



**An Roinn Fiontar,
Trádála agus Fostaíochta**
Department of Enterprise,
Trade and Employment

Public Consultation on the Single Market Emergency Instrument Regulation



Subject of the Public Consultation

The Department of Enterprise, Trade and Employment is seeking the views of stakeholders on the Regulation establishing a Single Market emergency instrument, proposed by the European Commission on the 19th of September 2022.

Stakeholders are asked to submit written contributions on the proposal by 5pm on Friday 21st of October 2022. The Department of Enterprise, Trade and Employment will represent Ireland at negotiations on the Commission's proposals over the coming months and responses to the consultation will help inform the work to be undertaken by the Department in this area.

Background

For almost 30 years, the Single Market has been the EU's most important asset, offering certainty, scale and a global springboard for companies, and wide availability of quality products and services for consumers. However, in recent crises, and particularly in the early days of the COVID-19 pandemic, businesses and citizens suffered from entry restrictions, supply disruptions and a lack of predictability of rules which fragmented the Single Market. According to the European Commission, intra-EU export restrictions and travel limitations, adopted in response to the pandemic, were in many cases poorly designed. This resulted in disruption in the free circulation of goods, services and persons, causing economic costs, delays and hampering the overall crisis response.

The Single Market Emergency Instrument proposal presented by the European Commission follows calls by the European Council for the EU to draw lessons from the COVID-19 pandemic and address remaining fragmentation, barriers and weaknesses of the Single Market in facing emergency situations.

The Department of Enterprise, Trade and Employment recommends that stakeholders visit the European Commission website which provides further information on the proposal. The Commission's proposal and accompanying texts are available on the Commission's website:

- Proposal for a regulation of the European Parliament and of the Council establishing a Single Market emergency instrument:
https://single-market-economy.ec.europa.eu/document/d1d0b38a-cec8-479d-be70-1ffae7e227a5_en
- Single Market Emergency Instrument- Questions and Answers:
https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_5444
- Single Market Emergency Instrument Factsheet:
https://ec.europa.eu/commission/presscorner/detail/en/FS_22_5445

Objective

The European Commission proposal states that the purpose of the Single Market Emergency Instrument (SMEI) is to provide a strong, agile governance structure, as well as a targeted toolbox, to ensure the smooth functioning of the Single Market in any future type of crisis. It is likely that not all the tools included in the proposal will be needed simultaneously. The purpose is rather to brace the EU for the future and equip it with what may prove to be necessary in a given crisis situation severely affecting the Single Market.

Structure

The SMEI aims to establish a comprehensive preparedness and crisis-response architecture composed of the following main components:

1. an advisory group
2. a framework for contingency planning
3. a framework for Single Market vigilance, and
4. a framework for Single Market emergencies.

1. The advisory group

The role of this group will be to advise the Commission on the appropriate measures for preventing or addressing the impact of the crisis on the Single Market. This central body will be composed of one representative of each Member State with expertise in Single Market matters as permanent members, and observers representing other crisis relevant bodies.

2. The framework for contingency planning

In normal times where no sudden event is likely to have or is already having severe disruptive effects on the Single Market, market forces ensure the functioning of businesses and the Single Market. The framework of contingency planning does not require an activation step and consists of:

- Arrangements for crisis protocols and crisis communication and training and emergency simulations in view of ensuring timely cooperation and exchange of information between the Commission, Member States and relevant Union level bodies and organising trainings and rehearsals on potential scenarios of Single Market emergencies.
- Ad hoc alerts for early warning system for any incidents that have or potentially could significantly disrupt the functioning of the Single Market and its supply chains of goods and services. In determining the significance or the seriousness of the disruption, pre-determined parameters will be taken into account such as the number of economic operators affected, geographical area or duration of the disruption.

3. The framework for Single Market vigilance

This will be the framework for impacts of significant incidents that have not yet escalated into a full-blown Single Market emergency. It requires activation when an incident that has occurred has the potential to significantly disrupt the supply chains of goods and services of strategic importance that are dependent on non-diversifiable and non-substitutable inputs, or which causes first signs of severe shortages of such goods and services. This framework includes a set of measures such as:

- Monitoring of the supply chains of goods and services of strategic importance that have been identified in the Union level risk assessment referred to in the framework for contingency planning and whose supply could be significantly disrupted due to the occurrence of an incident. Such monitoring will be carried out by the Member States on the basis of voluntary requests for information about factors impacting the availability of the selected goods and services of strategic importance.
- Building-up of strategic reserves, which is a measure subject to additional activation by means of additional Commission implementing acts. The Commission may draw up lists of individual and non-binding targets for the strategic reserves that the Member States should maintain. The Member States, acting jointly in a spirit of solidarity, shall deploy their best efforts to build up strategic reserves of the goods identified as being of strategic importance. The Commission 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 supported by objective data, the Commission may adopt an implementing act to render the individual target for one or more Member States mandatory.
- Public procurement: This allows procurement of goods and services of strategic importance by the Commission on behalf of Member States and procurement of goods and services of strategic importance by the Member States.

4. The framework for Single Market emergencies

The activation of the Single Market emergency mode will immediately activate a number of emergency-response measures, which include:

- Measures to improve transparency: Member States' obligations to notify any draft measures relating to crisis-relevant goods and services and goods and services of strategic importance as well as crisis-relevant restrictions of free movement of persons, together with the reasons for those measures.
- Actions for re-establishing and facilitating free movement: general requirements for free movement restrictions during a Single Market emergency (list of key principles) as well as provisions on prohibited restrictions.

- The banning of restrictions to free movement rights during a Single Market emergency requiring Member States to refrain from, for example, introducing intra-EU export bans of crisis-relevant goods or services and any export restriction of products or services that hamper their free movement, disrupt their supply chains, and create or increase shortages in the Single Market.
- Public procurement: This allows procurement of crisis-relevant goods by the Commission on behalf of Member States and procurement of crisis-relevant goods by the Member States.
- Actions to ensure the availability and supply of crisis-relevant goods, such as facilitating the expansion or repurposing of existing or the establishment of new production capacities for crisis-relevant goods, facilitating the expansion of existing or the establishment of new capacities related to activities, and the introduction of measures ensuring regulatory flexibility, including on permitting, aimed at facilitating the production and placing on the market of crisis-relevant goods.
- Targeted and coordinated distribution of strategic reserves. The Commission may recommend the Member States distribute Union strategic reserves and, where those are not available or sufficient, Member States' strategic reserves in a targeted way, where there is concrete and reliable evidence of serious disruptions in the supply chain of crisis-relevant goods leading to dire shortages of goods of strategic importance, including in geographical areas particularly vulnerable to such disruptions such as the EU outermost regions.
- Emergency measures of exceptional nature requiring additional activation:

Information requests to economic operators:

The Commission shall, if necessary, in case of severe shortages of crisis-relevant goods or services or an immediate threat thereof and after consulting the designated Advisory Group, request representative organisations of economic operators or, if necessary individual economic operators in crisis-relevant supply chains, to provide targeted information to the Commission in relation to their production capacities and current supply chain disruptions.

The Commission shall present aggregate information based on any targeted information requests to economic operators or representative organisations of economic operators to the designated Advisory Group.

Priority rated orders:

In the first stage, the Commission may invite economic operators to accept and prioritise an order of inputs for production of crisis-relevant goods or orders for the production or supply of crisis-relevant goods as final products.

In the second stage, the Commission may, in exceptional circumstances, on its own initiative or if asked by 14 Member States, assess the necessity and proportionality of resorting to priority rated orders of such goods, taking into account the position of the economic operator and potential affected parties. Following such assessment, the Commission may address an implementing act requiring an economic operator to accept and prioritise orders of inputs for the production or supply of crisis-relevant goods or orders of crisis-relevant goods as final products. Economic operators may, within 10 working days, decline to accept such obligation, and provide an explanation of duly justified reasons for doing so. The Commission may make such reasoned explanation or parts thereof public. The obligation, if accepted, shall take precedence over any performance obligation under private or public law.

The Commission shall have regard to the circumstances of the case, including the principles of necessity and proportionality. The priority rated order shall be placed at a fair and reasonable price.

- Targeted amendments of harmonised product legislation. This measure will allow an accelerated placing on the market of the identified crisis-relevant goods by introducing emergency procedures for conformity assessment, adoption of common technical specifications and market surveillance in the context of a Single Market emergency.

Consultation Responses

Stakeholder views are welcomed from all interested parties.

Views from stakeholders and interested parties on the proposed regulation are requested no later than 5pm on Friday 21st October 2022. Submissions should be marked “Single Market Emergency Instrument” and should be emailed to SMEI@enterprise.gov.ie. Further queries can also be made to SMEI@enterprise.gov.ie.

Information on Consultation Process

Freedom of Information Act 2014 and Publication of Submissions

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing it on our website or otherwise disclosing it under the Freedom of Information Act 2014.

General Data Protection Regulation and Data Protection Acts 1988 to 2018

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and provides individuals with more control over their personal data.

The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the General Data Protection Regulation and the Data Protection Acts 1988 to 2018.