



Deputy Permanent Representatives of Member States
COREPER 1

31 May 2023

Dear Presidency, dear Deputy Permanent Representatives,

BusinessEurope has been following the developments with regard to the proposal on Single Market Emergency Instrument (SMEI) from its inception. The European business community reiterated its commitment to joining forces in times of crises and helping the society in need of crisis-relevant products or services in our [position paper](#) of 12 January, addressing key issues of SMEI.

As the Council seems to be nearing its general approach on SMEI, BusinessEurope takes this opportunity to acknowledge major text improvements introduced during the Swedish EU Council Presidency, however, to also reiterate the remaining major concerns regarding the Commission's proposal and potentially the Council general approach.

We strongly believe that the vigilance and emergency mode provisions in the original proposal were disproportionate and failed to focus on the protection of Single Market freedoms or to ensure cooperative approach by mobilising the society. Instead, it violated the freedom to do business and messed up the trust in contractual relations (Article 27 on priority-rated orders), jeopardised commercially sensitive information by granularity and mandatory nature of information disclosure requirements on companies (Article 24 on information requests) and opted for a punitive approach (Articles 28-31 on fines). The stockpiling of products (Article 12) and intrusive market monitoring with the establishment of lists of the chosen "most relevant" economic operators (Article 11) hit at the equilibrium necessary to maintain a fair playing field and competition in the stressed market as well as led to the increase of compliance costs.

Such disproportionately far-reaching state intervention measures would undermine the credibility of the EU business environment and would work counter the flexibility, cost efficiency and speed of actions which are all necessary when mitigating a crisis.

BusinessEurope calls upon COREPER to defend the imperative deletions (Articles 12 and 27) and further reconsider the information collection provisions (Articles 11 and 24) in this light. The free movement articles (Articles 16-17) under the Emergency Mode should strictly define the blacklist of Single Market restrictions without any exemptions or vague conditionalities and be supported by transparency provisions under Article 19 to ensure full legal certainty in turbulent times.



BusinessEurope considers that only a significantly improved version of SMEI to match its legal basis and the Single Market objectives could bring the value added at EU level, and that Member States are well placed to ensure such an improvement.

Yours sincerely,

Markus J. Beyrer