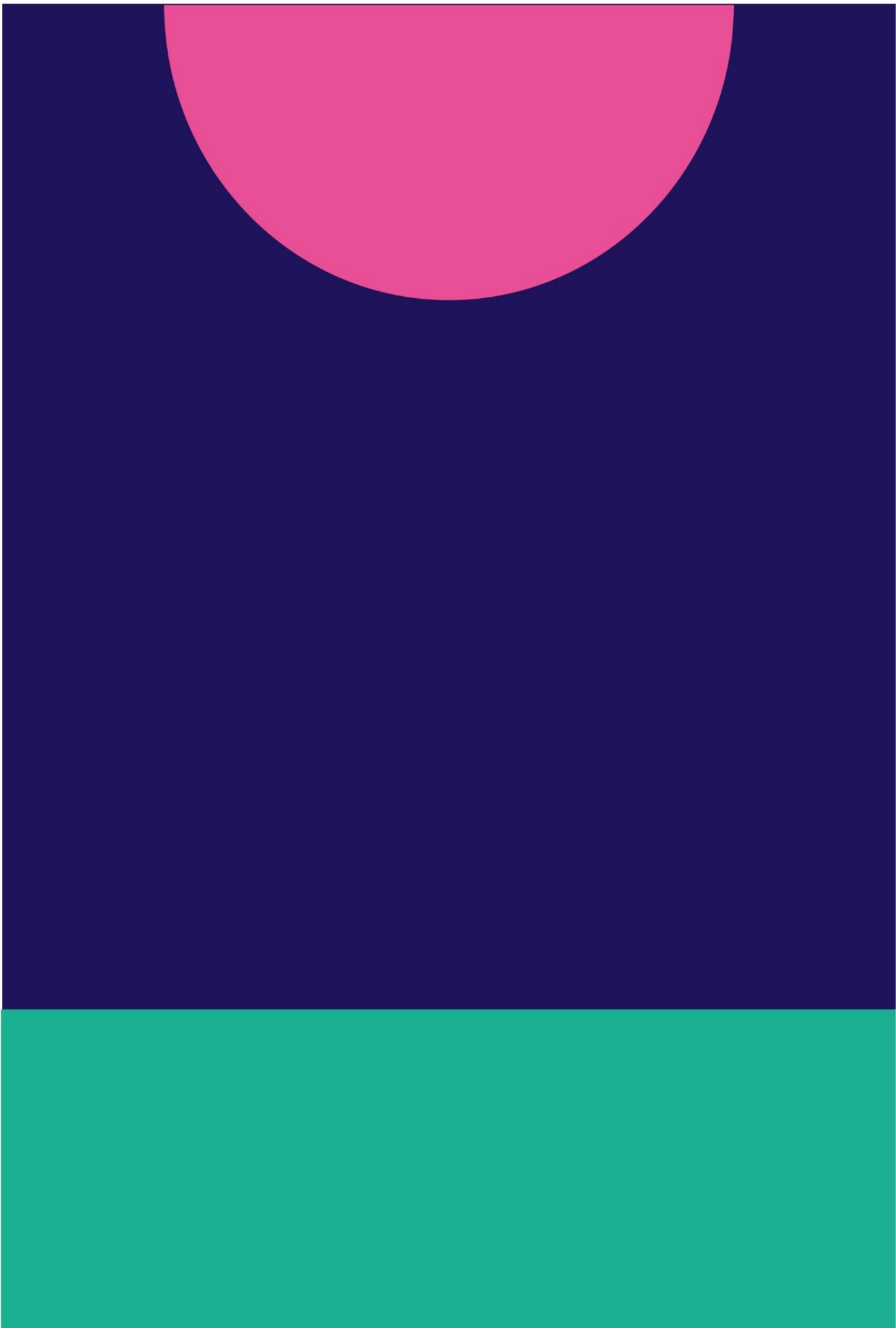




# Public Consultation on the Single Market Emergency Instrument

**Ibec position**

21 October 2022



## Introduction

Ibec's 'Stronger Europe, Stronger Ireland' campaign highlights that the single market is the EU's most valuable asset and that a competitive single market can offer a framework to enable economic growth, job creation, and fundamentally, a rise in living standards for our citizens. Given the economic challenges we face today, the effective and efficient operation of the single market is more important than ever.

With the Single Market Emergency Instrument (SMEI), the European Commission's stated aim is to preserve the free movement of goods, services and persons and the availability of essential goods and services in the event of future emergencies, building on the experience of the Covid-19 pandemic. As businesses, we welcome the ambition from the Commission to ensure the sound functioning of the EU single market and the acknowledgement that the single market can be a key asset in managing a crisis.

However, while bearing in mind business support for EU efforts to prepare for future emergencies, we are concerned that the SMEI proposal goes beyond these original objectives. The Commission's proposal addresses broader supply chain issues outside of times of crises, which requires a dedicated and careful approach. Furthermore, there is a lack of clarity surrounding key definitions. This includes the central point of when an event is considered a crisis as well as uncertainty about how the framework would be implemented in practical terms.

We believe that the proposal could have far-reaching implications on relations with the EU's external trading partners. Viewed in the context of other recently published measures (Data Act, Critical Raw Materials Act), the proposal is indicative of an EU that is increasingly inward-looking. As well as a smooth functioning single market, openness to trade and the ability to attract investment are among the EU's most powerful tools and are at the core of Europe's economic prosperity and competitiveness. It is imperative that all EU proposals take into account potential impacts on trade and investment.

The effectiveness and proportionality of measures, alongside the involvement of stakeholders in decision-making processes during both the vigilance and emergency phases, are key to ensuring a resilient single market.

### **Scope should not go beyond emergency protection**

The scope of the proposal is too broad and addresses not only the protection of single market freedoms in times of crises, but also the EU's so-called strategic dependencies, which are to be defined, and challenges in supply chains more generally. The scope of the proposal should focus on its original objective, ensuring a framework is in place to provide targeted, effective and necessary measures to protect single market freedoms during an emergency situation, such as the Covid-19 pandemic. The current proposal is not focused and this broad, one size fits all approach, creates uncertainty regarding how and when this proposal would be implemented in practice. Such uncertainty could reduce trade

and hamper business investments decisions.

### **Level of intervention should respect the role of business**

Irish business acknowledges the effective role the EU played in preserving single market freedoms during the Covid-19 pandemic, including the introduction of green lanes, coordinated travel guidelines and the creation of an EU Digital Covid Cert. However, lessons should be drawn from how the EU, member states and business can work together to navigate a crisis. In this regard, we are concerned that aspects of the SMEI proposal would provide a framework for a significant and unreasonable level of public intervention. The SMEI proposal, if adopted in its current form, would give the Commission the power to monitor critical supply chains, steer industries outside of emergency situations and create targets for strategic reserves. This proposal raises concerns that excessive market monitoring and regulatory intervention in business decisions could be enabled under legislation. Irish business believes that the objectives of the SMEI proposal can be met without such levels of intervention and many aspects are not compatible with the principle of proportionality.

### **Definitions need to be clear and harmonised**

The type of crisis that would trigger the SMEI and criteria for decision-making mechanisms is unclear. The text as it stands leaves open to interpretation whether a shortage of certain critical materials, disruptions in supply chains or a future pandemic would constitute a crisis for the purposes of this proposal. This lack of clarity therefore limits the possibilities to assess how and when the SMEI would work in practice, and how businesses would be impacted. This does not provide certainty to enable business. To avoid the possibility of a prolonged period of interventionist measures, it is crucial to have clearly defined and harmonised definitions within the eventual legal text.

### **Advisory Group should be transparent and include business stakeholders**

The proposal, if adopted, would give the Commission powers to assess situations of imminent threat and crisis and to make procedural steps triggering different phases. The SMEI proposal also includes the creation of an Advisory Group that would work with the Commission to evaluate whether the emergency framework should be activated. However, the Advisory Group does not have clearly defined decision-making powers and there is a lack of consistency on when and how the Advisory Group and stakeholders would be involved. It is crucial that an adequate governance structure, a balance between the role of member states, role of the European Commission and business partners, is struck. We believe the Advisory Group should have a more significant role, include member states and stakeholders, and that its activities should be transparent.

## **Administrative burden should be minimised and companies should not be liable to disclose commercially sensitive information**

The proposal would place extra requirements on businesses, at a time of challenging emergency situations. If the crisis mode is activated, the proposal would allow the Commission to require companies to provide information, which could be burdensome to collect and provide or potentially be commercially sensitive. As well as raising concerns regarding competitiveness, such demands place additional burdens on economic operators, reducing their ability to focus on and manage the crisis at hand. Furthermore, if companies do not comply with the information requests, they can be fined. Ibec would like to draw attention to the many positive examples of cooperation and voluntary information sharing during the Covid-19 pandemic, when businesses willingly cooperated and prioritised orders and diversified supply chains, to the benefit of EU citizens and the EU economy. Therefore, we believe that businesses should not be liable to disclosing commercially sensitive information for the purpose of crisis preparedness. The Commission should obtain information from member states through a common agreed framework.

## **Business supports sectoral legislation & conformity assessment**

Ibec broadly supports the proposed amendments to the sectoral legislation that aims at accelerating market access for products in times of crises, facilitating the conformity assessment procedures and reinforcing market surveillance to ensure the level-playing field.

## **Measures on procurement must be consistent with existing EU rules and regulations**

Joint purchasing, including cross-border, is not new and is permissible under the existing EU procurement rules. Use of Article 34 of the proposal should be strictly regulated. SMEI should address coordination of procurement to ensure the supply of what is necessary for society in times of crises and the efficiency of public spending. It must avoid potentially harmful disruption to existing supply chains of national healthcare providers, emergency services and first/rapid responders.

Provisions governing the establishment and implementation of the negotiating mandate of the Commission set out in Article 35 of the proposal must be consistent with 2014/24/EU. It should avoid duplication, and potential conflict, with existing public procurement rules and regulations. It is curious why this specific provision for site-visits is included in Article 35(3) of the proposal. This would be commonly and more effectively regulated when required through standard contract clauses. Contracting authorities already have the option to fully utilise the flexibilities within the existing EU procurement rules to increase the value of products and services supplied by 50% under existing contracts (Article 72, 2014/24/EU). Use of certain modification provisions would have to be carefully managed to remain compliant with EU procurement rules. There must be

consistency between Article 36 (modalities of procurement) of the proposal and the contract provisions set out in 2014/24/EU.

## **EU must not send negative signals to international partners**

For Irish business, a key concern is that the proposal may have implications on our relations with external trading partners. Viewed in the context of other recently published measures (Data Act, Critical Raw Materials Act), the proposal is indicative of an EU that is increasingly inward-looking. Discretionary powers given to public authorities to establish lists of most relevant economic operators, information sharing requests, supply chain reorganisation orders and the threat of fines are likely to be seen as an over-reach by the EU and will send a negative message to the EU's trading partners. Furthermore, the broad scope and current lack of clarity within the proposal send a signal of a far-reaching EU executive to economic operators. In this context, it is also important the SMEI is consistent with existing and proposed EU legislation.

## **Conclusion**

Ibec and its member companies look forward to working with the Department of Enterprise, Trade and Employment, and the EU institutions to assist in ensuring the right balance is struck for an effective and proportionate instrument, guaranteeing the protection and development of the single market.

Ibec believes that the EU must support companies, economies and member states as they strive to compete, innovate and prosper in extraordinary challenging circumstances. To survive and succeed, business needs a well-functioning, agile and resilient EU single market and an EU that remains open to trade and investment. In this context, it is important that the SMEI is effective, proportionate and designed to address future emergency situations. The SMEI should not overreach and interfere in the normal operation of supply chains, which would create uncertainty and reduce Irish and EU business competitiveness.



## About Ibec

Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 36 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels. With over 240 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad. Ibec also provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.

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