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European Commission proposal to introduce a new EU Crisis Response Mechanism

IRU position on the European Commission's proposal to introduce a new EU Crisis Response Mechanism

I. IRU POSITION

The EU Single Market is a crucial component of EU society and economy, driving its growth and prosperity. IRU welcomes the European Commission's proposal to introduce a Single Market Emergency Instrument (SMEI) which, as a crisis response mechanism, can more efficiently deliver on the promise to address the challenges related to the free movement of goods and people than the current rules.

While IRU supports the introduction of a SMEI, several recommendations for improvement are essential to allow the EU commercial road transport sector to benefit fully.

IRU specifically calls for the following:

- **An extension of the application of the mechanism to medium- and small-intensity crises.** The proposal appears to cover only large-scale emergencies and crises at the EU level and does not seem to be concerned by smaller obstacles to free movement.
- Guarantee that **all goods transport movements by road are considered as crisis-relevant and essential.**
- A clear definition of what constitutes **“crisis-relevant” and “essential movements of people”**.
- Any emergency measures decided at the EU level to be implemented by all Member States in a harmonised and compatible manner to facilitate cross-border operations.
- A definition that considers mobile and non-mobile workers in the transport, logistics, and mobility chains as essential, and guarantees their freedom of movement in times of crisis. It is imperative that no restrictions impede on the ability of transport workers to carry out their professional duties.
- **The establishment of a swift and smooth decision-making and communication process between the European Commission and Member States** to ensure a prompt implementation of emergency measures and avoidance of any barriers. The 10-day period, as described in the proposal, should not delay rapid action nor be used as a pretext for unilateral Member State measures.
- **An obligation for the industry to provide crisis-relevant information** to the European Commission and Member States as well as **an obligation for the European Commission and Member States to provide adequate information** on crisis-related measures to transport operators, which is critical for the continuity of mobility and logistics chains.

- **The implementation of sanctions** on Member States that fail to inform the European Commission of any proposed measures related to crisis-relevant goods and services of strategic importance, and restrictions on the free movement of persons during a crisis.

II. ANALYSIS

1. Overview

a) Background

Since its entry into force, Regulation (EC) No. 2679/98 has proven to not be much more than a nominal instrument to guarantee free movement. Despite many interventions by the European Commission towards Member States to address barriers, it proved close to impossible, in most cases, to remedy obstacles which often lead to perilous situations for stranded drivers and enormous costs for the road transport industry.

The COVID-19 pandemic exposed the fragility of the EU Single Market, its free movement of people and supply chains in an unprecedented way, underlining the reliance of the European economy and EU Single Market on an efficiently functioning passenger and goods transport network. Uncoordinated measures implemented by individual Member States were counterproductive. As a result, the commercial road goods and passenger transport industry was severely impacted. Goods were blocked at internal borders, people could not return to their country of residence, essential transport workers were unable to travel to and from their workplaces, essential training requirements could no longer be fulfilled, and key road safety checks could no longer be carried out, with the risk that commercial road transport vehicles, including buses, coaches, trucks and taxis, would no longer be able to operate. The importance of road passenger transport in repatriation efforts should be clearly emphasised. When emergency rules were adopted at the EU level to facilitate certain procedures, such as the administrative prolongation of Certificates of Professional Competence for drivers and roadworthiness certificates for vehicles and temporary derogations from driving and rest time rules, Member States still failed to act in a compatible and harmonised way. This made it very difficult to undertake cross-border operations.

b) Positive aspects of the new proposal

IRU welcomes the newly proposed emergency and crisis response instrument and hopes it will more effectively address the barriers faced by European road goods and passenger transport operators. IRU notes many positive elements, including the requirement that Member States refrain from introducing restrictions on road goods and passenger transport during EU Single Market emergencies. The proposal's consistency with the "Contingency Plan for Transport" and measures to repatriate stranded passengers and transport workers and strengthen transport policy coordination through the Network of National Transport Contact Points also benefits the commercial road transport sector.

c) Limitations of the new proposal

IRU is concerned that the new emergency tool may be too high level and could leave the road transport industry without a tool to rely on in case of small-scale regional or Member State-level barriers to free movement. The new instrument should also ensure that all transport, mobility, and logistics mobile and non-mobile workers can continue to function in case of a crisis.

To address these limitations, IRU has analysed several aspects of the proposal and identified the solutions below.

2. Addressing barriers to the free movement of goods and people: clarification of procedures

Some aspects of the new crisis response mechanism have not yet been fully clarified. It is unclear how and when the new instruments will be deployed. The concrete

measures that could be deployed to prevent obstacles to the free movement of goods and people are also not described. The definition of the emergency modes is ambiguous, and there is a lack of clarity on crucial conditions for the commercial road transport sector. Additional clarity should be provided about which movements of goods or people services are crisis-relevant and essential.

Further clarification will provide more legal certainty for the road transport industry and help to plan and carry out operations in emergency situations without becoming entangled in blockades.

IRU calls for:

- A guarantee that all goods transport movements by road are considered crisis-relevant and essential, and a clear definition of what constitutes “crisis-relevant” and “essential people movements”.
- The instrument should also be deployable in smaller-scale crisis situations than those currently described in the proposal.
- Clear guidelines on how and when emergency measures can be deployed, and what specific measures will be put in place to prevent obstacles to free movement.
- Clear definitions for emergency modes, and additional details on how the commercial road transport sector would function during these modes.
- Any emergency measures decided at EU level should be implemented by all Member States in a harmonised and compatible manner to safeguard cross-border operations.
- Sufficient guarantees for the free movement of all workers in transport, logistics and mobility chains.

3. Information and transparency

IRU supports a more transparent emergency response mechanism with more clearly defined EU contingency planning measures, information mechanisms, national administration contact points, enhanced administrative cooperation, a repository of crisis measures, and closer interaction between the European Commission and Member States through an advisory group. This enables rapid solutions to be found when the EU Single Market is impacted by emergency situations. Although the advisory group may provide recommendations and opinions, the European Commission will ultimately decide on crisis response measures. A negotiating mandate can be established which gives the European Commission a temporary mandate, during an emergency, to become a central purchasing source of goods and services, even on behalf of individual Member States. The duration of this mandate is not clearly defined, leaving economic operators in uncertainty regarding emergency operations.

IRU is concerned that the interaction between the European Commission and the advisory group in areas such as the granting of an emergency mandate could lead to unnecessary delays in decision-taking, which could in turn lead to the emergence of new barriers. The COVID-19 crisis has demonstrated that decision-making should be as swift and smooth as possible.

While Member States are required to inform the European Commission of any proposed crisis measurements, there are no consequences or penalties specified for the failure to do so. Specifying this would improve the European Commission’s ability to monitor and prevent disruptions to the EU Single Market more effectively. In addition, what constitutes goods, people and services of “strategic importance” is not clearly defined, leaving economic operators with little certainty regarding emergency operations.

During a crisis, Member States’ national authorities may monitor and request information from the supply chains of strategically important goods and services. The information provision is voluntary before a crisis is declared. Once declared, economic operators must provide the information on request, with failure in doing so resulting in penalties. IRU insists that the obligation to provide good and reliable information during

a crisis should not only be imposed on the industry but also on the EU and Member States' authorities.

IRU calls for:

- The establishment of clear and consistent rules for providing information to the EC and competent national authorities during an emergency.
- The implementation of sanctions on Member States that fail to inform the EC of any proposed measures related to crisis-relevant goods and services of strategic importance, and to restrictions on the free movement of persons during a crisis.
- An obligation for the national authorities of Member States to explicitly provide adequate information to economic operators during a crisis process.
- The clarification of the duration of the negotiating mandate for the EC's emergency powers to become a central purchasing source of goods and services.

4. Strengthening the response mechanism to emergency situations in the EU Single Market

IRU considers that strengthening the transparency of measures – taken not only between the European Commission and Member States but also towards citizens and industrial sectors – represents a positive development. Member States should provide a justification for the need of emergency measures, and the European Commission should review the compatibility of these measures with EU law and principles.

The SMEI proposal mandates that a Member State must delay the adoption of any measure for 10 days from the date of the European Commission's receipt of the notification. The European Commission has 10 days to decide. Failure to decide within a 10-day period could open the door to unilateral Member State action. However, in emergency situations that impact the functioning of the EU Single Market, prompt action is crucial. The COVID-19 pandemic serves as an example of the fact that the longer a decision is delayed, the more damage a crisis can impose.

In light of this, IRU believes that the 10-day delay proposed by the SMEI proposal may be too long in certain emergency situations, and a more flexible approach may be necessary to ensure that swift action can be taken to mitigate the impact of a crisis. Ultimately, the priority must be the preservation of the EU Single Market and the protection of citizens, businesses, and economies.

IRU calls for:

- A shorter time frame to allow swift and smooth evaluation by the European Commission and the related advisory group. The 10-day period, as described in the proposal, should not delay rapid action nor be used as a pretext for unilateral Member State measures.
- The decision-making process by the European Commission and the related advisory group to be streamlined to ensure quick decisions in an emergency situation.
- The process for EU Member States to notify each other about proposed emergency measures to be done more efficiently to avoid delays.

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