

# Procedure file

Basic information		
CNS - Consultation procedure Regulation	1997/0330(CNS)	Procedure completed
Free movement of goods: elimination of obstacles to trade, Commission intervention mechanism		
Subject 2.10 Free movement of goods 2.60.01 Trade restrictions, concerted practices, dominant positions		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		11/02/1998
		PSE <a href="#">SKINNER Peter</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs, Citizens' Rights		06/01/1998
		PPE <a href="#">PALACIO VALLELERSUNDI Ana</a>	
Council of the European Union	<b>LIBE</b> Civil Liberties and Internal Affairs		
	Council configuration	Meeting	Date
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a> <a href="#">2149</a>		07/12/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a> <a href="#">2130</a>		09/11/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a> <a href="#">2094</a>		18/05/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a> <a href="#">2079</a>		30/03/1998

Key events			
18/11/1997	Initial legislative proposal published	COM(1997)0619	Summary
30/03/1998	Debate in Council	<a href="#">2079</a>	
29/06/1998	Legislative proposal published	<a href="#">09348/1998</a>	Summary
15/07/1998	Committee referral announced in Parliament		
28/10/1998	Vote in committee		Summary
28/10/1998	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0385/1998</a>	

04/11/1998	Debate in Parliament		
05/11/1998	Decision by Parliament	T4-0642/1998	Summary
07/12/1998	Act adopted by Council after consultation of Parliament		
07/12/1998	End of procedure in Parliament		
12/12/1998	Final act published in Official Journal		

### Technical information

Procedure reference	1997/0330(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Rules of Procedure EP 050; EC before Amsterdam E 235
Stage reached in procedure	Procedure completed
Committee dossier	ECON/4/10297

### Documentation gateway

Initial legislative proposal		<a href="#">COM(1997)0619</a> <a href="#">OJ C 010 15.01.1998, p. 0014</a>	18/11/1997	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0643/1998</a> <a href="#">OJ C 214 10.07.1998, p. 0090</a>	29/04/1998	ESC	
Legislative proposal		<a href="#">09348/1998</a>	29/06/1998	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0385/1998</a> <a href="#">OJ C 359 23.11.1998, p. 0005</a>	28/10/1998	EP	
Text adopted by Parliament, 1st reading/single reading		T4-0642/1998 <a href="#">OJ C 359 23.11.1998, p. 0014-0091</a>	05/11/1998	EP	Summary
Follow-up document		COM(2001)0160	22/03/2001	EC	Summary
Follow-up document		SWD(2019)0371	08/10/2019	EC	Summary
Follow-up document		SWD(2019)0372	08/10/2019	EC	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
---------------------	-------------------------

### Final act

[Regulation 1998/2679](#)  
[OJ L 337 12.12.1998, p. 0008](#) Summary

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

**OBJECTIVE:** to ensure rapid restoration of the free movement of goods when it is impeded in such a way as to seriously disrupt the functioning of the internal market. **SUBSTANCE:** the Commission proposes adoption of a regulation creating a specific Commission intervention mechanism so that certain obstacles to the free movement of goods are rectified rapidly. Under this mechanism, the Commission

would request the Member State concerned, by means of a decision, to take the measures necessary to bring to an end a clear and unmistakeable obstacle to the free movement of goods within the meaning of Articles 30-36 of the Treaty. The power given to the Commission would be confined to certain cases for which rapid action is necessary. A decision taken by the Commission would thus produce immediate legal effects for individuals in the national legal systems. The proposal envisages that, where the Member State does not comply with the Commission's decision within the given period, the Commission will immediately refer the matter to the Court of Justice under Article 169 of the EC Treaty within the very short deadlines set out in the Regulation. ¿

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

---

OBJECTIVE: to establish a Commission intervention procedure to eliminate certain obstacles to the movement of goods. SUBSTANCE: the proposal for a Regulation obliges any Member State within whose territory obstacles to the free movement of goods arise to take the necessary proportionate measures to re-establish free movement of goods within its territory as soon as possible in order to remove any risk of continuation, increase or intensification of the disruption or loss in question and any risk of disruption of the free movement of goods and the contractual relations on which it is based. More specifically, the proposal provides that if an obstacle arises or is likely to arise, any Member State which has the relevant information shall communicate it to the Commission immediately. The Commission is to forward the information to the Member States at once. The Member State must inform the Commission and, on request, the other Member States, of the measures it has taken or intends to take with regard to the obstacle. The Commission must notify the Member State concerned that the rules have been violated, and the Member State must reply to the notification. ?

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

---

As a result of the increasing awareness that industrial action in some cases may cause severe disruptions to the free movement of goods (an example in the use of road blocks), the Commission last year put forward a proposal establishing a rapid intervention mechanism giving it power to request the Member State(s) concerned to remove any such obstacles without delay. However, that proposal was met with several objections which prompted the Council to substantially modify the original proposal in order to curtail the Commission's powers and to expressly recognise fundamental rights such as the right to strike. While approving the general reasoning behind the Council text, The Committee adopted a number of amendments calling for the proposal's scope to be extended to include the removal of obstacles to the free movement of workers. The rapporteur is Mr Peter SKINNER (PES, UK)?

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

---

In adopting the report by Mr Peter SKINNER (PSE, UK) on removing certain obstacles to trade, Parliament rejected virtually all the amendments tabled by the Committee on Economic and Monetary Affairs and Industrial Policy. Only three of the 14 amendments tabled were adopted. Except for Amendment 1, reaffirming that freedom of movement for workers is one of the fundamental principles of the Community, all the other amendments seeking to include free movement of workers in the proposal for a regulation in parallel with free movement of goods were rejected.?

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

---

OBJECTIVE: to establish a Commission intervention mechanism to eliminate certain obstacles to the movement of goods. COMMUNITY MEASURE: Council Regulation (EC) no. 2679/98 on the operation of the single market with regard to the free movement of goods between Member States. CONTENTS: the Regulation provides that if an obstacle arises or is likely to arise, any Member State which has the relevant information shall communicate it to the Commission immediately. The Commission is to forward the information to the Member States at once. The Member State must inform the Commission and, on request, the other Member States, of the measures which it has taken or intends to take with regard to the obstacle. The Regulation obliges the Member State within whose territory obstacles to the free movement of goods arise to take the necessary proportionate measures to re-establish free movement of goods within its territory as soon as possible. The Commission must notify the Member State concerned that the rules have been violated and the Member State must reply to the notification within five days. ENTRY INTO FORCE: 7 December 1998.?

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

---

Two years after the entry into force of Council Regulation 2679/98/EC of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States, the time has come to assess progress in its application in light of the experience gained. Economic operators recognise that the information exchange system, as enshrined in the Regulation and the Resolution, has on the whole functioned fairly well over the last two years. However, there are doubts about the real effectiveness of these two legal instruments in preventing or eliminating obstacles. The only thing that can be established is the existence of short-lived obstacles. With a view to resolving the weaknesses of the regulation, the Commission suggests three possible scenarios: - maintaining the status quo: the Commission feels that the existing legal framework requires genuine cooperation with the Member States at several levels; - a more dynamic approach in applying the Regulation and compliance with the Resolution (for example, adoption of a vade-mecum intended for the Member States and economic operators, ad hoc system of regular information for the Council and the European Parliament on the course of each case of application of the Regulation); - amendment of the Regulation to extend and improve its scope (for example, elimination of any ambiguity in the definition of obstacles requiring rapid intervention under the Regulation, illustrative list of the necessary and proportionate supporting measures to restore as soon as possible the free movement of goods in the territory of the Member States, an extension of the scope of the Regulation to include

situations which are not currently covered, the introduction of an accelerated procedure for bringing proceedings before the Court of Justice in the absence of a reply from a Member State, the insertion of a provision in the Regulation requiring Member States to adopt swift and effective ways and means of compensating individuals damaged by an obstacle). ?

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

---

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 publicly 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.

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

---

This Commission staff working document contains the executive summary of 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.

According to the evaluation, the Regulation has been effective in enabling the exchange of information between the Commission and the Member States (through the national contact points - NCPs) via the early warning mechanism, even if such exchange mechanism is considered in some aspects insufficient.

Since the adoption of the Regulation up until June 2019, 244 obstacles have been reported to the Commission under the early warning mechanism, after which the Commission could inform the other Member States. However, the evaluation has also shown that there are many incidents that have not been reported under the Regulation.

The evaluation has also shown that the Regulation has a deterrent effect and thus has exerted pressure on Member States public authorities to address cases of disruptions in the physical movement of goods, and has therefore improved the management of obstacles.

### Shortcomings

The evaluation has identified a number of shortcomings, which overall undermine the value, efficiency, coherence and added value of the Regulation.

### Effectiveness

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.

### Efficiency

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. It thereby does not prevent losses for economic operators, although it can help to shorten the time of disruption and thus related damages.

### Coherency

To keep the Regulation coherent, relevant and with EU added value, it needs some adaptation to embrace new technological developments, to ensure faster communication of the obstacle and also inform interested parties and stakeholders. 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.

### Conclusion

It is concluded that the issues mentioned above could possibly be mitigated through:

- a better definition of the key concepts of the Regulation (e.g. obstacles);
- the introduction of a monitoring mechanism to check Member States compliance with their obligations under the Regulation;
- 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;
- the introduction of a transparent, and non-discriminatory and effective procedure to compensate economic operators for any losses or damage related to the obstacles.

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.