



**Chambers
Ireland**
Advancing business together



Single Market Emergency Instrument Consultation

Submission by Chambers Ireland

October 2022

About Chambers Ireland

Chambers Ireland, the voice of business throughout Ireland, is an all-island organisation with a unique geographical reach. Our 40 members are the Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

Our Network has pledged to advocate for and support the advancement of the United Nations Sustainable Development Goals (SDGs). In doing so, we use the Goals as a framework to identify policy priorities and communicate our recommendations, and we have a particular focus on five of the goals encompassing decent work and economic growth (SDG 8), sustainable cities and communities (SDG 11), advancements in gender equality (SDG 5), viable industries, innovation, and infrastructure (SDG 9) and progress in climate action (SDG 13).¹

The SDG goals are intrinsically linked to our policy proposals and sustainability underpins our work as the voice of the Irish business community. We are uniquely well-placed to voice the concerns and views of SMEs throughout Ireland. In the context of the present consultation regarding the Single Market Emergency Instrument, the instrument is particularly relevant for - but not limited to - SDG 8 (economic growth) and SDG 9 (viable industries, innovation, and infrastructure). Regarding affairs at European level, we work closely with our colleagues at Eurochambres to articulate the views of business across the European Union. Our Chief Executive, Ian Talbot, is Deputy President of Eurochambres, which acts as the eyes, ears and voice of the business community at EU level.

¹ The Chambers Ireland SDGs. Available at: <https://www.chambers.ie/policy/sustainable-development-goals/chambers-ireland-sdgs/>

Chambers Ireland's views on the proposed Single Market Emergency Instrument

General observations

The new Single Market Emergency Instrument (SMEI) aims to ensure that essential goods can circulate within the European Union during an emergency such as the COVID-19 pandemic that adversely affected critical supply chains.

The proposed SMEI is welcomed by Chambers Ireland. Especially during the initial phase of COVID-19, intra-EU export restrictions and travel limitations, adopted in response to the pandemic, were in many cases poorly designed. A misalignment of Member State policy resulted in a disruption of the free circulation of goods, services and people, causing economic costs, delays and hampering the overall crisis response. It is our view that such an instrument would have been necessary during the past two years, not least for the purpose of aligning Member States policy so that the emergency powers enacted at national level were coordinated, but especially for ensuring that the supply of critical goods was not affected.

The implementation of the SMEI is necessary to avoid a misalignment of policy across Member States during crises, particularly with regard to the procurement and stockpiling of critical goods, among other aspects. It is imperative on the back of the most recent health crisis – COVID-19 - that the European Union has learnt from the critical supply chain issues it faced during the initial stages of the pandemic. A pan-European approach is critical in this context to mitigate the damage done by crises of similar scale and disruption in the future. This is especially true from the perspective of small countries such as Ireland, which need an efficient mechanism to be in place at EU level, as they cannot adequately deal with such crises alone.

No two crises are the same nor require the same measures to mitigate the collateral damage arising from them. Nonetheless, there is a need to prepare even where uncertainty exists regarding the scale or estimated level of response required. In terms of preparation, manufacturers and essential equipment need to be identified, even where it is not possible to know in advance what exactly is needed. Furthermore, rules of engagement need to be agreed upon and enforced, particularly where first-mover advantage needs to be constrained. Levelling the playing field in this context is critical. This is especially important in the context of stockpiling or hoarding of critical items by Member States.

Implementation of the instrument is key and certain aspects of the SMEI must not go further than its intended purpose, especially where the instrument may encroach on the national autonomy of a Member State. It is pivotal that there is adequate coordination of the SMEI with other crisis mechanisms developed at an EU level; for example, the European Health Emergency Preparedness and Response Authority (HERA) for health emergencies or the Chips Act for the semiconductor

supply chain. Furthermore, from the perspective of business, any changes to their operation should be handled with caution. For example, non-compliance with certain provisions of the proposed SMEI – relating to order prioritisation - could become expensive for companies. According to the draft proposal, penalties could reach up to 1.5% of the company's turnover. It is our view that a balance must hence be struck; too rigid an application will render the SMEI ineffective, while any action must be taken with as little economic disruption as possible.

Below, Chambers Ireland outlines its position on numerous aspects of the instrument. The main provisions includes but is not limited to: the language of the proposed instrument, response measures including information-sharing, public procurement, and state aid, and preparation measures such as digital tools and stockpiling.

The definition of 'crisis'

One of the concerns Chambers Ireland has with regard to the proposed SMEI, is the definition given to the word 'crisis'. In our opinion, the definition should not be too broad so that it may be adopted on spurious grounds. More importantly, nor should it be unduly narrow so that the instrument is rendered unimplementable in times of actual crisis.

As is common knowledge, the instrument should respect the principles of subsidiarity and proportionality which govern the exercise of the EU's competences with regard to the functioning of the Single Market. It should not go further than what it is intended to do. Nor should the instrument be adopted unless it is more effective than action taken at national level.

Though the purpose of the instrument is to mitigate disruptions arising from crises, the potential exists for it to be disruptive for numerous sectors if activated unnecessarily. Definitions must be clearly set out with sufficient clarity as to the reach of the instrument. This is especially important when deciding what constitutes a crisis, so that the instrument can, and may only be used in the most appropriate and necessary of exceptional circumstances where the integrity of the Single Market is at risk.

Therefore, for the framework to be applicable, it should be clear that the crisis in question substantially affects the functioning of the Single Market. If the instrument is to be triggered, then it must be subject to objective criteria. The instrument must also be limited in time and strictly apply only for the duration of the crisis. This is pivotal to ensure legal certainty and by extension will provide some degree of stability to the business community across the EU.

Enhanced notification mechanism

A protected Single Market is pivotal for developing a business-friendly marketplace, to which security of supply is of paramount importance. Indeed, in order to protect it, the

European Commission already has the power to use initiate infringement proceedings against Member States who violate EU law. Infringement proceedings have long been an important weapon in ensuring that EU law is properly applied and respected in the Member States of the EU. Whereas they are the classic method of supervision of the European Commission, they are also fraught with weaknesses and at times have proved inadequate in dealing effectively with breaches of EU law. In the context of COVID-19, this manifested itself in spurious public health grounds being used as a reason by Member States to invoke measures restricting free movement.

Bearing the above in mind, the Technical Regulations Information System (TRIS) notification procedure – or at minimum a similar system – should be used in times of crisis with a view to tackling non-compliant national measures. The notification rules also facilitate an urgency procedure that enables the immediate adoption of a national draft under certain conditions. The obligation to notify the Commission under the urgency procedure means the Commission may subsequently reject it if there is a need to do so.

Sharing of information

A distinct issue for companies during COVID-19 was the lack of reliable information about measures that applied in each Member State. This was due to the misalignment of public health policies taken at national level. It is our view that the Re-open platform could be used as a blueprint for future crises to share such critical information. The shared information would need to be standardised as much as possible, with alert mechanisms in place to enable efficiency across supply chains. This would lessen the administrative burdens for businesses, while also enabling them to meet their regulatory requirements in an efficient manner. In line with our previous statement that the crisis-framework needs to be adaptable, the platform should also be equipped to regroup different information pertaining to other types of crises.

Public procurement

We are in favour of the European Commission issuing guidance documents such as the one on public procurement framework that was published during COVID-19. The publication of similar documents would be necessary in the event of another crisis emerging, since they provide clarity with regards to the applicable European legislative framework. It is also important to highlight the role of the European Commission in organising the public procurement of crisis-relevant goods during a crisis. It is pivotal that this is done at EU-level, so that national governments do not push up prices in an attempt to outbid each other. From the perspective of Member States like Ireland, which does not have the same clout in this context as larger Member States, this is fundamental to an adequate crisis-response. More broadly, this will also facilitate more efficient collective action, and preserve the free movement of goods, people, and services when reacting to exceptional circumstances.

State aid provisions

During both COVID and the Russian invasion of Ukraine, the European Commission provided flexibility with regard to state aid; namely the “State-aid Temporary Framework” and the “Temporary Crisis Framework”. Both frameworks proved to be effective measures to support the economy of the Single Market during times of crisis. They were particularly helpful for companies across the EU, who would otherwise struggle to make their operations financially viable during such exceptional circumstances.

We accordingly acknowledge the importance of having a flexible and speedy temporary state aid framework in place which is effective during crises like COVID-19. We therefore emphasise the importance of a) proposing a temporary state aid framework when it is necessitated and introducing amendments to it and b) approving a national aid scheme under the framework.

Requirement for companies to increase production capacity

Part of the proposed SMEI includes a requirement for certain companies to increase production. In line with our earlier statement that certain manufacturers and products (e.g those manufacturing critical medical equipment), we view this provision as necessary. However, more guidance as to how this requirement may be enforced would be welcome.

Incentives should also be considered to encourage companies to increase their production capacity. One of the most effective ways of incentivising companies may well be to provide some form of taxation relief, however this would have to be presented in the form of a recommendation, as taxation is a Member State competence.

Digital tools for crisis planning and management

In order to prepare for future crises, the creation of a digital tool with the capability to collect and distribute information as to the existing stock of critical items, should be a priority. This would be used to transfer information between companies. It should come at no financial expense to the companies using the tool, and it should be interoperable with their existing digital tools.

Companies ought to be able to personalise the alerts and information received, based on their characteristics and needs. An artificial intelligence system could use algorithms to flag and send notifications that concern the specific needs of that company. This would need to be handled carefully, and the subsequent extra administrative burdens which would be imposed on the companies – especially those recovering from recent crises - should also be considered in its design.

Information requests and stockpiling

Under the draft proposal, the European Commission may require companies or their associations to provide information about the supply of particular types of goods in times of emergency. If the companies or associations do not comply with the information requests or provide wrong information, they are at risk of being fined up to €300,000. The types of information being requested may be critical to the functioning of the company, and its dissemination could potentially jeopardise its competitive edge in the market. Consequently, companies may be reluctant to collaborate. Fines should therefore be proportional to their size and turnover, as opposed to being set at a limit which may be negligible for larger companies and affect smaller companies unfairly.

Similarly, stockpiling is a necessary feature of crisis-planning for Member States, and was a feature of the response across the EU to COVID-19. Nonetheless, it is our view that the European Commission should have at minimum a coordination role for essential goods. Records should be kept of the relevant stockpiles of each Member State, and it is critical that information relating to the stockpiles is shared among the Member States. It is for this reason that we welcome the proposal that the Commission may recommend Member States to ensure the availability of crisis-relevant goods and services by facilitating the expansion or repurposing of production lines, or by accelerating permits for critical goods. Additionally, we welcome the possibility for the Commission to recommend that Member States facilitate the distribution of strategic reserves in a targeted way.