the supply chains of which have been disrupted, cannot be obtained from publicly available sources or as a result of information provided voluntarily.		
(26) The activation of the Single Market emergency mode, where needed, should also trigger the application of certain crisis-response procedures which introduce adjustments to the rules governing the design, manufacture,	BE (Drafting): (26) The activation of the Single Market emergency mode, where needed, should also trigger the application of certain crisis-response procedures which introduce adjustments to the	BE (Comments): The term “National competent authorities” should be replaced by the term “competent authorities of the Member States”, in order to reflect the complex division of powers in many

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conformity assessment and the placing on the market of goods subject to Union harmonised rules. These crisis-response procedures should enable products, designated as crisis-relevant goods to be placed swiftly on the market in an emergency context. The conformity assessment bodies should prioritise the conformity assessment of crisis-relevant goods over any other ongoing applications for other products. On the other hand, in cases, where there are undue delays in the conformity assessment procedures, the national competent authorities should be able to issue authorisations for products, which have not undergone the applicable conformity assessment procedures to be placed on their respective market, provided that they comply with the applicable safety requirements. Such authorisations shall be only valid on the territory of the issuing Member State and limited to the duration of the Single Market emergency. In addition, in order to facilitate the increase in supply of crisis-relevant products, certain flexibilities should be introduced with respect to the mechanism of presumption of conformity. In the context of a Single Market emergency, the manufacturers of crisis-relevant goods should be able to rely also on national and international standards, which provide an equivalent level of protection to the harmonised European standards. In cases where	rules governing the design, manufacture, conformity assessment and the placing on the market of goods subject to Union harmonised rules. These crisis-response procedures should enable products, designated as crisis-relevant goods to be placed swiftly on the market in an emergency context. The conformity assessment bodies should prioritise the conformity assessment of crisis-relevant goods over any other ongoing applications for other products. On the other hand, in cases, where there are undue delays in the conformity assessment procedures, the competent authorities of the Member States should be able to issue authorisations for products, which have not undergone the applicable conformity assessment procedures to be placed on their respective market, provided that they comply with the applicable safety requirements. Such authorisations shall be only valid on the territory of the issuing Member State and limited to the duration of the Single Market emergency. In addition, in order to facilitate the increase in supply of crisis-relevant products, certain flexibilities should be introduced with respect to the mechanism of presumption of conformity. In the context of a Single Market emergency, the manufacturers of crisis-relevant goods should be able to rely also on national and international standards, which provide an equivalent level of	Member States regarding this matter.

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the later do not exist or the compliance with them is rendered excessively difficult by the disruptions to the Single Market, the Commission should be able to issue common technical specifications of voluntary or of mandatory application in order to provide ready-to-use technical solutions to the manufacturers.	protection to the harmonised European standards. In cases where the later do not exist or the compliance with them is rendered excessively difficult by the disruptions to the Single Market, the Commission should be able to issue common technical specifications of voluntary or of mandatory application in order to provide ready-to-use technical solutions to the manufacturers.	
(27) The introduction of these crisis-relevant adjustments to the relevant sectorial Union harmonised rules requires targeted adjustments to the following 19 sectorial frameworks: Directive 2000/14/EC, Directive 2006/42/EU, Directive 2010/35/EU, Directive 2013/29/EU, Directive 2014/28/EU, Directive 2014/29/EU, Directive 2014/30/EU, Directive 2014/31/EU, Directive 2014/32/EU, Directive 2014/33/EU, Directive 2014/34/EU, Directive 2014/35/EU, Directive 2014/53/EU, Directive 2014/68/EU, Regulation (EU) 2016/424, Regulation (EU) 2016/425, Regulation (EU) 2016/426, Regulation (EU) 2019/1009 and Regulation (EU) 305/2011. The activation of the emergency procedures should be conditional upon the activation of the Single Market emergency and should be limited to the products designated as crisis-relevant goods.		

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(28) In cases where there are substantial risks to the functioning of the Single Market or in cases of severe shortages or an exceptionally high demand of goods of strategic importance, measures at Union level aimed to ensure the availability of crisis-relevant products, such as priority rated orders, may prove to be indispensable for the return to the normal functioning of the Single Market.	FI (Drafting): <u>deleted</u> DK (Drafting): (28) In cases where there are substantial risks to the functioning of the Single Market or in cases of severe shortages or an exceptionally high demand of goods of strategic critical importance, measures at Union level aimed to ensure the availability of crisis-relevant products, such as priority rated orders, may prove to be indispensable for the return to the normal functioning of the Single Market.	DK (Comments): Ammended following proposed changes in Article 3.
(29) In order to leverage the purchasing power and negotiating position of the Commission during the Single Market vigilance mode and the Single Market emergency mode, Member States should be able to request the Commission to procure on their behalf.		
(30) Where there is a severe shortage of crisis-relevant products or services on the Single market during a Single Market emergency, and it is clear that the economic operators that operate on the Single market do not produce any such goods, but would in principle be able to		

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repurpose their production lines or would have insufficient capacity to provide the goods or services needed, the Commission should be able to recommend to the Member States as a last resort to take measures to facilitate or request the ramping up or repurposing of production capacity of manufacturers or the capacity of the service providers to provide crisis-relevant services. In doing so the Commission would inform the Member States as to the severity of the shortage and the type of the crisis-relevant goods or services that are needed and would provide support and advice in relation to the flexibilities in the EU acquis for such purposes.		
(31) The measures ensuring regulatory flexibility would allow the Commission to recommend that Member States accelerate the procedures for granting permits that would be necessary for enhancement of the capacity to produce crisis-relevant goods or provide crisis-relevant services.		
(32) Additionally, to ensure that crisis-relevant goods are available during the Single Market emergency, the Commission may invite the economic operators that operate in crisis-relevant supply chains to prioritise the orders of	AT (Drafting): (32) Additionally, to ensure that crisis-relevant goods are available during the Single Market emergency, the Commission may invite the economic operators that operate in crisis-	IT (Comments): See comments to relevant articles AT (Comments): See Art. 27 (4).

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inputs necessary for the production of final goods that are crisis relevant, or the orders of such final goods themselves. Should an economic operator refuse to accept and prioritise such orders, following objective evidence that the availability of crisis-relevant goods is indispensable, the Commission may decide to invite the economic operators concerned to accept and prioritise certain orders, the fulfilment of which will then take precedence over any other private or public law obligations. In the event of failure to accept, the operator in question should explain its legitimate reasons for declining the request. The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality.	relevant supply chains to prioritise the orders of inputs necessary for the production of final goods that are crisis relevant, or the orders of such final goods themselves. Should an economic operator refuse to accept and prioritise such orders, following objective evidence that the availability of crisis-relevant goods is indispensable, the Commission may decide to invite the economic operators concerned to accept and prioritise certain orders, the fulfilment of which will then take precedence over any other private or public law obligations. In the event of failure to accept, the operator in question should explain its legitimate reasons for declining the request. The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality.	
(33) 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.		
(34) Where the activities to be carried out pursuant to this Regulation involve the		

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processing of personal data, such processing should comply with the relevant Union legislation on personal data protection, namely Regulation (EU) 2018/1725 of the European Parliament and of the Council ³ and Regulation (EU) 2016/679 of the European Parliament and of the Council ⁴ .		
(35) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the possibility to adopt supportive measures for facilitating free movement of persons, for establishing a list of individual targets (quantities and deadlines) for those strategic reserves that the Member States should maintain, so that the objectives of the initiative are achieved. Furthermore, implementing powers should be conferred on the Commission as regards activating the vigilance mode and vigilance measures in order to carefully monitor the strategic supply chains and coordinate the building up of strategic reserves for goods and services of strategic	DK (Drafting): (35) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the possibility to adopt supportive measures for facilitating free movement of persons, for establishing a list of individual targets (quantities and deadlines) for those strategic reserves that the Member States should maintain, so that the objectives of the initiative are achieved. Furthermore, implementing powers should be conferred on the Commission as regards activating the vigilance mode and vigilance measures in order to carefully monitor the strategic supply chains and coordinate the building up of strategic	DK (Comments): Ammended following proposed changes in Article 3.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁴ Regulation (EU) 2016/769 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

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importance. Moreover, implementing powers should be conferred on the Commission as regards activation of specific emergency response measures at the time of a Single Market emergency, to allow for a rapid and coordinated response. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.	reserves for goods and services of strategie critical importance. Moreover, implementing powers should be conferred on the Commission as regards activation of specific emergency response measures at the time of a Single Market emergency, to allow for a rapid and coordinated response. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.	
(36) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’). In particular, it respects the right to privacy of the economic operators enshrined in Article 7 of the Charter, right to data protection set out in Article 8 of the Charter, the freedom to conduct business and the freedom of contract, which are protected by Article 16 of the Charter, the right to property, protected by Article 17 of the Charter, right to collective bargaining and action protected by Article 26 of the Charter and the right to an effective judicial remedy and to a fair trial as provided for in Article 47 of the Charter. Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of	BE (Drafting): (36) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’). In particular, it respects the right to privacy of the economic operators enshrined in Article 7 of the Charter, right to data protection set out in Article 8 of the Charter, the freedom to conduct business and the freedom of contract, which are protected by Article 16 of the Charter, the right to property, protected by Article 17 of the Charter, right to collective bargaining and action, including the right to strike, protected by Article 28 of the Charter and the right to an effective judicial remedy and to a fair trial as provided for in Article 47 of the Charter. Since the objective of this Regulation cannot be	BE (Comments): BE finds that this recital does not sufficiently precise whether this regulation does not affect the right to strike, due to the repealing of Council Regulation (EC) 2679/98. This recital should at least mention that the right to strike is included in the art 28 of the Charter. For a better guarantee, it should be integrated in the articles of the proposal. Moreover the reference is incorrect: The right to collective bargaining and action is protected by Article 28 and not 26 of the Charter.

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the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. The Regulation should not affect the autonomy of the social partners as recognised by the TFEU.	sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. The Regulation should not affect the autonomy of the social partners as recognised by the TFEU.	
(37) The Union remains fully committed to international solidarity and strongly supports the principle that any measures deemed necessary taken under this Regulation, including those necessary to prevent or relieve critical shortages, are implemented in a manner that is targeted, transparent, proportionate, temporary and consistent with WTO obligations.		
(38) The Union framework shall include interregional elements to establish coherent, multi-sectoral, cross-border Single Market vigilance and emergency response measures, in particular considering the resources, capacities and vulnerabilities across neighbouring regions, specifically border regions.		

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(39) The Commission shall also where appropriate enter into consultations or cooperation, on behalf of the Union, with relevant third countries, with particular attention paid to developing countries, with a view to seeking cooperative solutions to address supply chain disruptions, in compliance with international obligations. This shall involve, where appropriate, coordination in relevant international fora.		
(40) In order to put in place a framework of crisis protocols the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement the regulatory framework set out in this Regulation by further specifying the modalities of cooperation of the Member States and Union authorities during the Single Market vigilance and emergency modes, secure exchange of information and risk and crisis communication. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making . In particular, to		

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ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		
(41) Council Regulation (EC) 2679/98 which provides for a mechanism for bilateral discussions of obstacles to the functioning of the Single Market has been rarely used and is outdated. Its evaluation demonstrated that the solutions provided by that Regulation are not able to cater for the realities of complex crises, which are not limited to incidents happening at the borders of two neighbouring Member States. It should therefore be repealed.		BE (Comments): The repeal of Regulation (EC) No 2679/98 must not affect the right to strike. The inclusion of a reference to Article 28 of the Charter of Fundamental Rights in Recital 36 is in no way sufficient to guarantee the protection of the right to strike. Therefore BE requests that the right to strike be guaranteed by an article in the proposed regulation.
HAVE ADOPTED THIS REGULATION:		
		AT (Comments): General comment: In order to create a well-functioning instrument in practice, the proposed provisions and the scope of such an instrument has to be clear. Unfortunately, this is not the case. As the discussions in the WP meetings show, most of the provisions contain unclear terms and its application in practice is

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		questionable. In our view, further in-depth discussions as well as an appropriate involvement of the Member States needs to be foreseen in this Regulation.
Article 27 Priority rated orders	FI (Drafting): <u>deleted</u> <u>Article 6a (new)</u> <u>The Commission shall encourage the Member States to create national operating models for cooperation between public administration and businesses and their representative organisations to be prepared for times of crisis.</u> <u>Recital (new): As past crises, especially the COVID-19 pandemic, has shown the Member States should be better prepared for times of crisis. Therefore, it is necessary to create national operating models for cooperation between authorities and businesses to strengthen preparedness for future crisis. It is necessary to have regular exchange of information between the public sector and businesses and their representative organizations in order to detect early stage signals of potential product shortages or other events that could escalate into a crisis endangering the functioning of the Single Market. For example, sectors may organise themselves into pools where information is</u>	BE (Comments): BE is not convinced that such provision can be built on the legal basis of Art 114, 21 and 45 TFUE and therefore waits for the formal CLS's opinion on it. More specifically, BE questions the necessity and proportionality of these measures, which will entail heavy burdens for businesses, especially SMEs, at a time when they will also have to manage a crisis situation. It is imperative to keep the administrative burden on SMEs to a minimum. With regard to the financial impact on companies, this article does not take into account the costs of prioritising production lines and reallocating them once the crisis situation has passed. In general, the use of the two terms "implementing act" and "Commission's decision" leads to confusion, although they seem to mean the same thing. It would be useful to clarify this point. Will the Commission also base its resort to priority orders on the list of relevant contacts of economic operators drawn up by the Member

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	<u>exchanged on issues relevant to functioning of each sector.</u> IE (Drafting): Article 27 Priority rated orders PL (Drafting): Article 27 Priority rated orders LU (Drafting): Article 27 Priority rated orders	States, as is the case in Article 24(4)? FI (Comments): <i>Instead of any threat of fines, crisis preparedness should primarily be based on <u>voluntary action</u> to which economic operators find it necessary to commit in order to safeguard the functioning of society and consequently also their own competitiveness. Therefore it is necessary to create national operating models for cooperation between authorities and businesses to strengthen preparedness for future crisis.</i> A concrete example on Finnish national model for coordination: A good relationship between national authorities and private sector actors provides much information about possible shortages and critical dependencies. This close cooperation also offers a possibility to discuss if businesses would have interest and capabilities to adjust their production to produce crisis relevant goods during crisis situation when necessary. In Finland, sectors and pools operate in connection with the National Emergency Supply Agency (NESA), maintaining and developing security of supply and continuity management in the networks of companies and organisations in their respective sectors. These sectors include the authorities, ministries,

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		central agencies, business organisations, and representatives of key companies. The security of supply sectors include the food supply, energy supply, financial, logistics, industry and healthcare sectors. The task of the sectors is to promote cooperation between businesses and the authorities and to steer, coordinate and monitor preparedness in their respective sectors. They can also analyse threats in their own sector. The pools support and promote sectoral and office-specific operational preparedness, and their operations are planned and implemented in cooperation with the businesses. The operations of the pools are based on agreements between sectoral organisations and the National Emergency Supply Agency. The role of the pools is to monitor, investigate, plan and prepare the security of supply in its sector and to define and prepare general plans for emergency operations. They also maintain a database of critical operating locations and operators in their sectors and organise press conferences, trainings and exercises necessary for maintaining preparedness in the field. Finnish businesses see the added value of the national <u>voluntary</u> model as it is in their interest too, that the society functions under crisis

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		situation and economy and markets recover rapidly after the crisis. IE (Comments): IE believes that Priority Rated Orders should be voluntary in nature. We have concerns around placing additional burdens on economic operators dealing with a crisis, and the effects such orders could have on an economic operator's relationship with existing customers including in countries outside the EU. We also have concerns around how such orders would affect other economic operators in the same market. More clarification is required on the explanations an economic operator could give for declining to accept a priority rated order. IE proposes deletion of the current text. NL (Comments): We are not yet convinced of the need for priority rated orders. Therefore, we posed a number of specific questions during the working party on 21 February, 2023. As our concerns have not yet been fully addressed during the working party, we propose to change the mandatory nature of the priority rated orders to a voluntary nature. This is similar to our proposal for article 24. Most of the amendments reflect this proposed change. In addition, given the far-reaching implications priority rated orders may have, we share the

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		CLS' view that more conditions as to the application of priority-rated orders are desirable, for example the dual activation that we proposed for article 23. PL (Comments): This measure is disproportionate, discriminatory, too far-reaching and violates the competences of Member States. We share the concerns of business entities, which should be guaranteed the freedom to conduct business. Priority rated orders may lead to disruption of the conditions for conducting business, including public procurement. Economic operators should not be burdened with additional obligations, especially in a potentially difficult period, which is the crisis. Cooperation with business is a better way to deal with problems concerning the availability of products or services than taking control over them, as well as stimulating market processes than manually controlling these processes. Priority rated orders may also significantly disrupt the functioning of the Single Market, including disrupting or even preventing the performance of a public contract awarded by a Member State. Priority rated orders should be voluntary, based on dialogue and cooperation with entrepreneurs, and not as a mandatory system controlled

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		centrally by the European Commission. We propose to delete this article. PT (Comments): Portugal restates its previous comments that the requests to prioritize orders to economic operators will have to be assessed as it may unevenly affect economic freedom in the market, seriously affecting competition and trade. Therefore, the impact of these measures needs to be considered. It is also necessary to avoid unnecessary administrative burdens for businesses, especially SMEs, in order not to hamper their competitiveness. It is crucial to assess the financial impacts of the initiative. Consideration should be given to the possibility of economic operators being entitled to compensation in case of revenue losses due to EU refocusing or prioritization. SI (Comments): Similarly to article 24 we would prefer for this kind of a provision to be of a voluntary nature as we believe that we should not be putting additional excessive administrative burdens on the economic operators during the times of crisis and particularly not during the what is defined as emergency mode which is a very demanding period for them by definition. Additionally, we believe that the economic

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		operators in times of crisis strive to adapt as efficiently as possible, trying to still successfully function in an unstable market. We should therefore aim for cooperation with them in the times of crisis and we should also attempt to contribute by proposing functional alternatives that would contribute to the functioning of the Internal market and help the EU businesses through challenging times. We also call for an inclusion of the Advisory Group in the decision.making process regarding the priority rated orders – either in this article or in article 4. Its inclusion and therefore also inclusion of the Member states in the process regarding priority rated orders is currently not sufficient. LU (Comments): <i>We consider this provision to be particularly intrusive into the market, with unassessed consequences in terms of liability of the concerned economic operator, in terms of the competitiveness of the EU economy as a whole and lacking the necessary safeguards.</i> <i>In times of crisis, economic operators should be supported and cooperation should be the spirit, rather than mandatory instructions for changing production lines.</i> IT (Comments): Italy believes that the art. 27 on orders with

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		priority rating is particularly critical for the following reasons: • The intervention of the EC in the business activity, impacting the functioning of production lines and supply chains, raises concerns of proportionality; • the dialogue envisaged between the EC and businesses could be exagerately complex under time constraints. The 10 days delay for operators to justify the decision not to comply with the obligations could be too short; • The publication of the reasons for the refusal to execute priority orders raises concerns of confidentiality. It is not evident that the Commission would always be able to determine the confidential nature of information, so that litigations and requests for compensation might arise. • Priority rated orders might send signals to the market with distortive effects on prices and level playing field. They might also provoke non-intended “hoarding race”, worsening scarcity in the market. The release from contractual obligations to meet priority orders would apply only to obligations under European legislation. Companies with obligations under foreign law are not safeguarded.

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		LT (Comments): We suggest deleting the article (arguments, such as a negative influence on international relations and EU competitiveness as well as attractiveness, have already been raised during the last WP). If not enough MSs suggest deletion, the second option we could support – voluntary Priority rated orders. In this aspect we have some questions, to which we would like to get answers before agreeing on the Art. In addition, we would be open to explore proposals by other MSs to create national operating models which would ensure proper cooperation during crisis period.
		AT (Comments): In general, we are very sceptical about this Article. Even in times of crisis, market principles should not be disregarded. As Recital 36 recalls, Article 16 ECFR protects the freedom to conduct a business and with contractual freedom. We believe that the priority rated orders should be carried out on a voluntary basis, just as we consider the provision of information in the context of the requests for information to economic operators to be voluntary. If must kept obligatory: in the event that EC requests companies to accept and give priority

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		to certain orders for the production or supply of crisis-relevant goods, clear criteria are required to justify such interference with entrepreneurial freedom. Does the EC have any concrete examples where such priority rated orders would have been necessary during past crises (e.g. Covid-19) and where the market did not regulate itself? DK (Comments): <u>From a principled and practical point of view, we find that the article to be of a particularly intrusive nature and ground for great concern. Denmark cannot support it in its current form.</u> Firstly, we do not at this stage support the obligatory nature of the article, ie. the possibility of the Commission to oblige economic operators to prioritise certain orders. The article does not take into account the lessons drawn from recent crises, where businesses showcased flexibility and a willingness to be part of the solution on a voluntary basis. We would therefore prefer voluntary solutions based on cooperation with actors. Secondly, in line with the comments of Council Legal Service at the IMWP on 21 February, we find it problematic that it is not specified beforehand who could potentially be required to

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		prioritize orders. Hence, it could be any economic operator in the European Union. Such an approach seems very far-reaching and causes unpredictability for businesses in the Union. We are also concerned about the proportionality and legal feasibility of intervening in the decisions of economic operators as prescribed in this article, especially with regards to breaches of contractual obligations and what the consequences would be thereof. Thirdly, we have strong reservations regarding the missing role of the Member State in which the economic operator is based. In our view, in order for crisis management involving economic operators to be fruitful and efficient, a very close dialogue is needed between the national governmental level and economic operators based in the specific Member States. Finally, the article is unclear in key aspects and lacks fundamental details on vital elements not least given the discussion at the WP on 21 February that causes even greater confusion on many aspects. Among other things, the Commission explained that having contractual obligations with a third country operator would be a valid reason for not complying with a priority rated order. However, this is not outlined in the proposal and does as well fundamentally change the potential use of the instrument in conflict with what have been

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		explained earlier. In this respect, we fully share the CLS' view that more safeguards would be needed to ensure the proportionality of the article. In this light, we find that the article in some aspects would need a complete rewriting in order for us to assess properly the intentions of the Commission with the article. We are currently investigating alternative approaches to the priority rated orders, which we will share with the Presidency, Member States and the Commission at the earliest convenience.
1. The Commission may invite one or more 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').	FR (Drafting) The Commission may invite one or more 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'). The Commission shall notify simultaneously the Member State where the economic operator operates, for information purposes. The Member State where the economic operator operates may object to this invitation if it considers that the request for prioritisation affects contracts that affect the essential interests of Member States' national security, public security or defence, in accordance with	FR (Comments) We disagree to direct communication between the Commission and economic operators without simultaneous information of the Member State where the economic operator operates.. In this way, the Member State may provide support to the operator concerned, if necessary. We also propose the insertion of a provision offering the Member State the possibility of objecting to the commission's request for prioritisation in the event that it concerns goods or services which are the subject of public procurements meeting sovereignty issues. By reflecting on this issue, it seems necessary to insert, where the Commission find it relevant

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	Article 346 of Treaty on the Functioning of the European Union, and shall inform the Commission thereof. IE (Drafting): 1. — The Commission may invite one or more 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’). NL (Drafting): 1. The Commission may invite one or more 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’). <u>The Commission will do so in accordance with the mandate given by the Council implementing act as stated in article 23 of this Regulation.</u> PL (Drafting): 1. — The Commission may invite one or more 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’). SI (Drafting): The Commission may invite one or more	(we propose new subparagraphs to article 2.8), to add an exclusion clause and a reminder of article 346 TFEU similar to NIS2 and CER directives : After “<i>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.</i>” Insert : § This Regulation does not apply to public administration entities that carry out their activities in the areas of national security, public security, defence or law enforcement, including the prevention, investigation, detection and prosecution of criminal offences. §. Member States may decide that the provisions of this Regulation do not apply to specific economic operators which carry out activities in the areas of national security, public security, defence or law enforcement, including the investigation, detection and prosecution of criminal offences, or which provide services exclusively to the public administration entities referred to in paragraph [upper] of this Article. And (jus afterwards or after article 1.3) § The obligations laid down in this Regulation shall not entail the supply of information the

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	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'). In order to do so, the Commission presents the chosen economic operator or operators with an assessment of necessity and proportionality of resorting to such a measure. LU (Drafting): 1. — The Commission may invite one or more 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'). EE (Drafting): Delete IT (Drafting): 1. The Commission, after consulting the Advisory Group, may invite one or more 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'). LT (Drafting): 1. The Commission may invite one or more economic operators in crisis-relevant supply chains established in the Union to accept and	disclosure of which would be contrary to the essential interests of Member States' national security, public security or defence. § Without prejudice to Article 346 TFEU, information that is confidential pursuant to Union or national rules, such as rules on business confidentiality, shall be exchanged with the Commission and other relevant authorities in accordance with this Regulation only where that exchange is necessary for the application of this Regulation. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of that exchange. The exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of entities concerned. BE (Comments): BE questions the added value of the invitation provided for in § 1, as § 2 makes it possible to impose this request for a priority order on the economic operator. PT (Comments): • This article enables the COM to issue a decision that requires the economic operator to accept and prioritize orders classified as priority. It means that these priority rated orders are mandatory. We question the mandatory character of these priority orders.

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	prioritise certain orders for the production or supply of crisis-relevant goods ('priority rated order'), by adopting a decision. The Commission will do so in accordance with the mandate given by the Council implementing act as stated in article 23 of this Regulation.	• The interference with entrepreneurial freedom by the European Commission through priority orders is critical. What are the criteria justifying such interference? • What is the role of the Member State in the decision-process that leads to the priority order? And what is the role of the Advisory Group? How the process of inviting economic operators will be done and how those one or more operators will be selected? SI (Comments): We believe that the assesment of necessity and proportionality of a requested measure/s should be presented to the economic operator/s latest at the time of the request by the Commission for them to resort to such measures. That would additionally persuade and encourage economic operators to follow in the requested direction which would be particularly crucial if the measures become voluntary. EE (Comments): We're not convinced of the need for this article, especially after the WP on 21 February 23, 2023. We do not see how the Commission can choose, which Member State orders should be prioritized above others in case of crisis. We believe in a time of crisis, we should be working together in solidarity instead of bidding against each other. Moreover, this article is disproportionately burdensome to

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		producers as this regulation covers all producers in the EU, regardless of size and sector, who cannot predict if and when they could become producers of crisis relevant goods. Therefore it is impossible for them to take any safeguards against the likely and potential financial and partnership losses. IT (Comments): Prior to any decision on priority order (if at all) the advisory group has to be consulted. The composition of the Advisory group should include economic operators. SK (Comments): We welcome CLS opinion on this Article provided at the WP on 21 February. We are concerned about this Article, its impact on the market, competition, freedom to do business, property rights. We are questioning the proportionality of this measure and find it discriminatory (different treatment of economic operators). We would welcome more clarification on the application of the Article in practice (what would be the contents of the COM's invitation). AT (Comments): We believe that the priority rated orders should be carried out on a voluntary basis, just as we consider the provision of information in the context of the requests for information to economic operators to be voluntary.

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		Questions: - How do EC priority-rated orders relate to Part V (Procurement) ? - What exactly is the function of « priority-rated orders » under SMEI ? Could « priority-rated orders » be somehow used to speed up MS' procurement processes or would EC envisage a delegation of authority to place priority ratings on orders to MS? - How would MS apply for a « priority rating » for their procurement ? LV (Comments): Latvia is of view that the Advisory group should have more significant role during emergency mode and wording of Article 27 paragraph 1 should specify that before the Commission invites one or more economic operators to accept and prioritise certain orders for the production or supply of crisis-relevant goods, the Commission should consult with the Advisory Group. LT (Comments): Clear information about the invitation process should be provided in the operational part, e.g., how those one or more operators will be selected? How will the COM ensure that the selection procedure is fair and compliant with competition rules? Will the invitation be done via phone/email/decision? Will MSs/Advisory

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		group be informed/consulted before the invitation? After invitation?
	FR (Drafting) If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market. The Commission's decision shall take into account the size and resources of the economic operator concerned and allow exemptions for SMEs.	FR (Comments) Given the disproportionate economic, administrative and legal burden that would weigh on SMEs required to prioritize orders, exemptions should be allowed according to the size and production capacity of the economic operator concerned. DK (Comments): We note that it is important to provide clarity as to whether the economic operator is legally bound by an "invitation" from the Commission, including to what extent the economic operator can be sanctioned for not accepting/prioritising an order.

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2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market	BE (Drafting): 2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market. This paragraph shall not apply to micro-enterprises. IE (Drafting): 2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the	BE (Comments): It is imperative to keep the administrative burden on SMEs to a minimum and therefore BE asks the Commission to consider an exemption for micro-enterprises. BE would like a clarification of the term "exceptional circumstances". What are the circumstances that can be defined as such? Indeed, it is exceptional circumstances that lead to the activation of the emergency mode. What additional elements need to be present for the Commission to adopt this type of binding decision? Also, how will "any parties demonstrably affected" by the priority order be identified? PT (Comments): • This article enables the COM to issue a decision that requires the economic operator to accept and prioritize orders classified as priority. It means that these priority rated orders are mandatory. We question the mandatory character of these priority orders. • The interference with entrepreneurial freedom by the European Commission through priority orders is critical. What are the criteria justifying such interference? • What is the role of the Member State in the decision-process that leads to the priority

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	request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market NL (Drafting): 2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential	order? And what is the role of the Advisory Group? • How the process of inviting economic operators will be done and how those one or more operators will be selected? We believe that this assessment of necessity and proportionality for the priority order should have been done beforehand. It needs to be clarified. SI (Comments): In line with the article 27.1 we would like to delete the part of the paragraph referring to the mentioned assesment which is already a part of the process at the requesting stage. EE (Comments): We are opposed to any obligation for priority rated orders SK (Comments): We are somewhat concerned about the power given to the COM. How to assure that the COM's decision will be based on relevant data? What will be the source of evidence, data on which the COM's decision on indispensability of prioritisation will be based? We would welcome more clarification why the measure should be initiated on the request of „14 Member States“ (majority?) AT (Comments):

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	priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market. PL (Drafting): 2. — If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an	Mandatory priority rated orders interfere with the freedom to conduct a business. Provisions in this context should be precise and clear. The wording in para 2 does not comply with these requirements. Terms like “exceptional circumstances” are not clear enough in this regard. LV (Comments): Obligation to prioritise certain orders could create administrative and financial burden (for example, within a given deadline economic operator is obliged to provide an explanation why it can't accept to prioritise certain orders, as well as the additional costs, like rise of price of ingredients and raw materials, will need to be covered by economic operators) as well as legal consequences for economic operators, therefore Latvia would prefer that prioritization of certain orders should be only on voluntary basis. MT (Comments): MT is in disagreement with last part part of the this paragraph and proposes deletion. Themeasure should be a voluntary one, which does not provide for a mandatory order by CION through an Amplementing Act.

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	implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market SI (Drafting): 2. If an economic operator does not accept and prioritise priority rated orders, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities	

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	in the Single Market LU (Drafting): 2. — If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market EE (Drafting): Delete AT (Drafting):	

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	2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market. LV (Drafting): 2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to	

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	priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market LT (Drafting): 2. — If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a	

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	reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market MT (Drafting): 2. If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept	

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	and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market	
		FR (Comments) Will the Commission plan on justify this precedence to the economic operators customers ?
3. Where the economic operator to which the decision referred to in paragraph 2 is addressed accepts the requirement to accept and prioritise the orders specified in the decision, that obligation shall take precedence over any performance obligation under private or public law.	IE (Drafting): 3. — Where the economic operator to which the decision referred to in paragraph 2 is addressed accepts the requirement to accept and prioritise the orders specified in the decision, that obligation shall take precedence over any performance obligation under private or public law. NL (Drafting): 3. — Where the economic operator to which the decision referred to in paragraph 2 is addressed accepts the requirement to accept and prioritise the orders specified in the decision, that obligation shall take precedence over any performance obligation under private or public law.	NL (Comments): Please note that the EU cannot abolish performance obligations of EU companies undertaken with a party from a third country. Therefore, this is covered by (7). PT (Comments): - As foreseen in this paragraph (3) the obligation of priority rated orders <u>shall prevail over</u> any performance obligation under private or public law. We question these provisions. - What is the consequence for companies when breaking contractual (national and international) agreements? What impact this will have on national and international competition, certainly affecting the

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	PL (Drafting): 3. — Where the economic operator to which the decision referred to in paragraph 2 is addressed accepts the requirement to accept and prioritise the orders specified in the decision, that obligation shall take precedence over any performance obligation under private or public law. LU (Drafting): 3. — Where the economic operator to which the decision referred to in paragraph 2 is addressed accepts the requirement to accept and prioritise the orders specified in the decision, that obligation shall take precedence over any performance obligation under private or public law. EE (Drafting): Delete	reliability of European economic operators to its trading partners? Compliance with WTO rules is under question with these provisions. What impact this will have on costs (direct and indirect) to economic operators? How long it will take for economic operators to prepare for the needed production? This must be thoroughly clarified. • Consideration should be given to the possibility of economic operators being entitled to compensation in case of revenue losses due to EU refocusing or prioritization. What is the role of the Advisory Group in the identification of the priority orders? IT (Comments): Compliance with WTO rules when it comes to trading partners is under question. SK (Comments): We are concerned about the protection for the operator against not fulfilling its “performance obligation under private or public law.”. AT (Comments): These provisions can lead to lengthy proceedings for damages due to non-fulfilment of "subordinated" contracts. ES (Comments): Spain supports the deletion of this paragraph 3,

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		as it contains sensitive issues that are not well articulated in the Regulation, specially taking into account the consequences provided for in paragraph 7, in so far as where an economic operator would not be liable for any breach of contractual obligations governed by the law of a MS that is required to comply with the priority rated order. The Council Legal Service has referred to article 144 as the legal basis for justifying the breach of contractual obligations under public or private law, but nevertheless points to the fact that the case law is not sufficiently clear in this field, and that the key aspect to be considered is the principle of proportionality. However, neither this paragraph or recitals 28 and 32, specify the way in which this principle would operate. It also remains unclear what financial liability regime would operate in the event of such a breach of contract, and who would be liable for these costs. It is therefore considered that the legal basis put forward is not sufficiently clarified in the text, nor are the consequences of paragraph 7. In addition, the EC refers to the coherence between Article 27 and public procurement contracts in progress, which would require an assessment of the situation as an exemption from liability or an assessment of the priority of the functions, but these issues are not included in the Public Procurement Directive, and as mentioned above,

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		the legal basis that would justify this type of situations in TFEU is not sufficiently clear in the text. LT (Comments): We still need a better understanding of the consequences of this para and if it is legally sound, especially in case of obligations with third countries. If para 3 remains, amendments shall be made in narrowing down “over <i>any</i> performance”. MT (Comments): Following the remarks from the CLS, MT continues to have serious doubts as to whether this provision about the order taking precedence over obligations in private and public law is in fact legally sound.
		FR (Comments) For the Commission, what would be considered as a reasoned explanation and duly justified reasons ?
4. Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or	IE (Drafting): 4. Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the	BE (Comments): BE asks that SMEs be given a flexible interpretation of the reasons that can be given for declining a priority request. PT (Comments): Article 27° (4) assumes that all businesses independently of their situation, size, or

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appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity.	decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity. NL (Drafting): 4. — Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity. PL (Drafting):	other factors, must accept the priority orders once decided by the COM. We reiterate our concerns on this mandatory priority orders and its consequence for businesses, especially SMEs, that are already facing severe constraints in a time of crises. • What is the reasoning for the 10 days given to companies to explain why they decline to prioritize the orders? The paragraph foresees that the COM will make public the explanation by the economic operator why it is not possible to accept the priority rated order. What is foreseen here to be publicized? It needs further clarification. IT (Comments): The 10-day notification period for economic operators to explain why it is not possible or appropriate to comply with the requirement is quite short, especially for SMEs. The notification timeframe could be increased. AT (Comments): What about third party contractual obligations? What are „other considerations of comparable gravity“? LV (Comments): If the economic operator has received priority rated orders from third countries, it should serve as a basis for the economic operator to decline

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	4. — Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity. LU (Drafting): 4. — Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on	to accept the requirement to prioritise priority rated order from the Commission. Latvia is of view that economic operators who have received public financial support could only be invited to accept and prioritise certain orders for the production or supply of crisis-relevant goods like it was in the Chips Act Article 21 paragraph 2.

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	account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity. EE (Drafting): Delete LV (Drafting): 4. Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons are referred in Article 27 (5) or include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity. LT (Drafting): 4. — Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to	

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	accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity.	
		DK (Comments): It should be specified what the criteria are regarding the assesment of whether a decline is sufficiently reasoned by reference to “inability” or “particular hardship or economic burden”. Furthermore, it is unclear which “other considerations of comparable gravity” may consitute a sufficient reason for a decline. During the IMWP on 21 February, the Commission explained that having contractual obligations with a third country operator would be a valid reason for not complying with a priority rated order. However, this is not outlined in the proposal and does as well fundamentally change the potential use of the

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		instrument in conflict with what have been explained earlier.
The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality.	IE (Drafting): The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality. NL (Drafting): The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality. PL (Drafting): The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality. SI (Drafting): LU (Drafting): The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality. EE (Drafting): Delete AT (Drafting): The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality. LT (Drafting):	SI (Comments): We do not support the idea of making such reasoned explanations public and the reasons given by COM in the WP meeting regarding this aspect were in our opinion not sufficient to persuade us that this is indeed appropriate. SK (Comments): We have doubts about publication of “reasoned explanation” provided by economic operators. AT (Comments): Such explanations should not be public.

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	The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality.	
5. 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.	IE (Drafting): 5. 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. PL (Drafting): 5. 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. LU (Drafting): 5. 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.	BE (Comments): What is meant by "third country"? Does it only cover orders from a "third State" or also those from "third country companies"? What are the consequences for the economic operator established in the Union? What does COM do with this information? If this is a valid reason for declining the priority order, why is it not included in §4? AT (Comments): Third country contract obligations can be a sufficient justification for not accepting the contract, it was said - in our view, this should be explicitly stated in paragraph 5. LV (Comments): How the economic operator will know whom to contact from the Commission and within what time limit economic operator should inform the Commission of the priority rated orders from third countries? We are also of view that this Article should be incorporated under Article 27.4. as if the economic operator is subject to a measure of a third country which entails a priority rated

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		order, it should serve as a duly justified reason why it can not perform the priority rated order asked by the Commission.
6. The Commission shall take the decision referred to in paragraph 2 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law. The decision shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable price.	IE (Drafting): 6. The Commission shall take the decision referred to in paragraph 2 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law. The decision shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable price. NL (Drafting): 6. The Commission shall take the decision <u>to invite one or more economic operators to accept and prioritise certain orders</u> referred to in paragraph 2 1 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations	BE (Comments): When COM justifies the proportionality of its decision, it will be necessary for it to demonstrate that a less restrictive measure for the economic operator would not have the same effect as a binding decision. What is a "fair and reasonable price"? Wouldn't it be appropriate to develop a transparent pricing model to determine what is a fair and reasonable price and applicable to SMEI and the Chips Act and other regulations? NL (Comments): The decision to invite economic operators to accept and prioritise certain orders should take the impact on third countries into account (see the comments above). We propose to explicitly include this consideration in paragraph 6. Negative effects on third countries may harm trade relations and may also harm the EU's resilience if it triggers a <i>tit-for-tat</i> escalation, given the global nature of supply chains. PT (Comments): • We restate the concerns and the questions made in previous paragraph (2) and (3).

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	under international law. The decision <u>invitation</u> shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. <u>It shall also take into account any impact on third countries including the effect on third countries' supply and production of crisis-relevant goods.</u> It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable <u>market</u> price. PL (Drafting): 6. — The Commission shall take the decision referred to in paragraph 2 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law. The decision shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be	• The priority rated orders will be subject to a fine (also in article 28°). For the reasons stated before, we question this imposition of fines to economic operators. What is the meaning of “fair and reasonable price”? This will be decided based on what criteria? And, who bears the costs? IT (Comments): The price should be calculated to cover all outstanding costs. Thresholds should be established to quantify the minimum and maximum "fair and reasonable price". AT (Comments): It should be clear that SME interests are duly taken into account. The so-called "fair and reasonable price" is mentioned in Art. 27(6), but in the case of accepting priority orders, it is necessary to calculate a price that covers all outstanding costs. At least the direct, indirect costs and the market price should be taken into account. Also, in case of obligatory acceptance of priority orders, especially if it means a significantly change of production lines, face termination of existing contractual obligations leading to penalties for non-compliance and loss of business partners. LV (Comments): The SMEI proposal should set a procedure on

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	performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable price. LU (Drafting): 6. — The Commission shall take the decision referred to in paragraph 2 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law. The decision shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable price. EE (Drafting): Delete AT (Drafting): 6. The Commission shall take the decision referred to in paragraph 2 in accordance with applicable Union law, including the principles	how the fair and reasonable price will be established for priority rated orders. It should be taken into account that during the times of crisis the availability and so the price for critical ingredients and raw materials increases rapidly what should be taken into account for setting the fair price for the priority orders.

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	of necessity and proportionality, and the Union's obligations under international law. The decision shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. The Commission shall have due regard to the administrative burden on economic operators and in particular SMEs, which may be associated with priority rated orders, and ensure it is kept to a minimum. It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable price. LT (Drafting): 6. The Commission shall take the decision referred to in paragraph 2 1 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law. The decision invitation shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence.	

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	<u>It shall also take into account if accepted the priority rated order could have a negative impact on third countries.</u> It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable market price.	
7. Where an economic operator accepts and prioritises 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.	IE (Drafting): 7. Where an economic operator accepts and prioritises 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. NL (Drafting): 7. Where an economic operator accepts and prioritises a priority rated order, it shall not be liable for any breach of contractual obligations or public 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	BE (Comments): BE questions the absence of liability for any breach of contractual obligations, in particular in the context of contracts concluded by the economic operator outside the EU (possible impact on European competitiveness, compatibility with WTO rules, risk of retaliation, etc.). PL (Comments): This is a violation of the "<i>pacta sunt servanda</i>" principle and may lead to the disruption of supply chains as well as cause damage to various categories of economic operators. PT (Comments): We do not understand this. What is the legal basis that underpins this paragraph? This conflicts with national legislation. It must be

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	compliance with the required prioritisation. PL (Drafting): 7. — Where an economic operator accepts and prioritises 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. SI (Drafting): Where an economic operator accepts and prioritises a priority rated order, it shall not be liable for any breach of other 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. LU (Drafting): 7. — Where an economic operator accepts and prioritises 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.	clarified. SI (Comments): We are worried regarding the effects such approached could have on the established relations of economic operators within the EU. We therefore emphasize the aspects of necessity and proportionality that should be more specifically included also regarding this provision. We additionally propose the following rewording to make the paragraph more understandable - it is about breaching other contractual obligations because of accepting the priority order. SK (Comments): We are questioning the application of this para in relation with the economic operators from third countries. AT (Comments): These provisions can lead to lengthy proceedings for damages due to non-fulfilment of "subordinated" contracts. LT (Comments): Before agreeing with this para we still need a better understanding of the consequences of this para and if it is legally sound. In addition, we do not understand this part: "<i>Member State that is required to comply with</i>"

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	EE (Drafting): Delete	<i>the priority rated order</i> ". What is meant by this part? That MSs are bound by an individual decision to x operator? MT (Comments): MT doubts whether this provision claiming exemption of liability is legally sound also with regard to contracts governed by jurisdictions outside the EU.
		DK (Comments): The contracting parties to the economic operator may suffer an economic loss due to delay caused by the accept of the priority order. It should be specified whether the contracting parties are to be compensated for such a loss since the economic operator is not liable. Furthermore, it should be specified if the accepting economic operator will be entitled to compensation if the priority order is less profitable than the original order(s).
8. The implementing acts referred to in paragraph 2 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).	IE (Drafting): 8. The implementing acts referred to in paragraph 2 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	AT (Comments): Horizontal comment, applies to Article 14(6), 18(1), 18(3), 24(8), 27(2) and 27(8). AT does not believe in the necessity of « immediately applicable implementing acts » under this Regulation. AT does not find the « urgency relating to the impacts of the crisis on the Single Market » sufficiently legislatively circumscribed. AT believes that implementing

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	Article 42(3). NL (Drafting): 8. — The implementing acts referred to in paragraph 2 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). PL (Drafting): 8. — The implementing acts referred to in paragraph 2 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). LU (Drafting): 8. — The implementing acts referred to in paragraph 2 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	acts adopted under ordinary NONA examination procedure can be adopted fast enough and their discussion in the Committee according to Art. 42(1) can make them more legitimate and smooth the procedure of MS' implementation. Therefore, examination procedure in Art. 42(2) need be amended with a clause referring to the « no opinion, no action » (NONA) comitology procedure. ES (Comments): The use of Article 8 of Regulation 182/2011 seems to generate legal uncertainty if the cases that justify its application are not properly specified and delimited. We should not forget that we are in fact dealing with a regulatory instrument that is applied for emergency situations and for exceptional cases, so it is not clear in what situations the EC could arrogate to itself the power to use article 8. In this sense, as in the case of article 14.6, we consider necessary to clarify the concept of duly justified imperative grounds of urgency, taking into account that Article 5 of Regulation (EU) No 182/2011 will no longer apply, that allows MS for a much more control in the process and the Commission would be allowed to have wide-ranging powers of action.

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	accordance with the procedure referred to in Article 42(3). EE (Drafting): Delete AT (Drafting): 8. The implementing acts referred to in paragraph 2 shall be adopted in accordance with the examination procedure referred to in Article 42(2). <u>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).</u> LT (Drafting): 8. The implementing acts referred to in paragraph 2 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).	
Article 28 Fines to operators for failure to comply with the obligation to reply to mandatory information	FI (Drafting): <u>deleted</u>	BE (Comments): As with article 27, BE is not convinced that such provision can be built on the legal basis of

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requests or to comply with priority rated orders	IE (Drafting): Article 28 Fines to operators for failure to comply with the obligation to reply to mandatory information requests or to comply with priority rated orders PL (Drafting): Article 28 Fines to operators for failure to comply with the obligation to reply to mandatory information requests or to comply with priority rated orders LU (Drafting): Article 28 Fines to operators for failure to comply with the obligation to reply to mandatory information requests or to comply with priority rated orders EE (Drafting): Delete LT (Drafting): Article 28 Fines to operators for failure to comply with the obligation to reply to mandatory information requests or to comply with priority rated orders	Art 114, 21 and 45 TFUE and therefore waits for the formal CLS's opinion on it. Belgium attaches importance to the proportionality of the application of Article 28. Furthermore, what happens if the Commission is not convinced by the justification provided by the company for not accepting priority orders? It is essential that COM gives reasons why the imposition of a fine is necessary despite the justification provided by the company. FI (Comments): We propose deletion of articles 27 and 24 and replacing them by increased cooperation and exchange of information between national authorities and companies. It is necessary to ensure the voluntary nature of the measures, which is why articles on fines are not needed. IE (Comments): As we propose to change the mandatory nature of article 24 and 27 to a voluntary nature, we believe fines to operators for failure to comply with information requests and priority rated orders are not proportionate. NL (Comments): As we propose to change the mandatory nature of article 24 and 27 to a voluntary nature, we believe fines to operators for failure to comply with information requests and priority rated

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		orders are not proportionate. PL (Comments): The added value of SMEI is to introduce a mechanism for rapid communication between the Commission and Member States, coordination and exchange of information in crisis situations, rather than a system of fines imposed on economic operators. A constructive dialogue with economic operators is needed instead of penalties imposition, which during the crisis can only worsen their competitiveness and financial situation. Fines on operators will not contribute to increasing their production capacity. In addition, fines on operators constitute restrictions to the right to property set out in Article 17 of the EU Charter of Fundamental Rights. They are neither proportionate nor justified restrictions of the property right. We propose to delete this Article. PT (Comments): We question this imposition of fines to economic operators already facing severe constraints in a time of crisis. SI (Comments): As we propose to change the mandatory nature of article 24 and 27 to a voluntary nature, we believe fines to operators for failure to comply with information requests and priority rated orders are not

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		proportionate or even appropriate. We therefore do not see the need for articles 28, 29, 30 and 31. LU (Comments): <i>Given that we don't support mandatory information requests (see previous comments) and mandatory priority rated orders, these articles are redundant and should also be deleted.</i> EE (Comments): Since we see the information requests should only be voluntary and priority rated orders should be deleted altogether, all fines related articles should also be deleted. We do not believe that fining companies already under financial distress would promote cooperation. AT (Comments): In principle, we reject any punishment of companies in the form of sanctions, especially during a crisis, and advocate the voluntary provision of information by companies. Particularly in the event of a crisis, companies should not be saddled with additional burdens in the form of reporting obligations and the imposition of fines for non-response, as this would ultimately only reduce their competitiveness and their ability to cope with the crisis. LT (Comments): As we propose either a deletion or voluntary

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		nature of article 24 and 27, we believe fines are not proportionate. This especially is relevant having in mind that EU economy is based on SMEs.
	FR (Drafting) Following a consultation of the Member State(s) in which the economic operator concerned is established, the Commission may, by means of a decision, where deemed necessary and proportionate, impose fines:	FR (Comments) The Member States in which the economic operator concerned is established should be given a voice during the evaluation of the necessity and proportionality of the decision to impose such a fine.
1. The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines:	IE (Drafting): 1. — The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines: NL (Drafting): 1. — The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines: PL (Drafting): 1. — The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines: LU (Drafting): 1. — The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines: EE (Drafting):	BE (Comments): Before taking its decision, the Commission should consult the advisory group (or rather steering committee – see previous comment on Art 4, repeated below in Art 32). PT (Comments): The paragraph also states that “ <i>The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines.</i> ” What is the legal basis for such decisions? SK (Comments): We find the imposition of fines to be a heavy burden for economic operators in times of crises. LV (Comments): We would like to seek an explanation from the Commission side whether the enforcement of the Commission decision foresees the possible role

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	Delete LT (Drafting): 1. The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines:	of the Member States and engagement of their authorities in this process? MT (Comments): MT objects to any imposition of fines as it believes that the provision of information and the the following of a priority order should remain voluntary
(a) where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit;	IE (Drafting): (a) — where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit; NL (Drafting): (a) — where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit; PL (Drafting): (a) — where a representative organisation of economic operators or an economic operator,	SI (Comments): Reference to representative organisations in the context of fines is not in line with the explanations provided by the Commission when article 24 was addressed when it was mentioned that they would not bare the burden of proof. It could therefore be concluded that they cannot be liable for fines as they should not even have such aggregate information which would, as we've heard while discussing article 24, not be in line with the anti-trust legislation. Expressions such as "gross negligence" and "incomplete or misleading information" would need to be further defined to bring more legal clarity. IT (Comments): We doubt whether representative organisations should be addressee of mandatory information requests.

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	intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit; SI (Drafting): (a) where an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit; LU (Drafting): (a) — where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit; EE (Drafting): Delete IT (Drafting): (a) where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the	It would be useful to have further details on the definition of "gross negligence". Its scope could be better specified and could be related to the size of the economic operator. Representative organizations may not have information on the production of their members. LV (Comments): Latvia's preferred option is that information requests are provided on voluntary basis, therefore fines for providing incorrect, incomplete or misleading information or fines for failing to provide requested information should be deleted in the proposal. Additionally, fines should not be imposed on representative organisation of economic operators or economic operators themselves if the Commission has invited to provide information on voluntary basis. Thus reference here to the whole Article 24 (as Article 24.1 refers to information requests on voluntary basis) is wrong by default. It also should be taken into account that the economic operators might provide incorrect or incomplete information not on purpose, but out of ignorance or accidentally thus they should have the right to be heard before the imposition of a fine. Additionally, is there any interlinkage between Data Act and SMEI proposal regarding

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	information within the prescribed time limit LV (Drafting): (a) — where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit; LT (Drafting): (a) — where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit;	information requests and proposed fines?
	DK (Drafting): (a) — where a representative organisation of economic operators or an economic operator, intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit;	DK (Comments): Amendments following proposed changes for Article 24.
(b) — where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the	IE (Drafting): (b) — where an economic operator, intentionally or through gross negligence, does	AT (Comments): As we have proposed to delete mandatory requests for information according to Art. 24

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Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order;	not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order; NL (Drafting): (b) — where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order; PL (Drafting): (b) — where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order; LU (Drafting): (b) — where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order; EE (Drafting): Delete AT (Drafting):	(2), point b can be deleted as well.

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	(b) — where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order; LT (Drafting): (b) where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order;	
(c) where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27	IE (Drafting): (c) — where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27 NL (Drafting): (c) — where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27	

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	PL (Drafting): (e) — where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27 LU (Drafting): (e) — where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27 EE (Drafting): Delete LT (Drafting): (e) where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27	
	FR (Drafting) Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall be calculated according to progressive tacks brackets, based on the size of the economic operator concerned.	FR (Comments) Proportionality would penalize more SMEs.

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	not exceed 200 000 EUR.	
2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR.	IE (Drafting): 2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR. NL (Drafting): 2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR. PL (Drafting): 2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR. LU (Drafting): 2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR. EE (Drafting): Delete LV (Drafting): 2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR. LT (Drafting): 2. Fines imposed in the cases referred to in paragraph 1 (a) and (b) shall not exceed 200 000 EUR.	SI (Comments): We believe that the fixed amount cannot be appropriate due to the various factors (proportionality when bigger economic operators are concerned, the effect of the inflations rates and the actual value of the amount over time ...). Even if trying to set the symbolic fines, they can quickly become considerable burdens for micro businesses or SMEs despite taking into account article 28.4 while article 28.4 cannot be taken into account appropriately when bigger economic operators are concerned where this amount can easily result in a minuscule fine to such an extent that there is no deterrence effect. LV (Comments): Please see comment regarding Article 28 paragraph 1 subparagraph (a). During the times of crises many economic operators already struggle with liquidity issues therefore the max amount of fines are disproportionately high and should be reduced, especially for SMEs.

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	FR (Drafting) Fines imposed in the cases referred to in paragraph 1 (c) shall be calculatated according to progressive tacks brackets, based on the size of the economic operator concerned. not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of total turnover in the preceding business year.	FR (Comments) Proportionality would penalize more SMEs than large companies.
3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of total turnover in the preceding business year.	IE (Drafting): 3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of total turnover in the preceding business year. NL (Drafting): 3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of	BE (Comments): BE would like clarification as to which turnover will be taken into account in the calculation of this fine: - Is it the national, European or worldwide turnover? - Is it the turnover of the subsidiary/branch targeted by the priority order or that of the whole group? SK (Comments): The fines seem to be very severe. We consider 1 % daily too high. LV (Comments): Please see the previous comment. It's unclear if the fine will be imposed at 1% of the <u>total worldwide</u> turnover ?

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	total turnover in the preceding business year. PL (Drafting): 3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of total turnover in the preceding business year. LU (Drafting): 3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of total turnover in the preceding business year. EE (Drafting): Delete LT (Drafting): 3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of	

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	total turnover in the preceding business year.	
	FR (Drafting) In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness, and the liquidity concerns that the economic operator might face in a situation of crisis.	FR (Comments) Many economic operators are likely to face liquidity problems in times of crisis
4. In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.	IE (Drafting): 4. In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness. NL (Drafting): 4. In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness. PL (Drafting): 4. In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the	IT (Comments): The size and economic resources of the economic operator concerned should be taken into account when setting the amount of the fine. Companies could face particularly high costs to change supply chains and production lines. Fines could further exacerbate the crisis condition.

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	nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness. LU (Drafting): 4. — In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness. EE (Drafting): Delete IT (Drafting): LT (Drafting): 4. In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.	
5. The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed.	IE (Drafting): 5. — The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed.	SK (Comments): We would prefer one more practical (administrative) instance/procedure for review before proceeding to the court.

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	NL (Drafting): 5. — The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed. PL (Drafting): 5. — The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed. LU (Drafting): 5. — The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed. EE (Drafting): Delete LT (Drafting): 5. — The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed.	

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Article 29 Limitation period for the imposition of fines	FI (Drafting): <u>deleted</u> IE (Drafting): Article 29 Limitation period for the imposition of fines PL (Drafting): Article 29 Limitation period for the imposition of fines LU (Drafting): Article 29 Limitation period for the imposition of fines EE (Drafting): Delete LT (Drafting): Article 29 Limitation period for the imposition of fines	FI (Comments): We propose deletion of articles 27 and 24 and replacing them by increased cooperation and exchange of information between national authorities and companies. It is necessary to ensure the voluntary nature of the measures, which is why articles on fines are not needed. IE (Comments): As we propose to delete article 28, we believe the extension and deactivation of fines are not necessary. NL (Comments): As we propose to delete article 28, we believe the extension and deactivation of fines are not necessary. PL (Comments): We propose to delete this Article as a consequence of our proposal to delete Articles 24, 27 and 28. PT (Comments): As stated before, we question this imposition of fines to economic operators already facing severe constraints in a time of crisis. AT (Comments): We reject any punishment of companies in the form of sanctions, especially during a crisis.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
		Companies should not be burdened with additional reporting obligations and fines for non-response. A crisis should not be the time for sanctions, rather we need to think about how we can give support to companies, so that they are maximally supportive in the crisis as well. LT (Comments): The same comment as in the article 28.
1. The Commission power to impose fines in accordance with Article 30 shall be subject to the following limitation periods:	IE (Drafting): 1. The Commission power to impose fines in accordance with Article 30 shall be subject to the following limitation periods: NL (Drafting): 1. The Commission power to impose fines in accordance with Article 30 shall be subject to the following limitation periods: PL (Drafting): 1. The Commission power to impose fines in accordance with Article 30 shall be subject to the following limitation periods: LU (Drafting): 1. The Commission power to impose fines in accordance with Article 30 shall be subject to the following limitation periods: EE (Drafting):	IT (Comments): We would welcome more information about the limitation period for the imposition of fines. Indeed, this power of the Commission, expressed through a decision, shall be subject to specified limitation periods: two years in the case of infringements of provisions concerning requests of information and three years concerning the obligation to prioritize the production of crisis-relevant goods. A more balanced and shorter time frame could be considered. LV (Comments): Latvia is of view that fines should be imposed only during the emergency mode and 6 months after the emergency mode has been deactivated therefore limitation period for the imposition of fines should be reduced to 6 months.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	Delete LT (Drafting): 1- The Commission power to impose fines in accordance with Article 30 shall be subject to the following limitation periods:	
(a) two years in the case of infringements of provisions concerning requests of information pursuant to Article 24;	IE (Drafting): (a) — two years in the case of infringements of provisions concerning requests of information pursuant to Article 24; NL (Drafting): (a) — two years in the case of infringements of provisions concerning requests of information pursuant to Article 24; PL (Drafting): (a) — two years in the case of infringements of provisions concerning requests of information pursuant to Article 24; LU (Drafting): (a) — two years in the case of infringements of provisions concerning requests of information pursuant to Article 24; EE (Drafting): Delete LV (Drafting): (a) two years six months in the case of infringements of provisions concerning requests	SK (Comments): We might consider unifying the periods in a) and b) for more clarity. LV (Comments): Please see the previous comment. Fines and limitation period should not be imposed if the Commission has invited representative organisations or economic operators to provide information on a voluntary basis.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	of information pursuant to Article 24 (2); LT (Drafting): (a) two years in the case of infringements of provisions concerning requests of information pursuant to Article 24;	
(b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2).	BE (Drafting): (b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 27(2). IE (Drafting): (b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2). NL (Drafting): (b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2). PL (Drafting): (b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2). LU (Drafting):	BE (Comments): typo SI (Comments): The reference to article 26.2 is not correct. SK (Comments): We might consider unifying the periods in a) and b) for more clarity. AT (Comments): Typo. LV (Comments): Please see the previous comment. There seems to be a technical error regarding the reference to Article 26(2), as obligation to prioritise certain orders are not referred in this Article.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	(b) — three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2). EE (Drafting): Delete AT (Drafting): (b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 267(2). LV (Drafting): (b) three years six months in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2) Article 27 (2). LT (Drafting): (b) three years in the case infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2).	
2. The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run	IE (Drafting): 2. — The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
on the day on which the infringement ceases	repeated infringements, time shall begin to run on the day on which the infringement ceases NL (Drafting): 2. — The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run on the day on which the infringement ceases PL (Drafting): 2. — The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run on the day on which the infringement ceases LU (Drafting): 2. — The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run on the day on which the infringement ceases EE (Drafting): Delete LV (Drafting): 2. The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run on the day on which the infringement ceases.	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	LT (Drafting): 2. The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run on the day on which the infringement ceases	
3. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period.	IE (Drafting): 3. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period. NL (Drafting): 3. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period. PL (Drafting): 3. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period. LU (Drafting): 3. Any action taken by the Commission or the competent authorities of the Member States	BE (Comments): BE would like to know what kind of action taken by the Commission or the competent authorities could affect the limitation period. LV (Comments): What actions should be taken from Member States during the limitation period? Should a Member State take action on its own initiative or by the initiative of the Commission?

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period. EE (Drafting): Delete LT (Drafting): 3. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period.	
4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement.	IE (Drafting): 4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement. NL (Drafting): 4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement. PL (Drafting): 4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement.	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	LU (Drafting): 4. — The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement. EE (Drafting): Delete LT (Drafting): 4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement.	
5. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.	IE (Drafting): 5. — Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union. NL (Drafting): 5. — Each interruption shall start the time running afresh. However, the limitation period	LV (Comments): More precise wording would be needed to clearly understand when the limitation period expires.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union. PL (Drafting): 5. — Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union. LU (Drafting): 5. — Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	Commission is the subject of proceedings pending before the Court of Justice of the European Union. EE (Drafting): Delete LT (Drafting): 5. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.	
Article 30 Limitation periods for enforcement of fines	FI (Drafting): <u>deleted</u> IE (Drafting): Article 30 Limitation periods for enforcement of fines PL (Drafting): Article 30 Limitation periods for enforcement of fines LU (Drafting):	FI (Comments): We propose deletion of articles 27 and 24 and replacing them by increased cooperation and exchange of information between national authorities and companies. It is necessary to ensure the voluntary nature of the measures, which is why articles on fines are not needed. IE (Comments): As we propose to delete article 28 and 29, limitation periods for the enforcement of fines

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	Article 30 Limitation periods for enforcement of fines LT (Drafting): Article 30 Limitation periods for enforcement of fines	are not necessary. NL (Comments): As we propose to delete article 28 and 29, limitation periods for the enforcement of fines are not necessary. PL (Comments): We propose to delete this Article as a consequence of our proposal to delete Articles 24, 27 and 28 PT (Comments): As stated before, we question this imposition of fines to economic operators already facing severe constraints in a time of crisis. LT (Comments): The same comments as in the article 28.
1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five years.	IE (Drafting): 1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five years. NL (Drafting): 1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five years. PL (Drafting): 1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be	SK (Comments): 5 years may be too long. LV (Comments): Limitation period should be reduced to three years like it was in the Chips Act Article 30 paragraph 1.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	subject to a limitation period of five years. LU (Drafting): 1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five years. EE (Drafting): Delete LV (Drafting): 1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five three years. LT (Drafting): 1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five years	
2. Time shall begin to run on the day on which the decision becomes final.	IE (Drafting): 2. Time shall begin to run on the day on which the decision becomes final. NL (Drafting): 2. Time shall begin to run on the day on which the decision becomes final. PL (Drafting): 2. Time shall begin to run on the day on which the decision becomes final. LU (Drafting):	LV (Comments): What type of decision the Commission will issue and when it becomes final? Within what time limit the economic operator may appeal the decision taken by the Commission?

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	2. — Time shall begin to run on the day on which the decision becomes final. EE (Drafting): Delete LT (Drafting): 2. — Time shall begin to run on the day on which the decision becomes final.	
3. The limitation period for the enforcement of fines shall be interrupted:	IE (Drafting): 3. — The limitation period for the enforcement of fines shall be interrupted: NL (Drafting): 3. — The limitation period for the enforcement of fines shall be interrupted: PL (Drafting): 3. — The limitation period for the enforcement of fines shall be interrupted: LU (Drafting): 3. — The limitation period for the enforcement of fines shall be interrupted: EE (Drafting): Delete LT (Drafting): 3. — The limitation period for the enforcement of fines shall be interrupted:	SK (Comments): The interruptions may make the enforcement more complicated.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
(a) by notification of a decision varying the original amount of the fine or refusing an application for variation;	IE (Drafting): (a) — by notification of a decision varying the original amount of the fine or refusing an application for variation; NL (Drafting): (a) — by notification of a decision varying the original amount of the fine or refusing an application for variation; PL (Drafting): (a) — by notification of a decision varying the original amount of the fine or refusing an application for variation; LU (Drafting): (a) — by notification of a decision varying the original amount of the fine or refusing an application for variation; EE (Drafting): Delete LT (Drafting): (a) by notification of a decision varying the original amount of the fine or refusing an application for variation;	
(b) by any action of the Commission or of a Member State, acting at the request of the	IE (Drafting): (b) — by any action of the Commission or of a	LV (Comments): What actions should be taken from Member

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
Commission, designed to enforce payment of the fine.	Member State, acting at the request of the Commission, designed to enforce payment of the fine. NL (Drafting): (b) — by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine. PL (Drafting): (b) — by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine. LU (Drafting): (b) — by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine. EE (Drafting): Delete LT (Drafting): (b) — by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine.	States during the limitation period? Should a Member State take action on its own initiative or on the initiative of the Commission?
(4) Each interruption shall start time running	IE (Drafting):	LV (Comments):

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
afresh.	(4) — Each interruption shall start time running afresh. NL (Drafting): (4) — Each interruption shall start time running afresh. PL (Drafting): (4) — Each interruption shall start time running afresh. LU (Drafting): (4) — Each interruption shall start time running afresh. EE (Drafting): Delete LV (Drafting): (4) 4. Each interruption shall start time running afresh. LT (Drafting): (4) Each interruption shall start time running afresh.	Technical error regarding Article 30 paragraph 4.
(5) The limitation period for the enforcement of fines shall be suspended for so long as:	IE (Drafting): (5) — The limitation period for the enforcement of fines shall be suspended for so long as: NL (Drafting): (5) — The limitation period for the	LV (Comments): Technical error regarding Article 30 paragraph 5.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	enforcement of fines shall be suspended for so long as: PL (Drafting): (5) — The limitation period for the enforcement of fines shall be suspended for so long as: LU (Drafting): (5) — The limitation period for the enforcement of fines shall be suspended for so long as: EE (Drafting): Delete LV (Drafting): (5) 5. The limitation period for the enforcement of fines shall be suspended for so long as: LT (Drafting): (5) The limitation period for the enforcement of fines shall be suspended for so long as:	
(a) time to pay is allowed;	IE (Drafting): (a) — time to pay is allowed; NL (Drafting): (a) — time to pay is allowed; PL (Drafting):	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	(a) — time to pay is allowed; LU (Drafting): (a) — time to pay is allowed; EE (Drafting): Delete LT (Drafting): (a) time to pay is allowed;	
	DK (Drafting):	
(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.	IE (Drafting): (b) — enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union. NL (Drafting): (b) — enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union. PL (Drafting): (b) — enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union. LU (Drafting): (b) — enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union. EE (Drafting):	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	Delete LT (Drafting): (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.	
Article 31 Right to be heard for the imposition of fines	FI (Drafting): <u>deleted</u> IE (Drafting): Article 31 Right to be heard for the imposition of fines PL (Drafting): Article 31 Right to be heard for the imposition of fines LU (Drafting): Article 31 Right to be heard for the imposition of fines EE (Drafting): Delete LT (Drafting): Article 31 Right to be heard for the imposition of fines	FI (Comments): We propose deletion of articles 27 and 24 and replacing them by increased cooperation and exchange of information between national authorities and companies. It is necessary to ensure the voluntary nature of the measures, which is why articles on fines are not needed. IE (Comments): As we propose to delete article 28, 29 and 30, we believe the right to be heard for the imposition of fines is not necessary. NL (Comments): As we propose to delete article 28, 29 and 30, we believe the right to be heard for the imposition of fines is not necessary. PL (Comments): We propose to delete this Article as a consequence of our proposal to delete Articles 24, 27 and 28. However, economic operators must be guaranteed the right of defence. PT (Comments):

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
		As stated before, we question this imposition of fines to economic operators already facing severe constraints in a time of crisis. LT (Comments): The same comments as in the article 28.
1. Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on:	IE (Drafting): 1. Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on: NL (Drafting): 1. Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on: PL (Drafting): 1. Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on: LU (Drafting): 1. Before adopting a decision pursuant to Article 28, the Commission shall give the	BE (Comments): As a reminder, BE asks for a definition of “representative organisation” to be added in art.3. SK (Comments): The procedure may be too complicated for operators or their representatives.

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	economic operator or representative organisations of economic operators concerned the opportunity of being heard on: EE (Drafting): Delete LT (Drafting): 1. — Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on:	
	DK (Drafting): 1. Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on:	DK (Comments): Amendments following proposed changes for Article 24.
(a) preliminary findings of the Commission, including any matter to which the Commission has taken objections;	IE (Drafting): (a) — preliminary findings of the Commission, including any matter to which the Commission has taken objections; NL (Drafting): (a) — preliminary findings of the Commission, including any matter to which the Commission has taken objections; PL (Drafting): (a) — preliminary findings of the Commission,	LV (Comments): How the Commission will inform economic operators about the preliminary findings? Will the Commission address a preliminary decision to economic operators informing about the preliminary findings?

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	including any matter to which the Commission has taken objections; LU (Drafting): (a) — preliminary findings of the Commission, including any matter to which the Commission has taken objections; EE (Drafting): Delete LT (Drafting): (a) — preliminary findings of the Commission, including any matter to which the Commission has taken objections;	
(b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.	IE (Drafting): (b) — measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph. NL (Drafting): (b) — measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph. PL (Drafting): (b) — measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph. LU (Drafting): (b) — measures that the Commission may	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	intend to take in view of the preliminary findings pursuant to point (a) of this paragraph. EE (Drafting): Delete LT (Drafting): (b) — measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.	
2. Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days.	BE (Drafting): 2. Economic operators and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days. IE (Drafting): 2. — Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days. NL (Drafting): 2. — Undertakings and representative	BE (Comments): To ensure consistency of this paragraph with the whole text of the proposal, BE suggests replacing the term "undertakings" by "economic operators" SK (Comments): We suggest to raise the minimum period (e.g. to 30 days).

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days. PL (Drafting): 2. — Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days. LU (Drafting): 2. — Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days. EE (Drafting): Delete LT (Drafting): 2. — Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days.	
	DK (Drafting): 2. Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days.	DK (Comments): Amendments following proposed changes for Article 24.
3. The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment.	IE (Drafting): 3. The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment. NL (Drafting): 3. The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment. PL (Drafting): 3. The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	comment. LU (Drafting): 3. — The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment. EE (Drafting): Delete LT (Drafting): 3. — The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment.	
	DK (Drafting): 3. The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment.	DK (Comments): Amendments following proposed changes for Article 24.
4. The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled to have access to the Commission's file under	IE (Drafting): 4. — The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.	to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement. NL (Drafting): 4. — The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member	

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	States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement. PL (Drafting): 4. — The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement. LU (Drafting): 4. — The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled	

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	to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement. EE (Drafting): Delete LT (Drafting): 4. — The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access	

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	shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.	
	DK (Drafting): 4. The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.	DK (Comments): Amendments following proposed changes for Article 24.
Chapter II Other measures for ensuring availability of crisis-relevant goods and services	IE (Drafting): Chapter II Other measures for ensuring availability of crisis-relevant goods and services	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
<i>Article 32</i> <i>Coordinated distribution of strategic reserves</i>	IE (Drafting): <i>Article 32</i> <i>Coordinated distribution of strategic reserves</i> PL (Drafting): <i>Article 32</i> <i>Coordinated distribution of strategic reserves</i> LU (Drafting): <i>Article 32</i> <i>Coordinated distribution of strategic reserves</i> EE (Drafting): <i>Delete</i> LV (Drafting): <i>Article 32</i> <i>Coordinated distribution of strategic reserves</i> LT (Drafting): <i>Article 32</i> <i>Coordinated distribution of strategic reserves</i>	IE (Comments): IE has previously suggested that Article 12 be deleted as decisions on strategic reserves should be made by Member States. PL (Comments): The SMEI proposal goes far beyond the general objective and introduces solutions that violate the principles of subsidiarity and proportionality regarding, inter alia, coordinated distribution of strategic reserves. The provisions of the SMEI Regulation on coordinated distribution of strategic reserves interfere with national solutions and rules in the area of national security with regard to principle of building up, distribution and financing. The distribution of strategic reserves directly affects the security and public order of the Member States, i.e. areas outside the competence of the EU. Member States are entitled to freedom as regards organisation of their strategic reserves. We propose to delete Article 32 as a consequence of our proposal to delete Article 12. PT (Comments): As already referred in our comments on article

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
		12 on Strategic Reserves, our understanding is that it needs to be thoroughly clarified before proceeding to its consideration. Adding to the questions raised in our previous comments on article 12, it is not clear how these strategic reserves will be distributed among Member States. SI (Comments): We have to express reservation regarding this article as it is linked to the notion of strategic reserves where we haven't received enough answers to numerous very concrete questions. LU (Comments): <i>We are unsure about the normative value of this provision. It is also unclear exactly how and to whom any strategic reserves should be distributed. This creates legal and concrete uncertainty in its application and should therefore be deleted.</i> LV (Comments): We do not support Article 12 and the obligation to build strategic reserves, because no information has been provided on such important aspects as: a) where the Member States should stockpile goods that are identified as strategic and crisis-relevant b) what should be done with stockpiled goods when the emergency mode is not activated or is deactivated? and c) by which criteria the Commission will set

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		individual targets for quantities of goods that the Member States should maintain? Considering that certain goods are stockpiled through other crisis mechanisms such as UCPM and RescEU, and there are too many uncertainties and questions regarding strategic reserves, Latvia is of view that obligation to build strategic reserves of goods identified as crisis-relevant should rather be part of existing horizontal crisis mechanism, either UCPM or IPCR. Latvia has concerns regarding distribution of strategic reserves as (1) it could create a situation where Member States with less stocks of crisis relevant goods will always rely on Member States which have higher stocks of crisis relevant goods, (2) if crisis situation is regional and does not effect all Member States, distribution of strategic reserves could create an artificial crisis situation in Member States which are not directly effected by particular crisis situation, and (3) it is unclear whether this provision foresees whether Member States should distribute also their <u>national</u> strategic reserves, therefore Latvia does not support Article 32. LT (Comments): As we have proposed to delete Art 12, Art 32 should be deleted as well.

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		In general, we support the idea that during the crisis MSs should work closely and genuinely follow a principle of solidarity; the coordinating role of the COM is also of paramount importance. In this regard, we could support new paragraph 3a of Article 4 Advisory Group proposed by other MSs: 3a. The advisory group and the Commission continuously monitor the functioning of the market, examine possible gaps and may propose recommendations for stockpiling.
	FR (Drafting) Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may provide non-binding recommendations to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	Market emergency.	
Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency.	BE (Drafting): Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the steering committee, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency. FI (Drafting): <u>deleted</u> Article 4 Advisory Group <u>3a. (new) The advisory group and the Commission continuously monitor the functioning of the market, examine possible gaps and may propose recommendations for stockpiling.</u> IE (Drafting): Where the strategic reserves constituted by the	BE (Comments): This article requires some clarification: - Will the recommendation to MS to allocate in a targeted way apply to the territory of the MS itself and/or to the whole territory of the EU? - What is meant by "in a targeted way"? As reminder (see previous comment on article 4), for BE, it is important that the advisory group is able to work as an effective steering body for cooperation between the Commission and the Member States, to better reflect the fact that steering is done under the leadership of COM, but in close coordination with the MS. FI (Comments): The advisory group and the Commission should monitor the functioning of the market during normal times too. As stockpiling and management of reserves are the responsibility of the Member States, Article 32 should be deleted. Instead, the advisory group and the Commission may recommend Member States to stockpile certain goods based on latest observations. Note: It is unclear what “insufficient” and “a targeted way” mean in practice. NL (Comments): We believe that, when recommending to divide

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	Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency. NL (Drafting): Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having due regard to the need not to further aggravate disruptions on the Single Market, <u>including the free movement of goods, persons and services</u>, including in geographical areas particularly affected by such disruptions and in accordance with the	the strategic reserves, the Commission should have due regard, not only for the need not to further aggravate disruptions on the Single Market, but especially for the need to not further aggravate disruptions of the free movement of goods, persons and services. EE (Comments): Firstly, we proposed the deletion of Article 12 on compulsory strategic reserves. Secondly, we believe that the distribution of reserves should happen on the basis of solidarity and free will. The cooperation is in the interest of the Member States as we operate on a common market. However, each and every Member State is in the best situation to assess how much they are able to share with others at the time of crisis based on the most up-to-date information. SK (Comments): We have some concerns about this procedure related to our concerns raised in relation to Article 12. We are also of the opinion that this procedure could have a negative impact on some MSs. We have question about the application of the distribution mechanism in practice. AT (Comments): A mandatory distribution of MS's strategic reserves in a Single Market emergency where overall supply of certain goods is insufficient

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency. PL (Drafting): Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency. LU (Drafting): Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where	may be a critical matter. - Should MS, whose « strategic reserves » are thus being distributed in the name of European solidarity not at least be guaranteed a fair and reasonable price ? - How is free-riding prevented, i.e. some Member States not adequately ensuring their own strategic reserves (which may be costly) and then profiting from other MS's strategic reserves when this solidarity clause kicks in? AT believes this implementing power to ask for a distribution of strategic reserves, if any, should be conferred to Council or else made with a positive qualified majority. LV (Comments): Please see the previous comment. MT (Comments): MT had proposed the deletion of Art 12. MT therefore also proposes deletion of this article on coordinated distribution.

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	possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency. EE (Drafting): Delete LV (Drafting): Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency. LT (Drafting): Where the strategic reserves constituted by the	

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	Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency.	
	DK (Drafting): Where the strategic reserves constituted by the Member States in accordance with Article 12 prove to be insufficient to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the advisory group, may recommend to the Member States to distribute the strategic reserves in a targeted way, where possible, having due regard to the need not to further aggravate disruptions on the Single Market and the free movement of goods, persons and services, including in geographical areas particularly affected by such disruptions and in accordance with the principles of	DK (Comments): While we have a general reservation on strategic reserves in article 12, we find it very important that any coordinated distribution of such reserves is based on voluntary contributions by Member States. In this regard, could the Commission please confirm that any Commission recommendations pursuant to article 32 are entirely voluntary to follow? Can the Commission disregard the opinion of the advisory group? What recourse does the advisory group have in the event that its opinion has been disregarded?

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	necessity, proportionality and solidarity and establishing the most efficient use of reserves with a view to ending the Single Market emergency.	
Article 33 Measures to ensure the availability and supply of crisis-relevant goods and services	IE (Drafting): Article 33 Measures to ensure the availability and supply of crisis-relevant goods and services PL (Drafting): Article 33 Measures to ensure the availability and supply of crisis-relevant goods and services LU (Drafting): Article 33 Measures to ensure the availability and supply of crisis-relevant goods and services EE (Drafting): Delete	BE (Comments): BE is concerned about the interference of these measures with the contractual obligations and responsibilities of companies. IE (Comments): The measures foreseen in this article are very similar to what is foreseen in article 12, 27 and 32. As we believe this article is not of added value, we propose to delete this article. If the Article is not deleted, the involvement of the Advisory Groip should be included in any decisions made. NL (Comments): The measures foreseen in this article are very similar to what is foreseen in article 12, 27 and 32. As we believe this article is not of added value, we propose to delete this article. PL (Comments): Any decision on measures to ensure the availability and supply of crisis-relevant goods should remain within the competence of Member States, and not the Commission. These measures give the EC too far-reaching prerogatives in managing economic processes.

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		We are in favour of strengthening the role of the advisory group and a greater role of the Member States and Council in the decision-making process on key crisis management issues. We believe that problems with the availability of products or services can be more effectively prevented by cooperating with entrepreneurs, and not by taking control over them. We propose to delete this Article as a consequence of our proposal to delete Articles 24 and 27. PT (Comments): What will be the impact of these measures on businesses contractual obligations and liabilities before partners? What costs (economic, financial) can incur here? What will be the role of the Advisory Group here? SI (Comments): Reference to the Advisory Group's role is needed in this context as well. LU (Comments): <i>We consider this measure to be particularly intrusive and without clarity as to what the Commission may actually recommend. A recommendation also carries a legal value. The formulation is open ended as it may include other types of measures and as regards its scope (given that the scope of SMEI is undefined).</i>

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		DK (Comments): We generally find that any recommendations of the Commission on measures to be taken by Member States should be carefully considered, evidence-based and proportionate and should as well be entirely voluntary for Member States to follow.
1. The Commission may, when it considers that there is a risk of a shortage of crisis-relevant goods, recommend that Member States implement specific measures to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible.	FI (Drafting): 1. The Commission may, when it considers that there is a risk of a shortage of crisis-relevant goods, <u>and taking into consideration the opinion provided by the advisory group,</u> recommend that Member States implement specific measures to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible. IE (Drafting): 1. The Commission may, when it considers that there is a risk of a shortage of crisis-relevant goods, recommend that Member States implement specific measures to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible.	BE (Comments): BE considers that the advisory group (or rather steering committee – see previous comment on Art.4 + above comment on Art 32) should be consulted before the Commission issues a recommendation. FI (Comments): The advisory group should be part of the process. It is important to ensure that the recommendations remain recommendations in the further legislative negotiations. Member States' stockpiling measures should remain in the competence of the Member States in the future too. EE (Comments): We do not see an added value of this article. We have not received an answer to our question on what kind of measures can the Commission propose or examples of what they would have. We also do not know how and on which basis these recommendations are made. Adapting

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	NL (Drafting): 1. — The Commission may, when it considers that there is a risk of a shortage of crisis-relevant goods, recommend that Member States implement specific measures to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible. LU (Drafting): 1. — The Commission may, when it considers that there is a risk of a shortage of crisis-relevant goods, recommend that Member States implement specific measures to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible. EE (Drafting): Delete	production to supply changed or growing demand is already in the interests of producers so we do not see a need for outside recommendations. IT (Comments): The potential costs of production changes and contractual damages to buyers or suppliers could be burdensome. Therefore, the intervention on economic operators should be limited. The Commission should consider an ad hoc financial instrument to facilitate the implementation of this article. SK (Comments): The measures can have negative impact on the domestic markets of some MSs, so it is necessary to double check their details before adopting them. We suggest to emphasize the principles of necessity, proportionality and solidarity. What is the source of evidence for the COM's recommendation? The application of this article on the Single Market is not clear. LV (Comments): Latvia is of view that economic operator should have the rights to refer to the Commission with a request to make recommendations to the Member States, if there is a risk of a shortage of

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
		crisis-relevant goods. LT (Comments): Preliminary we are flexible regarding this article if it remains as a recommendation for MS to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services. But in this regard, we ask the clarification in the recitals of what follow-up measures COM would take if a MS do not follow recommendations. We would ask to double check whether services aspect should not be included as well. In addition, the role of AG should be incorporated in this Article.
	DK (Drafting): 1. The Commission may, when it considers that there is a risk of a shortage of crisis-relevant goods, <u>and after consultation of the advisory group,</u> recommend that Member States implement specific measures to ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible.	DK (Comments): The advisory group should be consulted before the Commission makes its assessments and recommendations. We fundamentally question the feasibility and appropriateness of some of the potential measures mentioned in the article, such as “measures to ensure the efficient re-organisation of supply chains”. ES (Comments): EU legislative initiatives are leading towards a better product safety network for products and better traceability (digital product passport).

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		Traceability is actually very much related to safety. It is necessary to highlight that even those measures to ensure availability of specific products shall respect product safety and also traceability requirements in order to have the necessary information in case of serious risks or accidents. ES would like to add the following wording to the text: <i>These measures shall be applied safeguarding any safety and traceability requirements according to EU applicable Law.</i>
2. In particular, the measures referred to in paragraph 1 may include measures:	IE (Drafting): 2. In particular, the measures referred to in paragraph 1 may include measures: NL (Drafting): 2. In particular, the measures referred to in paragraph 1 may include measures: LU (Drafting): 2. In particular, the measures referred to in paragraph 1 may include measures: EE (Drafting): Delete	BE (Comments): BE would like to receive concrete examples of the nature of these measures.
(a) facilitating the expansion or repurposing of existing or the establishment of new production capacities for crisis-relevant goods;	IE (Drafting): (a) facilitating the expansion or repurposing of existing or the establishment of new production capacities for crisis-relevant goods;	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
	NL (Drafting): (a) — facilitating the expansion or repurposing of existing or the establishment of new production capacities for crisis relevant goods; LU (Drafting): (a) — facilitating the expansion or repurposing of existing or the establishment of new production capacities for crisis relevant goods; EE (Drafting): Delete	
(b) facilitating the expansion of existing or the establishment of new capacities related to service activities;	IE (Drafting): (b) — facilitating the expansion of existing or the establishment of new capacities related to service activities; NL (Drafting): (b) — facilitating the expansion of existing or the establishment of new capacities related to service activities; LU (Drafting): (b) — facilitating the expansion of existing or the establishment of new capacities related to service activities; EE (Drafting): Delete	

Commission proposal	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Drafting Suggestions	AT BE DK EE ES FI FR IE IT LT LV MT NL PL PT SI SK Comments
(c) aiming at accelerating permitting of crisis-relevant goods.	BE (Drafting): (c) aiming at accelerating permitting of crisis-relevant goods and services. IE (Drafting): (c) — aiming at accelerating permitting of crisis-relevant goods. NL (Drafting): (c) — aiming at accelerating permitting of crisis-relevant goods. LU (Drafting): (c) — aiming at accelerating permitting of crisis-relevant goods. EE (Drafting): Delete	BE (Comments): Some services require prior authorisation / permitting.
		DK (Comments): Can the Commission elaborate on whether accelerating permitting of crisis-relevant goods, also includes accelerating permitting of transport services, who delivers the crisis-relevant good?
	End	End