

The Crisis of the Single Market. EU Legislation for the Response to Emergencies and Crisis on the European Market

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Abstract

A well-functioning and resilient single market remains a fundamental resource for the European Union economy to create and distribute wealth to its citizens. The facts demonstrate that in recent years the crisis and the problems of many countries have interrupted the normal functioning of the common market, with inevitable consequences on the social and economic cohesion of the European Union. The supply challenges that have occurred over the years in several critical sectors, including, in particular, the healthcare sector, have drawn the attention of the European institutions to the importance of strengthening the sustainability of the common market and industrial ecosystems by addressing, in particular, the weaknesses of the sectors in a strategic way and mitigating disruptions (even preventively) in a more efficient and coordinated way. During the pandemic crisis, unilateral measures adopted by Member States and the lack of transparency have damaged the fundamental freedoms of the common market, with significant and already evident economic and social consequences. This situation represented the "challenge" that has so far put the European Union system in the greatest difficulty in recent history, which in order to deal with this crisis due to the spread of covid 19, member states have intervened autonomously, adopting non-homogeneous measures that have been imposed and implemented at the national level, including border closures. After this phase of uncertainty, states began to find common solutions and promote common policies with soft law instruments, and as such, on the one hand, fast, flexible and easy to use but with more important legitimacy deficits, which have been approved by deviating from the legislative procedure foreseen by the treaties and by the absence of a judge.

Keywords: European Union, SMEI, European Commission, IPCR, ERCC, European Convention

Introduction

The common policies and soft law instruments were instruments of a predominantly indicative nature which were soon followed by a further and substantial set of non-binding acts adopted in the various policies of the Union (M. Dawson, F. De Witte, 2013).

As regards, specifically, the safeguarding of the single market - considered by the Union itself to be its most precious resource, on the one hand, the legal instruments for governing the crisis already existing in the panorama of the European Union were used, as well as the Protection Union Civilian. The Union institutions have made use of legal instruments such as the technical-scientific instructions of the Community Agencies), the recommendations of the Council and the instructions of the Commission, as well as having approved numerous legislative initiatives for financial assistance, for market recovery and for the European Union's socio-economic changes: the European Union as a whole has started to recover despite the depth of the impact of the pandemic, the ongoing effects of climate change and resulting natural disasters, as well as global economic and geopolitical instabilities , The European Union is called upon to better prepare for future crises that are already almost certain, which could further endanger the single market for many years.

To achieve the objectives of increasing the true elasticity of the unique - that is, to help understand what is happening, to try to democratize with equal skills and to try to challenge with, the European Commission on 19 September 2022 published the proposal of a package of binding legislative instruments, the so-called "Single Institution for the market emergency" (hereinafter SMEI), which aims to deal with rapid and effective action against crises, affirming the correctness of the functioning and the truth of the fears, to the benefit of the people and businesses of the European Union.

After identifying the existing vertical and horizontal tools in the EU to respond to emergencies (which would be integrated if the project came into force), this contribution seeks to examine the SMEI as a whole - and for this reason. For example, there is no objectivity in the reasons and in the proposal, both due to the compatibility of the principle of proportionality - and by focusing on the regulatory instruments of individuals, as well as on the new and special notion of "strategic relevance" read in the ritual. of the concept of "autonomous strategist", you will be able to fool someone who has taken on a horizontal extension in the definition of Union policies. Analyze your color and analyze your color before the first time.

Existing tools in EU emergency response legislation

For the governance of crisis situations (the so-called horizontal instruments) the European Union has various legal instruments that contain provisions of a general nature. Recently, regulatory instruments have been added to them, proposals from the European Commission still in the approval phase, containing more targeted

measures and some of a transversal nature, others linked to specific sectors, including the internal market itself (the so-called vertical instruments.) (*The External Dimension of the EU Disaster Response* F. Casolari 2016)

Before the Treaty of Lisbon, the civil protection sector - despite being included among the objectives of the Community by the Maastricht Treaty (art. 3, letter t), TEC) - was not equipped with relevant material rules aimed at defining its scope and the specific conditions for the exercise of this competence. (Tizzano , *Law manual of the European Union, Turin, 2020*). However, a complete forecast was dictated starting from 2007 with the introduction of Article 196 TFEU, through which today the Union encourages cooperation between Member States to strengthen the effectiveness of prevention and protection systems against natural disasters or caused by man.(This is a parallel competence, as provided for in article 6, letter. f), TFBE, which aims exclusively to encourage, support and integrate the action of the Member States, without being able to replace the competences of the latter and with the usual exception of any legislative harmonization initiative.)

Referring to the studies for a more in-depth and specialized examination of this provision, (M. C. Baruffi , *Short commentary on the Treaties of the Union european, 2014*) here it is important to underline how this primary rule acts as a legal basis for various legislative instruments, including the so-called. "Union Civil Protection Mechanism". The latter - in relation to which we limit ourselves to highlighting its characteristic features - established by Decision 1313/2013/EU amended several times, most recently in 2021,(Decision no. 1313/2013/EU of the European Parliament and of the Council, of 17 December 2013, on the Union Civil Protection Mechanism, in OJEU L 347, of 20 December 2013, p. 924 ss., lastly amended with Regulation 2021/836/EU, of 20 May 2021, in OJEU L 185, of 26 May 2021) was created with the main objective of improving the effectiveness of prevention, preparation and response to disasters, natural or man-made, inside and outside the Union: while the primary responsibility for disaster prevention and response lies with the Member States, ensuring the implementation of solidarity between Member States in accordance with of Article 3 (3) of the TEU. The mechanism ensures Union protection not only for people, but also for the environment and property, including cultural heritage, in relation to any type of natural and/or man-made disaster, including environmental disasters, l marine pollution and serious health emergencies occurring within or outside the territory of the Member States¹.

For the purposes indicated, this mechanism makes use of a central structure active 24 hours a day, 7 days a week, the Emergency Response Coordination Center (hereinafter "ERCC"), managed by the European Commission. The ERCC is responsible for real-time coordination, monitoring and emergency assistance, working closely with national civil protection authorities and relevant Union bodies to promote a cross-sectoral approach to disaster management. The Member States

¹ See art. 1, paragraph 2, of decision no. 1313/2013/EU, cit.

involved commit the resources to be made available, while the ERCC has the task of directing the aid interventions and defining the directives and specifying the tasks entrusted to the modules or other response means. Based on lessons learned over time, it has been found that voluntary offers of mutual assistance, coordinated and facilitated by the civil protection mechanism, have not always guaranteed the availability of sufficient resources to satisfactorily respond to the primary needs of people affected by disasters. (F. Rolando , *Health protection in European Union law and the EU's responseto the Covid-19 emergency, in The Covid-19 health emergency and European Union law. The crisis, the cure, the prospects*). For this reason, first in 2019 with the creation of additional resources, and then in 2021 with the modification of the trade union mechanism, the European Union tried to make up for the shortcomings of the system, today even more visible due to the pandemic crisis, natural disasters during which it is estimated that the mechanism was activated 216 times.

In order to improve disaster preparedness and response capacity at Union level, the Regulation also expanded the competences of the ERCC already foreseen in Article 7. Precisely to address a wide range of emergencies within and outside outside the Union, the Centre's operations, analytical, monitoring and information management capabilities and communication capabilities between the competent authorities have been mainly strengthened. Finally, to address the lack of transport and logistics resources – identified as a fundamental obstacle to the ability of Member States to provide or receive assistance – Regulation (EU) 2021/836 sets the objective of ensuring full financing, with funds which will be charged to the Union budget, in all cases of large-scale disasters¹. These changes aim to make them more supportive, but above all more flexible, with respect to crises, the extent of which is difficult to fully identify in advance.

These changes aim to make the mechanism more supportive, but above all more flexible, with respect to crises, the extent of which is difficult to fully identify in advance. However, the role of the ERCC does not end in the civil protection sector. This center acts, in fact, as a central point of contact at Union level with the competent authorities of the Member States also in relation to another horizontal crisis response instrument, namely the so-called "Integrated Political Crisis Response Mechanism". (hereinafter "IPCR"). These are integrated mechanisms aimed at enabling timely coordination and response, including at political level, by the Union to crises that have a broad political impact or importance, both internal and external to the territory of the Member States. The IPCR, in fact, provides the Council with the tools and flexibility necessary to decide on the management of the Union's response, including rapid consultations and possible proposals for actions. The political control and strategic direction of all phases of the IPCR process are placed under the guidance of the

¹ See recital 32 of Regulation (EU) 2021/836, cit

Presidency of the Council, taking full account of the powers of the Commission. The IPCR also aims to monitor how the solidarity clause is implemented.

To these two general horizontal emergency management mechanisms, another horizontal instrument was added in 2020, created specifically to achieve better application of market rules in the event of a crisis: the so-called Task Force for the implementation of the single market (hereinafter “SMET”). Made up of Member States and the Commission, the Task Force has the task of holding periodic meetings to assess the state of compatibility of national legislation with the rules of the single market, to prioritize the most urgent obstacles, to address cases of “over-regulation” unjustified, to discuss horizontal implementation issues and follow up on the implementation of the action plan approved in March 2020 under the European Industrial Strategy.

SMET also acts as a liaison between the institutions, regularly briefing the Competition Council and the European Parliament's Committee on Internal Market and Consumer Protection. During the pandemic, SMET played an active role in addressing and counteracting the emergence of obstacles to normal operations of the single market, (in particular, preliminary qualification checks for the provision of temporary services. The above-mentioned crisis response mechanisms are complemented by other more targeted “vertical” measures, i.e. focusing on specific aspects of the common market, such as the free movement of goods or common export rules.

One of these is Regulation (EC) no. 2679/98 (known as the “Strawberry Regulation” because it originates from a dispute between Spain and France over these fruits) ¹ which establishes a response mechanism to address obstacles to the free movement of goods attributable to the behavior of a Member State, whether positive or attractive, capable of causing serious disruption to the free movement of goods or serious harm to the private individuals concerned, and which therefore require immediate intervention.

SMEI innovative package proposal

The European Commission has recently proposed the innovative PMII package, a package which is based on the assumption that the effect of a crisis in the single market can be twofold: on the one hand, it can lead to obstacles to free movement within the market from only, interrupting its normal functioning; on the other hand, the crisis could aggravate any shortages of related goods and services in individual Member States. The legislative instruments that constitute the initiative should be able to prevent both types of consequences² through the adoption of a regulation

¹ Regulation (EC) no. 2679/98 of the Council of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods between Member States, OJ L 337 of 12.12.1998, p. 8

² See, recital 6 of the proposal for a regulation of the European Parliament and of the Council establishing an emergency single market instrument, cit.

aimed at creating a global response architecture to the crisis, taking into account the different levels of impact on the single market and a regulation and a directive aimed at modifying the harmonized standards established in some existing sectoral frameworks in the European legal system. In this sense, the proposal of this package aims to be a clear attempt by the EU to overcome the sometimes informal management of crises, i.e. through soft law instruments, through the development of codified, binding instruments, approved in a transparent and above all, in compliance with the requirement of legitimacy (including democratic) of the power exercised, profiles that are somehow missing in the "soft" tools. (E. Mariolina, S. Oana , *The Elusive Legitimacy of EU Soft Law: An Analysis of Consultation and Participation in the Process of Adopting COVID-19 Soft Law in the EU*).

Important implications arise from this: first of all, the choice to adopt legislative acts is subordinated to a part of the activity European regulatory institutions to procedures aimed at complying with Member States; furthermore, the binding nature of these regulatory instruments would also allow their implementation "from above", i.e. through the judicial bodies of the individual member states, as well as direct control by the European Commission, also in relation to a possible appeal to the Court of Justice. Justice. Justice for failure to fulfill obligations under Union law on the basis of Articles 258 and 260 TFEU.

Otherwise, the level of informality of the soft tools determines the lack of a clear definition of the competences - and the related responsibilities - between the Union and the individual member states, and a consequent "weak" effectiveness as it is obtained through what is often defined as "voluntary compliance" by states and citizens. (E. Mariolina , S. Oana , *The Elusive Legitimacy of EU Soft Law: An Analysis of Consultation and Participation in the Process of Adopting COVID-19 Soft Law in the EU*).

As stated by the Commission itself, the implementation of emergency and supervisory measures, mandatory in all Member States, can facilitate the coordination of response actions in the event of a crisis, thus avoiding the occurrence of violations of freedoms. Looking specifically at the framework regulation, which can be defined as the backbone of the SMEI, a series of measures would be established aimed at anticipating, preparing and responding to the impact of crises on the common market, with the aim of maintaining the free circulation of information, of goods, services and people and ensure the availability of strategically important goods and services as well as crisis-relevant goods and services in the single market. The proposed measures take into account the different levels of impact of the crisis on the market and can be classified into five main subcategories: (a) the establishment of an advisory group, (b) the adoption of measures for the receipt, exchange and exchange of relevant information, (c) develop a contingency planning framework, (d) develop a single market surveillance framework and (e) develop a single market contingency framework.

The role of the Advisory Group (a), chaired by the Commission and composed of a representative from each Member State, would be to advise the Commission on appropriate measures to prevent or address the impact of a risk of disruption or crisis on the single market, ensuring at the same time adequate coordination. More specifically, the Advisory Group would help the Commission to assess the intensity of the risk or crisis and the need to activate supervisory or emergency arrangements respectively in the single market. It would also analyze crisis-related information collected by Member States, the Commission or received from economic operators and facilitate its sharing with all relevant crisis bodies at EU level and, as appropriate, with third countries. Both individual Member States and the Commission, for this purpose, should equip themselves with central liaison offices to coordinate contacts and exchanges of information between States and European institutions.

The Commission may also recommend Member States to ensure the availability of essential goods and services by facilitating the expansion or conversion of production lines or by accelerating the authorization of such goods. Finally, the Commission may recommend that Member States facilitate the targeted distribution of strategic reserves. In addition to these measures, the regulation provides for other measures, even more "extraordinary", which could in fact be activated by the Commission only following an act which is further applicable, possible and subsequent to the activation of the emergency regime, and this is precisely the reason for "double activation", which will be discussed in more detail below, especially in relation to compliance with the principle of proportionality in the application of the legislation Article 5, paragraph 4, TEU of the measures identified in the proposed package.

Among the measures listed in a specific dedicated title is the possibility for the Commission to request information from economic operators through a formal binding decision (Article 24 of the Framework Regulation). They also provide for the possibility for the Commission to invite companies to accept orders classified as priority for goods relevant to the crisis and, in exceptional circumstances, to ask companies to comply with such requests or to explain serious reasons justifying a possible refusal. article 27 of the framework regulation).

The measures also include the possible adoption of the foreseen derogations from the harmonized product legislation (Article 26 of the Framework Regulation) The Framework Regulation - and, in particular, priority orders, measures facilitating the conversion of production lines and measures facilitating the expansion of production capacity – would therefore harm some rights directly protected by the primary sources of the European Union. First of all, the right to freedom of enterprise, mentioned in Article 16 of the Charter of Fundamental Rights of the European Union, which can therefore be limited during a possible emergency of the single market.

Conclusions

During the analysis of the proposed SME package, the term "strategic" was used several times. This is a new concept in European disaster response law, and therefore

deserves specific study. It should be remembered from the outset that the classification of a case in crisis (or emergency) conditions is by no means irrelevant for European Union law. Despite this, to date, a unitary definition of "crisis" has not yet been formulated by the European legal system. The same difficulty can be found in relation to the more specific concept of disaster (or catastrophe). It therefore seems even more interesting to try to analyze the new definitions presented in Article 3 of the proposed framework regulation, including "goods and services of strategic importance", "strategic reserves" and "sectors of strategic importance".

First of all, it can be concluded that the concept "strategic" was not conceived simply as a synonym of the term "relevant": both adjectives are used in different contexts, these concepts can also be found as "strategic autonomy" of the Union otherwise, the first, due to the limited "reserves" taken into consideration, the second, to identify the group of "goods and services" subject to different rules in the event of a crisis. And it is precisely this prediction that facilitates the understanding of the strategic concept: all goods and services linked to the crisis are goods and services of strategic importance, they are also irreplaceable. Precisely this last characteristic could make it necessary, in the Commission's opinion, to establish what it defines as "strategic reserves", i.e. stocks of goods of strategic importance aimed at preparing for a single market emergency.

Finally, we need to understand what "irreplaceable" means. To this end, it may be useful to recall the more detailed definition of "areas of strategic importance", which identifies areas of critical importance for the Union and its Member States as those of systemic and vital importance for public safety, security, public order or public health and the collapse, failure, loss or destruction of which would have a significant impact on the functioning of the single market.

Specifically, the SMEI provides that if the Commission, with the implementing act, activates the supervisory mode, at the same time it must prepare the list of goods and services that it considers to be of strategic importance, to be monitored and in relation to which it can decide, on as appropriate, reserve reserves.

Instead, it will be the task of the Member States to create and maintain an inventory of the most important economic operators, established in the national territory of reference, which operate along the supply chains of goods and services of strategic importance identified in the implementing act. , the competent national authorities, however, will be required to direct supply requests to the voluntarily identified operators. The competent national authorities should then transmit the relevant findings to the Commission and the Advisory Group via their central liaison office without delay, including for the purpose of assessing the need to create buffers. Therefore strategic reserves, if requested by a Member State, must remain significantly below individually defined objectives. The Commission may then take further measures, such as requiring that country to build up its strategic stocks of the

product by a certain deadline, trying to avoid creating disproportionate pressure on the supply chains of the identified goods due to the accumulation of reserves.

Finally, Article 32 of the framework regulation regulates the hypothesis in which the strategic reserves established by the Member States, despite the adoption of the measures illustrated so far, prove insufficient to meet the needs linked to the emergency of the single market.

The Commission could, at this point, recommend that States distribute strategic reserves in a targeted way, where possible, also in geographical areas particularly affected by disturbances in the common market and in compliance with the principles of necessity, proportionality and solidarity, deciding, perhaps with the introduction of relevant restrictions and controls, and the more efficient use of these reserves, to end the single market emergency. Everything explained so far is clearly influenced by the aspiration to "autonomy", which has to do with the protection and security of the Member States, has now acquired a horizontal extension in the definition of the Union's policies, also extending to the economic sphere -technological.

It is clear that SMEI is absolutely aligned with the quest for strategic autonomy, if not the first concrete, broad-spectrum manifestation of the actual intent of this objective. In particular, from the provisions of the proposal dealing with the storage of goods and services of strategic importance, the monitoring of reserve stocks and interventions in the event of shortages, the main theme is the EU's desire to work towards achieving and maintaining its economic autonomy in relation to the supply of essential goods and services, thus avoiding the emergence of asymmetric interdependence with third countries, thus protecting the economic system of the Union from the effects of the extraterritorial application of sanctions and other harmful practices by third countries.

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