

## *Single Market Emergency Instrument (SMEI)*

Legislative proposal, 19 September 2022

### *Position Paper*

#### Introduction

France Industrie acknowledges the Single Market Emergency Instrument (SMEI) regulatory proposal in order to ensure the availability of essential products in the single market and **welcomes its objective of proposing coherent responses to crises**. The industry does support the European Commission's ambition to prevent and mitigate disruptions of the single market in times of crisis. The SMEI is a much-needed tool to ensure the stability and resilience of French industries, especially during the current energy crisis which further weakens their competitiveness.

This is an interesting legislative proposal as it **draws lessons from the COVID crisis during which Member States introduced immediate but uncoordinated measures**. The establishment of a **European coordination framework has proven to be of great value for the industry**. Therefore, an instrument perpetuating this framework is extremely relevant.

**However, what was true for vaccine procurement or the mask crisis might not apply to other value chains.**

The scope of this instrument would be much broader than single market disruptions, as it would also address the supply chain. French and European industries **need to assess whether such a large perimeter is relevant, useful and proportionate**. A **dedicated commitment of industries** in the development of those measures is necessary. In order for the SMEI to be to most effective, **co-creation must prevail**.

France Industrie notes that the legislative proposal would not apply to sectors already covered by existing mechanisms such as the European Health Emergency Preparedness and Response Authority (HERA) and the EU Chips Act.

This new instrument must, therefore, be **developed in perfect coherence with those other crisis mechanisms to avoid any discrepancy** in the applications of each of these tools, which would result in an increased burden on businesses. Value chains are particularly intertwined and sensitive, especially in this period of instability and accumulating crises.

Furthermore, France Industrie believes that **harmonised definitions of the terms “crisis” and “emergency” are crucial** to ensure this instrument meets the desired objectives.

France Industrie is convinced by the necessity of establishing this new instrument, but considers that the European Parliament and the Council should take into account, among others, the following points.

## 1. Advisory group

The setting up of an advisory group in charge of assessing the extent of a threat or crisis and to analyse the information gathered by the Member States, the Commission or the economic operators is **relevant**. **An equivalent mechanism could be introduced in the EU Chips Act, as the current Semi-Conductors Board is limited to a single membership of the Member States** and does not provide neither for a permanent participation of external stakeholders, **including industries**, nor any leverage to consult them.

However, **French industry asks for a permanent representation of the industrial stakeholders** rather than being invited to participate as observers and could bring a more specific point of view. To that extent, it is necessary to expand the membership of this advisory group to include European industries.

France Industrie understands the need for this advisory group to collect information in order to coordinate the European response to a potential crisis, but yet expresses some **concerns regarding its ability to securely manage confidential business information**. It is crucial for the viability and competitiveness of French and European industries to take into consideration the level of confidentiality of the information requested and transmitted.

## 2. Planification of emergency measures

The legislative proposal enables the European Commission to take **anticipative and proactive actions** to prepare the EU to deal with crises to come as crisis protocols and crisis communications, training and simulations for administrative services, ...

There is clearly a need for the EU to coordinate its response to any crisis and France Industrie supports the Commission's intention to **protect the single market against potential disturbances**. France Industrie suggests to complement this instrument with a tool box providing for tools and reading keys adapted to each part. Each level of intervention would require its own toolbox.

## 3. Vigilance mode

The introduction of a **coordination mechanism between Member States is particularly valuable** especially when the EU faces a threat of serious disruption to the provision of strategically important goods and services. It is also consistent with the considerations France Industrie has previously expressed on the reduction of strategic dependencies.

If companies are involved in the efforts, they should be **included in the co-creation of measures at a good level of representativeness**. Otherwise, any non-targeted intervention could have a serious impact on the economic equilibrium and projections of industrial companies.

The legislative proposal also provides that in case of an activation of the vigilance mode, Member States have to **identify strategic goods and services** in order to monitor the supply chains. Industries support this **crucial measure** but nevertheless recalls that such lists must be established in a particularly meticulous manner and in association with the industrial companies. **An unfortunate publication of those lists could heavily impact the market and create distortions of competition between companies**.

#### 4. Emergency mode

French industries are fully aware of the necessity to intervene as quickly as possible in case of a crisis and acknowledge that an increased transparency and a deeper understanding of critical supply chains are essential to anticipate and effectively address any upcoming disruption.

However, French industries have strong concerns toward this mechanism as it stands, as **too many questions have yet to be answered. An emergency intervention must not systematically lead to an overly strong centralisation of the decision-making process and to deep interventions in the markets** without a real dialogue with the direct stakeholders, especially since other options are available. Generally speaking, this instrument **cannot rely on a “one-size-fits-all” approach**. The same tools cannot be applied for all cases. Regardless of the strategy adopted, it must be based on a **value chain approach**.

This mechanism must be developed in coordination with European industries throughout the entire process and in the most proportionate manner possible, as they will be severely impacted. Nevertheless, even if industries are involved in the decision-making process, **large-scale interventions in the market, such as mandatory disclosure of information or mandatory prioritisation of productions, remain of major concern**. Among other risks, such measures could jeopardise the business models and the confidentiality of company data and IPR and could result in disproportionate additional burdens, especially for SMEs in an unstable context of accumulating crises.

French industries are particularly preoccupied by the **excessive and mandatory collection of information and its management** by the European Commission. If a third part gains access to confidential information, it could have serious consequences on the **viability and security of numerous companies**.

Industries are offering an **alternative which consists in a proportionate and targeted mechanism which includes industries, and provides for a toolbox while ensuring compliance with competition regulations, trade secrets and industrial property rights**. The determined solutions would be coordinated and enforced at the best possible level of intervention, whether it is national or European, private or public, while respecting the **principle of subsidiarity**. **Such a mechanism could be established even in an emergency situation**.