

Free movement of goods: elimination of obstacles to trade, Commission intervention mechanism

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This Commission staff working document concerns the evaluation of Regulation (EC) 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States.

The purpose of this evaluation is to assess the functioning of the Regulation over the period 1999-2018 as applied by the EU Member States. The evaluation builds on the findings of the previous stock-taking exercises carried out by the Commission since the adoption of the Regulation in 1998.

The time period covered by this evaluation ranges from 1999 to mid-2019. The geographical scope of the evaluation includes all the EU Member States. The EFTA States and Turkey have not been included. In terms of case studies, the focus has been placed on France, Spain, Bulgaria, Greece, Slovakia, Austria, and Belgium.

The evaluation is a follow-up to the decision taken in 2016 by the European Commission, national authorities and several key stakeholders on the need to evaluate the Regulation in the light of the latest developments and challenges such as those derived from the use of new technologies.

The evaluation exercise was launched in 2017 and this Staff Working Document concludes this evaluation process.

Main findings

Based on the evaluation findings and without prejudice to the shortcomings identified by the evaluation, the major achievements of the Regulation are two-fold:

- (i) it has enabled the exchange of information between the Commission and the NCPs via the early warning mechanism;
- (ii) it has proved to be an effective tool of exerting pressure on the Member States to promptly address cases of disruptions in physical movement of goods and has improved the management of obstacles.

Effectiveness and efficiency

The effectiveness of the Regulation is jeopardised by the lack of awareness, especially by local authorities, of the existence of the Regulation, its role, mechanisms, and objectives it seeks to pursue. As a result, many obstacles or disruptions are not reported. The lack of a monitoring mechanism to check the Member States' compliance with their obligations also contributes to the weakening of the effectiveness of the Regulation. The exchange of information carried out by email between the Commission and the Member States does not seem sufficient. The Regulation does not ensure that other stakeholders are informed. In addition, there is no direct communication channel between the NCPs of different Member States when an obstacle occurs. Moreover, real-time information related to ongoing or future obstacles is not publically available or accessible.

The main external factor influencing the efficiency of the Regulation is that, in order to not interfere with the right to strike, the Regulation does not prevent obstacles from occurring, so it does not prevent losses for economic operators, although it can help to shorten the time of disruption and thus the related damages.

Coherence, relevance and EU added value

To keep the Regulation coherent, relevant and with EU added value, it needs some adaptation to new technological developments to ensure faster communication of the obstacle and also to inform all interested parties and stakeholders. It is also underlined that some new challenges are not addressed by the Regulation, such as fluctuations of agricultural prices, migration flows and security threats. In terms of coherence, the Regulation is considered to be a useful instrument that does not interfere with other EU or national policies, in particular it is consistent with the EU transport and environmental policies. However, there are some concerns regarding the use of the Regulation in the case of strikes, as the aim of the Regulation is to prevent obstacles, while at the same time not interfering with the fundamental rights such as the freedom to strike.

Currently, the Regulation does not foresee a compensation mechanism for the losses suffered by individuals. The Commission is therefore not in a position to demand that the damage suffered by individuals in the event of an obstacle be compensated.

Conclusion

The issues mentioned above could possibly be mitigated through:

- a better definition of ‘obstacles’, the timing of communication (‘immediately’ and ‘as soon as possible’) and ‘necessary and proportionate measures’, to ensure the correct application of the Regulation;
- the introduction of a monitoring mechanism to check Member States’ compliance with their obligations to both inform the Commission;
- the introduction of a unified digital solution with real time information accessible to businesses and national associations to speed up information exchange and reduce the asymmetry of information;
- a transparent, non-discriminatory and effective procedure to compensate economic operators for any loss or damage related to the obstacles.

Taking into account the increasing volume of goods transported across the EU, obstacles to the free movement of goods may cause higher economic losses now than when the Regulation was initially adopted, both to individuals and national economies. Therefore, strengthening the policy embodied in the Regulation could help to make it more efficient and effective, as well as coherent and relevant, and could bring benefits to the functioning of the EU internal market and its economic operators.

In the past, the EU institutions and relevant stakeholders were deterred from engaging in actions to strengthen the policy embodied in the Regulation due the unanimity rule required to revise the current Regulation. However, it should be noted that not all actions to further strengthen the policy would necessarily require legislative change and also alternative Treaty bases might be investigated. While for example the introduction of a monitoring mechanism and the establishment of a compensation mechanism are likely to require legislative change, the direct exchange of information between Member States and other interested parties, via a central electronic platform is less likely to require legislative change. In any case, this would need to be further investigated.

Any attempt to further develop measures to mitigate the problems identified in this evaluation should be analysed in light of the ongoing technological developments which require, as the evaluation has shown, to possibly think in a different way about the functioning of the “Strawberry” Regulation.