

Single Market Emergency Instrument
Public Consultation October 2022
DAFM Observations

Access to Finance – Economics and Planning

1. Access to finance is a critical business need with finance required:
 - a. as working capital to ensure the efficient functioning of businesses on a day-to-day basis; and,
 - b. as investment capital, to develop and evolve to meet future needs and challenges.
2. The Department of Agriculture, Food and the Marine (DAFM) work closely with the Department of Enterprise, Trade and Employment (DETE) to ensure adequate access to finance to SMEs. This partnership has yielded important supports for businesses, to ensure that they have access to finance to help deal with the challenges brought about by Brexit, COVID-19 and the impact of the war in Ukraine¹.
3. Experience through successive economic crises has shown that in such times as well as requiring cashflow finance businesses continue to look to the future and seek investment finance to adapt to emerging market conditions. This has prompted delivery of loan schemes which address both cashflow and investment needs.
4. In the context of ensuring adequate access to finance for SMEs including farmers, fishers and food businesses in times of crisis the European Commission's proposed Regulation for a Single Market Emergency Instrument is welcome. The work undertaken to ensure a coordinated approach to anticipate, prepare for and respond to crises that have important cross-border effects and threaten the functioning of the Single Market is timely.
5. It is noted that the SMEI would only be deployed where no EU instrument already exists or where existing instruments do not provide crisis-relevant provisions. It is further noted that the Commission should only resort to the activation of the Single Market emergency measures, where the economic operators are not able to provide a solution to the particular aspects of a Single Market emergency on a voluntary basis.
6. In the event of future crises, the availability of the following mechanisms will be useful in addressing the impact:
 - Advisory Group

¹ The Future Growth Loan Scheme; Brexit Impact Loan Scheme; COVID-19 Credit Guarantee Scheme.

- Framework for contingency planning
- Framework for SM vigilance
- Framework for SM emergencies

7. However, as the SMEI provides for measures restricting the free movement of goods and persons, (Article 18) albeit in certain limited circumstances, careful consideration of these provisions is merited to ensure the integrity of the Single market is maintained.

Fertilisers

The proposal seems to make sense for fertilisers from an Irish point of view.

It should be recognised that Ireland is in a uniquely vulnerable position when it comes to fertiliser supply due to our geographical location and the fact that we have no indigenous fertiliser manufacture and rely on imports for 1.6 – 1.7 million tonnes. It does acknowledge that “the demand for crisis-relevant goods or services across the EU territory may also be uneven as some EU regions are disproportionately vulnerable and exposed to supply chain disruptions” so maybe this covers it.

It prevents manufacturing EU countries from banning exports thus ensuring supply even in a crisis, this is welcome from a fertiliser perspective for Ireland.

Another positive is the building of strategic reserves - although this may be a recommendation or an obligation

It will be done at MS level which may be an issue for Ireland given our lack of storage facilities compared to our use and also the resources required to fund this would be an issue.

Facilitation of public procurement may potentially guard against higher prices for Irish farmers and consumers.

Food Industry Development Division Comments

1. Article 1 subject matter

-we note the change in subject matter – we had previously commented on Article 1 (3) in that it was not clear what was meant by the previous reference that this regulation would only apply where no more specific mechanisms exist, this latter text now having been removed. The new Article 1(3) and (4) state that

The measures referred to in paragraph 1 include:

(d) measures for addressing Single Market impacts of significant incidents that have not yet resulted in a Single Market emergency (Single Market vigilance), including a set of vigilance measures and

(e) measures for addressing Single Market emergencies, including a set of emergency response measures

We understand therefore that this regulation covers significant incidents and significant emergencies affecting the Single market and that this **is for all sectors with the exception of those listed at Article 2 (2). The agriculture and food sector is therefore included in the scope of this Regulation.**

2. Article 4(3) Advisory group

It would be useful if representation could include representation from the European Food Security Crisis preparedness and response Expert Group. As single market issues could differ depending on the sector being considered the relevant expertise needed could vary.

3. Article 6 (2) Crisis protocols

We note the obligations of Article 6 including for the Commission and the Member States to put in place detailed administrative arrangements for ensuring timely cooperation and secure exchange of information between the Commission concerning crisis protocols and we understand this to mean in respect of the agri food sector.

4. Article 8 Ad hoc alerts for early warning

We note the requirement for the central liaison office of a Member State to notify the Commission and the central liaison offices of other Member States without undue delay of any incidents that significantly disrupt, or have the potential to significantly disrupt, the functioning of the Single Market and its supply chains (significant incidents), and we understand this to include incidents concerning the agri food sector.

5. Article 11 Monitoring

We note that Article 11 (2) provides that the Commission shall provide for standardised and secure means for the collection and processing of information for the purpose of paragraph 1, using electronic means and that without prejudice to national legislation requiring collected information including business secrets to be kept confidential, confidentiality with regard to the commercially sensitive information and information affecting the security and public order of the Union or its Member States shall be ensured.

It is important that matters that would be commercially sensitive in regard to supply chains of private operators are kept confidential.

We note that Article 11(3) requires Member States to set up and maintain an inventory of the most relevant economic operators established on their respective national territory that operate along the supply chains of goods and services of strategic importance that have been identified in the implementing act activating the vigilance mode. Again, commercially sensitive information must be a primary consideration in the compilation of any such inventory.

6. Article 11 (4)

We note the reference to voluntary information required from economic operator/stakeholder that is in line with the Union rules on competition governing the exchange of information. While we welcome this approach, it is difficult to see how effective the monitoring can be where information may not always be provided and note that this information will be provided to the Commission as per article 11 (7).

7. Article 11 (5)

We welcome the reference to the need for National competent authorities to have due regard to the administrative burden on economic operators and in particular SMEs, which may be associated with requests for information and ensure it is kept to a minimum.

8. Article 12 Strategic reserves

Article 12 (1) there appears to be a typo error in "Capacities which are a part of the rescEU..."

Article 12 (3) We welcome the change in the language and rule in respect of MS requirement to build up reserves that now, in 12 (3), the text states:

(3) "Taking due account of stocks held or being built up by economic operators on their territory, Member States shall deploy their best efforts to build up strategic reserves of the goods of strategic importance identified in accordance with paragraph 1. The Commission shall provide support to Member States to coordinate and streamline their efforts."

However, we note that the Commission may still decide to direct MS to build up strategic reserves as per 12 (4):

(4) Where the building of strategic reserves of goods of strategic importance identified pursuant to paragraph 1 can be rendered more effective by streamlining among Member States, the Commission may draw up and regularly update, by means of implementing acts, a list of individual targets regarding the quantities and the deadlines for those

strategic reserves **that the Member States should maintain**. When setting the individual targets for each Member State, the Commission shall take into account:

- (a) the probability and impact of shortages referred in paragraph 1;
- (b) the level of existing stocks of the economic operators and strategic reserves across the Union, and any information on economic operators' ongoing activities to increase their stocks;
- (c) the costs for building and maintaining such strategic reserves

It is unusual to maintain food reserves in developed countries as market mechanisms, and strong EU support for agriculture usually ensure sufficient food. It is not clear if the requirement to retain reserves means that economic operators are compensated by MS (and Commission) for storing their products or not placing them on the market/keeping them in reserve. The legality of the mechanisms requiring a reserve, thereby preventing markets being placed on the market is unclear. The correlation with any market intervention measures under the CAP for the agri food sector for storage etc is unclear and greater clarity would be needed regarding the interaction of these proposals and the CAP.

9. Article,12 (6)

We note the following:

"6. Where the strategic reserves of a Member State continuously fall significantly short of the individual targets referred to in paragraph 4 and economic operators on its territory are not able to compensate that shortfall, the Commission may, at its own initiative or at the **request of 14 Member States**, assess the need to take further measures to build up strategic reserves of goods of strategic importance identified pursuant to paragraph 1.

Following such an assessment, where the Commission establishes, supported by objective data, that

- (a) the needs for the good in question remain unchanged or have increased compared to the situation at the time the target referred to in paragraph 4 was first set or last amended pursuant to paragraph 4,
- (b) access to the concerned good is indispensable to ensure preparedness for a Single Market emergency
- (c) the Member State concerned has not provided sufficient evidence to explain the failure to meet the individual target, and (d) exceptional circumstances exist, in that the failure by that Member State, considering its importance to the supply chain concerned, to build up such strategic reserves gravely imperils the Union's preparedness in the face of an impending threat of a Single Market emergency, the Commission may adopt an implementing act, requiring the Member State in question to build up its strategic reserves of the goods concerned by a set deadline.

While noting that Article 12 (7) provides that the Commission shall seek to ensure that the building up of strategic reserves does not create a disproportionate strain on the supply chains of the goods identified in accordance to paragraph 1, or on the fiscal

capacity of the Member State concerned. **It is not clear whether 12 (6) requires any 14 Member States, or whether the type of product that requires a reserve to be built up, will be a factor in determining which MS make the requirement. The use of a simple majority for such a significant policy decision seems unusual.**

10. Article 13 Criteria for activation

We note the reference to 13 (1) (g) that the Commission will take into account the *"geographic area that is and could be affected, including any cross-border impacts on the functioning of supply chains that are indispensable in the maintenance of vital societal or economic activities in the Single Market;"* and in that context this may have relevance for the all island GI products if, for example, any of the inputs e.g. grain, dairy cream was deemed to be a product of strategic importance in crisis.

11. Article 17 Prohibited restrictions of free movement rights during a Single Market emergency

We are not clear on the distinction between 17 (1) and (2) references to Intra Union and Intra EU.

Also, the movement of dairy products between NI and IE for Irish Cream Liqueur would need consideration.

12. Article 24 Information requests to economic operators, Article 25, 26 and 27 and 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

We question the need for Article 24 and related Articles given the measures already outlined in the regulation.

Legal advice should be sought on the right of *the Commission to directly impose decisions* on economic operators and to impose fines in Article 27.

13. Article 32 Coordinated distribution of strategic reserves

It is not clear in such circumstances how MS own immediate production would be affected viz a viz other MS requirement

ENDs