

EUROPEN Information note on the European Commission proposal for a Single Market Emergency Instrument (SMEI)

Background

On 19 September 2022, the European Commission (EC) published its [proposal for a Regulation for a Single Market Emergency Instrument](#) (SMEI) to ensure the free movement of persons, goods and services in times of crisis, as well as to ensure better preparedness and coordination among Member States in implementing crisis-related measures and ultimately avoid fragmentation of the EU single market.

Arising from the renewed [EU Industrial Strategy](#), published in May 2021, the proposal comes ahead of the thirtieth anniversary of the EU single market in January 2023.

The proposed Regulation repeals Council Regulation (EC) No 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States and it is a text with EEA relevance, meaning it will be directly applicable in EU Member States as well as Iceland, Liechtenstein and Norway.

Main elements

- The Regulation establishes 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, and where no EU instrument already exists or where the existing instruments do not lay down crisis-relevant provisions.
- The instrument will apply without prejudice to the provisions put forward by already existing and targeted crisis management instruments (direct mention is made to the interplay with the Contingency plan for ensuring food supply and food security, as well as to the European Food Security Crisis preparedness and response Mechanism, see Recital 15), which are to be considered as *lex specialis*, meaning those will prevail in case of conflict with the SMEI.
- Financial services, medicinal products, medical devices or other medical counter-measures and food safety products are excluded from the scope of the initiative due to the existence of a dedicated crisis-relevant framework in these areas.
- The proposal is based on Articles 114 (Internal Market), 21 (free movement of persons) and 45 (free movement of workers) of the Treaty on the Functioning of the European Union (TFEU).
- The SMEI aims to establish a comprehensive preparedness and crisis-response architecture composed of the following main components:
 - **An advisory group:** to ensure adequate coordination, assist and advise the EC on the appropriate measures for preventing or addressing the impact of the crisis on the Single Market (i.e. assist and advise the EC on the need to activate one or more of the below frameworks). The group will be composed of one representative per each Member State and be chaired by the EC. **The EC may invite representatives of other crisis-relevant bodies, representatives of economic operators, stakeholders organisations and other experts as ad hoc observers.**
 - **A framework for contingency planning: outside times of crisis,** the EC together with Member States will work to establish crisis protocols to increase preparedness, run simulations and trainings, and have Member States send ad hoc alerts for early signals of any incident that

significantly/ seriously disrupt or have the potential to disrupt the functioning of the Single Market and its supply chains of goods and services. **In relation to the latter, the significance or seriousness of the disruption will be based on pre-determined parameters**, including the number of economic operators affected by the disruption, the duration of the disruption, the share of the Single Market affected, and the effect of the disruption on non-diversifiable and non-substitutable inputs.

- **A framework for Single Market vigilance: when the crisis becomes clearer but have not yet escalated into a full Single Market emergency**, this system will **monitor critical supply chains identified by the contingency planning framework and assess risks, preparedness levels and potential mitigating measures**. Through implementing acts, **the EC can draw up lists of individual and non-binding targets for the strategic reserves that the Member States should maintain**. The EC might, in exceptional circumstances, on its own initiative or if asked by 14 Member States, assess the need to take further measures to build up strategic reserves of such goods. Following such assessment **the EC may adopt an implementing act to render the individual target for one or more Member States mandatory**.
- **A framework for Single Market emergencies**: to be activated, on proposal of the EC, by means of an EU Council implementing act **when a crisis becomes acute**. After activation based on the criteria established in Art. 13 and for a maximum duration of 6 months (which can be further extended by other 6 months only), the framework will directly apply: measures to improve Member State transparency; actions for re-establishing and facilitating the free movement of goods and services; the banning of restrictions to free movement rights during a Single Market emergency (e.g. requiring Member States to refrain from introducing intra-EU export bans of crisis relevant goods or services). Additionally, **emergency measures of exceptional nature and requiring dual activation** (see art. 23¹) **may be implemented, including information requests to economic operators; actions to ensure the availability and supply of crisis-relevant goods; priority rated orders; and coordinated distribution of strategic reserves**.
- In five years from the entry into force of the Regulation and every five years after that, the EC reports to the EU Parliament and EU Council on the functioning of the contingency planning, vigilance and Single Market emergency response system suggesting any improvements if necessary.

To be noted

- **Definitions - article 3**
 - **'crisis'**: *an exceptional unexpected and sudden, natural or man-made event of extraordinary nature and scale that takes place inside or outside of the Union;*
 - **'strategically important areas'**: *areas with critical importance to the Union and its Member States, in that they are of systemic and vital importance for public security, public safety, public order or public health, and the disruption, failure, loss or destruction of which would have a significant impact on the functioning of the Single Market;*
 - **'goods and services of strategic importance'**: *goods and services that are indispensable for ensuring the functioning of the Single Market in strategically important areas and which cannot be substituted or diversified;*
 - **'crisis-relevant goods and services'**: *goods and services that are indispensable for responding to the crisis or for addressing the impacts of the crisis on the Single Market during a Single Market emergency;*
- **Measures on strategic reserves - article 12**
 - The EC may require, by means of implementing acts and in relation to goods listed in an implementing act, that Member States provide information all of the following:

¹ The article explains that binding measures may be adopted by the Commission by means of implementing acts may be adopted only after a Single Market Emergency has been activated by means of a Council implementing act.

- (a) the current stock in their territory;
- (b) any potential for further purchase;
- (c) any options for alternative supply;
- (d) further information that could ensure the availability of such goods.
- Member States shall report to the Commission the levels of strategic reserves of goods of strategic importance held by them, and the levels of other stocks of such goods held on their territory.
- **Measures for re-establishing and facilitating free movement - Article 19:**
 - During Single Market emergencies, Member States shall notify to the Commission (using the [TRIS portal](#)) any crisis-relevant draft measures restricting free movement of goods and the freedom to provide services as well as crisis-relevant restrictions of free movement of persons, including workers together with the reasons for those measures.
- **Information requests to economic operators - Article 24:**
 - The EC might invite representative organisations or economic operators in crisis-relevant supply chains to provide relevant information in relation to their production capacities, possible existing stocks of crisis-relevant goods, and components thereof in its Union production facilities and third country facilities, while fully respecting trade and business secrets (art. 25 regulates confidentiality and the processing of the information).
- **Priority rated orders - Article 27 ([we kindly invite you to review all provisions in this article](#)):**
 - The EC may invite one or more economic operators in crisis-relevant supply chains established in the Union to accept and prioritise certain orders for the production or supply of crisis-relevant goods.
- **Fines to operators for failure to comply with the obligation to reply to mandatory information requests or to comply with priority rated orders - Article 28 ([we kindly invite you to review all provisions in this article, as well as articles 29 and 30 which details limitation periods for the imposition and the enforcement of fines](#)):**
 - The EC may, by means of a decision and when deemed necessary and proportionate, impose fines in the following circumstances:
 - where a representative organisation of economic operators or an economic operator, supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 24, or does not supply the information within the prescribed time limit (fines shall not exceed 200 000 EUR);
 - where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 (5)² or fails to explain why it has not accepted a priority rated order (fines shall not exceed 200 000 EUR);
 - where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis-relevant goods ('priority rated order') pursuant to Article 27 (fines shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the EC decision not exceeding 1% of total turnover in the preceding business year).
 - In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.
 - The EU Court of Justice have unlimited jurisdiction to review, cancel, reduce or increase the fine imposed.

² According to this article, when an economic operator established in the Union is subject to a measure of a third country which entails a priority rated order, it shall inform the Commission thereof.

Next steps

- Given the importance of the file, negotiations in the Competitiveness Council and the European Parliament will kick off immediately. The Competitiveness Council (Internal market and industry) is expected to discuss the file already on [29 September](#).
- The European Commission aims to adopt the Regulation by the end of 2023, during the anniversary of the Single Market.
