

# Single Market Emergency Instrument (SMEI)

POSITION PAPER

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## THE RATIONALE BEHIND SMEI

To many, the year 2020 and all that ensued might now seem like a distant memory, but as we are all aware, the lasting effects of the pandemic continue to be felt in our society and economy. The unprecedented global pandemic and the disruption it brought in the free movement of goods motivated the European Commission's proposal for a Single Market Emergency Instrument (SMEI). With the initial shock of the crisis created by the pandemic, Member States quickly came to the realisation that the Single Market is currently not equipped to deal with crises situations as a result of the remaining fragmentation, barriers, and weaknesses within it. Through the SMEI proposal, the European Commission's objective is to create resilience within the Single Market by addressing these shortcomings. This robust plan also aligns with the EU's current priorities for a green and digital transition.

## SUPPORT FOR THE CONCEPT OF SMEI

Overall, MBB is in favour of having an instrument in place that can ensure the seamless functioning of the Single Market during crisis times and to make it more resilient in such situations that it might face in the future. Furthermore, businesses also remain aligned with the Commission in ensuring that the necessary steps are taken in guaranteeing that the free movement of people, goods and services remains intact. This was an ongoing challenge during the Covid-19 crisis and therefore, an instrument such as SMEI is required to ensure that a functional, effective, and timely system is in place. It is also generally agreed that these crisis mitigation measures at EU-level need to be necessary, proportional, and non-discriminatory. Businesses therefore remain supportive of the general principle behind SMEI.



## MAIN ELEMENTS OF THE PROPOSAL

In reaching the European Commission objective of being able to respond to crises and safeguard the free movement of goods, services, and persons, thereby ensuring the availability of strategic good and services within such periods, the SMEI package includes (1) the main regulation establishing SMEI, (2) a regulation and directive amending several product-specific regulatory regimes and (3) an impact assessment.

SMEI as adopted by the Commission, has three main pillars. The first of which tackles contingency planning which encompasses all regular activities within the Single Market. The second pillar would be activated by a Commission implementing act for a maximum period of six months and is titled: the 'Single Market vigilance mode'. The third pillar: the Single Market emergency mode, would be activated by a Council implementing act also for a maximum period of six months.

Starting with the contingency planning pillar, at this level, preparation is central to SMEI. It will include for the establishment of crisis protocols such as crisis cooperation in communicating and exchanging information as well as carrying out different training and simulations as preparedness measures.

The mid-tier pillar within the SMEI is the Single Market vigilance mode and this incorporates a framework that aims to address the threat of significant disruption of the supply of goods and services that are strategically important to the functioning of the Single Market. Measures under the vigilance mode will include the monitoring of supply chains of goods and services of strategic importance and the procurement of strategic reserves.

The escalation of SMEI will culminate in the single market emergency mode which is to be enacted in the case of disruptions in the free movement within the Single Market or if the functioning of the supply chains that are indispensable for the maintenance of vital societal or economic activities are hampered. Measures imposed under this mode could include the public procurement of crisis-relevant goods as facilitated by the European Commission as well as the recommendation by the European Commission for Member states to ensure the availability of goods and services through increased and accelerated production and facilitated distribution methods.

## THE REACTION OF THE ECONOMIC SECTORS: INFORMATION REQUESTS AND SANCTIONS

Based on the initial consultation earlier on this year, the MBB considers that SMEI's scope was too wide and is concerned that businesses will find it more difficult to comprehend what is required of them, especially SMEs, which may not have the necessary resources to fully comply.

Concrete examples of added burdens to businesses within SMEI's framework include the provisions requiring market operators to answer to information requests as highlighted under Title III Chapter I in the case of single market emergency response measures. The burden of answering information requests coupled with sanctions in the case of breaches, makes these provisions under SMEI overburdensome for businesses.

For instance, within the vigilance and emergency modes, SMEI is proposing for "recommendations" in favour of "building strategic reserves of goods and services of strategic importance" and "recommendations to businesses to share crisis-relevant information". The highlighted recommendations bring into question the alignment of the SMEI framework against the rules of the market economy and contract law given that these recommendations supersede all.

The point on information sharing applies both ways. Within SMEI, the EU expects timely and accurate reporting from the businesses' side however, it is noticeable that within the SMEI text, there is not a reference to the timely and reliable information to be received from public health authorities. This was a recurring issue during the Covid-19 pandemic. The Re-open platform during the aforementioned pandemic can in this case be considered as a best practice that can be applied and improved in creating accessible, user-friendly, reliable and most important timely sources of information.

Such measures are questioned in terms of the level of proportionality. For example, where businesses are unable to provide information, they are still obliged to provide a justification for the decline of the request. This ties in with the imposition of sanctions onto businesses as stipulated within Article 28. It is proposed that sanctions are to be imposed on those unable to provide the necessary information or prioritise the "priority" products. In times of crises, businesses are already operating under challenging conditions and the imposition of such fines can be detrimental to the same businesses' longevity. Moreover, there is also no guarantee that the imposition of fines will change the outcomes as businesses will already be operating under a tough market regime and may not possess the flexibility that is expected.

## THE ROLE OF BUSINESS

One of the components within SMEI is the establishment of an advisory group. The latter's role will be to assist the European Commission in assessing the scope of the crisis and whether there is a need to activate the Single Market vigilance or emergency modes. This advisory group is to be chaired by the Commission and composed of one representative from each Member State. Representatives of other crisis-relevant instruments such as of the HERA Board or of the Integrated political crisis response (IPCR), the European Parliament, EEA states, or economic operators and stakeholder organisations could be invited to participate as observers.

Given the expected imposition on businesses through the SMEI framework, MBB believes that businesses ought to have a greater voice. The potential inclusion of relevant stakeholders within the advisory group is a step in the right direction. However, for SMEI to have an impactful application that is not to the detriment of the same businesses that are providing the supply of the strategically important goods, it must be ensured that businesses are consulted, through their representatives, and have a greater say in the discussions concerning SMEI especially within the advisory group.

## SMES

Under SMEI, companies will have to face additional obligations which will include for instance the monitoring of strategic reserves as well as prioritising orders will undoubtedly leave either direct or indirect effects on SMEs as these are applied across supply chains.

Another negative impact on SMEs are the potential sanctions imposed when failing to meet obligations. Sanctions must be proportionate.

Moreover, SMEI will require companies to increase production in ensuring that there are enough emergency reserves. The legislation must avoid a one size fits all policy particularly for SMEs that have limited resources, whereby ramping up productivity levels, might not be realistically possible.

## CONCLUSIONS

SMEI is an initiative aiming to create mechanisms that are able to cater for different emergencies that threaten the good functioning of the single market during crises. Forward thinking and preparation is necessary and this principle behind SMEI is welcome, however, one must caution the proposition for the prioritisation of orders as well as the disclosure of sensitive business information. These elements within SMEI add burdens on businesses, particularly SMEs, right as they are in the process of recovery and rebuilding.

All of this, while businesses must also keep up with the digital and green transition, as well as other challenges linked to labour shortages and skills mismatches. Businesses are already at crossroads, and during crises they will be even more so, therefore, EU legislators must ensure that SMEI is well defined and avoids imposing additional burdens.

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