

## CALL FOR EVIDENCE FOR AN IMPACT ASSESSMENT

This document aims to inform the public and stakeholders on the Commission's future legislative work so they can provide feedback on the Commission's understanding of the problem and possible solutions, and give us any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	Single Market Emergency Instrument (SMEI)
<b>LEAD DG (RESPONSIBLE UNIT)</b>	GROW.A.4
<b>LIKELY TYPE OF INITIATIVE</b>	A package of legislative and non-legislative initiatives
<b>INDICATIVE TIMETABLE</b>	Q3-2022
<b>ADDITIONAL INFORMATION</b>	<a href="#">SMEI at Have Your Say</a>

### A. Political context, problem definition and subsidiarity check

#### Political context

The European Council in its Conclusions of 1-2 October 2020 stated that the EU will draw the lessons from the COVID-19 crisis and address remaining fragmentation, barriers and weaknesses of the Single Market in facing emergency situations. In the Update of the Industrial Strategy Communication<sup>1</sup>, the Commission announced an instrument to ensure the free movement of persons, goods and services, as well as greater transparency and coordination in times of crisis. The initiative forms part of the [Commission Work Programme for 2022](#)<sup>2</sup>.

Confronted with growing instability, strategic competition and security threats, e.g. due to Russia's invasion of Ukraine, the meeting of EU leaders in Versailles on 10-11 March 2022 highlighted the need to build a more robust economic base, which is more resilient, competitive and fit for the green and digital transitions, building on the strengths of the Single Market.

The Single Market is a key asset in managing a crisis and strengthening the EU's economic resilience. While resilience of the Single Market is the prime responsibility of the European businesses, the EU and its Member States may take actions to leverage the power of the Single Market to better solve crises. Furthermore, some of the Single Market rules and requirements – while useful and necessary – lack the flexibility that can make the difference in times of emergency.

The initiative will constitute a general Single Market emergency instrument (the “Instrument”) that will ensure complementarity with existing and new EU crisis response initiatives and mechanisms, for example the [European Health Emergency Preparedness and Response Authority \(HERA\)](#), [the Contingency plan for transport](#), [the European food security crisis preparedness and response mechanism](#), [the Schengen Borders Code revision](#), [the integrated political crisis response mechanism \(IPCR\)](#) and [the proposal for a directive to enhance the resilience of critical entities providing essential services in the EU](#).

#### Problem the initiative aims to tackle

The COVID-19 pandemic and more recently Russia's invasion of Ukraine have highlighted a number of structural shortcomings in the organisation of the Single Market in case of unforeseen crises and/or demand or supply shocks. As stated in the Industrial Strategy Update in 2021, while industry is well placed to improve resilience and reduce vulnerabilities, through diversification of suppliers, substitution of inputs and use of secondary raw materials, the Commission is identifying public policy measures that can support industry's efforts to address dependencies and to develop strategic capacity needs: diversifying supply and demand relying on different trading partners whenever

<sup>1</sup> Communication “Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery”, COM(2021)350 final, 05 May 2021

<sup>2</sup> Communication “Commission Work Programme 2022, Making Europe stronger together”, COM(2021)645 final, 19 October 2021

possible, but also stockpiling and acting autonomously whenever necessary. To this end, the EU-US Trade and Technology Council could be seen as benchmark for coordinated approaches to key global trade issues between likeminded international partners. The assessment of potential needs to more effectively respond to and manage future crises shall also extend to possible enhanced means to prevent disruptions and prepare for such crises, including inter alia a comparison to our global partners, which have equipped themselves with certain crisis instruments. While the overall Single Market legal framework is considered sound, the following problems are likely to hamper the EU's ability to respond to any major crisis with important cross-border effects, including for instance another public health crisis, a natural disaster, a migration crisis, an armed conflict, a major technological accident or other crises that can significantly hinder free movement of persons, goods and services in the Single Market and/or disrupt supply chains:

**1. The lack of information, coordination and communication channels:** The Commission and other EU institutions, Member States, stakeholders and citizens collectively do not have the means to obtain the necessary information to manage and respond to future crises, e.g. on the different crisis and crisis preparedness measures taken or on the availability of goods and services of potential relevance to a crisis. The assessment shall examine the adequacy of the respective information, coordination and communication channels in different possible phases, e.g. to adequately anticipate, monitor, prepare for and manage a crisis. This is exacerbated by a lack of coordination and communication channels dedicated to Single Market crisis management between the EU institutions and Member States and/or between Member States, but also between the Commission and businesses and citizens in the different areas of the Single Market.

**2. The lack of emergency and crisis management provisions or measures and of clarity on how to use such existing provisions or measures:** Some EU rules and key principles of the Treaty, e.g. concerning the free movement of services and persons, may require further clarification to be fully used and operational during a crisis and in the context of emergency situations. While free movement is not an absolute right and may be restricted for public policy, public security and public health reasons, such restrictions need to be proportionate and non-discriminatory. In addition, existing EU rules may not cater for the level of urgency and for the EU level coordination needed for adequate crisis management. For example, normal conformity assessment or standardisation procedures could be too slow to respond to a sudden supply or demand shock for particular products relevant for a certain type of crisis. Other EU rules, e.g. on public procurement, contain emergency provisions, but their scope of application may be unclear to their addressees. Furthermore, there may be a lack of measures of last resort, such as ramping up production and availability, or coordinating the distribution of scarce goods when there are dire shortages of crisis-relevant resources in times of crisis.

#### **Basis for EU action (legal basis and subsidiarity check)**

##### **Legal basis**

Depending on the content of the legal instrument(s) of this initiative, the following legal bases could be appropriate: Article 21 TFEU (free movement of persons), Article 33 TFEU (intra-EU customs cooperation), Article 43 (agricultural goods), Article 46 TFEU (free movement of workers), Articles 53(1) and 62 TFEU (free movement of services and professionals), Article 91 TFEU (transport), Article 114 TFEU (establishment and functioning of internal market), Article 118 (intellectual property), Article 122 (measures appropriate to the economic situation in case of severe difficulties), Article 169 (consumer protection), Article 194 TFEU (energy), Article 207(2) TFEU (common commercial policy) and 337 TFEU (information collection and checks by the Commission).

##### **Practical need for EU action**

The sound functioning of the Single Market is a joint endeavour for Member States and the European Union. The Instrument would complement other policy tools to anticipate and prevent disruptions, where possible, and would also prepare for and respond to unavoidable crises, which have important cross-border effects and threaten the functioning of the Single Market. It is in such moments of crisis that effective and efficient coordination and cooperation amongst the Commission, EU institutions, EU agencies and Member States are most needed. The power of the Single Market needs to be leveraged in order to allocate products and services where they are most needed to better mitigate and solve crises. Therefore, action is needed at EU level. Thus, the initiative would provide a reinforced European governance and a toolbox of targeted and temporary instruments that would be used in accordance with the principles of proportionality and non-discrimination, to support policy in anticipating and preventing disruptions, if possible, and to prepare for and respond to crises. Among the tools under consideration that would be finally retained, it is very likely that not all tools would be activated in any given situation. In particular, the need for recourse to such tools will depend on industry's own response to the lessons of recent supply crises in terms of greater preparedness and resilience.

The added value of the Instrument would be the increased ability of the EU institutions, EU agencies and Member States to act in a coordinated and rapid way when the Single Market is put under strain, and, where necessary, adopt targeted, proportionate and temporary measures in a fast and transparent manner.

#### **B. Objectives and policy options**

The main policy objective of the initiative is to enhance the Single Market's resilience through appropriate and necessary crisis preparedness and crisis management and guarantee its smooth functioning in times of crisis. The initiative

therefore aims to prevent disruptions, prepare for and respond to crises by: (1) providing adequate information, coordination and communication mechanisms between EU institutions, Member States and stakeholders adapted to different phases of a crisis; and (2) providing the means to ensure the resilience of the Single Market including availability of products and services relevant for a certain type of crisis, and guaranteeing as much as possible the free circulation of goods, services and persons in times of crisis.

To achieve these objectives, the Commission will assess a range of policy options for the content and scope of the Instrument, combining legislative and non-legislative measures. Beside the baseline scenario or ‘changing nothing’, the Commission will assess an option focused on non-legislative measures, a hybrid option combining legislative and non-legislative measures and a third option proposing a legislative framework with a broader range of crisis management measures. The options could be structured along two pillars operational in a specific phase (*crisis preparedness* and *crisis response*).

The final inclusion of and precise content of each pillar would be defined on the basis of the feedback received in the context of consultation activities and the impact assessment, and could include specific options to be combined for each crisis situation.

The CRISIS PREPAREDNESS pillar, if included, would aim to prevent strategic disruptions and prepare for crises before they arise. Subject to further analysis, this pillar might include modules such as:

- Module for targeted monitoring of identified strategic supply chains to anticipate shortages affecting the smooth functioning of the Single Market (this could be done on either a voluntary or mandatory basis);
- Module for regular assessment of risks and preparedness including by expert bodies/groups, followed by emergency trainings and drills for relevant national and EU experts;
- Module of mitigating measures, including possible strategic storage or stockpiling system(s), for increasing the availability of goods of key strategic importance such as critical raw materials
- Industry-led initiatives aiming at enhancing the resilience of strategic supply chains.

The CRISIS RESPONSE pillar, if included, would contain a toolbox of measures to be activated in the context of a specific crisis materialising. Subject to further analysis, this toolbox could include modules in order to ensure the free movement and availability of products, services and persons relevant for a certain type of crisis such as:

- Module for streamlined procedures for placing on the market and prioritising market surveillance and controls for products relevant for a certain type of;
- Module providing clarifications and possibilities for joint action in the area of public procurement;
- Module for targeted information requests to economic operators;
- Module setting out key principles to identify those national measures restricting the free movement of goods, services and persons that are incompatible with the Single Market in the particular crisis situation and create a blacklist of such measures.
- Module for measures of last resort such as i) targeted and coordinated distribution of products relevant for a certain type of crisis (possibly previously subject to stockpiling) when there are dire shortages of crisis-relevant resources in times of crisis or ii) ramping up of production capacity for products relevant for a certain type of crisis, possibly encouraged by targeted and necessary financial support e.g. for procurement. This could also include the possibility of speeding up permitting procedures at national level, and an obligation on certain undertakings, under defined, proportionate conditions, to accept and prioritise orders of crisis-relevant products in order to enhance the availability of indispensable goods, e.g. to critical services, during a crisis.
- Module on enhanced notification mechanism for national crisis measures including fast-track procedures and peer review to provide adequate coordination and communication mechanisms and to ensure free movement of goods, services and persons.

These new measures would be without prejudice to the Commission’s ability to use existing or planned instruments such as authorisation and monitoring measures for exports and/or imports, FDI screening, relevant state aid frameworks, compulsory licensing and the Member State’s ability to engage in joint procurement where one or several Member States would procure on behalf of one or several Member States under the Procurement Directives.

### **C. Likely impacts**

The measure would help to enhance the Single Market’s crisis management and the smooth functioning in times of crisis. It would reduce economic costs for businesses in times of crisis as it would reduce the risk of an uncoordinated and fragmented response across the EU. It would also reduce costs for administrations and ultimately citizens by improving transparency, the availability of information as well as the proportionality and non-discriminatory character of measures taken in the crisis response. The need to comply with information requests and transparency requirements should also be well designed to ensure a proportionate administrative burden for economic operators compared to the gain of resilience for the single market.

The initiative would buffer negative economic effects such as supply chain or production disruptions across industrial

ecosystems by improving the availability of goods and services in times of crisis. This would be beneficial for citizens and enterprises, especially for Small and Medium-sized Enterprises (SMEs), which are more likely to suffer from free movement restrictions, supply chain disruptions and limited access to goods and services.

The initiative is unlikely to have direct social or environmental impacts, but could possibly have certain impacts on EU fundamental rights.

Depending on its ultimate composition, the administrative cost of this instrument would be mostly limited to risk assessment and preparedness costs in normal times, but it could involve certain additional costs during a time of crisis, such as administrative costs for targeted information collection/sharing and possible meetings for the Commission, national administrations/authorities and potentially economic operators. On the other hand, the initiative could reduce administrative burdens and costs for economic operators and administrations, through better coordination transparency and predictability of the measures deployed in times of crisis. Recurrent costs will be kept to the minimum by using the digital by default rule.

## D. Better regulation instruments

### Impact assessment

An impact assessment will be prepared to identify the problems, set out the policy options and assess the likely positive and negative impacts emerging from the different options.

Evidence and data that will be used in the impact assessment will include upcoming materials as well as already published resources, including:

- [“The impact of COVID-19 on the Internal Market”, study at the request of the EP IMCO Committee;](#)
- Evaluation of the “Strawberry Regulation” (EC) No 2679/98 and its supporting external study<sup>3</sup>;
- On-going evaluation of the New Legislative Framework;
- Relevant information and/or evidence collected in the context of existing or proposed EU crisis response initiatives and mechanisms (e.g. HERA, Schengen Borders Code, Contingency plan for ensuring food supply and food security, the integrated political crisis response mechanism (IPCR), Contingency plan for transport, first Commission report on the EU Digital COVID Certificate Regulation, Council Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic), second Commission report on the EU Digital COVID Certificate Regulation and Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475;
- Academic studies and literature on the effect of previous crises on the functioning of the Single Market, as well as existing position papers and other documents drawn up by relevant stakeholders;
- The results of the public and targeted consultations on the initiative.

### Consultation strategy

The purpose of the consultation is to collect evidence and views from a broad range of stakeholders, giving them an opportunity to provide relevant information on the problems and potential solutions concerning crisis-related disruptions of the Single Market. The information gathered will provide input for the assessment of the impacts of different policy options for the initiative.

The relevant stakeholders for this initiative include national authorities responsible for the Single Market; Non-Governmental Organisations representing civil society; EU and national consumer associations; associations representing industry, businesses and professionals; businesses, including SMEs; social partners; academic experts on free movement in the Single Market; citizens.

Consultation activities include:

- Call for evidence consultation including a public consultation during four weeks (in English). The respondents can find the consultation via the [SMEI page](#) on the Commission’s central public consultations page Have Your Say portal.
- Targeted consultations with Member States authorities, stakeholders and experts through different Commission Committees and expert groups.

In these activities, particular consideration will be given to SMEs, citizens and consumers, and to the relevant pan-European associations representing businesses, workers and consumers. A factual summary report of the public consultation will be published on the Have Your Say portal eight weeks after the closure of the public consultation.

<sup>3</sup> SWD(2019) 371 final, available at <https://data.consilium.europa.eu/doc/document/ST-13119-2019-INIT/en/pdf>

A synopsis report, a summary of all consultation results, will also be prepared and annexed to the Impact Assessment Report.

**Why we are consulting?**

The purpose of the consultation is to collect evidence, experiences and views from stakeholders. This will enable the Commission to take into due consideration the relevant information on the problems and potential solutions when carrying out the impact assessment for the Single Market Emergency Instrument.

**Target audience**

All citizens and organisations are welcome to contribute to this consultation. The Commission seeks to gather input from a broad range of stakeholders, including national authorities responsible for the Single Market; Non-Governmental Organisations representing the civil society; EU and national consumer associations; associations representing industry, businesses and professionals; businesses, including SMEs; social partners; academic experts on free movement in the Single Market; citizens.