

Summary

- The European Commission has proposed a new [“Single Market Emergency Instrument”](#) (SMEI) designed to prevent supply chain disruptions within the EU during future crises, such as those experienced at the start of the COVID-19 pandemic.
- The Russian invasion of Ukraine and the energy crisis have highlighted the need for the EU to act urgently to make Europe’s economy more resilient and competitive, as seen with the focus on “strategic autonomy”.
- The SMEI can also be seen as an attempt to reflect the lessons learned early on during the COVID-19 pandemic when there was enormous pressure on Member State governments to close borders and restrict the export of personal protective equipment and medicines. While those concerns were short-lived, there remains a desire to minimise any such future risks to EU unity.

Report

On 19 September 2022 the European Commission published a legislative proposal to gain new powers aimed at ensuring the free movement of goods, services and people and preventing shortages of critical goods and services within the EU Single Market during emergency situations.

The proposal seeks to avoid supply chain disruptions similar to those experienced by the EU at the start of the COVID-19 pandemic, such as the bans on exports of protective medical gear imposed by certain EU Member States. Internal Market Commissioner Thierry Breton recalled how the EU found itself “ill-equipped to effectively and quickly counter the restrictive measures that are too often [...] the first reaction of our Member States when under pressure”. The Commissioner said that the new instrument was a direct result of recent experience, and “rather than relying on ad hoc improvised actions, the SMEI will provide a structural answer to preserve the free movement of goods, people and services in adverse times”.

What are the main measures in the SMEI?

The Commission has proposed a series of escalating emergency response “modes” that could be activated depending on the severity of the crisis.

In normal times, the SMEI sets out a range of **contingency measures** that the Commission can undertake in order to prepare for possible future crises. These measures include preparing crisis protocols and communication, training and simulations, and an early warning system. The Commission would also regularly carry out risk assessments to determine which sectors, goods and services are of strategic importance and vulnerable to disruption.

The Single Market **vigilance mode** would be triggered if there was a significant incident which threatened supply chains in the Single Market. The main measures under the vigilance mode include monitoring by EU Member States of “strategically important” goods and services, as well as building up reserves in these areas. “Strategically important” goods and services would be determined on a case-by-case basis, depending on the situation.

The EU would move to the Single Market **emergency mode** if a crisis had a “wide-ranging impact” on the Single Market, with “severe disruptions to free movement on the Single Market or the functioning of critical supply chains”. EU Member States would need to approve the activation of this emergency mode. In this situation, EU institutions could prohibit most national restrictions to the free movement of essential goods, services and workers within the EU. Member States would also be required to notify the Commission of any national restrictions as soon as possible, and to consider comments or feedback received from the Commission or other Member States. The Commission could also facilitate joint procurement efforts, and recommend that Member States facilitate the quick production and delivery of essential goods and services.

Most controversially, under the emergency mode the Commission could use “extraordinary measures” to compel businesses to provide information about their production capacities and stocks of essential goods and could force them to accept priority rated orders for these goods. According to EU Commissioner for Competition Margrethe Vestager, priority orders would override obligations under EU contractual rules - but not contracts subject to third-country jurisdictions. This suggests that EU manufacturers could continue to produce and export essential goods to third countries in future crises. The Commission could also recommend that Member States implement measures to re-organise supply chains and production lines in order to ensure the availability of crisis-relevant goods and services. Such measures could include facilitating the expansion or repurposing of existing production capacities.

What is the relationship between SMEI and other EU crisis response instruments?

A number of EU legal instruments lay down provisions which are relevant for the management of crises in general, many of which have been implemented since the beginning of the Covid-19 pandemic. The SMEI will focus predominantly on removing obstacles and preserving the free movement of goods, services and persons and on ensuring the availability of critical products within the Single Market. In this way, it will complement other EU frameworks which lay down more targeted measures on certain aspects of crisis management or are relevant for specific sectors, for example: the European Health Emergency Preparedness and Response Authority ([HERA](#)), the [contingency plan](#) for ensuring food supply and food security and the proposed [European Chips Act](#), which addressed semiconductor supply chains.

Potential impact on New Zealand business

The main impact on New Zealand business in the EU would likely arise under the “emergency mode”. This is because measures relating to requests for information about production capacities and stocks of essential goods as well as those related to re-organising supply chains and production facilities would apply to foreign companies established in the EU, as well as European companies.

However, companies could also stand to benefit from a focus by EU institutions on re-establishing free movement of goods, services and people, as well as banning the adoption of specific restrictions to free movement. Improved transparency and coordination as well as clearer guidance for Member States could help provide certainty and help to mitigate disruptions of the sort experienced at the start of the COVID-19 pandemic, when initial nationally focused responses fuelled 80-km long border queues and threatened to disrupt the flow of goods across internal EU borders. Furthermore, the SMEI envisages measures to make it faster and easier for products that are designated as relevant for managing the crisis to be placed on the EU market, such as allowing for additional flexibility in conformity assessment procedures and increased recognition of international standards.

Next steps

The SMEI proposal will now be discussed and amended by the European Parliament and Member States in the Council. Commissioner Breton has said that he wants the law to be adopted in 2023 – the 30th anniversary of the Single Market.

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