

SINGLE MARKET EMERGENCY INSTRUMENT

Proposal COM(2022) 459 of 19 September 2022 for a Regulation establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98

cepPolicyBrief No. 6/2023

SHORT VERSION [[Go to Long Version in German](#)]

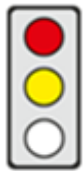
Context | Objective | Interested Parties

Context: In response to the Covid 19 pandemic, Member States closed their borders and, due to a shortage of commodities such as protective masks, imposed export bans and other restrictive measures.

Objective: The Single Market Emergency Instrument (SMEI) is designed to safeguard the free movement of goods, services and people, particularly in times of crisis, and to ensure that goods and services of strategic importance as well as crisis-relevant goods and services are available in the EU.

Interested Parties: Member States, Businesses, Employees, EU Citizens

Brief Assessment



Pro

- ▶ During the Covid 19 pandemic, unilateral action by Member States severely limited the functioning of the Single Market. This led to shortages in the supply of goods and services. The SMEI will prohibit such restrictions with regard to strategically important or crisis-relevant goods and services.

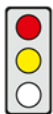
Contra

- ▶ If the Commission concludes that there is an impending supply shortage of a strategically important product and/or service, and thereby declares a product or service to be strategically important, this may exacerbate the shortage or even trigger it in the first place.
- ▶ Priority rated orders distort the Single Market in favour of companies whose orders are prioritised, and at the expense of companies whose orders are deferred. According to the Commission proposal, the latter will not receive any compensation for this as companies that carry out priority rated orders will not be liable for any resulting breaches of contract.

Goods and services of strategic importance or crisis relevance [Long Version A.1, A.4, A.5.1]

Commission proposal. When a crisis is impending or has already occurred, the Commission can declare goods and services to be "of strategic importance" or "crisis-relevant".

- Goods and services are strategically important if their supply is "significantly" threatened and they are indispensable for the functioning of the Single Market in strategically important areas.
- Crisis-relevant goods and services are indispensable for crisis response in the event of a Single Market emergency.

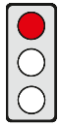


cep-Assessment: If the Commission declares a product and/or service to be strategically important because it considers the supply of that product and/or service to be significantly threatened, this may exacerbate or even trigger a shortage of supply in that product and/or service. The most efficient way to ensure the supply of goods and services is through a market economy.

Priority rated orders [Long Version A.5.5]

Commission proposal: During a Single Market emergency, the EU Commission will be able to oblige companies to prioritise orders for crisis-relevant goods and release them from liability for breaches of other contracts if

- the prioritisation of the order is indispensable for the maintenance of vital societal or economic activities in the Single Market, and
- the priority rated order is necessary and proportionate.



cep-Assessment: Priority rated orders distort the Single Market in favour of companies whose orders are prioritised, and at the expense of companies whose orders are deferred. In addition, the latter will not receive any compensation for this as companies that carry out priority rated orders are not liable for any resulting breaches of contract. This exemption from liability can only apply, however, if the obligation is subject to EU law.

Prohibited restrictions [Long Version A.5.2]

Commission proposal: During a Single Market emergency, Member States will be prohibited from, inter alia,

- introducing intra-EU export bans of crisis-relevant goods or services, and
- restricting the free movement of persons, within the EU, involved in the production or supply of crisis-related goods or services if the restrictions create or increase shortages of such goods and services.



cep-Assessment: During the Covid 19 pandemic, shortages in the supply of goods and services were triggered and exacerbated by restrictions on the Single Market introduced by Member States. For example, Member States imposed entry or exit restrictions which meant that workers could not pursue their activities in other Member States. This resulted inter alia in a lack of workers in the health sector who were needed to combat the crisis. The SMEI may help to ensure that this does not happen again.

Prior checks [Long version A.5.3]

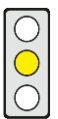
Commission proposal: During a Single Market emergency, Member States will have to notify the Commission of any crisis-relevant draft measures restricting the free movement of goods, services or persons. The Commission will examine whether the measures are compatible with EU law. If it finds "immediately obvious and serious grounds" to believe that they do not comply with EU law, the Commission will notify the Member State by way of comments.



cep-Assessment: Prior checks by the Commission may prevent prohibited or disproportionate restrictions to the Single Market during a Single Market emergency if Member States take the Commission's comments into account.

Relationship to other crisis mechanisms, the Schengen Borders Code and fundamental freedoms [Long Version A.2]

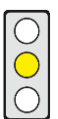
Commission Proposal: The SMEI does not apply to goods and services that already have their own crisis mechanisms, such as medicines, medical devices and semiconductors. The SMEI only addresses the relationship to the Schengen Borders Code and the fundamental freedoms in general terms.



cep-Assessment: The fact that the SMEI does not apply to medicines, medical devices and semiconductors is to be welcomed, as this avoids conflicts between the crisis mechanisms. However, the relationship to other crisis mechanisms such as the so-called Single Market Enforcement Task Force should also be clarified. In addition, the SMEI should clarify that national measures not only have to comply with the SMEI to be lawful, but also with other EU laws, such as the Schengen Borders Code and fundamental freedoms.

Implementing acts [Long Version A.4, A.5.1, A.5.4, A.5.5]

Commission proposal: The Council will declare a Single Market emergency by means of an implementing act; the Commission will indicate which goods and services are strategically important or crisis relevant by means of an implementing act, as well as enable priority rated orders and requests for information, and oblige Member States to build up strategic reserves, among other things.



cep-Assessment: The procedure for the adoption of implementing acts provides for significant involvement of the Member States, which is why the multiple use of implementing acts strengthens the role of Member States. However, they cannot be used to oblige Member States to build up strategic reserves.