

## Eurochambres reply to the public consultation on a Single Market Emergency Instrument

### 1. General observations about the COVID crisis

The Covid crisis hit European citizens and businesses harshly, and created a tough economic environment to operate in. Most of all the integrity of the Single Market came under heavy pressure, with national governments pushing through unilaterally-decided measures restricting access to their countries. This added to the economic harm of the pandemic as such, as many of these restrictive measures were arguably neither proportionate or necessary to reach public health objectives.

A number of initiatives were taken in order to mitigate the effects of the crisis. In particular, Eurochambres early on supported the guidelines on internal border management measures in the EU as well as the subsequent Communication on the implementation of the Green Lanes<sup>1</sup>. We also supported the Commission proposal for a Digital Green Certificate, which was a necessary and efficient instrument to allow the free movement of people again within the borders of the EU. The Commission proved that the collective interests of the Europeans were best served when a central authority took upon itself the coordination of reactive measures.

Despite the swift actions, businesses throughout the past two years sustained important impediments in the movement of goods, services and workers within the Single Market. Value chains were disrupted, investment decisions were postponed and our interdependencies have never been laid bare more than now.

As a consequence of the pandemic and the restrictive measures that accompanied it, the economy tanked 6,3%<sup>2</sup> in 2020 and growth remains sluggish until today.

In this context Eurochambres welcomes the European Commission's consultation on a Single Market Emergency Instrument, as recent experience shows that the EU has to be better equipped itself against crises and therefore needs an open debate with stakeholders on the creation of an effective toolbox, which can be activated when warranted.

### 2. On the notion of crisis

Few will doubt that the world has recently been confronted with a crisis situation. Few will therefore doubt that the pandemic required swift and decisive action on the part of the European executive. However, crises differ greatly in timespan, nature and (economic) consequences. Despite these differences, they all can put the integrity of the Single Market under pressure. We therefore support the Commission's initiative to put in place an instrument that preserves the integrity of the Single Market in crisis times.

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<sup>1</sup> Eurochambres position paper, [Maintaining the Single Market – Re-affirming the free movement of goods, services and workers in the Single Market during the COVID-19 outbreak](#)

<sup>2</sup> [swd-annual-single-market-report-2021\\_en.pdf \(europa.eu\)](#)

Any new exceptional legal framework, should of course only be applicable in times of crisis. Circumstances need to be exceptional in order to use exceptional measures. For the framework to be applicable, it should be clear that the crisis at hand substantially affects the functioning of the internal market. In parallel, the triggering of any new mechanism should be subject to the fulfillment of defined number of objective criteria. Furthermore, the exceptional legal framework should by definition be limited in time and not last longer than the crisis itself. These strict conditions under which the exceptional regime will function, should ensure legal certainty and stability to the business environment.

More generally, any new framework should respect the principles of subsidiarity and proportionality which govern the exercise of the EU's competences.

### 3. Crisis response measures

#### 3.1. Enhanced notification mechanism

As set out above, measures contributing to keeping the integrity of the Single Market will serve businesses and ultimately, the normal functioning of our societies, best during a crisis. The Commission already has tools at its disposal to act against countries that violate Single Market freedoms: infringement proceedings. The Commission could have used such proceedings against countries wrongly invoking public health reasons to restrict free movement. Unfortunately, resorting to this instrument seems to be difficult for different reasons. This is a flaw in the system that needs to be resolved.

The Commission already has a very effective set of tools at its disposal, namely the TRIS<sup>3</sup> notification procedure, which should also be increasingly used in times of crisis with a view to tackle illegitimate national measures adequately. The notification rules also provide for an urgency procedure, which should enable the immediate adoption of a national draft under certain conditions. When measures are taken to protect public health or public order in a crisis situation, Member States are obliged to notify their measures under the urgency procedure, which may then be rejected or approved by the Commission.

#### 3.2. Sharing of information

One of the main issues companies have confronted with, was a lack of timely and reliable information about measures taken at the national level. This concerns both information about restrictions to free movement and measures to preserve public health which varied greatly from country to country.

The [Re-open](#) platform in this respect served its purpose relatively well. Eurochambres believes that the platform could be used as a blueprint for future crises, but it should be ensured that the information available on this type of platforms would be more standardized so that companies can find the same type of information for the different member states. Member States should therefore be obliged to share the information about national measures through a standardized template. Ideally, the information should also be available in all official EU languages.

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<sup>3</sup> [TRIS - European Commission \(europa.eu\)](#)

In order to allow companies to be as well informed as possible, the emergency platform should allow for the companies to subscribe to alert mechanisms, which would be tailor-made to the type of information that is relevant to a specific business.

Finally, such platforms can thus be further elaborated to regroup information with regards to other types of crises (for example to provide clarity on sanctions that are applicable in the context of the ongoing military conflict in Ukraine).

### 3.3. Free movement of workers

In border regions, the continuity of economic activity was put under severe pressure as they heavily rely on cross-border workers. This was particularly the case for Luxembourg where 46%<sup>4</sup> of employees are cross-border workers. We argue that more specific measures should be taken to ensure and facilitate mobility for cross-border workers during periods of crises, such as the harmonisation of certificates for cross border workers which would facilitate their mutual recognition between Member States and ultimately ensure mobility of cross-border workers during crises.

When mobility of cross border workers cannot be possible such as in case of lockdown, the continuity of the activity can be ensured by homeworking. In this case, Member states can be encouraged to facilitate the legal framework for homeworking such as to conclude bilateral agreements to derogate from the EU social security regulation and tax rules.

### 3.4. Public procurement

We are in favour for the European Commission to issue guidance documents such as the [one](#) on public procurement framework in the emergency situation that was published during the COVID pandemic. Similar documents would be welcomed in the case of the emergence of another type of crisis, since they provide clarity with regards to the applicable European legislative framework.

### 3.5. Speedier procedures for State-Aide Temporary framework

During the COVID pandemic, the European Commission provided for more flexibility in state aid rules through the adoption of a “State aid Temporary Framework”. More recently, a Temporary Crisis Framework to enable Member States to use the flexibility foreseen under State aid rules to support the economy in the context of Russia's invasion of Ukraine, was adopted.

These initiatives are welcomed by the Chambers as it brings some much needed relief to companies that are struggling with exceptional circumstances. While these were timely, we would be in favour of including certain provisions in an upcoming « Single Market Emergency Act » which would provide for a simplified, more flexible, and speedier procedure for both a) proposing a temporary state aid framework and introducing amendments to it and b) approving a national aid scheme under such a framework. This procedure should however not compromise the integrity of the internal market and ensure a level playing field for all companies.

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<sup>4</sup> [Statistiques.public.lu Portal](https://statistiques.public.lu)

### 3.6. Measures of last resort

The experience of the covid 19 health crisis has shown that companies (which had the means to do so) were capable of self-organising to increase their production capacity or reorient their production to meet the needs of essential products (e.g., production of hydroalcoholic gels and masks, production of basic food products, etc.). Therefore, Eurochambres believes that recommendations to companies to ramp up production capacity would be sufficient and should in no way be an obligation.

Companies can be encouraged/incentivized by Member States to make the necessary investments or to reorganise their productive capacity. Member States can be also encouraged to introduce a legal framework that is favourable to this (e.g., derogation from the rules on working hours, overtime free of tax and social charges, etc.). Therefore, recommendations to Member States in this regard could be relevant.

Speeding up permitting procedures in times of crisis may be an appropriate measure provided that it does not compromise the requirements of quality and impartiality.

## 4. Crisis preparedness measures

### 4.1. Digital tools for crisis planning and management

An integrated and automated digital tool for companies and Member States could be key in the preparation for a vast range of future crises.

This type of a digital tool could permit both the collection and dissemination of various type of information between companies (such as information on existing stock of goods). Such a tool should however be interoperable with existing digital tools of companies and its integration should by no means represent any supplementary financial expense for a company.

With regards to the type of information that should be disseminated via such a digital tool, it would perhaps be plausible for companies to be able to personalise the alerts and information received, based on their characteristics, and needs. An artificial intelligence system could, using algorithms, then “flag” and send notifications that concern, for example, only the field of activity of a specific company.

It is equally important to think about how companies can introduce data into such systems and what type of data (quality, relevance) should be introduced. With regards to the question on whether such information should be introduced on a mandatory or voluntary basis, attention should be drawn to the fact that an obligation to provide such information could, on one hand, create an important administrative burden on companies and, on the other hand, require extra resources. This could be particularly challenging for companies that are in the process of economic recovery, especially in light of the current situation (COVID-19 pandemic, crisis related to ongoing military conflict in Ukraine).

In any event, an eventual mandatory obligation for information sharing between companies should by no means imply sharing of strategic commercial data, which is prohibited under EU competition law (and notably the [future legal framework on EU](#)

[competition rules on horizontal agreements](#)). Such an information sharing procedure should also take into consideration the provisions of the General Data Protection Regulation (GDPR).

#### **4.2. Voluntary responses to information requests**

Due to the type of information that would be delivered to the Commission, it should be ensured that the systems used are waterproof in the strict sense. Under its competition policy, the Commission already has experience in this, however for the sake of trust the Commission should work out in its proposal convincing arguments how the system could fulfill the most stringent safety requirements. Barring this, companies could not be blamed not to collaborate. Information should also be disclosed on a voluntary basis.

#### **4.3. Stockpiling measures**

Stockpiling measures should be left to the discretion of the Member States. At the same time the Commission could have a coordination role for certain essential goods and keep records of the stockpiles of the different Member States and share that information among them.

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