

Political opinion from the Luxembourg Parliament (“*Chambre des Députés*”)

Courtesy Translation

In view of the importance of a well-functioning internal market for the economy of the Grand Duchy of Luxembourg, the *Chambre des Députés* has examined the above-mentioned proposal for a regulation.

The purpose of this proposal is to set up a mechanism for a rapid response to emergencies and crises, which threaten the functioning of the internal market.

With its open economy, where 45% of the workforce is cross-border workers and 85% of goods and 50% of services are imported from other EU countries, Luxembourg is heavily dependent on the EU's internal market - but is also the first to suffer when it does not work properly.

The Covid-19 pandemic has highlighted not only the fragility of the internal market, but also the challenges to the European Union's ability to respond to emergency situations in a coordinated and effective manner. Many Member States have reacted unilaterally by adopting measures restricting the free movement of goods, services and people.

The *Chambre des Députés* naturally supports the European Commission's approach and efforts to avoid such situations in the future by proposing an instrument to ensure the proper functioning of the internal market, including in times of crisis.

However, when reading the content of the proposed mechanism, the *Chambre des Députés* can only express its disappointment by noting a significant gap between the stated objective of a better functioning internal market and the provisions at hand.

Instead of proposing effective and practical measures to stop Member States from introducing restrictions in times of crisis, the Regulation provides for a bureaucratic structure that is far from reality. The instrument as proposed could become a real obstacle to the rapid and pragmatic management of emergency situations. The European Commission and Member States would be forced to initiate cumbersome and time-consuming procedures instead of acting quickly, as was the case during the pandemic.

Of particular concern is the fact that the proposal appears to allow, or even invite, Member States to introduce restrictions to the internal market in times of crisis - even though such barriers are prohibited by the Treaty on the Functioning of the European Union (TFEU) and secondary legislation.

The *Chambre des Députés* believes that the proposed provisions would jeopardise the free movement of goods, services and persons - freedoms enshrined in the TFEU. This would lead to additional derogations, justifying the introduction of restrictive measures such as those introduced during the Covid-19 pandemic (export bans, closure of borders to cross-border workers, etc.) and thus creating a precedent that is at odds with the legal basis of the proposal - in particular Article 114 of the TFEU - which enshrines the harmonisation and approximation of rules to improve the functioning of the internal market.

The mechanism as currently proposed by the European Commission appears to be a step backwards from the *acquis* and does not contribute to the proper functioning of the internal

market as required by the extensive case law of the European Court of Justice on Article 114 of the TFEU. The rationale that Treaty freedoms can be ignored in times of crisis is problematic and the EU should be cautious before enshrining it in horizontal secondary legislation. The *Chambre des Députés* calls for a pragmatic and effective approach, insisting in particular on the proportionality of new measures and their compatibility with the Treaties.

More generally, the *Chambre des Députés* invites the European Commission to propose measures that facilitate the effective exercise of the fundamental freedoms of the Treaty on the Functioning of the European Union and bring real added value to the integration of the internal market.

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