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signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
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Subject: COMMISSION STAFF WORKING DOCUMENT 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

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Delegations will find attached Commission staff working document SWD(2019) 371 final.

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**COMMISSION STAFF WORKING DOCUMENT**

**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**

{SWD(2019) 372 final}

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## **1. INTRODUCTION**

### **1.1. Purpose, objective and scope of the Evaluation**

The Regulation (EC) 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States<sup>1</sup> (hereinafter the ‘Regulation’) establishes an information and monitoring mechanism in order to prevent and limit the consequences of obstacles to trade in goods across the EU internal borders which inflict serious losses on individuals. The Regulation governs the Member States’ obligations in guaranteeing the free movement of goods in the European Union and is known as the ‘Strawberry Regulation’. It was adopted as a consequence of the continued serious obstacles that, during the 1990s, negatively affected agricultural products (mainly strawberries, tomatoes and wine) transported from Spain and other countries to France. 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. This evaluation builds on the findings of the previous stock-taking exercises carried out by the Commission since the adoption of the Regulation in 1998, notably the 2001 Report on the progress of the application of the Regulation<sup>2</sup> (the ‘2001 Report’) and the 2007 Evaluation which covered the period from 1990 to the end of 2006. 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 objectives of the evaluation can be summarised as follows:

- Assessing the impact of the Regulation with regard to the serious disruption of the free movement of goods within the EU, and in particular all the various means open to enterprises to ensure that they are informed of serious disruptions.
- Evaluating, to the extent possible, damages caused by serious obstacles to the free movement of goods since the application of the Regulation.
- Identifying best practices aiming to improve the functioning of the Regulation as a means to ensure the free movement of goods without serious disruption. Such best practices can be linked to possible ways to improve the functioning of the Regulation and can also examine alternative methods to address the obstacles to the free movement of goods, either at EU or national level.

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 was carried out with the help of a consortium comprising the Technopolis Group with EY and VVA. Stakeholder

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<sup>1</sup> OJ L 337, 12.12.1998, p. 8–9.

<sup>2</sup> Brussels, 22.3.2001 COM(2001) 160 final, Report from the Commission to the Council and the European Parliament on the application of Regulation (EC) No 2679/98.

consultation took place between March 2017 and March 2018<sup>3</sup>. This Staff Working Document concludes this evaluation process.

## 2. BACKGROUND TO THE INTERVENTION

### 2.1. Description of the intervention and its objectives

The right to the free movement of goods originating in Member States, and of goods from third countries that are in free circulation in the Member States, is one of the fundamental principles of the Treaty on the Functioning of the European Union (Article 34 TFEU). The Regulation was adopted with the aim of safeguarding and protecting the free movement of goods in the European internal market and to reduce considerable and potentially irreparable financial losses suffered by economic entities.

The free movement of goods generates some 25% of the EU GDP and accounts for 75% of intra-EU trade, contributing greatly to European growth while spurring employment and inward investment. It offers the opportunity to sell to more than 500 million consumers and 21 million businesses. In 2016, total inland freight transport in the EU-28 was estimated to be just over 2.400 billion tonne-kilometres (tkm); with around three quarters of this total being transported by road. Intra-EU trade developed vigorously until the financial and economic crises severely hit all EU Member States and sectors, leading to a sharp decline in trade in 2009. From 2011 onwards, weak demand and slow economic growth led to low dynamics in intra-EU trade in goods. Positive signs of accelerated growth in intra-EU trade have been observed as of 2015 and 2016.<sup>4</sup> Minimising obstacles to the free movement of goods and its negative impacts on stakeholders can help realise the full potential of the free movement of goods in the Single Market, calculated in the range of 183 billion to 269 billion EUR<sup>5</sup>.

The Regulation was adopted as a result of the shortcomings identified by the European Council in Amsterdam on 16<sup>th</sup> and 17<sup>th</sup> of June 1997 in addressing the cases of serious obstacles to the free movement of goods. It was conceived as an adequate tool to address the obstacles that started emerging in the 1990s such as the blocking of roads and tunnels, amongst others, that negatively affected the free movement of agricultural products (in particular strawberries, tomatoes and wine) from Spain and other countries to France.

While negotiations on the regulation were being held in the Council and the Parliament, the Court of Justice (hereinafter referred to as ‘the Court’) passed a judgment relating to serious obstacles to the free movement of goods.<sup>6</sup> In that judgment, the Court found that a Member State was failing to comply with the obligations deriving from Article 34 TFEU (ex Article 28 TEC), in conjunction with Article 4(3) TEU (ex Article 10 TEC), *“since the measures adopted to deal with actions by private individuals which create obstacles to the free movement of certain [...] products [...] were manifestly inadequate to ensure freedom of intra-Community trade in [...] products on its territory by preventing and effectively dissuading the*

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<sup>3</sup> 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, Technopolis Group in consortium with EY and VVA Consulting, 2018.

<sup>4</sup> <https://www.businesseurope.eu/publications/eu-single-market-facts-and-figures>

<sup>5</sup> <https://www.businesseurope.eu/publications/eu-single-market-facts-and-figures>

<sup>6</sup> Case C-265/95, *Commission v France*, ECLI:EU:C:1997:595.

*perpetrators of the offences in question from committing and repeating them.*” This judgement is considered ground-breaking, since it was the very first case in which the Court was called to rule whether a Member State is liable for its inaction in the face of restrictions on imports emanating from third parties.

In 1998, the Regulation was adopted on the basis of ex Article 308 TEC, nowadays Article 352 TFEU, which requires unanimity in the Council. The *ratio legis* was to establish the procedures capable of responding rapidly and effectively to the restrictions on the free movement of goods resulting from the obstacles. Consequently, the Regulation constitutes an instrument to respond to both inadequate action and non-action by Member States against immobilisation or destruction of goods resulting from acts of vandalism / violence.

The Regulation introduced three approaches, i.e. (i) an early warning mechanism in the event of an obstacle or a risk of an obstacle, (ii) an obligation on the Member States to take the necessary and proportionate measures needed to ensure the free movement of goods, and (iii) the Commission’s action notifying the Member States and urging them to take such measures.

At the time of adopting the Regulation, and since the Member States were not able to reach an agreement on a compensation mechanism, the Council also signed a Resolution<sup>7</sup> reaffirming the Member States’ undertaking to respond rapidly to any move by the Commission and to ensure compensation for losses incurred by individuals.

The overall objective of the Regulation is to guarantee the functioning of the internal market by ensuring the free movement of goods through preventing and addressing the obstacles effectively. The specific objectives of the Regulation are: (i) to ensure an adequate and rapid exchange of information between the Member States and the Commission on possible obstacles to the free movement of goods and on the way to overcome them; (ii) to have a preventive effect to anyone planning to create possible obstacles; and (iii) to lead to an overall change of approach to dealing with obstacles. Concretely, these objectives entailed: (i) developing an early warning mechanism in the event or risk of an obstacle; (ii) making the Member States take the necessary and proportionate (and preventive whenever possible) measures needed to ensure the free movement of goods; and (iii) establishing a notification from the Commission to the Member States to ensure timely measures to guarantee free movement of goods.

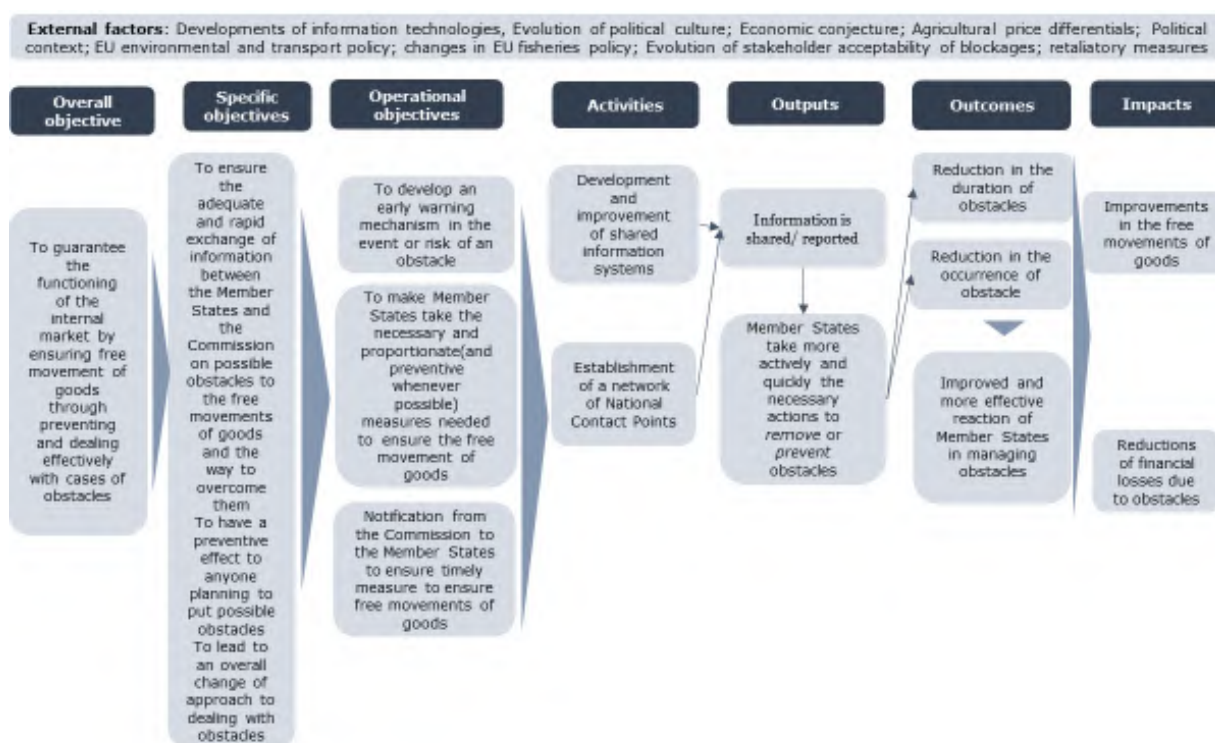
Since the Regulation has been in force, shared information systems have been developed and a network of National Contact Points has been established.

The figure below illustrates the intervention logic and also identifies the external factors that may affect the intervention. In this regard, the EU intervention represents the link through which “activities” are transformed into concrete and measurable “outcomes” that have direct “impacts” on the everyday life of the EU citizens, and which are intended to meet the “objectives” set by the Regulation (EC) No. 2679/98 towards a well-functioning internal market free of obstacles (e.g. goods are not damaged or destroyed when being transported within the EU).

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<sup>7</sup> Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 7 December 1998 on the free movement of goods; OJ L 337 of 12.12.98, p.10-11.

**Figure 1: Intervention Logic<sup>8</sup>**



Source: Technopolis group

## 2.2. Points of comparison – technological development

The Regulation was adopted at a moment when there was hardly any real time information about actual obstacles to the free movement of goods within the EU. In those pre-mobile-app days, the exchange of information between national authorities on actual obstacles was much more important than it is now. Currently many driving apps and traffic apps are already easily accesible through smartphone and other technologies. These mapping and GPS applications are long-established and are regularly updated by their respective owners. Therefore, they excel in their reporting of active traffic conditions and real-time route updates by relying on its users for information and gathering data by crowdsourcing. In addition to traffic, these apps show speed cameras, accidents and other impediments to the journey. As a result, they can serve for cargo transportation companies as tools for bypassing blockages of roads and tunnels, thus facilitating the achievement of the prevention of physical barriers to trade which has been one of the key objectives of the Regulation.

## 2.3. Regulation provisions - snapshot:

**Article 1** of the Regulation defines the obstacles to the free movement of goods on which its application is based. They must be likely to constitute a breach of Articles 34 to 36 TFEU,<sup>9</sup>

<sup>8</sup> Page 24 of the Final Report on 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, 2018, Valdani, Vicari & Associati.

<sup>9</sup> The Regulation thus applies only to intra-EU trade, and not to trade in goods between Member States and third countries.

lead to serious disruption of the free movement of goods, cause serious loss to the individuals affected, and require immediate action in order to prevent any continuation, increase or intensification of the disruption or loss in question. It is immaterial whether the obstacles are the result of action or inaction by a Member State, since the latter is defined according to the terms of the aforementioned case law of the Court.

**Article 2** of the Regulation makes it clear, however, that it does not affect the exercise of fundamental rights, including the right to strike.

The warning mechanism is defined in **Article 3** of the Regulation. It must be implemented in the event of an obstacle or the threat of an obstacle and involves the Member States transmitting information to the Commission which the latter passes on to all the other Member States.<sup>10</sup>

**Article 4** of the Regulation requires the Member States, in the event of an obstacle, to take all necessary and proportionate measures so that the free movement of goods between Member States is assured in its territory, and to inform the Commission of such measures.<sup>11</sup>

Where an obstacle occurs, the Commission must, pursuant to **Article 5** of the Regulation, notify the Member State concerned of the reasons for its action and request it to take the necessary and proportionate measures to remove the obstacle. This notification may be published in the Official Journal and is transmitted to any party which requests it.

The Regulation was adopted as a means of ensuring the free movement of goods in the face of ‘obstacles’. While those ‘obstacles’ are not given a proper definition, the Regulation establishes in its Article 1 some key concepts, including the term of “inaction”. The Regulation does not include either a definition of a ‘*serious disruption*’, or ‘*serious loss*’.

**Table 1: Key concepts of the Regulation**

Concept	Explanation
<i>Notifying /reporting /identifying an ‘obstacle’</i>	Specific terminology is used in relation to who has ‘identified’ obstacles: <ul style="list-style-type: none"> <li>– Member States notify ‘obstacles’.</li> <li>– The Commission identifies ‘obstacles’.</li> <li>– Economic operators report ‘obstacles’.</li> </ul>

<sup>10</sup> In Case *Commission v Austria* (C-320/03), Austria had argued, inter alia, that the Commission should have used the procedure under the Regulation instead of an infringement procedure under Article 258 TFEU. Yet, the Court said that engaging a procedure under the Regulation is in no way a precondition which the Commission must satisfy before commencing the pre-litigation procedure under Article 258 TFEU, and that that Regulation does not in any way restrict the Commission’s powers under Article 258 TFEU.

<sup>11</sup> The necessity and the proportionality are in the first place evaluated in the light of Articles 34 to 36 TFEU and more in particular on the basis of the criteria suggested in the Court of Justice’s case-law, in particular in the above-discussed judgment of 9 December 1997 (*Commission v France*, Case C-265/95) and, very especially, in the subsequent judgments of 12 June 2003 (*Case C-112/00, Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich*), and of 15 November 2005 (*C-320/03, Commission v Austria*).



<b><i>Immobilisation of goods</i></b>	Restriction of the entry to, export from or transit movement of goods within the territory of another Member State. Only cross-border movement of the goods within the EU is covered by the Regulation.
<b><i>Member State concerned</i></b>	The country where the obstacle took place.
<b><i>Nature of ‘obstacles’</i></b>	Serious disruption of the free movement of goods can include: (1) immobilisation of goods; (2) destruction of goods; or (3) both.  Destruction of goods may also take place indirectly, due to that (perishable) goods that are being transported between Member States are destroyed through immobilisation of vehicles but not through direct actions to destroy these goods.
<b><i>National Contact Point (‘NCP’)</i></b>	In April 1999 the Commission invited the Member States to designate National Contact Points in order to establish a network of contacts across the EU to ensure the rapid transmission of information under the early warning mechanism set up by the Regulation.  In most Member States, the national contact points are Ministry officials working in the following areas: Economy, Transport, Enterprise, Trade, Industry, Employment and Foreign Affairs. For some Member States, staff of Permanent Representations to the European Union is also indicated as contact points.

#### **2.4. This evaluation and the previous stock-taking exercises**

As mentioned in Section 1.1, in 2001 the Commission issued a report on the progress of the implementation of the Regulation.<sup>12</sup> In 2006 and 2007, an evaluation of the Regulation was carried out.<sup>13</sup> The current evaluation differs from the Report of 2001 and from the evaluation of 2007, notably for its time coverage. While the 2001 Report focused on the progress made after two years following the adoption of the Regulation in 1998, the 2007 evaluation covered a much wider period, looking at the events from 1990 to 2007. It was, therefore, comparing the situation before the adoption of the Regulation to the period thereafter until 2007. This current evaluation, while building on the results of the 2007 evaluation, covers data from 1998 to 2019. In terms of territorial coverage, the 2007 evaluation did not cover the three new Member States: Bulgaria, Romania, and Croatia. Nevertheless, the findings of the current and past evaluations seem to identify the same shortcomings such as unclear scope of the regulation, lack of consistent cooperation between the Member States, and lack of an effective compensation mechanism.

Despite the shortcomings identified in the previous report and evaluation, there have been no clear calls from stakeholders nor the EU Member States requesting a revision of the Regulation. This may be due to the fact that reaching consensus among all Member States, as required by Article 352 TFEU, may prove challenging in order to amend the provisions of the Regulation with unanimous approval in the European Council. Possible alternative routes of policy action (e.g. non-legislative action) were not really considered.

<sup>12</sup> Brussels, 22.3.2001 COM(2001) 160 final, Report from the Commission to the Council and the European Parliament on the application of Regulation (EC) No 2679/98.

<sup>13</sup> <https://publications.europa.eu/en/publication-detail/-/publication/aa363fad-0ec7-4364-924a-c895f41a098d>

#### **2.4.1. The 2001 Report**

Two years after the entry into force of the Regulation, the Commission assessed progress in its application and published a report in accordance with the requirement of the Regulation.<sup>14</sup>

The report included assessments of: the implementation of the Regulation; the weaknesses of the Regulation, including opinions on the Commission's actions; and raised main issues and avenues for further reflection on improving the Regulation.

The main weaknesses of the Regulation then found included:

- No penalty is provided for Member States that fail to inform the Commission of perceived 'obstacles' to the free movement of goods nor for cases of absence of a reply by Member States when a request for information by the Commission has been made; or cases when a Member State takes the measures needed to ensure the free movement of goods but omits to inform the Commission;
- Monitoring Member States' compliance with their obligations as regards both informing the Commission and taking the necessary and proportionate steps to ensure the free movement of goods in the event of an obstacle which is not enshrined in the Regulation;
- The definition of the scope of the Regulation is abstract and open to various interpretations;
- The Regulation does not effectively resolve the issue of fast and effective complaint procedures for compensating economic operators.

#### **2.4.2. Follow-up to the 2001 Report**

The Council adopted conclusions on the 2001 review<sup>15</sup>, seeing merit in having a more dynamic approach to applying the Regulation, by means of: closer cooperation between the Commission and the Member States; adoption of a vademecum; and, creation of a website.

The Council stressed the importance of cooperation for operators, the Commission, and the Member States in order to provide complete information as quickly as possible in the case of a barrier or risk of a barrier, particularly on the nature and location of any obstacles to freedom of movement and on alternative routes, and of regular exchanges on the application of the Regulation. It finally emphasised that Member States had agreed *"to ensure that rapid and effective review procedures are available for any person who has been harmed as a result of a breach of the Treaty caused by an obstacle within the meaning of Article 1 of Regulation (EC) No 2679/98."*

In 2004, the Commission conducted a survey amongst the Member States with a view to giving the Member States practical support in the identification and choice of 'necessary and proportionate measures' as stipulated in the Regulation by putting in place a directory of best practices on the matter. The survey conducted by the Commission collected information on

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<sup>14</sup> COM(2001)160 of 22 March 2001:  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1479195404074&uri=CELEX:52001DC0160>

<sup>15</sup> Press release of the 2371<sup>st</sup> Council meeting on Internal Market, Consumer Affairs and Tourism:  
[http://europa.eu/rapid/press-release\\_PRES-01-333\\_en.htm](http://europa.eu/rapid/press-release_PRES-01-333_en.htm)

the legislative or regulatory provisions and administrative practices used by the Member States.

In line with the Council conclusions, the Commission arranged a meeting in December 2005 to develop a vademecum together with the Member States concerning e.g. the guidelines and templates for submitting information and also the possible criteria for identifying an obstacle. The Member States were invited to submit their observations by January 2006, but only eight Member States took the opportunity to respond.

#### **2.4.3. The 2007 Evaluation**

A first evaluation of the Regulation was conducted in 2007.<sup>16</sup> The report concluded that most obstacles appeared to have been reported. In some instances the application of the Regulation had helped to forewarn operators of incidents. However, transport operators did not consider this to be an essential component of the Regulation. The presence of the Regulation (or the jurisprudence of the European Court of Justice) had increased the awareness of some Member States about the importance of the obstacles and their obligation to react in ways that would mitigate their consequences. Yet, there remained some ambiguity in the application of the Regulation (e.g. definition of obstacles, timing of communication) and resulting actions (e.g. definition of ‘proportionate’ responses).

In summary, on the basis of the cases examined, the report indicated that the Regulation had made some contribution to reducing ‘obstacles’ and associated damage. The Regulation may have also served as a deterrent and had an incentive effect towards Member States and, as a consequence, reduced the damage that would otherwise have occurred. It had been inexpensive to implement.

A higher level of effectiveness may have been possible, according to the report, had there been a possibility to fine or otherwise penalise Member States for insufficient action or non-action.

The report also said that limitations of the Regulation that were pointed out when it was first debated and reviewed by the Commission in 2001 still remained. These limitations include the unclear scope of the Regulation, the lack of consistent cooperation, the lack of arrangements to monitor compliance by the Member States, the absence of any financial penalty for Member States and the lack of fast and effective complaint procedures to compensate economic operators. The report also mentioned some operational problems associated with the implementation of the Regulation. For example, some ‘obstacles’ were difficult to foresee, notifications might be delayed or received after the occurrence of the ‘obstacle’, responses were delayed, and communication by fax was perceived as outdated. At the same time it was found that many of the incidents arise suddenly and only last for a short while, which makes them difficult to react to.

Despite the shortcomings identified in the 2007 evaluation, there has been no attempt to amend the Regulation at EU level. The requirement to amend the Regulation by unanimity in

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<sup>16</sup> [http://bookshop.europa.eu/en/evaluation-of-the-functioning-of-regulation-ec-no-2679-98-of-7-december-1998-on-the-functioning-of-the-internal-market-in-relation-to-the-free-movement-of-goods-among-the-member-states-pbNB0214273/:pgid=GSPefJMEtXBSR0dT6jbGakZD0000cAVtaW\\_i:sid=2RdNgx7pmjINmEbhJfTJHzM3sRLULwqpUc=?CatalogCategoryID=z0KABstpR4AAAEjr5AY4e5L](http://bookshop.europa.eu/en/evaluation-of-the-functioning-of-regulation-ec-no-2679-98-of-7-december-1998-on-the-functioning-of-the-internal-market-in-relation-to-the-free-movement-of-goods-among-the-member-states-pbNB0214273/:pgid=GSPefJMEtXBSR0dT6jbGakZD0000cAVtaW_i:sid=2RdNgx7pmjINmEbhJfTJHzM3sRLULwqpUc=?CatalogCategoryID=z0KABstpR4AAAEjr5AY4e5L)

the Council, or the fact that new technical developments such as apps with geo-localisation and real-time information, facilitating the exchange of information of obstacles within the territory of the internal market among interested economic operators, could have a significant deterrent effect on any attempt to revise the Regulation.

### **3. IMPLEMENTATION OF THE REGULATION**

#### **3.1. Description of the implementation**

After the adoption of the Regulation and the Resolution, Member States have designated contact points to set up the network to ensure the rapid transmission of the information submitted under the early warning mechanism. Initially the information exchange between the Commission and the Member States was organised via fax. Since 2001, the exchange is done on the basis of an electronic distribution list by email.

Due to the lack of clarity of specific terms of the Regulation, one of the shortcomings identified in this and previous evaluations, the Commission has organised meetings and workshops with the Member States to ensure a common interpretation of the provisions of the Regulation throughout the Union.<sup>17</sup>

In order to address the shortcomings of the existing infringement procedure and to tackle obstacles to the free movement of goods covered by the Regulation in an efficient manner, the Council successfully invited the EU Court of Justice to amend its Rules of Procedure<sup>18</sup> to speed up such procedures.

Despite the commitment of the Resolution signed by the Member States to ensure effective compensation for losses incurred by individuals, no further developments have been reported at EU level on this front.<sup>19</sup>

#### **3.2. Number and nature of obstacles reported under the Regulation**

The findings of the evaluation show that the Regulation has been generally effectively implemented by the Member States, although some of its key provisions, like Article 3 (which sets actions to be taken by the Member States when an obstacle occurs or in case of a threat of the occurrence of an obstacle), are only partially used. The evaluation of the Regulation has also revealed that Article 5 (which provides for notification by the Commission to the Member State concerned where the Commission considers that an obstacle is occurring) has never been used by the Commission even if it acts as a deterrent against Member States' inaction.

Since the adoption of the Regulation until June 2019, a total of 244 obstacles have been reported to the Commission under the early warning mechanism, following which the Commission may inform the other Member States. In 2018, 21 obstacles have been notified, whereas for the first half of 2019, only four notifications have been notified.

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<sup>17</sup> Last workshop for the moment now took place on 10 June 2016.

<sup>18</sup> The amendments to the Rules of Procedure of the EU Court of Justice were adopted on 28 November 2000, OJ L 322 of 19.12.2000, p. 1.

<sup>19</sup> Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 7 December 1998 on the free movement of goods; OJ L 337 of 12.12.98, p. 10.

During the first seven years of the Regulation (1999 to the end of 2006), 90 obstacles were notified, identified and reported to the Commission across the EU while between 2007 and June 2019, 154 obstacles have been reported to the Commission, representing an average of 12 notifications per year, with an increase in the annual number of notifications since 2011 and an increase from the last period observed under the 2007 evaluation. During the period 2007-2019, out of 154 notifications of obstacles received by the Commission, 17 (11%) were reported by stakeholders.

The vast majority of the notified disruptions related to road blockades, while the least notified disruptions concerned railway and airport traffic. For the details on changes in the reported obstacles see Subsection 4.1.2. below. A table with all the reported incidents (2007-2019) is included in Subsection 4.1.1. below.

The full list of obstacles to the free movement of goods, as defined by Article 1 of the Regulation, reported by the Member States to the Commission during the 2007-2019 period is also presented in Annex 12 to the Final Report on the evaluation of the Regulation.<sup>20</sup>

However, not all obstacles have been notified by the Member States to the Commission under Article 3, and a number of them have been reported by economic operators rather than by the national authorities themselves. The following cases serve as examples of the non-fulfillment of the obligation by the Member States to transmit information to the Commission when obstacles arise: (i) the French farmers' strikes against imported goods in 2015, 2016 and 2017 (only 1 out of 20 of these incidents was reported to the Commission); (ii) the blockade of the freight port of Calais and the strike by part of the staff in October 2015; and which was not notified and (iii) the blockages of the I/11 road in the Kysuce Region of Slovakia in 2017 which were not notified.

Overall, the obstacles reported to the Commission<sup>21</sup> seem to have led to significant costs, particularly due to the delays caused to economic operators. The sectors most affected by the disruptions are the transport and logistic sector and the food sector. For more details regarding costs see section 4.2.

As a part of the Commission's requests for information concerning (potential) obstacles, the Member States are asked about the actions they are taking to safeguard the free movement of goods. However, no monitoring arrangements over the compliance by the Member States of their obligations to take the necessary and appropriate actions to ensure the free movement of goods have been put in place (Article 4).

Furthermore the Regulation does not foresee any direct communication between the national contact points of the different Member States when an obstacle occurs, while the case studies illustrated examples of neighbouring regional authorities being informed about the expected obstacles via informal bilateral channels.

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<sup>20</sup> Final Report of March 2018 on 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.

<sup>21</sup> One out of 20 events at the French-Spanish border, all blockades at the Bulgarian border, the event at the Brenner Pass, and the road blockades by Belgian trucks in April 2016 have been reported to the Commission under Regulation (EC) No. 2679/98.

### 3.3. Method

The evaluation assesses the effectiveness, efficiency, relevance, coherence, and EU-added value of the Regulation. It is based on the responses provided to the evaluation questions and sub-questions, on judgement criteria, indicators, sources of data and methodological tools.<sup>22</sup>For the period between 1999 and 2006, the evaluation's findings are based on the information and data provided by the 2007 Evaluation.

The relevant data and information were collected through the following:

- Documentary review of policy papers, articles and reports from national authorities and trade associations, as well as the previous two evaluation studies of the Regulation in 2001 and 2007.
- Interviews with 70 stakeholders involved in, or affected by, the Regulation, including Commission officials, national contact points (NCPs), European and national agriculture/food associations, European and national transport associations and other industry associations, trade unions, and chambers of commerce.
- Six case studies focusing on examples of different obstacles to the free movement of goods that are covered by the Regulation:
  - French farmers' strike against imported goods (seasonal, since the early 90s);
  - the blockade of the freight port of Calais / strike undertaken by part of the staff (October 2015);
  - seasonal blocking of the Bulgarian border by Greek farmers (seasonal, since 2007);
  - road I/11 in Kysuce Region / disruptions due to inadequate infrastructure (February-April 2017);
  - citizens' protests against transit traffic over the Brenner Pass (from 1998 to 2012, on at least 9 occasions); and
  - social movements impacting the free movement of goods in Belgium (in 2014 and 2016).
- An open public consultation was launched by the European Commission on 9 October 2017 for a period of 12 weeks. The consultation had a very low participation rate, since the generated responses came from only 20 participants from 14 Member States whose answers were analysed.

A complete list of literature consulted, including the EU legislation, case-law of the Court of Justice of the European Union, press reviews and online resources can be found both in Annex 1: 'Procedural Information' and in Annex 10 to the Evaluation Report.<sup>23</sup>

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<sup>22</sup> Final Report of March 2018 on 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, pp. 24-29.

<sup>23</sup> Ibid, pp. 131-132.

### **3.4. Limitations in the analysis and mitigation measures**

Given the lack of awareness about the provisions of the Regulation among some key stakeholders, i.e. economic operators and local authorities, it was difficult to draw robust conclusions from them. The main findings from interviews and the Open Public Consultation suggest that while National Contact Points, EU officials, European associations and some national associations (mainly transport and business associations) are aware of the Regulation, public authorities at local and regional level and economic operators are not sufficiently aware of the provisions laid down in the Regulation and in what situations they would be applicable. The main reason for the lack of awareness of the Regulation is the fact that, while it contains provisions to ensure the exchange of information between the Member States and the Commission, it does not ensure that other stakeholders should be informed. As a result, it is advisable to raise awareness of the existence and purpose of the Regulation and its early warning mechanism (who should report to whom and what) among local authorities.

Moreover, the Regulation does not contain a monitoring mechanism on the implementation of the Regulation and on the number and type of notifications of disruptions that the Commission should have received from the Member States in compliance with the Regulation. There are also no available national or European statistics on the type of 'obstacles' covered by the Regulation.

Due to the low number of responses received to the open public consultation, the most important inputs came from the desk research, interviews and the case studies. As mentioned above, only 20 answers to the open public consultation have been received.

In order to mitigate the above-mentioned limitations (the lack of awareness and the limited number of responses received), interviews with additional stakeholders have been conducted and their replies have been incorporated into the results of the open public consultation, the case studies, and the desk research.

It was also difficult to estimate the costs and benefits resulting from the Regulation, especially with relation to the efficiency evaluation criterion. The responses concerning the benefits have been mainly gathered via the interviews, desk research, and replies from the open public consultation.

## **4. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS**

### **4.1. Evaluation of the Effectiveness of the Regulation**

#### ***4.1.1. How is the Regulation applied in Member States? To what extent have Member States actually complied with the requirements of the Regulation and the need to safeguard the free movement of goods, in line with the principle of proportionality?***

##### *4.1.1.1. The early warning mechanism in the event or risk of an obstacle (Article 3)*

In April 1999, the Commission invited the Member States to designate National Contact Points (NCPs) in order to establish a network of contacts across the EU to ensure the rapid transmission of information under the early warning mechanism set up by the Regulation (Article 3). In most Member States, the NCPs are ministry officials working in the following areas: economy, transport, enterprise, trade, industry, employment and foreign affairs. For some Member States, staff of Permanent Representations to the EU are also indicated as contact points.

Communication between the NCPs and the Commission to notify obstacles and the exchange of additional information under the early warning mechanism (Article 3) takes place by e-mail. In some Member States frequently affected by obstacles, a clear communication process to notify obstacles under the Regulation has been established.

#### *4.1.1.2. Incidents reported*

As per Article 3 of the Regulation, Member States report obstacles to the Commission, which then informs the other Member States. This early warning mechanism takes place by e-mail. The analysis of the evolution of obstacles has been divided between the period 1999-2006 and 2007-2017, as results were already collected, analysed and published previously. Results from 2018 to mid 2019 are also included in this Staff Working Document.

Since the adoption of the Regulation until June 2019, 244 obstacles were reported to the Commission under the early warning mechanism, following which the Commission could inform the other Member States. In 2018, 21 obstacles have been notified, whereas for the first half of 2019, four notifications have been notified.

During approximately the first seven years of the Regulation (1999 to the end of 2006), 90 obstacles were notified, identified and reported to the Commission across the EU.

Around 41% of the cases that occurred took place in France. Austria had the second highest proportion of cases with 19%. Together these two countries accounted for 60% of all cases. Fifteen other countries experienced ‘obstacles’ on their territory after the adoption of the Regulation, which means that in total 17 countries have experienced ‘obstacles’ within their national borders.<sup>24</sup>

During the period from 2001 to 2006, economic operators reported 36 obstacles (40%) to the Commission, while Member States notified the Commission of the obstacle in 23 cases (26%). This represented an increase compared to the 1999 to 2000 period, when the Commission identified most of the cases, and an increased level of involvement of stakeholders (e.g. economic operators and government bodies).

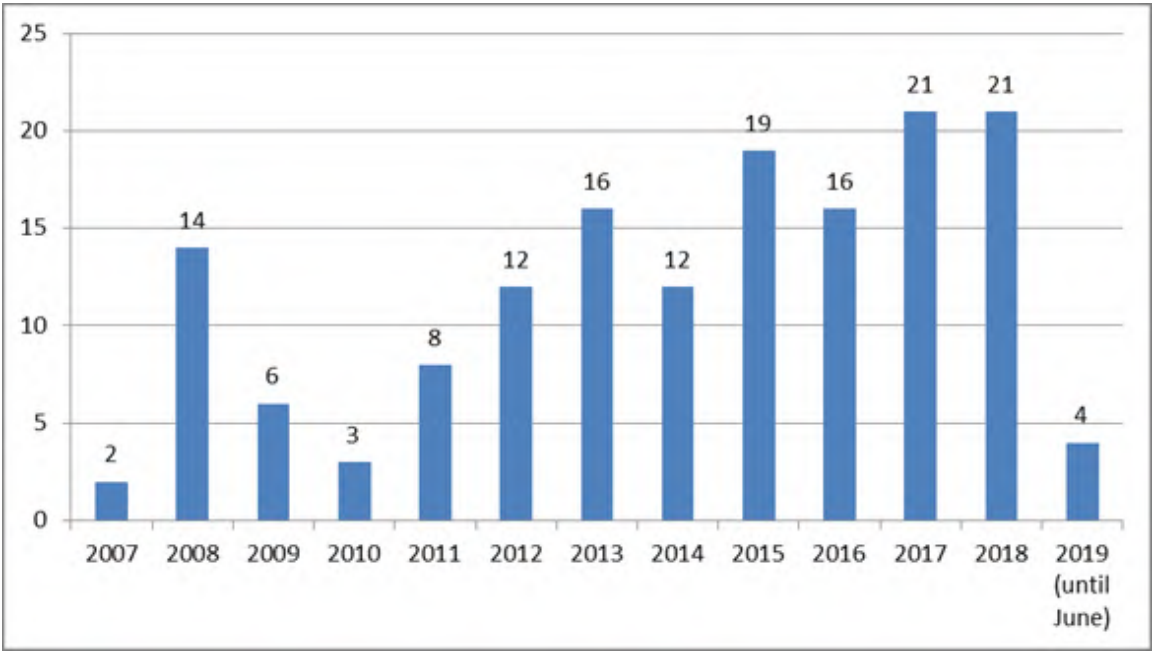
Between 2007 and June 2019, 154 obstacles were reported to the Commission representing an average of 12 notifications per year (Figure 1), with an increase in the annual number of notifications since 2011 and an increase from the last period observed under the 2007 evaluation. During the period 2007-2019, of the 154 notifications of obstacles received by the Commission, 17 (11%) were reported by stakeholders.

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<sup>24</sup> Evaluation of the functioning of Regulation (EC) No 2679/98 of 7 December, 1998, on the functioning of the internal market in relation to the free movement of goods among the member states, GHK and Technopolis, 2007.



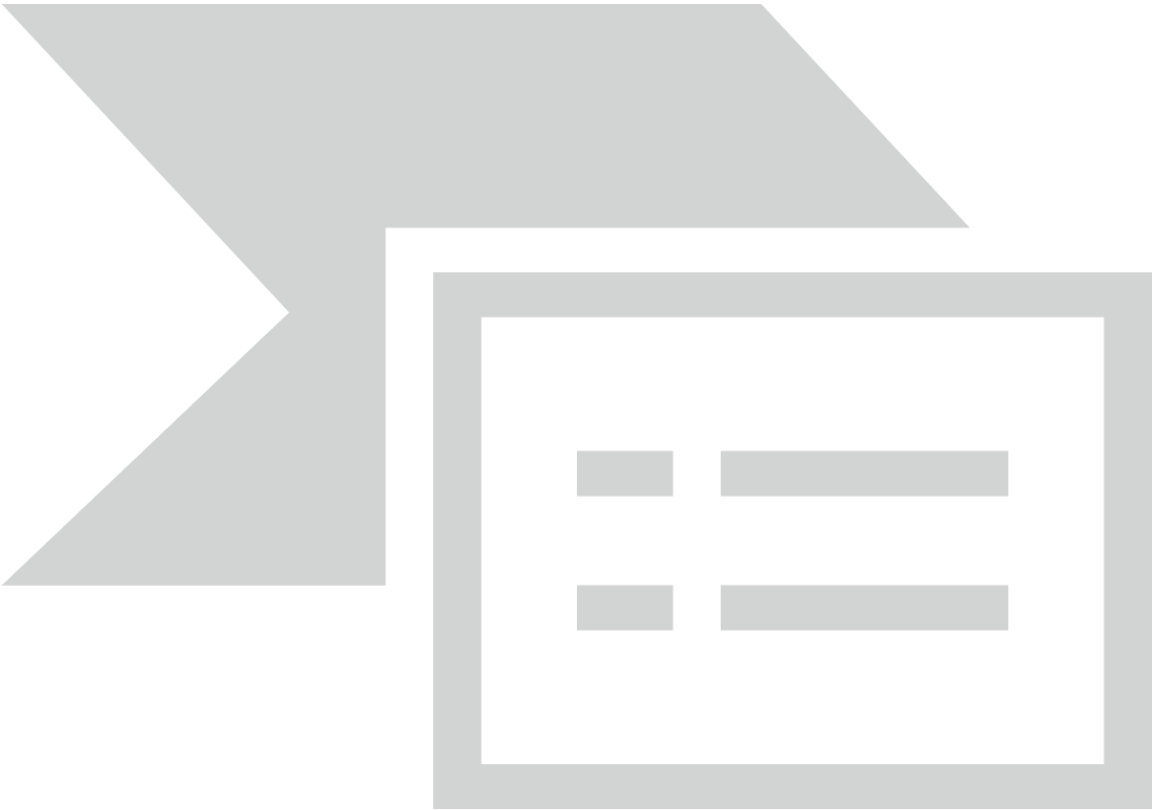
**Figure 2: Obstacles reported (2007-2019)**



Source: European Commission

This pattern corresponds largely with the evolution of intra EU-28 exports of goods for the same period:

**Figure 3: Evolution of intra EU-28 export of goods**



- More than 50% of the notifications that occurred between 2007 and 2019 were initiated by three Member States: Romania (22% or 34 notifications); Greece (20.7% or 32 notifications) and Italy (15.5% or 24 notifications), with nine Member States or EEA Members not having sent any notifications (Cyprus, Czech Republic, Denmark, Finland, Luxembourg, Malta, Norway, the Netherlands and Sweden).
- Almost half of the notifications received by the Commission between 2007 and 2019 concerned obstacles occurring in three Member States: Romania (22% or 34 notifications); Greece (20.7% or 32 notifications) and Italy (15.5% or 24 notifications).

Throughout the period 1999-2019, Member States generally responded to the Commission’s requests for further information within the two working days deadline usually set by the Commission.

Nonetheless, information collected from desk research and interviews with economic operators shows that a certain number of obstacles to the free movement of goods were not reported by Member States to the Commission. Desk research and case studies have actually shown that most of the incidents that occurred at the selected borders were not reported by the Member States under the Regulation. This means that some Member States did not use the Regulation at all, even though obstacles occurred within their borders. One of the explanations given by NCPs relates to the different interpretations of the term “obstacle” as it is not clearly defined by the Regulation. Moreover, some NCPs argued that sometimes it was not appropriate to apply the Regulation, particularly with regard to the right to strike. Another explanation may be the lack of awareness of the existence of the Regulation and its obligation, or the perceived lack of results following the notification.

When it comes to assessing the magnitude of the identified short-coming of non-notifications, there are no monitoring schemes available or statistics at the Member States’ or EU level that would give an accurate picture of the situation, beyond the desk research carried out in the Evaluation.

**Table 2: Examples of cases that were not reported under the Regulation**

<b>1. French farmers’ strike against imported goods</b>
From the list of incidents of the last three years (2015, 2016 and 2017) shared by the Spanish NCP, only <b>one of the 20 incidents</b> were notified under the Regulation. The 20 incidents recorded in this list came from claims reported by transport companies at the Spanish consulates in France. Spain and France have a long-lasting trade relationship; thus, the Spanish ministries (MAEC and MAPAMA) hold regular meetings to evaluate reported claims and avoid any damages to commercial relations with France.
<b>2. General strike of 15 December 2014 in Belgium</b>
No notifications were received by the Commission regarding the general strike of 15 December 2014, in Belgium, one of the largest strikes in many years, when access to and from the country was completely cut off.
<b>3. Road I/11 in Kysuce Region (Slovakia)</b>
According to the list of cases notified under the Regulation provided by the Commission, <b>Slovakia has reported only one disruption since 2006</b> . This disruption concerned numerous road obstacles that occurred in 2009. As confirmed by the regional authorities of Kysuce, this disruption notification did not concern the situation on the I/11 road. <sup>25</sup> <b>The Regulation has therefore not played the role of an early</b>

<sup>25</sup> Based on interviews.

**warning mechanism in any of the disruptions on the I/11 road**, despite the fact that two of the mentioned demonstrations were communicated in advance to the police.<sup>26</sup> Moreover, local authorities had no previous knowledge of this Regulation and neither did they know how to report an obstacle or disruption.<sup>27</sup>

#### *4.1.1.3. Obligation by the Member States to take necessary and appropriate actions needed to ensure the free movement of goods (Article 4)*

As a part of the Commission's requests to Member States for information concerning (potential) obstacles, Member States are asked about the actions they are taking to safeguard the free movement of goods. Such actions typically include one or more of the following measures:

- Disseminating information to stakeholders;
- Ensuring alternative routes;
- Information broadcast on radio or displayed on highways;
- Allocating (additional) police resources;
- Setting up of specific support measures;
- Establishing dialogue with demonstrators;
- Creating a coordination cell within the relevant ministry or department;
- Organising a meeting with relevant stakeholders; and
- Ensuring communication with local authorities.

Limited information was available on the actions taken by the Member States and how the Commission and other Member States were informed of these measures. Furthermore, the case studies illustrated that the NCPs do not always coordinate the management of the incidents as they are often handled by local and regional authorities. Thus, most communication actions take place at local and regional levels, with many stakeholders involved in the flow of information (e.g. the police, trade unions and local authorities).

The Regulation does not foresee any direct communication between the NCPs of the different Member States when an obstacle occurs, but the Brenner Pass case study illustrated an example of neighbouring regional authorities being informed about the expected obstacles via informal bilateral channels.

#### *4.1.1.4. Commission action notifying the Member States (Article 5)*

To date, there have been no cases where the Commission notified Member States of obstacles occurring in their territory and published the notification in the Official Journal of the European Union.

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<sup>26</sup> Interview with the chairman of the Association of Kysuce Businesses and member of D3preKysuce, conducted on 20.11.2017.

<sup>27</sup> Based on interviews.

**4.1.2. Has the Regulation improved the free movement of goods within the internal market in the face of a serious disruption? How much has the existence and/or use of the Regulation made it possible to change behaviour and to actually ensure the free movement of goods in the face of a serious disruption?**

**4.1.2.1. Changes in the reported obstacles**

Despite the enlargement of the internal market since the adoption of the Regulation, the number of obstacles identified or reported to the Commission has remained stable since 1999. In recent years, however, an increase in the average number of cases per year can be noted, with at least 12 cases per year since 2012.

The case studies illustrate that the increase in the number of notifications is due to both traditional trade challenges<sup>28</sup> within an enlarged Union as well as the new challenges emerging in the Schengen area.

Since the introduction of the Regulation, obstacles were most often caused by construction work and demonstrations or strikes. In the period 2007-2019, construction work or maintenance were the cause of 46 (30%) of the 154 obstacles reported to the Commission under Article 3, while strikes/demonstrations accounted for 53 (34%) of the obstacles. In some cases, weather conditions<sup>29</sup> (e.g. snow and heat waves) or specific events<sup>30</sup> (e.g. State visits and festivals) also caused obstacles. The large majority of cases concerned the immobilisation of goods, whereas a minority of events concerned the destruction of goods, and this ratio has remained stable both in the period before the Regulation was adopted and since its introduction. Overall, the destruction of goods is more frequent when the goods are being transported rather than when in storage or at a point of sale.<sup>31</sup>

Road transport is the most-affected transport mode, however sea ports, air and rail transport were also affected in the disruptions reported to the European Commission:

**Table 3: Types of obstacles per transport mode**

<b>1. Road transport</b>
In the <b>1999-2006</b> period, the disruptions concerned road transport in 52% of the events reported to the Commission, increasing to <b>60%</b> (92 out of 154 obstacles) for the <b>2007-2019</b> period.
<b>2. Sea ports</b>
Since the introduction of the Regulation, sea ports were affected in <b>12%</b> of the obstacles reported. The figure has remained stable in the 1999-2006 period and in the 2007-2019 period the figure reached <b>17%</b> .
<b>3. Other transport modes</b>
In the 2007-2019 period, disruptions of <b>airport traffic</b> presented 25 out of 154 of the obstacles notified. Obstacles to <b>railway transport</b> are relatively rare, accounting for only five out of 154 notifications in the 2007-2019 period.

Figures from the cases at hand are not conclusive on whether the Regulation has actually improved the functioning of the internal market. Nevertheless there is a case to be made that the Regulation has helped to stabilize this functioning.

<sup>28</sup> E.g. protest against Spanish imports to France.

<sup>29</sup> 9 out of 154 notifications in the 2007-2019 period.

<sup>30</sup> 13 out of 154 notifications in the 2007-2019 period.

<sup>31</sup> European Commission, February 2017, List of cases notified under the Regulation (EC) No 2679/98.

#### *4.1.2.2. Changes in Member States' behaviour to ensure the free movement of goods*

Although the occurrence of obstacles has not significantly decreased since the adoption of the Regulation, findings from the desk research and interviews show that the main benefits of the Regulation, in terms of changes in the behaviour of public authorities, have been to speed up the responses and actions of some national authorities to reduce the consequences of obstacles due to the pressure from the Commission and other Member States.

According to the 2007 Evaluation of the Regulation and some interviewed NCPs, the Regulation has helped to reduce the duration of the obstacles and thus the associated damage thanks to improved information flows on anticipated obstacles (Article 3) and to the pressure on Member States to take adequate actions and resolve the issues (Article 4). Twelve out of 20 respondents to the Open Public Consultation affirmed that the Regulation has improved the management of obstacles at Member State borders. According to an interviewed NCP, the time gap between the communication of the disruption and the implementation of actions to resolve the issue ranges from a few hours to a day.

On the other hand, based on findings from some interviews and the case studies, the Regulation is not always effective in resolving incidents or reducing their duration. Firstly, this is due to the fact that the early warning mechanism works too slowly, as it does not allow to communicate the incidents in a real time, but rather through email exchanges. Secondly, as suggested inter alia by the Bulgarian Ministry of Transport, another reason for this situation is that the European Commission has not been empowered to make binding decisions and guarantee their implementation as well as to impose sanctions on the Member States which are in breach of their legally binding obligations to prevent incidents.

Examples of lengthy incidents related to the duration of recurrent obstacles are found at the Bulgarian-Greek border, usually in January-February. Those have increased from two weeks to over four weeks in the last few years:

- 24.01.2007 – a blockage of two weeks;
- 26.01.2009 – a blockage of three weeks;
- 20.01.2013 – a blockage of 18 days; and
- 16.01.2016 – a blockage of 40 days.

Moreover, 11 out of 20 respondents to the open public consultation (including NCPs and economic operators) considered that the Regulation has not been effective in making Member States take necessary and proportionate measures to ensure the free movement of goods.

#### ***4.1.3. Have any provisions of the Regulation provided particularly good results regarding obstacles hindering the free movement of goods? Have any of the provisions provided by the Regulation been particularly ineffective? Are there any lessons to be learnt from them?***

Overall, the Regulation has provided satisfactory results to a certain extent, although its effectiveness is affected by a number of aspects, among which are: the lack of clarity of specific terms, the lack of awareness by Member States' authorities, often at regional and local level, of the obligations derived from the Regulation, warning mechanisms that are not sufficiently fast as compared with alternative information means available for stakeholders,

the lack of a compensation mechanism in case of losses or damages related to the obstacles, etc.

Based on the findings from the desk research and interviews, the provisions of the Regulation concerning early warning and the exchange of information on obstacles under Article 3, and hence the opportunity for proactive action from Member States as per Article 4, have generated some satisfactory results. Nine out of 20 respondents of the open public consultation considered that the Regulation has been effective in ensuring the adequate and rapid exchange of information between the Member States and the Commission (three others considered it ‘not effective at all’, while four ‘not so effective’; the other four chose the ‘neutral’ reply). However, the majority of stakeholders interviewed indicated that the problem is that the current timing of the early warning mechanism based on the exchange of information by e-mail is too cumbersome, because the transmission of information via e-mail is too slow to prevent short-term disruptions. It does not allow all stakeholders concerned to be informed quickly about the incidents.

In this context, some NCPs suggested that the warning mechanism should be based on the real time information about the obstacles that should be made available to national authorities and all stakeholders on a common digital platform. This, in effect, would increase the possibility to quickly address the issues and propose alternative routes. Currently, most transport stakeholders rely on geo-location real-time traffic apps, national traffic websites, the media, or business associations to be warned about obstacles and learn about alternative routes. In addition, the case studies illustrate that the Regulation is not always used in cases of obstacles to the free movement of goods and that several cases of disruptions are solved directly at the local or national level without using the early warning mechanism. The reason for this tendency of non-deployment of the Regulation’s mechanism, as provided by the findings, is: (i) the lack of knowledge of the Regulation among those who should report the incidents (e.g. Slovakia case study); or (ii) the lack of cooperation between administration at the national and local levels (e.g. Greece-Bulgaria case study); and (iii) the scope of the Regulation which is abstract and open to varying interpretations, for instance in terms of key definitions such as ‘obstacles’ or ‘necessary and proportionate measures’ to be taken by the Member States.

Article 5, namely the possibility for the Commission to notify a Member State of an obstacle happening on its territory and to request action, and the possibility for the Commission to publish this notification in the Official Journal of the European Union has never been used, as the competence with which it equips the Commission seems to serve as a fairly sufficient tool that puts pressure on the Member States to take measures when an obstacle has emerged. This provision, and especially the ‘name and shame’ effect, may have a deterrent effect on Member States, which are encouraged to act quickly in cases of obstacles occurring in their territory.

Although no provision can be said to be particularly ineffective, the effectiveness of the Regulation is allegedly hampered as mentioned above, among other aspects, by the lack of clarity of some of its terms.

Already previous evaluation of the Regulation and interviewees reported ambiguities in the definition of ‘obstacles’ and the timing of communication (‘immediately’ and ‘as soon as possible’ in Article 3) or the resulting actions (definition of ‘proportionate’ measures). Despite the identified limitations of the Regulation in the past evaluation of 2006/2007, the Regulation has not been revised and no relevant measures to address the limitations have been undertaken at the EU level. Revising the terms of the Regulation would require unanimity in

the Council, which carries the risk of opening discussions agreed at the time by 15 Member States, touching upon areas of “shared competences” between the EU and Member States.

The current evaluation has confirmed that due to the lack of clarity of the definition of ‘obstacle’, ‘serious disruption’ and ‘serious loss’, some Member States are not sure of which disruptions are in the scope of the Regulation, which may explain why they do not report all events to the Commission. The problem, touching upon the usefulness of the provisions of the Regulation, which stems from the answers received from twelve out of 20 respondents to the open public consultation, is the lack of the adequately detailed definition of measures through which the Member States could better prevent/solve incidents from obstructing the free movement of goods. As pointed out by several NCPs, another problematic issue at stake is the lack of a sufficient number of organised meetings or workshops among NCPs to exchange best practices and clarify possible questions of interpretation, in order to ensure a more effective implementation of the Regulation.

***4.1.4. To what extent are interested parties informed of the existence of the Regulation and the possibilities it provides? Is the information exchange procedure set up by the Regulation effective, particularly in light of rapid technological change with regards to the availability of information?***

*4.1.4.1. Regulation awareness among the interested parties*

The main findings from interviews and the open public consultation suggest that while NCPs, European associations and some national associations (mostly transport associations and business associations) are aware of the Regulation, public authorities at local and regional level and economic operators are not sufficiently aware of the Regulation and of situations it would apply to. Twelve out of 20 respondents to the open public consultation considered that the Regulation has not been an effective means for communicating obstacles to the free movement of goods to economic actors in a timely manner. An example of the lack of stakeholders’ awareness of the Regulation becomes evident when obstacles to the free movement of goods occur repeatedly, such as those on the I/11 road in the Kysuce region.<sup>32</sup> The authorities who dealt with the disruptions were either the local police or the Slovak Road Administration, depending on the nature of the incidents, but at the local level these local authorities neither had previous knowledge of the Regulation nor did they know how to report an obstacle or disruption. The main reason for the lack of awareness of the Regulation is that while it contains provisions to ensure the exchange of communication between the Member States and the Commission, it does not ensure that other stakeholders should be informed. In some Member States, the NCPs indicated that they publish the notifications on their websites (namely in the Czech Republic and Sweden) or inform the relevant stakeholders directly (namely in Cyprus and Ireland).

On the other hand, some stakeholders – mainly transport operators – appeared particularly aware of the Regulation as they report cases of obstacles directly to the Commission (40% of the cases in the 2001-2006 period, 12% between 2007 and 2019). In addition, national authorities and economic operators were relatively aware of the measures taken by Member States to prevent or limit obstacles to the free movement of goods or to mitigate their consequences. Among these measures, respondents to the open public consultation appear

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<sup>32</sup> Slovakia Case study – Road I/11 in Kysuce Region.

most aware of measures such as redirections of traffic,<sup>33</sup> as well as ensuring the presence of police and requesting authorisation for demonstrations.<sup>34</sup>

#### *4.1.4.2. Information exchange mechanism*

The information exchange procedure via e-mail between the Commission and Member States can be ineffective if the recipient of the information is absent and unable to react in sufficient time. Consequently, according to the findings based on an interviewed NCP, the time gap between the communication of the disruption and the implementation of actions to resolve the issue ranges from a few hours to a day.

The evaluation has shown that currently the central problem in terms of the transmission of information is the lack of a unified digital platform where information on notifications of incidents and obstacles would be directly available in real time to national authorities and stakeholders, allowing them to quickly plan alternative solutions. This problem has been indicated by several NCPs (namely from Austria, Croatia, Germany, Greece, Finland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Spain, UK) and transport associations and companies. Currently, most transport stakeholders rely on national traffic websites, on the media or on business associations to be warned about obstacles and learn about alternative routes. The Austrian NCP mentioned the good practice example of the Austrian online traffic information platform (Verkehrsauskunft Österreich – VAO)<sup>35</sup> and apps, a joint initiative of all local public transport providers, ministries, the national motorway operator and many other stakeholders to provide a coherent data exchange and information system to be used jointly by all these partners.

#### ***4.1.5. To what extent has the Regulation been useful in facilitating the free movement of goods in the face of serious disruption? Should additional and/or alternative measures be taken to improve the situation?***

##### *4.1.5.1. Effectiveness of the Regulation in facilitating the free movement of goods*

Overall, the objectives of the Regulation are to contribute to resolving the disruptions to the freedom of movement of goods in the internal market by improving the information exchange between Member States and the Commission and by putting pressure on Member States to promptly take all the necessary measures to ensure the free movement of goods. However, the Regulation does not prevent obstacles from happening and does not specifically address issues of short duration.

Thirteen out of 20 respondents to the open public consultation believed that overall the Regulation has contributed to the prevention or reduction of serious disruptions to the free movement of goods occurring at the EU internal borders only to a limited extent. While the early warning mechanism has improved the exchange of information between the Member States and the Commission, the information is not available to stakeholders in real time. Interviewed stakeholders reported that they usually use other information sources to learn about disruptions and about alternative routes. Furthermore, the system of notification of obstacles via e-mails to the Commission may not be suitable for obstacles of short duration

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<sup>33</sup> 7 out of 7 respondents aware of measures taken by Member States.

<sup>34</sup> 5 out of 7 respondents aware of measures taken by Member States.

<sup>35</sup> <http://www.verkehrsauskunft.at/>



(e.g. one day or less), since the disruption may be over before the notification reaches the other Member States.

Although the Regulation is useful to put pressure on Member States to take necessary measures, in practice, as illustrated in the case studies, the obstacles are usually solved by direct actions at local level (e.g. rerouting, negotiations between economic operators and authorities, bilateral talks between neighbouring regional authorities), which are not necessarily related to an intervention from the NCPs or the Regulation. For instance, during the blockages at the Brenner Pass, the police coordinated at the regional level to ensure smooth operations on the day of the blockade. The neighbouring regional authorities in Italy and Germany were informed bilaterally about the expected obstacles. In addition, transport industry associations were informed through the Tyrol Chamber of Commerce, while the media were informed through the press department of the Tyrol region.

Finally, although the Regulation has a preventative effect on long disruptions by putting pressure on Member States to act immediately to ensure the free movement of goods, it does not prevent obstacles from happening in the first place. Twelve out of 20 respondents to the open public consultation considered that the Regulation has not been effective to prevent obstacles/disruptions.

#### *4.1.5.2. The main problems resulting from the Regulation which need to be addressed*

The main issues stemming from the Regulation that require improvements involve legal uncertainty for both the national authorities and other interested stakeholders (e.g. food and transport associations or companies) and refer to: (i) definitions concerning obstacles and proportionate measures; (ii) the timing for communication and action; as well as (iii) a modernisation of the information exchange procedure which is not fully in line with technological developments.

Firstly, as indicated by interviewees and respondents to the open public consultation, the lack of clarification of the definition of ‘obstacle’<sup>36</sup> does not allow NCPs to more effectively report disruptions to the Commission. Currently, not all events are notified to the Commission, as illustrated by the case studies. In addition, at present the Member States are precluded from taking more effective actions to prevent or resolve obstacles due to ambiguities in the provisions of the Regulation on the timing of communication and action (definition of ‘immediately’<sup>37</sup> and ‘as soon as possible’<sup>38</sup>) and on a definition of ‘necessary and proportionate measures’.<sup>39</sup>

Secondly, as explained above in Subsection 4.1.4.2., another urgent issue that should be resolved is the asymmetry of information and insufficient flow of communication of the incidents and their preventive measures. This problem results from the fact that currently very few economic operators are aware of the Regulation or are informed about the actions taken by the NCPs in cases of disruption. This has been confirmed by interviewees and 19 out of 20 respondents to the open public consultation who emphasized that the introduction of a unified digital solution with real time information, accessible to businesses and national associations, is indeed needed.

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<sup>36</sup> Articles 1, 3, 4, 5 of Regulation No 2679/98.

<sup>37</sup> Articles 3.1(a), 3.1(b), 3.2, 5.3 of Regulation No 2679/98.

<sup>38</sup> Article 3.2 of Regulation No 2679/98.

<sup>39</sup> Articles 1.2, 4.1(a), 5.1 of Regulation No 2679/98.

Thirdly, another aspect that is missing in the Regulation is a transparent, non-discriminatory and effective procedure to compensate economic operators for any loss or damage related to the obstacles. This vital issue has been pointed out by stakeholders interviewed and respondents to the open public consultation (10 out of 20), mainly transport and food associations. The Council Resolution reaffirmed the Member States' undertaking '*to ensure that rapid and effective review procedures are available for any person who has been harmed as a result of a breach of the Treaty caused by an obstacle within the meaning of Article 1 of Regulation (EC) No. 2679/98*' (Article 3). Due to the current lack of harmonisation of the regime for compensation across Member States, some stakeholders considered that access to compensation can be lengthy, complicated and discriminatory against economic operators. For instance, the case studies confirm that none of the damages incurred by the analysed obstacles were covered by any national, regional or local authorities. To highlight the seriousness of the problem which affects the whole logistic chain in the economic process, it is worth reiterating, as indicated in Subsection 4.2.3. below, that the damages incurred by economic operators range from direct damages, such as lost revenues from the toll road, the fixed costs for the drivers and compensations for late deliveries, to the indirect damages caused by a number of factors, for instance by spoiled goods, extra fuel and lost opportunities due to the inability to use the vehicle.

#### *4.1.5.3. Other issues that need to be addressed*

When faced with the risk of or in the event of an obstacle to the free movement of goods, the Regulation gives the Commission the possibility to address the issue only through the exchange of information. Although this reinforces the cooperation between Member States and encourages their national authorities to take action, the Regulation does not provide the Commission with the possibility to resolve issues through direct intervention.

With regard to the possibilities for resolving obstacles, Article 4(1) of the Regulation requires Member States to take necessary and proportionate measures. However, there is no specific sanctioning mechanism when Member States fail to take action and guarantee the free movement of goods. Article 5 acts as a deterrent as it provides the right for the Commission to notify a Member State about a disruption occurring on its territory and to publish the notification in the Official Journal of the European Union. However, this provision has never been used since the adoption of the Regulation. Eleven out of 20 respondents to the open public consultation recommended giving more power to the Commission to make binding decisions and guarantee their implementation as well as to impose sanctions on Member States which were in breach of their obligations. Infringement proceedings can be initiated in cases of inaction of Member States in the presence of an obstacle, but the length of such proceedings tends to be longer than the duration of the obstacle.

#### *4.1.5.4. External factors*

New security challenges observed since 2011 have pushed Member States to reintroduce border controls, thus giving rise to potential barriers to free movement in the Schengen Area. The border controls were mainly designed as responses to terror attacks or to the arrival of a large number of migrants entering the EU. For example, several Schengen countries – Austria, Belgium, Denmark, Germany, Hungary, Norway, Slovenia, and Sweden – reintroduced border controls after September 2015 due to the 'big influx of persons seeking international protection' or 'unexpected migratory flows'. The majority of these countries

invoked Article 28 of the Schengen Borders Code to reintroduce border controls in light of a ‘serious threat to public order or internal security’<sup>40</sup>. Although these controls do not formally constitute obstacles under the Regulation as the controls are not focused on the goods transported, they could have collateral effects on the flawless movement of goods across the EU.

Several obstacles (e.g. actions of French farmers against Spanish trucks and the obstacles at the Greek/Bulgarian borders) also resulted from the economic context, e.g. differences in agricultural prices across borders or reforms in the agricultural sector.

#### **4.1.6. Conclusions on the effectiveness of the Regulation**

While the Regulation has been generally implemented effectively, some provisions are only partially used, or have never been used, and there are a number of shortcomings well-identified by this and previous evaluations. On a positive note, the presence of the Regulation (and the jurisprudence of the European Court of Justice) has increased the awareness of some Member States of the seriousness of obstacles and their obligation to react in ways that would mitigate the consequences.

All Member States have established National Contact Points and the procedure of information exchange between the Commission and the Member States is correctly implemented. However, not all obstacles have been reported to the Commission as per Article 3, and a number of obstacles have been reported by economic operators rather than the Member States themselves. Article 5, which allows the Commission to notify a Member State of an obstacle and publish the notification in the Official Journal of the European Union, has never been used but acts as a deterrent.

The main achievements of the Regulation are:

- Put in place and advertise the exchange of information between the Commission and the Member States via the early warning mechanism (Article 3),
- Effective pressure on Member States to promptly address cases of disruptions and improved management of obstacles to some extent (Article 4).

The main issues hampering the effectiveness of the Regulation are:

- Lack of clarity of specific terms of the Regulation (*‘obstacle’*, *‘immediately’*, *‘as soon as possible’* and *‘necessary and proportionate measures’*), preventing its consistent and adequate application.
- Unsuitable system of notification of obstacles via e-mails to the Commission for obstacles of short duration (e.g. one day or less), since the disruption may be over before the notification reaches the other Member States.
- Lack of awareness of economic operators and local authorities about the provisions of the Regulation and the actions taken by the NCPs in cases of disruption.

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<sup>40</sup> Internal border controls in the Schengen area: “Is Schengen crisis-proof?”, Study for the LIBE Committee, 2016: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL\\_STU\(2016\)571356](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2016)571356)

- Not all damages and losses incurred are compensated.

## 4.2. Evaluation of the Efficiency of the Regulation

This section focuses on the relationship between the outputs, results and inputs of the intervention and their proportionality.

### 4.2.1. *To what extent are the costs proportional to the benefits achieved? To what extent has the application of the Regulation been cost effective?*

Overall, the costs of implementing the Regulation are limited in the Member States as there are only few cases of obstacles per year and the exchange of information takes place by e-mail.

For the national contact points (NCPs), as reported during interviews and in the case studies, the costs of communicating the obstacles to the Commission and other Member States do not constitute an administrative burden as they consist of exchanging information by e-mail, and updating relevant information on their respective websites. On average, only 12 cases of obstacles per year are reported to the Commission and trigger the use of the Regulation, so these costs are minimal. Similarly, in the previous evaluation of the Regulation,<sup>41</sup> most Member States found it difficult to provide an estimation of costs. Only a few Member States provided the following estimations:

- Around 5% of the unit's time is spent on the Regulation (NCP for Finland);
- Costs are estimated at around EUR 100 per month, including staff and material costs (NCP for the Slovak Republic);
- Costs are estimated to be one full-time employee for one month per annum (NCP for Slovenia).

Although one must be cautious in drawing general conclusions on the basis of the very limited data available, the information points to low costs of implementation for NCPs. Some NCPs pointed out that given the low cost of implementation, any benefits for stakeholders stemming from the Regulation are valuable. As highlighted by some NCPs and the previous evaluation, the main benefit of the Regulation is the improved exchange of information between the Member States and the Commission, leading to a reduction of the duration of the obstacles and of the associated damage.

While for the NCPs, the costs and benefits of implementation of the Regulation are proportionate, for the economic operators affected by the obstacles, the ratio is not as positive. They may experience severe consequences in terms of losses and damages due to delays and the rerouting or destruction of goods (see Subsection 4.2.3).

All in all, as explained above in the context of the implementation of the Regulation by the NCPs, the administrative burdens for the national authorities of the Member States are minimal due to:

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<sup>41</sup> Evaluation of the functioning of Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States, GHK and Technopolis, 2007.

- (i) simple communication channel based on the exchange of e-mails;
- (ii) non-complex tasks of updating relevant information on their respective websites;
- (iii) minimal costs of handling cases of obstacles, as there are 12 of them annually on average.

#### **4.2.2. *What factors influenced the efficiency of the implementation of the Regulation?***

The costs of implementation of the Regulation are minimal for NCPs as they exchange information about obstacles via e-mail and only a few (12 on average) cases of obstacles are reported to the Commission every year. On the one hand, the improved exchange of information (Article 3) and the pressure put on Member States to take all necessary and proportionate measures to ensure the free movement of goods (Article 4) allow a faster resolution of the obstacles. On the other hand, the case studies illustrate that in several cases the Regulation was not used to address obstacles. The Regulation offers an information and prevention mechanism, but it does not provide the Commission with the possibility to resolve the issues through direct intervention. With the availability of a unified digital tool for exchanging information about obstacles that is open to Member States and economic operators, the interviewees argue that more stakeholders would benefit from the Regulation, as more stakeholders would be informed about the obstacles and the preventive measures applied. According to the previous evaluation report,<sup>42</sup> the additional costs engendered by the implementation of new technological means for notification would be proportionate and absorbed by the new efficiency gains.

The findings from the desk research, interviews and the case studies showed that the economic operators, particularly those in the transport and food sector, can incur significant costs from obstacles. The obstacles analysed in the case studies led to direct economic losses ranging from EUR 39,200 to EUR 550,000 (see Subsection 4.2.3.) per event for companies.

The impact of the Regulation on the mitigation of these costs appears to be limited according to feedback from the interviews, but the main benefit highlighted was that triggering the early warning mechanism raised awareness about the importance of ensuring the free movement of goods, and putting pressure on Member States to manage the obstacles as best they can, for instance by proposing alternative routes and warning neighbouring countries.

#### **4.2.3. *How justifiable were the costs borne by different stakeholder groups, given the benefits they received?***

As indicated in the previous sections, the implementation costs of the Regulation are generally estimated to be low for NCPs and therefore seem to be lower than the potential benefits in terms of reducing the disruption period and the damages once an obstacle is notified and prevented.

The case studies provided some estimations of economic losses engendered by the obstacles. The table below shows the estimation of economic losses per case study. The estimates of direct costs from disruptions range from EUR 39,200 to EUR 550,000 per event for companies. Estimations of direct and indirect costs for the national economy range from EUR

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<sup>42</sup> Evaluation of the functioning of Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States, GHK and Technopolis, 2007.

10 million for each blockade at the Bulgarian border to EUR 480 million for the obstacles caused by the general strike in Belgium in December 2014.

**Table 4: Estimation of economic losses per case study**

Case study	Estimation of costs
French farmers' strike against imported goods	The average total direct cost per incident is <b>EUR 39,200</b> for transport and food companies. <sup>43</sup>
The blockade of the freight port of Calais / strike by part of the staff (October 2015)	The total direct cost of the strike at Calais in October 2015 would range between <b>EUR 192,500 and EUR 550,000</b> for transport companies. <sup>44</sup>
Seasonal blocking of Bulgarian border by Greek farmers (2007, 2009, 2013, 2016)	Each event in 2007, 2009 and 2013 cost around <b>EUR 10 million</b> for the Bulgarian economy. <sup>45</sup> The 2016 event led to estimated direct and indirect damages ranging from around <b>EUR 10 million</b> <sup>46</sup> to <b>EUR 12-15 million</b> <sup>47</sup> in the road transport sector, and <b>EUR 3.5 million</b> <sup>48</sup> for the Bulgarian agriculture sector.
Blockages at I/11 road in Kysuce Region	No direct costs caused by these incidents could be calculated.
Citizens' protests against transit traffic over the Brenner Pass	The total direct and indirect damages suffered during a 24-hour blockade in the Brenner Pass are estimated at up to <b>EUR 15.2 million</b> for logistics companies <sup>49</sup> and <b>EUR 426,000</b> <sup>50</sup> for the lost revenues from the toll road.
Social movements in Belgium impacting the free movement of goods in 2014 and 2016	The general strike of 15 December 2014 had an direct and indirect economic impact of <b>EUR 264.8 million</b> on the private sector, and <b>EUR 480 million</b> when also taking into account the impact on the public sector. <sup>51</sup> The road blockades in April 2016 affected 70% of Belgian food companies, with an average impact of <b>EUR 18,000</b> per day per company. <sup>52</sup> The May-June 2016 train strike cost around <b>EUR 5 million</b> to the freight operators (direct and indirect costs). <sup>53</sup>

Source: case studies

Findings from responses to the open public consultation, interviews and desk research also provided cost estimations of the disruptions occurring in the context of the migration crisis. Following restrictions on cross-border movements of refugees between Croatia and Slovenia in September 2015, the costs for the different economic operators could be estimated at

<sup>43</sup> Calculation based on figures provided by the Ministry of Foreign Affairs and Cooperation.

<sup>44</sup> Calculation based on a methodology of IRU (World Road Transport Organisation).

<sup>45</sup> According to the Bulgarian Minister of Transport:

<http://btvnovinite.bg/article/bulgaria/politika/moskovski-grackite-fermeri-blokirat-nezakonno-granicata-ni-na-njakolko-pati-ot-2007-g-nasam.html>

<sup>46</sup> Interview with the Bulgarian Union of International Transportation Companies.

<sup>47</sup> According to the Alliance of International Carriers:

<http://bnr.bg/post/100664286/prevozvachite-vnasat-iskove-sreshtu-grackite-fermeri-v-balgarski-sadilishta>

<sup>48</sup> <http://btvnovinite.bg/article/bulgaria/politika/miroslav-naidenov-ima-mehanizmi-s-koito-da-sprem-blokadata-po-granitsata-s-gartsiya.html>

<sup>49</sup> Calculation based on the figures of the Case C-112/00, *Schmidberger*, adjusted for inflation.

<sup>50</sup> Calculation based on the figures from annual toll road revenues: <https://www.wko.at/branchen/transport-verkehr/die-oesterreichische-verkehrswirtschaft-2017.pdf>

<sup>51</sup> DH.be (2014) Grève nationale: les derniers piquets levés en soirée, satisfaction des syndicats. Available at: <http://www.dhnet.be/actu/belgique/greve-nationale-les-derniers-piquets-leves-en-soiree-satisfaction-des-syndicats-5489f3703570a0fe4ce9e053>

<sup>52</sup> FEVIA, 07/04/2016, Blocages routiers: La moutarde monte au nez de l'industrie alimentaire. Available at: <https://www.fevia.be/fr/presse/blocages-routiers-la-moutarde-monte-au-nez-de-lindustrie-alimentaire>

<sup>53</sup> Interview with the Federation of Belgian Enterprises (FEB).

around 2-5 million EUR. The Dutch transport and logistic association also estimated that, based on a survey of around 400/600 member companies, the annual damage caused by road blockades due to the migrant crisis in Calais amounted to around EUR 150 million per year over the past three years. In 2009, according to the UK Federation of Small Businesses, the closure of Calais for just one day imposed a cost of EUR 1.03 million (GBP 1 million) on the UK haulage industry.<sup>54</sup> A report by Charlie Elphike, UK member of parliament, indicates that the 2015 strikes at Calais cost the UK economy EUR 1.12 billion.<sup>55</sup>

The cost of the disruption caused by the Koper Port Strike in Slovenia in July 2016 (reported to the Commission under the Regulation) are reported to amount to more than EUR 10 million across different economic operators<sup>56</sup> while railway operators reported a loss of EUR 700,000 per day<sup>57</sup>. It is unclear, however, whether these costs were generated by the strike as such, which is not necessarily per se an obstacle under the Regulation, and the corresponding economic inactivity, or by blockades organised by striking employees.

Overall, the obstacles reported to the Commission<sup>58</sup> under the Regulation seem to have led to significant costs, particularly through the delays caused to economic operators. The Regulation does not appear to have mitigated these costs.

Sectors most affected by the disruptions are the transport and logistic sector and the food sector. In the transport and logistic sector, the direct damages are caused by the stationary periods of the trucks (EUR 55/hour), the fixed costs for the drivers and compensations for late deliveries. The indirect damages are caused by spoiled goods, extra fuel, lost opportunities due to the inability to use the vehicle (EUR 800-1000/day) and lost profits.<sup>59</sup> Interviewees also estimated that the potential economic losses due to a serious disruption lasting several days could be estimated at up to several million euros, given that the whole logistic chain in the economic process is affected. In the food sector, an interviewee mentioned that additional time required or delays in transit can have serious economic consequences for agricultural products and the associated value chain. For example, delays require additional storage time and degrade the freshness of the food, thus affecting consumer satisfaction and sales price. Finally, obstacles can also have an impact on other sectors or on public entities (e.g. lost tax and road toll revenues).<sup>60</sup>

Economic operators can claim compensation from their insurances or from civil courts. In some cases where obstacles had a long duration or were systematic, stakeholders filed claims for compensation in the Member State where the obstacle took place. For instance, in the case of the long 2016 blockade at the Greek-Bulgarian border, the Alliance of International Carriers prepared a collective claim for compensation against Greek farmers to file in

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<sup>54</sup> <http://www.fsb.org.uk/docs/default-source/fsb-org-uk/policy/assets/fsblockadescomplaint.pdf?Status=Master&sfvrsn=1>

<sup>55</sup> <http://elphicke.com/downloads/ready-on-day-one--meeting-the-brex-it-borders-challenge.pdf>

<sup>56</sup> Response to Open Public Consultation.

<sup>57</sup> Libcom.org, 24.07.2016, Strike in the port of Koper. Available at: <https://libcom.org/blog/strike-port-koper-24072016>

<sup>58</sup> One out of 20 events at the French-Spanish border, all blockades at the Bulgarian border, the event at the Brenner Pass, and the road blockades by Belgian trucks in April 2016 have been reported to the Commission under Regulation (EC) No. 2679/98.

<sup>59</sup> Interviews with the Bulgarian Union of International Transportation Companies and IRU (World Haulage Association).

<sup>60</sup> <http://btvnovinite.bg/article/bulgaria/politika/miroslav-naidenov-ima-mehanizmi-s-koito-da-sprem-blokadata-po-granitsata-s-gartsiya.html>

Bulgarian courts,<sup>61</sup> and suggested that individual claims for compensation could be directly filed in Greek courts.<sup>62</sup>

Although the Regulation does not prevent obstacles from occurring, it has brought benefits by improving the exchange of information with the Commission and putting pressure on Member States to take action to ensure the free movement of goods. Although the exact benefits from the Regulation in terms of time or cost savings could not be estimated, 11 out of 20 respondents to the open public consultation acknowledged that the Regulation has improved the management of obstacles, and an interviewee noted that the Regulation brought benefits to transport operators by allowing them to avoid obstacles or be affected for a shorter time.

#### ***4.2.4. Are there significant differences in costs (or benefits) between Member States, and what is causing them?***

NCPs of all Member States reported low costs of implementation of the Regulation as it only concerns forwarding information by e-mail, involving a limited number of cases per year. For Member States where no obstacle occurs, these are the only costs of implementation, while the main benefit is to be kept informed about disruptions.

Member States where the obstacles occur have to spend more time on the implementation of the Regulation. They must inform the Commission and take all necessary and proportionate measures to ensure the free movement of goods. They must also inform the Commission about the measures taken. The administrative burden is thus greater in these countries, although cost estimations could not be provided. In the Member States affected by the obstacles, the economic operators suffering damages also put pressure on their national authorities to act, as illustrated in the case studies on the Calais strikes and on the blockades at the Greek-Bulgarian borders. The costs of the obstacles can be significant for the economies of the neighbouring countries, even when the cases have been reported to the Commission under the Regulation (e.g. EUR 1.12 billion in the UK due to the 2015 Calais strikes<sup>63</sup> and EUR 10 million for the Bulgarian economy for each blockade at the Greek border).<sup>64</sup>

Thus, in Member States where obstacles happen or where economic operators are affected, particularly in cases of repeated obstacles, the costs of implementation incurred by NCPs and the damage costs incurred by economic operators are greater, but the benefits of triggering the early warning mechanism can also be greater when this ensures that Member States take the necessary measures to shorten the disruptions.

#### ***4.2.5. Conclusions on the efficiency of the Regulation***

The costs of implementing the Regulation are limited in Member States as there are only a few cases of obstacles (12 on average) per year and the exchange of information takes place by e-mail. Given the low costs of implementation for the NCPs, any benefits for stakeholders stemming from the Regulation are valuable.

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<sup>61</sup> <http://bnr.bg/post/100664286/prevozvachite-vnasat-iskove-sreshtu-grackite-fermeri-v-balgarski-sadilishta>

<sup>62</sup> <http://bnr.bg/post/100664286/prevozvachite-vnasat-iskove-sreshtu-grackite-fermeri-v-balgarski-sadilishta>

<sup>63</sup> <http://elphicke.com/downloads/ready-on-day-one--meeting-the-brex-it-borders-challenge.pdf>

<sup>64</sup> <http://btvnovinite.bg/article/bulgaria/politika/moskovski-grackite-fermeri-blokirat-nezakonno-granicata-ni-na-njakolko-pati-ot-2007-g-nasam.html>



The main benefit of the Regulation appears to be the dialogue between the Member States and the Commission, which in general leads to a better management of the obstacles and thus to a reduction of their duration and associated damage.

One of the internal factors influencing the efficiency of the Regulation is the lack of clarity of some provisions such as the definition of “obstacle”, resulting in obstacles not being reported to the Commission and other Member States.

In Member States where disruptions occur or where economic operators are affected, particularly in cases of repeated obstacles, the costs of implementation of the Regulation incurred by NCPs and the costs related to damages incurred by economic operators are higher, but the benefits of triggering the early warning mechanism can also be greater when this ensures that Member States take the necessary measures to shorten the duration of the disruptions.

In conclusion, the Regulation has prompted some efficient changes. In particular it has improved the management mechanism of the notified incidents and resulted in benefits to economic operators (especially for operators in transport and food sectors) by allowing them to avoid disruptions or to shorten the period during which they are affected. This has certainly helped to offset the harsh economic consequences by reducing associated damages which stakeholders could have experienced due to road blockades or border’s closures otherwise. The cost savings are however very difficult to estimate. Furthermore, as indicated by the stakeholders, the original objective of the Regulation, namely ensuring the free movement of goods, is still appropriate. On the other hand, it has been clearly shown by the findings that with the limited costs and little time spent by the NCPs on the implementation of the Regulation, its impact is equally limited. This is even more aggravated by the lack of awareness of economic operators and local authorities about the provisions of the Regulation, leading to the lack of actions taken by the NCPs in cases of disruptions, as indicated in Subsection 4.1.6.

Significantly more costs could be reduced if the Regulation was always applied. This also stems from the fact that the Regulation has not been adapted to new technological developments and does not address new challenges as indicated in Subsection 4.3.2. below. As a result, the status quo of its provisions influences its efficiency, which may be also limited in view of the lack of prevention of obstacles from occurring or the lack of a mechanism for compensation of damages.

### **4.3. Evaluation of the Relevance of the Regulation**

To present the findings and analysis on the relevance of the Regulation this section examines the relationship between the needs and problems to be addressed and the objectives of the Regulation.

#### ***4.3.1. To what extent is the Regulation still relevant?***

The NCPs and EU level stakeholders underlined that the Regulation is a positive tool for ensuring the free movement of goods between the Member States. The NCPs agreed that there is a general need for an instrument to oblige Member States to communicate disruptions and share information on disruptions and future obstacles. Likewise, national associations believed that the Regulation is relevant for addressing the current needs of their members and mentioned that the EC’s role to monitor obstacles to free movement of goods is still

appreciated as it serves as a preventive tool for impeding obstacles by prompting Member States to react quickly. International and European associations indicated that the Regulation is appropriate and that even though some member organisations might not be aware of the Regulation itself, they are conscious that a mechanism to prevent and resolve physical obstacles is in place at the EU level.

**4.3.2. *To what extent have the original objectives proven to have been appropriate for the Regulation? How well do the original objectives still correspond to the needs within the EU?***

Stakeholders considered that the original objective of ensuring the free movement of goods is still appropriate for the Regulation, as well as the operational objectives of having an early warning mechanism, prompting Member States to take necessary and proportionate measures in the event of an obstacle. However, stakeholders seem to agree that some of the provisions of the Regulation should be revised to better address current needs and problems directly related to the free movement of goods.

Firstly, some NCPs indicated that the provisions of the Regulation do not include a set of concrete measures to prevent obstacles to the free movement of goods and to resolve obstacles when they arise, as currently the type of *'necessary and proportionate measures'* (Article 4) to be taken is left to the interpretation of Member States. They suggest that this set of concrete measures could be included in the Regulation without undermining the right to strike. According to the stakeholders, having incorporated such a set of measures into the Regulation, could solve the problem of the inadequate targeting of the current needs of European businesses. The measures at stake could include using the early warning mechanism for construction works that also impede the freedom of movement of goods, as only few of them are currently reported under the Regulation. Although delays linked to construction works are not always preventable, the early warning mechanism could serve as an information channel for individuals and companies to find an alternative route. Furthermore, the early warning mechanism could be transformed into an up-to-date online tool which could be accessed via mobile phones in order to spread the information about possible obstacles faster. At present, the issue regarding the information exchange is that it is done by e-mail, which is too slow to prevent short-term disruptions and does not allow all stakeholders concerned to be informed quickly.

Many involved parties expressed different views when asked if the Regulation is the right instrument to address today's needs and problems related to the free movement of goods. Some NCPs tended to agree that the problematic issue is that currently the Regulation does not address certain Member States' lack of urgency in reporting and mitigating obstacles, as now it also has a preventative function. The NCPs considered that there are new challenges and threats to the free movement of goods that are not addressed by the Regulation, such as:

- The economic context with the fluctuation of agricultural prices, that may lead to cross-border disruptions (e.g. case study on French farmers strikes against imported goods).
- Migration flows and security threats have led Member States to close their borders and have created additional blockades (e.g. case study on the blockade of the freight port of Calais).
- The compensation procedure for damages is not harmonised.

Likewise, the limited number of respondents to the open public consultation also pointed out another problem regarding the provisions of the Regulation and its scope, namely the fact that there are current needs which are not covered by the Regulation. Among the uncovered needs identified is improved access to information and communication for more effective crisis management.

#### **4.3.3. *How well adapted is the Regulation to subsequent technological advances?***

As highlighted by NCPs and business associations, the Regulation is not yet in line with the technological advancements that would allow all parties to receive notifications of the obstacles in real time. The current e-mail-based system is rather slow and does not provide economic actors (e.g. truck drivers) with real time information. Thus, by the time the information gets to the parties that could be affected by the incidents, there is not enough time to choose an alternative route. In practice the information takes too long to reach companies, and they tend to rely more on other sources (e.g. apps, media information or traffic webpages). These sources acquire the information much faster than the NCPs. In general, a digital interface rather than the current system of the early warning mechanism is considered to be a more efficient way of exchanging information on problems related to the freedom of movement of goods that better reflects current needs. The absence of a fast information exchange mechanism can also explain why some obstacles are not reported, as they may be resolved faster by local or regional action. In the case studies, most of the incidents that occurred at the selected borders were not reported, and in five out of six case studies the same types of incidents still occur repeatedly, with the Regulation not playing the role of an early warning mechanism.<sup>65</sup>

The current problems regarding the functioning of the present early warning mechanism mentioned by interviewees and case studies, include:

- Insufficient and rare use of existing European communication platforms such as the SOLVIT platform<sup>66</sup> and the Internal Market Information System;
- The lack of a unified digital solution accessible to businesses in which all transport providers could update information on incidents in real time;
- The lack of a web portal to track disruptions across the EU, making use of modern traffic-monitoring technologies as well as more traditional notifications. E-mailing notifications and alerts does not form an adequate communication channel, thus notifications could be uploaded to a central Commission website to which interested parties could subscribe for updates. The exchange of information system lacks also other useful information in relation to traffic disruptions or extreme weather events which would be relevant to the goods industry;
- The lack of other informal communication systems such as the Across the Alps website.<sup>67</sup> The website provides users with an information system on the main transit axes through the Alps in Austria, Germany, France, Italy, Slovenia and Switzerland.

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<sup>65</sup> French farmers' strike, Road I/11, Brenner Pass, Bulgaria Greece Case study and the Belgium Case study.

<sup>66</sup> SOLVIT platform. Available at: [http://ec.europa.eu/solvit/problems-solved/index\\_en.htm](http://ec.europa.eu/solvit/problems-solved/index_en.htm)

<sup>67</sup> Across the Alps platform. Available at: <http://www.acrossthealps.eu/>

#### ***4.3.4. How relevant is the Regulation to EU citizens? Are there areas of specific needs for free movement of goods that remain to be unaddressed?***

While EU citizens eventually benefit from the intervention under the Regulation to reduce the impact of obstacles, national business associations, particularly transport associations, indicated that the Regulation does not correspond to the current needs of their members as it does not set a clear framework on compensation. Significant losses are experienced by transport companies due to these incidents (see Subsection 4.2.3.) which are in most cases not compensated. At present, there are different procedures in place across Member States to claim compensation via insurance companies or civil courts. Many European businesses are not compensated for losses, neither by the regional/national authorities nor by the insurance companies. Hence, several business associations considered that the Regulation should promote a transparent, non-discriminatory and effective rapid procedure to compensate economic operators for any loss or damage. A member of the European Parliament suggested the inclusion of a minimum requirement in the Regulation (e.g. certification of losses to be provided by the regional/national authority to the actors involved in an incident) in order to allow businesses to claim any damages from their insurance companies. Several stakeholders in interviews called for a harmonised compensation system, and 10 out of 20 respondents to the open public consultation considered that it would be useful to create a compensation mechanism funded by the EU budget for private companies that incurred damages due to the obstruction of free movement of goods.

Moreover, several stakeholders suggested that Member States which do not comply with the legally binding obligation to report and prevent such incidents should be sanctioned. Eleven out of 20 respondents to the open public consultation considered that it would be useful to give more power to the Commission to take binding decisions and guarantee their implementation as well as to impose sanctions on Member States which were in breach of their obligations. This would have a deterrent effect on Member States which do not take all necessary and proportionate measures when disruptions occur.

#### ***4.3.5. Conclusions on the relevance of the Regulation***

Overall, stakeholders considered that the Regulation is still relevant to ensure the free movement of goods and that the early warning mechanism could be improved as a tool to exchange information and prompt the Member States to take necessary and proportionate measures in the event of disruption. Furthermore, stakeholders agreed that some of the provisions of the Regulation should be revised to better address current needs and problems directly related to the free movement of goods.

To adapt the Regulation to the new technological developments, to ensure faster communication of the obstacles and also to inform interested parties, stakeholders called for a unified digital solution with real time information accessible to NCPs, businesses and national associations.

In addition, some new challenges are not addressed by the Regulation, such as fluctuations of agricultural prices, migration flows and security threats. NCPs considered that it would be useful to include a set of concrete measures to be taken by Member States to prevent or resolve incidents. Moreover, several stakeholders suggested that Member States that do not comply with the legally binding obligation to report and prevent such incidents should be sanctioned. Finally, business associations considered that the Regulation should promote a

transparent, non-discriminatory and rapid procedure for compensating economic operators for loss or damage related to disruptions.

#### 4.4. Evaluation of the Coherence of the Regulation

The section assesses the relationship between the free movement of goods principle, the EU policies directly linked to the Regulation, such as environmental and transport policies, and national legal instruments that are in place as additional measures for preventing physical obstacles.

##### *4.4.1. To what extent is the Regulation coherent with wider EU policy (transport and environmental policy in particular)? Are there overlaps or complementarities between the measure and other EU actions that have similar objectives?*

The Regulation is embedded in the context of the free movement of goods. While the Regulation focuses on obstacles to the physical movement of goods, other Union legislation ensures that no regulatory or technical barriers hamper the free trade of goods in the EU.

Directive (EU) 2015/1535<sup>68</sup> aims to prevent potential trade barriers by introducing a notification procedure for draft technical regulations. When a Member State intends to adopt technical requirements that could result in barriers to the free movement of goods, the Member State is obliged to submit a draft of these requirements to the European Commission, which submits the draft to the other Member States. Within a deadline of three months, the Commission and all Member States can react. The procedure allows the Commission and the Member States to examine the draft technical regulations before their adoption. The aim is to ensure that these texts are compatible with EU law and the Internal Market principles.

Decision No 357/2009/EC<sup>69</sup> helps to prevent the transport policies of Member States from diverging and to facilitate the progressive implementation of the common transport policy. Similarly to the procedure of Directive (EU) 2015/1535, Member States who propose to adopt any transport laws, regulations or administrative provisions liable to interfere substantially with the implementation of the common transport policy have to notify the Commission of such measures and inform the other Member States. The Commission and all Member States can react within two months.

Regulation (EC) No 764/2008<sup>70</sup> aims at strengthening the functioning of the internal market by improving the free movement of goods. It contributes to the implementation of the

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<sup>68</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L1535&from=EN>

<sup>69</sup> Decision No 357/2009/EC of the European Parliament and of the Council of 22 April 2009 on a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in Member States. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0357&from=EN>

<sup>70</sup> Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0021:0029:en:PDF>. This Regulation will be repealed as of 19 April 2020 by the new Regulation (EU) 2019/515 of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State. Regulation 2019/515 aims to improve the mutual recognition mechanism by introducing measures to reduce the time for companies to receive

principle of mutual recognition, under which Member States are obliged to allow the marketing in their territory of a product that is legally marketed in another Member State. A company that already sells goods in one Member State should therefore not be required to fulfil additional requirements if it intends to sell the same goods in another Member State. The Regulation requires Member States to justify any decision addressed at an economic operator insofar as it prohibits or hinders the introduction of goods to the market that are lawfully marketed in another Member State, and the justification must be based on reasons qualified under Articles 34 and 36 of the TFEU. In addition, the Regulation provides for the establishment of national Product Contact Points.

Directive (EU) 2015/1535, Decision No 357/2009/EC and Regulation (EC) No 764/2008 are closely related. While the aim of Directive (EU) 2015/1535 and Decision No 357/2009/EC is to prevent the introduction of national requirements that may hinder the free movement of goods, Regulation (EC) No 764/2008 is directed at safeguarding the free movement of goods after technical requirements have been established. Both Directive (EU) 2015/1535 and Regulation (EC) No 764/2008 concern the regulatory action of national authorities with regards to the introduction of products to the national market, while Decision No 357/2009/EC aims to facilitate the implementation of the common transport policy. The Decision also seeks to ensure the free movement of goods, but rather focuses on physical obstacles, often during a transport operation, for example at the border and on the obligation of Member States to remove such obstacles.

In relation to the overlaps or complementarities with other EU actions and coherence with other EU policies, most of the national contact points (NCPs) and stakeholders indicated that the purpose of the Regulation is its use as an additional instrument for enforcing Articles 34–36 of the TFEU. Additionally, they believed that the Regulation does not overlap with any other legislative measures, indicating that it protects the principle of free movement of goods from physical obstacles. The results of the public consultation and interviews indicated that some stakeholders tended to confuse the different legislative provisions ensuring the free movement of goods, which are nevertheless complementary, such as Regulation (EC) No 764/2008, Directive (EU) 2015/1535 and Decision No 357/2009/EC.

Different views emerged when discussing the concrete EU policies more in depth, such as those regarding transport as well as social rights. According to some national associations, doubts persist on when and how to use the Regulation in the case of strikes. Moreover, the German Federal Association for Road Transport Logistics and Disposal (BLG) stated in a report that legitimate protest measures and illegal blockage actions should be distinguished from each other, and the latter should not be covered by the right to strike or engage in demonstration. It argues that, in the case of illegal blockages, Member States should be required to protect drivers and vehicles against attacks and to provide access to sanitation and other facilities for those held up by the blockages.<sup>71</sup>

Overall, the Regulation is coherent with EU transport and environmental policies and the weighting of different objectives (e.g. free movement goods vs. other public policy objectives) is done on the basis of TFEU Articles and case-law of the CJEU.

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market approval from the authorities, as well as voluntary conformity declaration and problem resolution mechanisms.

<sup>71</sup> Opinion about the revision of Regulation (EC) No 2679/98 on the functioning of the internal market in the context of the free movement of goods between Member States, BLG Germany, 2017.

#### **4.4.2. *Are there any issues related to the internal coherence of the measure (i.e. between various components of the measure)?***

The responses to the public consultation and interviews, as well as the results of the case studies, suggest that the stakeholders are not always aware of the exact scope of the Regulation, especially due to the lack of clarity of some definitions (*'serious disruptions'*, *'necessary and proportionate measures'*, *'immediately'* and *'as soon as possible'*), although some agree that the Regulation is internally coherent. Nonetheless, the desk research revealed that the relation of Article 2 of the Regulation with other provisions could appear challenging. According to the Regulation, the term 'obstacle' refers to a matter that leads to serious disruption of the free movement of goods by 'physically or otherwise preventing, delaying or diverting their import into, export from or transport across a Member State' (Article 1). In such a case the Member States should 'take all necessary and proportionate measures with a view to facilitating the free movement of goods in their territory' (Article 4). However, Article 2 of the Regulation states that the Regulation 'may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike'. Hence, the Member States cannot necessarily prevent or take measures to prevent the right to strike and might have to carry out only additional measures or secure alternative routes.

In order to prevent any misunderstandings, stakeholders considered that the Regulation should provide a clearer definition of an obstacle to ensure that people's rights are protected.

In complementarity with the Regulation, Member States also have additional legal instruments to ensure and protect the free movement of goods from physical obstacles. The national measures include:

- Legislation on demonstrations and measures to limit the restrictive effects of blockages caused by demonstrations in the Member States;
- Use of civil procedures and military intervention; and
- Procedures to remedy, compensate or sanction the damages resulting from obstacles.

#### **4.4.3. *Conclusions on the coherence of the Regulation***

The Regulation is considered to be a useful instrument that does not interfere with other EU or national policies. Overall, it is consistent with EU transport and environmental policies.

Some concerns have been noted 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.

#### **4.5. Evaluation of the EU added value of the Regulation**

This section focuses on the extent to which the value resulting from the Regulation is higher than the value that would have resulted from interventions initiated at regional or national levels by both public authorities and the private sector in the absence of any EU action.

**4.5.1. What is the additional value resulting from the application of the Regulation, compared to what could be achieved by Member States at national and/or regional levels?**

Most of the obstacles are of a short-term nature and easily solvable. Therefore, at first glance, EU action might not be seen as necessary. However, many of the NCPs and national associations agreed that the Regulation should stay in place as it helps to increase the coordination and exchange of information between the Member States.

The NCPs appreciated the opportunity for exchanging information between the Member States, the early warning mechanism as well as coordination efforts. These elements would be difficult to apply among the Member States without EU intervention. After all, the freedom of movement remains an issue that needs to be addressed at the EU level.

At the same time, it was observed that many Member States fail to fulfil their duty in reporting the obstacles or that the exchange of information is slow and inefficient. This has been observed in most of the case studies carried out for the purpose of evaluating the Regulation. The interviewed stakeholders, regardless of whether they are NCPs, associations or stakeholders at the EU level, seemed to share the view that coordination needs to be improved and that Member States should fulfil their obligations in notifying other Member States about any disruptions. The extent to which the EU intervention has been successful or not could be better assessed if NCPs were to fully comply with Article 3 of the Regulation, under which Member States must immediately inform the European Commission when an obstacle to the free movement of goods occurs.

In other instances, such as in the case study of the Brenner Pass in Austria, the early warning mechanism played no role in either preventing or resolving the obstacles to the freedom of movement of goods. As the main obstructions were authorised demonstrations, which fall under the organisers' fundamental rights, the local authorities could neither prevent nor resolve the obstacles. Instead, the local and regional authorities focused on providing alternative routes and informing the wider public about the situation. In this particular instance, the motorway operator ASFINAG was involved and parking spots for trucks were arranged. Moreover, the Austrian local authorities communicated with the neighbouring regions via bilateral informal channels.

**4.5.2. To what extent do the issues addressed by the Regulation continue to require action at EU level?**

The case studies have revealed that most of the incidents were communicated by local and national media without resorting to the Regulation and its early warning mechanism. Moreover, the media played an important role in several case studies (e.g. seasonal blocking of the Bulgarian border by Greek farmers and Road I/11 in Slovakia), providing information in real time and reaching a wider audience. The mediatisation of the incidents helped the wider public and drivers to be informed about the happenings, and often this is the only way for them to be informed about the blockages. Thus, the case studies also show that the media plays a greater role in communicating the incidents than the Regulation itself.

As illustrated in the case of the Slovak Road I/11, the media can also play a role in prevention. Due to the high mediatisation, drivers are now aware of the obstacles reoccurring during certain times of day or seasons and can opt for alternative routes accordingly.

However, as illustrated by the case studies on the Brenner Pass and on the blockades at the Greek-Bulgarian border, triggering the information mechanism nevertheless contributed to



identifying the incidents as major disruptions, thus raising awareness among the stakeholders involved and prompting public authorities to manage the incidents more effectively.

**4.5.3. *What would be the most likely consequences of stopping or withdrawing the application of the mechanism introduced by the Regulation?***

In case of an absence of an EU instrument such as the Regulation, the major cost would be:

- Lack of an early warning mechanism; and
- Lack of a supranational mechanism for exchanging information on disruptions.

Nevertheless, a couple of National Contact Points mentioned that the absence of the Regulation would not have a negative impact on the free movement of goods. This is due to the nature of the most common disruptions which are usually resolved quickly without any long-term negative consequences. One NCP even mentioned that withdrawing this legislation would lower the administrative burden in case of short disruptions. In cases of an absence of an early warning mechanism, the neighbouring Member States could establish bilateral channels to exchange information on any obstacles, as seen in the case study of the Brenner Pass.

**4.5.4. *Conclusions on the EU added value of the Regulation***

Many obstacles have not been addressed by the Regulation as not every Member State complies with the requirements set out by the Regulation (e.g. communicating obstacles immediately and taking all necessary and proportionate measures). This means that although as a matter of principle the Regulation has been implemented effectively because all of the Member States have established the NCPS and the procedure on information exchange between the Commission and the Member States exists and functions, there have been many cases where incidents have not been notified to the Commission, for instance concerning obstacles of short duration (e.g. one day or less), since the disruption may be over before the notification reaches the other Member States. According to the findings, most of the disruptions occurring at the borders between the Member States are of a short-term nature and easily solvable.

National, regional and local media coverage of the incidents is proving to be a more effective instrument for informing the wider public about disruptions than the early warning mechanism. Therefore, at first glance, EU action might not be seen as necessary.

However, the majority of stakeholders tend to agree on certain benefits that the Regulation brings to the internal market, one of them being the deterrent effect by putting pressure on Member States to act quickly when an obstacle has occurred, and the use of the early warning mechanism which, as has been confirmed by the NCPs, helps to increase the coordination and exchange of information between the Member States.

## **5. CONCLUSIONS**

As mentioned earlier in this document, total freight transport in the EU-28 was estimated to be just over 2.400 billion tonne-kilometres (tkm) in 2016; with around three quarters of this total being transported by road. However, according to the findings of the evaluation, since the adoption of the Regulation until the mid 2019, only 244 obstacles have been reported to the Commission under the early warning mechanism. Case-studies and desk research have

shown that many incidents occurred in the territory of the Member States, affecting economic operators, which have not been notified under the Regulation.

Based on the evaluation findings and without prejudice to the shortcomings identified by the evaluation, the major achievements of the Regulation are two-fold, as identified in Section 4.1.6:

- (i) it has enabled the exchange of information between the Commission and the NCPs via the early warning mechanism enshrined in Article 3;
- (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 under Article 4.

Nevertheless, when assessing the efficiency, effectiveness, coherence, relevance and the EU added value of the Regulation, the evidence has shown that there are at least five main shortcomings which seriously limit its performance (see Sections 4.1, 4.2 and 4.4), namely:

- unclear terms regarding the definition of main concepts, the timing and proportionality of the measures to be taken by the Member States, which determine the scope of its application;
- too slow a system of exchanging information based on e-mails which does not allow the unleashing of the full potential of information sharing, including real-time information sharing with the economic operators and stakeholders concerned;
- the lack of awareness and knowledge about the provisions of the Regulation among stakeholders (i.e. economic operators and local authorities);
- the lack of a harmonised compensation system for damages suffered, and;
- the lack of a monitoring system to check the Member States' compliance with their obligations and the possibility to impose sanctions for non-compliance.

Furthermore, it has been indicated that the Regulation does not effectively prevent obstacles from happening, since it does not affect in any way the exercise of fundamental rights as recognised in the Member States, including the right or freedom to strike as well as it does not specifically address issues of short duration.

### ***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. In addition, the evaluation has shown that in the Member States where disruptions occur or where economic operators are affected, particularly in cases of repeated obstacles, the costs of implementation of the Regulation incurred by NCPs and the costs related to damages incurred by economic operators are higher, but the benefits of triggering the early warning mechanism can also be greater when this ensures that the Member States take the necessary measures to shorten the duration of the disruptions.

### *Coherence, relevance and EU added value*

The evaluation has concluded that in order to ensure that the Regulation is coherent, relevant and has 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.

Due to the evidence pointing to the lack of incidents being reported under the Regulation, at first glance, the EU action might not be seen as necessary. However, this is certainly also due to the lack of awareness of the regulation and the subsequent underreporting. In addition, the majority of stakeholders tend to agree on certain benefits that the Regulation brings to the internal market, one of them being the deterrent effect by putting pressure on Member States to act quickly when an obstacle has occurred, and the use of the early warning mechanism.

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. Under certain circumstances, such compensation is the logical consequence of a failure to comply with the provisions of EU law, even if this has not been established by the Court. However, the procedures to be applied for demanding such compensation are governed by the national laws of the Member States. The Member States have undertaken in the 1998 Resolution to ensure that for cases covered by the Regulation, these procedures are rapid and effective, and that the economic operators are informed of them. However, the operators still complain that the procedures are too long and complicated, and that compensation is limited to operators blockaded on the territory of the Member State concerned and does not cover those who, as a result of the obstacle, were prevented from entering its territory. In view of this situation, the dispatch by the Commission of a notification to the Member State concerned and its publication in the Official Journal of the European Union, as foreseen by Article 5 of the Regulation, may prove useful for economic operators in their cases before the national courts, while not in any way directly resolving all their problems.

To conclude, in line with the feedback from NCPs and economic operators, 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 and take the necessary and proportionate steps to ensure the free movement of goods in the event of an obstacle, and thus ensure better enforcement of 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.
- 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.

Finally, it is important to emphasise that 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.

## **6. ANNEXES**

### **ANNEX 1: PROCEDURAL INFORMATION**

#### **1. IDENTIFICATION**

- Lead DG: DG Internal Market, Industry, Entrepreneurship and SMEs (GROW)
- Agenda planning/Work programme references: PLAN/2017/909

#### **2. ORGANISATION AND TIMING**

Work started in March 2017. An Inter-Service Steering Group (ISSG) chaired by DG Internal Market, Industry, Entrepreneurship and SMEs (GROW) was established with colleagues from Sec Gen, DG AGRI, DG ENER, DG EEA, DG ECFIN, DG JUST to this purpose.

The ISSG met once on 16 March 2017. Exchanges between ISSG group took place by email during the evaluation process.

The evaluation of the Regulation 2679/98 was carried out by Technopolis Group in consortium with the EY and the Valdani Vicari & Associati Consulting between March 2017 and March 2018.

- Publication in EUROPA of the Roadmap on the evaluation, 6 March 2017
- Signature of a specific contract for the Study on the evaluation, 6 March 2017
- Launch of the Open public consultation, 9 October 2017 (12 weeks)
- Approval of the Final Report of the Study for the evaluation, 28 March 2018

#### **3. EXCEPTIONS TO THE BETTER REGULATION GUIDELINES**

N/A

#### **4. CONSULTATION OF THE REGULATORY SCRUTINY BOARD**

N/A

#### **5. EVIDENCE, SOURCES AND QUALITY**

- Report from the Commission to the Council and the European Parliament on the application of Regulation (EC) No 2679/98, COM/2001/0160 final of 22 March 2001.
- Evaluation of the functioning of Regulation (EC) no 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (Final Report of 2001).
- Evaluation of the functioning of Regulation (EC) no 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (Final Report of 5 December 2007 submitted by Technopolis and GHK Consulting).

- Evaluation of the Regulation on the functioning of the internal market - Roadmap Ares (2017)1178558.
- Opinion about the revision of Regulation (EC) no 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (Submitted by BLG Germany in 2017).
- Evaluation of the functioning of Regulation (EC) no 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States (Final Report of March 2018 submitted by Valdani Vicari & Associati).

## ANNEX 2: STAKEHOLDER CONSULTATION: SYNOPSIS REPORT

### 1. INTRODUCTION

The European Council in Amsterdam on 16 and 17 June 1997 noted the limits to the infringement proceedings under the then Article 226 EC, nowadays Article 258 TFEU, in the case of serious obstacles to the free movement of goods requiring urgent rectification. It underlined the crucial importance of establishing *ad hoc* procedures capable of responding rapidly and effectively to the restrictions on the free movement of goods resulting from such obstacles. The European Council therefore asked the Commission to look into ways of ensuring effectively the free movement of goods, including the possibility of imposing penalties on the Member States.

In response to this remit, the Commission presented to the Council and the European Parliament, on 18 November 1997, a proposal for a Council Regulation (EC) setting up a specific mechanism for rapid intervention by the Commission.<sup>72</sup> Under this mechanism, the Commission would have requested the Member State concerned, by means of a Decision, to take the measures necessary to remove a clear and unmistakable obstacle to the free movement of goods within the meaning of the then Articles 28 to 30 EC, now Articles 34 to 36 TFEU. Individuals could have had the Decision rapidly enforced before the national courts and could, by means of national redress, have obtained provisional measures, combined with penalty payments or fines, to prevent extension or aggravation of the obstacle, to end the alleged infringement and, if appropriate, obtain compensation for the loss suffered.

The European Parliament held several debates on the scope of the Regulation, its value added and its impact on the right to strike. It proposed three amendments,<sup>73</sup> one of which was accepted by the Council.<sup>74</sup>

While the discussions were being held in the Council and the Parliament, the Court of Justice (hereinafter referred to as "the Court") handed down a judgment relating to serious obstacles to the free movement of goods.<sup>75</sup> In that judgment, the Court found that a Member State was failing to comply with the obligations deriving from Article 34 TFEU (ex Article 28 TEC), in conjunction with Article 4(3) TEU (ex Article 10 TEC), "*since the measures adopted to deal with actions by private individuals which create obstacles to the free movement of certain [...] products [...] were manifestly inadequate to ensure freedom of intra-Community trade in [...] products on its territory by preventing and effectively dissuading the perpetrators of the offences in question from committing and repeating them.*"<sup>76</sup> This judgement is considered ground-breaking, since it was the very first case in which the Court was called to rule whether a Member State is liable for its inaction in the face of restrictions on imports emanating from third parties.

Finally, the Commission's proposal was not accepted by the Council,<sup>77</sup> which preferred a compromise solution consisting of two components:

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<sup>72</sup> Proposal for a Council Regulation (EC) creating a mechanism whereby the Commission can intervene in order to remove certain obstacles to trade. COM (97) 619 final – 97/0330 (CNS), OJ C 10 of 15.1.1998, p. 14.

<sup>73</sup> 12752/98 PE-RE 76.

<sup>74</sup> An amendment to the wording of Article 5(5) of the Regulation.

<sup>75</sup> Judgment of the Court of 9 December 1997, *Commission v France* (C-265/95, Rec. p. I-6959), hereinafter referred to as the "Strawberry" judgment.

<sup>76</sup> Cf. summary of the judgment.

<sup>77</sup> Cf. opinion of the Council's legal service of 4 February 1998, 5731/98 JUR 53.

- The Regulation, which introduced three approaches: an early warning mechanism in the event of an obstacle or the risk of an obstacle, an obligation on the Member States to take the necessary and proportionate measures needed to ensure the free movement of goods, and Commission action notifying the Member States and urging them to take such measures; and
- a Resolution<sup>78</sup> reaffirming the Member States' undertaking to respond rapidly to any move by the Commission and to ensure compensation for losses incurred by individuals.

Thus in 1998 the Regulation was adopted on the basis of ex Article 308 TEC, nowadays Article 352 TFEU.

The Commission wanted to assess the Regulation. For that purpose an evidence-based assessment of the provisions of the Regulation was conducted. The evaluation criteria concerning the evaluation of the Regulation at stake were four-fold, namely:

- (i) effectiveness;
- (ii) efficiency;
- (iii) relevance (given the needs and its objectives);
- (iv) coherence (both internally and with other EU policy interventions); and
- (v) the achieved EU added-value.

This is an own-initiative evaluation. It was launched to assess how the relevant provisions have worked so far and whether there is a need to change or improve them.

The results of the evaluation intend to support any decision related to possible future actions to better address current needs and problems directly related to the free movement of goods within the EU internal market. Against this background, the Commission also wished to receive stakeholders feedback on whether the Regulation has achieved its objectives and if the Regulation has effectively ensured the free movement of goods in the face of serious disruptions; as well as on recommendations for the improvement of the Regulation to make it more effective and to bring it in line with technological developments.

## **2. OBJECTIVES OF THE CONSULTATION**

The consultation strategy aimed at gathering information from stakeholders to feed the assessment of its effectiveness, efficiency, relevance, coherence and EU added value.

This document presents an overview of the two consultation activities conducted during the Evaluation of the Regulation: interviews and open public consultation as well as their results. The strategy for the consultation activities, as well as the results and the representativeness of responses to this consultation are explained in this report.

The results of the interviews and of the open public consultation have been considered as a primary source feeding the responses to the evaluation questions (Effectiveness, Efficiency,

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<sup>78</sup> Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 7 December 1998 on the free movement of goods; OJ L 337 of 12.12.98, p. 10.



Relevance, Coherence, EU Value Added) which in turn have been used in the main evaluation report and the Staff Working Document.

Relevant stakeholders include Commission officials, national contact points (NCPs), European and national agriculture/food associations, European and national transport associations and organisations comprising industry associations, trade unions and chambers of commerce.

### **3. CONSULTATION METHODS AND TOOLS**

Overall, 70 stakeholders from all Member States and all target groups contributed to the interviews and 20 responded to the Open Public Consultation. In general, the results of the consultation are consistent, all the more so as some respondents to the Open Public Consultation also participated in the interviews. In principle, the interviews provided more depth information in the responses, with detailed explanations of the issues and their causes. Respondents to the Open Public Consultation tended to be slightly more negative than the total number of stakeholders interviewed with regard to the effectiveness of the Regulation, probably due to a lower level of representativeness<sup>79</sup>.

#### **3.1. Open Public Consultation**

An Open Public Consultation was launched on 9 October 2017 for a period of 12 weeks in 6 European Union languages (English, French, German, Italian, Polish, and Spanish), consisting of an online questionnaire published on a consultation website hosted on *Europa*<sup>80</sup>. The public consultation was closed on 31 December 2017. It was addressed both to individuals in their personal capacity and in their professional capacity or on behalf of an organisation (i.e. national contact point, government institution, local authority, transport company or a federation/association of transport companies).

A total of 20 people responded to the Open Public Consultation. Amongst the respondents, one answered as an individual in a personal capacity and the others in a professional capacity or on behalf of an organisation. The respondents included representatives of:

- 7 transport companies and a federation/association of transport companies;
- 7 government institutions;
- 4 National contact points;
- 2 did not specify their role.

Moreover, the respondents resided in 13 Member States plus ‘other’.

The Open Public Consultation has been a useful tool for reaching a number of stakeholders not included in the interviews. The results of the Open Public Consultation complemented the information gathered through the desk research, interviews and the six case studies. However,

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79 For instance, only six out of 20 respondents to the open public consultation see a preventive value of the Regulation in the reduction of obstacles since 1998, while a larger proportion of interviewees shared this view.

80 <https://ec.europa.eu/eusurvey/Strawberry/management/test>

considering the limited uptake (20 replies), the statistical relevance of the Open Public Consultation is limited. Consequently, the study team has relied more on other data collection tools to respond to the evaluation questions.

### **3.2. Surveys (interviews)**

A targeted survey was carried out through two questionnaires via face-to-face or telephone interviews in English addressed to:<sup>81</sup>

- EU officials (3 responses);
- National Contact Points (23);
- European business associations (4);
- Trade unions (4);
- National agriculture or food associations (9);
- National transport associations (5);
- Ministries or regional authorities (7).

Responses came from 70 respondents representing 14 Member States.

The targeted survey encountered some limitations:

- The main issue encountered during this activity was the lack of awareness of national business associations about the Regulation, which explains the relatively lower number of interviewees from this category, although food associations and transport associations generally demonstrated better awareness than other associations. To overcome this challenge, additional types of stakeholders have been interviewed such as trade unions and chambers of commerce<sup>82</sup>.
- Low level of participation in the Open Public Consultation: only 20 stakeholders replied. Considering the limited uptake, the statistical relevance of the open public consultation is limited. Consequently, the study team has relied more on other data collection tools to respond to the evaluation questions.

Face-to-face or telephone interviews have been conducted with the different categories of stakeholders involved in or affected by the Regulation, including Commission officials, national contact points (NCPs), European and national agriculture/food associations, European and national transport associations and other organisations, comprising industry associations, trade unions and chambers of commerce. The complete list of stakeholders

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81 There were two interview guides prepared to obtain the answers to the evaluation questions, namely: 'Interview guide for EU officials and National Contact Points', and 'Interview guide for European and national associations.'

82 The study team created an Excel database containing all of the results of the interviews, allowing to search by evaluation criteria, question and type of stakeholders. This information was triangulated with the results of the open public consultation, the desk research and the case studies in order to develop well-founded conclusions to the evaluation.

interviewed can be found in the Final Report of March 2018 on the Evaluation of the Regulation (EC) 2679/98.

To take into consideration the specificity and relevance of information collected during the interviews, different sets of questions have been asked depending on the profile, the specific area of competence or activity of the stakeholders. The interview guides can be found in Annex 2 to the Final Report of March 2018 on the Evaluation of the Regulation (EC) 2679/98.

### **3.3. Conference on the Evaluation of the Regulation**

The European Commission held no Conference on the evaluation of the Regulation.

### **3.4. Workshop**

Within a workshop held in Brussels on 10 June 2016, the Commission, national authorities and several key stakeholders<sup>83</sup> offered an overview of the background, objectives, and functioning of the Regulation in light of the experience gained and of the new challenges of the future – especially the role of the new technologies and the treatment of 'structural' obstacles (those almost cyclical and predictable). Specific focus was set on how national authorities deal with information flows. The stakeholders then presented their views on the issue and, finally, the new ways of dealing with information needs of authorities and those affected by obstacles were discussed.

The following points were then agreed as final set of **conclusions** and necessary **follow-up**:

1. The Regulation is still important and the Commission should continue playing its role: the Commission notifies Member States and urges them to take action;
2. new technologies to be considered – to guarantee a more timely flow of information and wider dissemination;
3. a formal evaluation of the functioning of the Regulation to be launched;
4. a new meeting of the network should be convened to discuss possible tools to improve the interchange of information within the Regulation; and
5. guidelines further detailing the functioning of the Regulation were not considered necessary.

## **4. ANALYSIS OF THE MAIN RESULTS OF THE INTERVIEWS**

Several stakeholders had experience with the Regulation, while some stakeholders had no awareness of its provisions.

### **4.1 Effectiveness**

The consultation aimed at understanding whether and to what extent the Regulation's objectives in terms of protection of free movement of goods have been achieved so far at both national and EU levels.

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83 The World's Road Transport Organisation (IRU), the European Sea Ports Organisation (ESPO), and the European Transport Workers' Federation (ETF).

Most stakeholders are aware of the Regulation.

- Effective but only partially used provisions

The interviewees consider that the provisions of the Regulation concerning early warning and the exchange of information on obstacles under Article 3, and hence the opportunity for proactive action from Member States as per Article 4, have generated satisfactory results.

Findings from the interviews show that the main benefit of the Regulation in terms of changes in the behaviour of public authorities has been the faster (pro/re)action of some national authorities to reduce the consequences of obstacles as a result of the peer pressure from the Commission and other Member States. According to some interviewed NCPs, the Regulation has helped to reduce the duration of the obstacles and thus the associated damage thanks to improved information flows on anticipated obstacles (Article 3) and due to the pressure on Member States to take adequate actions and resolve the issues (Article 4).

On the other hand, according to some interviewees, Regulation is not always effective in resolving the incidents or reducing their duration. In addition, economic operators report that a certain number of obstacles occurring to the free movement of goods were not notified by Member States to the Commission. This means that some Member States did not use Regulation even though obstacles occurred within their borders.

- Unclear definitions

According to NCPs, due to the lack of clarity of the definition of obstacle (how to define ‘serious disruption’ and ‘serious loss’), some Member States are not sure which disruptions are within the scope of the Regulation, which may explain why they do not report all events to the Commission. Moreover, some NCPs argued that sometimes it was not appropriate to apply the Regulation notably with regard to the right to strike.

NCPs would also welcome more clarity on the timing of communication and action (definition of ‘immediately’ and ‘as soon as possible’) and a more detailed definition of ‘necessary and proportionate measures’ to prevent or resolve obstacles, which would allow Member States to act more effectively in case of disruption.

As pointed out by several NCPs, it would be beneficial to organise more meetings or workshops among NCPs to exchange best practices and clarify possible questions of interpretation in order to ensure more effective implementation of the Regulation.

- Need to adapt the early warning mechanism

The majority of stakeholders interviewed questioned the quickness of the early warning mechanism by e-mail, and some NCPs suggested that the provision of real-time information about the obstacles on a common digital platform would increase the possibility to quickly address the issues and propose alternative routes.

Indeed, the findings from interviews showed that except for the National Contact Points, the EU officials, the European associations and some national associations (mostly transport associations and business associations), economic operators are not sufficiently aware of the provisions offered by the Regulation and in what situations they would apply. The main reason for the lack of awareness of the Regulation is that while it contains provisions to

ensure the exchange of communication between the Member States and the Commission, it does not ensure that other stakeholders should be informed. In some Member States, the NCPs indicated that they publish the notifications on their websites (namely in the Czech Republic and Sweden) or inform directly the relevant stakeholders (namely in Cyprus and Ireland). Economic operators reported that they usually use other information sources (e.g. media, traffic websites, information from national authorities or business associations) to learn about disruptions and about alternative routes.

To improve the direct exchange of information between Member States and other interested parties, several NCPs (namely from Austria, Croatia, Germany, Greece, Finland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Spain, UK) and transport associations or companies would be in favour of a central electronic platform where information on notifications and obstacles would be directly available to national authorities and stakeholders.

- Compensation mechanism

Stakeholders interviewed, mainly transport and food associations, call for a transparent, non-discriminatory and effective procedure to compensate economic operators for any loss or damage related to the obstacles.

## **4.2 Efficiency**

For the NCPs, the costs of communicating the disruptions to the Commission and other Member States do not constitute an administrative burden as they consist of exchanging information by e-mail or through existing information networks and updating relevant information on their respective websites. In their view, the main benefit of the Regulation is the improved exchange of communications between the Member States and the Commission, leading to a reduction of the duration of the obstacles and of the associated damage.

The interviewees argue that more stakeholders would benefit from the Regulation if a unified digital tool for exchanging information about obstacles, open to Member States and economic operators, were made available, as more stakeholders would be informed of the disruptions and of the preventive measures applied.

However, interviews with economic operators revealed that they incur significant costs due to obstacles, particularly in the transport and food sectors. According to the stakeholders, the impact of the Regulation on mitigating these costs appears limited, but the main benefit highlighted was that triggering the early warning mechanism raises awareness about the importance of ensuring the free movement of goods. This puts pressure on Member States to manage the disruptions as well as possible, for instance by proposing alternative routes and warning neighbouring countries about the obstacles.

## **4.3 Coherence**

With regard to the overlaps or complementarities with other EU actions and coherence with other EU policies, most of the NCPs and stakeholders indicated that the purpose of the Regulation is to be used as an additional instrument to enforce Articles 34–36 of the TFEU. Additionally, they believed that the Regulation does not overlap with any other legislative measures, indicating that it protects the principle of free movement of goods from physical obstacles.

According to some national associations, there remains tension and confusion in certain Member States on when and how to use the Regulation in case of strikes. One transport association stated that legitimate protest measures and illegal blockage actions should be distinguished from each other and the latter should not be covered by the right to strike or engage in demonstration.

#### **4.4 Relevance**

The NCPs and EU-level stakeholders emphasise that the Regulation is a relevant tool for ensuring the free movement of goods between the Member States. The NCPs agree that there is a general need for an instrument to oblige Member States to communicate and share information on disruptions and future obstacles. Likewise, national associations believe that Regulation is relevant in addressing the current needs of their members and mentioned that the Commission's role in monitoring obstacles to free movement of goods is still appreciated, as it serves as a preventive tool for impeding obstacles by prompting Member States to react quickly. International and European associations indicate that Regulation is appropriate and that, even though some member organisations might not be aware of the Regulation itself, they are conscious that a mechanism to prevent and resolve physical obstacles is in place at the EU level.

However, stakeholders generally agree that some of the provisions of the Regulation should be revised to better address current needs and problems directly related to the free movement of goods.

Firstly, some NCPs indicated that there is a need to include a set of concrete measures to prevent obstacles to the free movement of goods and to resolve obstacles when they arise, as currently the type of "necessary and proportionate measures" (Article 4) to be taken is left to the interpretation of Member States.

Secondly, the NCPs consider that there are new challenges and threats to the free movement of goods that are not addressed by the Regulation such as protectionist measures, migration flows and security threats.

Finally, NCPs and business associations highlighted that the Regulation is not yet in line with the technological advancements that would allow all parties to receive notifications of the obstacles in real time. In general, a digital interface rather than the current system of the early warning mechanism is considered to be a more effective way of exchanging information reflecting current needs and problems in the freedom of movement of goods.

Several business associations consider that Regulation should promote a transparent, non-discriminatory and rapid procedure to compensate economic operators for any loss or damage. Currently, many European businesses are not compensated for losses, neither by the regional/national authorities nor by the insurance companies.

Moreover, several stakeholders suggest that sanctions should penalise the Member States which do not comply with the legally binding obligation to report and prevent such incidents.

#### **4.5 EU added value**

Many NCPs and national associations agree that the Regulation should remain in place as it helps to increase the coordination and exchange of information between the Member States.

The NCPs appreciate the opportunity for exchanging information between the Member States, the early warning mechanism as well as coordination efforts.

However, interviewed stakeholders, including NCPs, associations or stakeholders at EU level, seem to share the view that coordination needs to be improved and that Member States should fulfil their obligations in notifying other Member States about any disruptions.

Nevertheless, a couple of NCPs mentioned that the absence of the Regulation will not have negative impact on the freedom of movement of goods. This is due to the nature of the most common disruptions, which are usually resolved quickly without any long-term negative consequences.

Overall, all stakeholders acknowledge the EU added value of the Regulation to the EU legal framework and policies and no stakeholder suggested to repeal it.

The national public authorities agree that the level playing field achieved would not be possible with individual Member States action. In addition, the NCPs appreciated the opportunity for exchanging information between the Member States, the early warning mechanism as well as coordination efforts. These elements would be difficult to apply among the Member States without EU intervention. After all, the freedom of movement remains an issue that needs to be addressed at the EU level.

## **5. ANALYSIS OF THE MAIN RESULTS OF THE OPEN PUBLIC CONSULTATION**

The consultation activities aimed at understanding whether the initial needs still correspond to current needs. Consequently, it allowed to gather a wide range of views on the Regulation in terms of what has worked well and what has not worked so well so far, as well as on expectations for the future.

In the reply to the question on the level of stakeholder's awareness and experience regarding the Regulation, 11 respondents considered their awareness to be 'substantial' while nine respondents considered it to be 'limited'. Interestingly, amongst the four National Contact Points participating in the consultation, three declared having a limited knowledge or experience of the Regulation. The results of this question have been used to assess the effectiveness of the Regulation.

The majority of the respondents believed that the Regulation has contributed to the prevention or reduction of serious disruption to the free movement of goods occurring at the EU internal borders only to a limited extent. On the other hand, only two government institutions, one national contact point and one transport company answered negatively. The results of this question have been used to assess the effectiveness of the Regulation.

Nearly half of the respondents consider that the Regulation has been effective to ensure the adequate and rapid exchange of information between the Member States and the Commission. On the other hand, a limited number of respondents to the OPC believe the Regulation was effective in obliging Member States to take necessary and proportionate measures to ensure free movement of goods, as well as to communicate to economic actors in a timely manner, and to prevent obstacles/disruptions.

As has been shown by the responses only a small majority of respondents is aware of specific cases in which the free movement was obstructed and of the associated costs. Some respondents also reported cost estimations for the disruptions occurring in the context of the

migration crisis. The results of this question have been used to assess the efficiency of the Regulation.

It was found that the preventive influence of the Regulation was only somewhat important or not important for the majority of the respondents having an opinion in the matter. The results of this question have been used to assess the effectiveness and relevance of the Regulation.

Approximatively 60% of the respondents believed that the Regulation improved the management of obstacles at Member State borders. The results of this question have been used to assess the effectiveness and efficiency of the Regulation.

Overall, respondents are not so aware of alternative (early) warning mechanisms in place at the national level in order to prevent serious disruption to the free movement of goods. The respondents mention that these include interdepartmental and interagency cooperation and traffic information websites and signs. The results of this question have been used to assess the coherence and EU added value of the Regulation.

In contrast, stakeholders are relatively well aware of the measures taken by Member States to prevent or limit ‘obstacles’ to the free movement of goods or to mitigate their consequences. Among these measures, respondents to the Open Public Consultation appear to be most aware of redirections of traffic<sup>84</sup>, as well as of the presence of police and the authorisation requested for demonstrations.<sup>85</sup> The results of this question have been used to assess the effectiveness and EU added value of the Regulation.

Half of the respondents indicated that there are current needs which are not covered by the Regulation. Examples of those issues are, in line with the findings from the interviews, technological needs and improved access to information and communication for more effective crisis management. The results of this question have been used to assess the relevance of the Regulation.

Among the recommendations for improving the Regulation, most respondents are in favour of the introduction of a unified digital solution with real time information accessible to businesses and national associations, as well as of providing a more detailed definition of measures that Member States should take to prevent/solve incidents. To a lesser extent, respondents are in favour of the creation of a compensation mechanism funded by the EU budget for private companies that incurred damages due to the obstruction to the free movement of good. They are also to a lesser extent, in favour of giving more power to the Commission to take binding decisions and guarantee their implementation as well as to impose sanctions on Member States in breach of their obligations. The results of this question have been used to assess the effectiveness and the relevance of the Regulation.

Most stakeholder categories recognised the efficiency of the Regulation. In particular, all categories, think that the costs and benefits derived from the application of the Regulation for national public authorities and economic entities are balanced.

The Regulation is also seen as coherent with the EU legislation on the free movement of goods, relevant and future-proof. Nonetheless, representatives from public authorities, civil society and consumer associations agree there are issues not adequately covered by the

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84 7 out of 7 respondents aware of measures taken by Member States.

85 5 out of 7 respondents aware of measures taken by Member States.



Regulation with regard to new technological developments in terms of the information exchange system between the National Contact Points.

All in all, there was a large consensus among stakeholders that the Regulation has EU added value.

## **6. FEEDBACK TO STAKEHOLDERS**

The consultation activities provided a wide range of views regarding the functioning of the mechanism foreseen in the Strawberry Regulation to prevent and limit the consequences of obstacles to the free movement of goods across the EU internal borders. The results of the public consultation focused on what has worked well and what has not worked so well, according to the consulted stakeholders. In addition, the interviews with the stakeholders formed an opportunity to promote the engagement of the national authorities, thus enhancing the chances of a good response rate.

The consultation activities were used as building blocks for the external evaluation study on the Regulation, with the goal of assessing the functioning and performance of the Regulation and identifying potential shortcomings or possible improvements. The consultation activities covered the time period of October-December 2017 and focused on the Regulation's application in the 28 Member States' territory. The consultations had as specific focus the application of the Regulation with regard to serious disruptions of the free movement of goods within the EU, and in particular, all the various means available to economic operators to ensure that they are informed of disruptions. The assessment of the evaluation and the consultations was done according to five criteria: effectiveness, efficiency, coherence, relevance and EU added value.

The consultation strategy originally foresaw a balanced feedback from different categories of stakeholders, including a geographical balance and a broad spectrum of economic operators (e.g. European and national business associations, trade unions, chambers of commerce). However, the replies and data collected gathered from the open public consultation was relatively poor, as only 20 responses were received, thus not fully matching the expected coverage. Nevertheless, the targeted interviews have mitigated the identified gaps in terms of geographical scope and broad spectrum of stakeholders to the extent possible, making the total results statistically representative and relevant.

For the purpose of collecting data, apart from the desk-research, documents review and the six case studies, face-to-face or telephone interviews have been conducted with the different categories of stakeholders involved in or affected by the Regulation. As a result, 70 respondents representing 13 Member States replied. When it comes to the estimation of costs and benefits stemming from the Regulation, with regard to the efficiency evaluation criterion, the information on the perception of the benefits has been collected mainly through the interviews. For the costs and damages, the gathered estimations are based from a combination of desk research, interviews and answers from the Open Public Consultation.

The public consultation and interviews have shown that public authorities and stakeholders find it important for the EU to have an efficient instrument to handle the instances where the free movement of goods could be or is being hampered by primarily actions by private organisations or people. A positive message is that most of the stakeholders have a certain

level of awareness and experience regarding the Regulation. This consequently leads to a better management of the obstacles, and thus contributes to a reduction of their duration and associated damage.

Concerns expressed by the stakeholders have been integrated in the assessment and the Commission will duly take these further into account in the fine-tuning and continuous implementation of the Regulation.

### ANNEX 3: METHODS AND ANALYTICAL MODELS USED IN PREPARING THE EVALUATION

The methodology used in preparing the evaluation consists of desk research, interviews with stakeholders involved in, or affected by, the Regulation, six case studies on examples of different obstacles to the free movement of goods, and an Open Public Consultation.

The **desk research** focused on an in-depth review of the policy papers, articles and reports from national authorities and trade associations, as well as the previous two evaluation studies of the Regulation in 2001 and 2007.

The **field research** made use of a combination of field research tools, namely two targeted surveys and 70 interviews face-to-face or telephone interviews were conducted with the different categories of stakeholders involved in or impacted by the Regulation<sup>86</sup>, plus the results of a Public Consultation launched by the Commission.

As for the **geographical coverage** of the stakeholder consultation, all EU Member States were involved in the consultation. The EFTA States and Turkey were not included.

**Six case studies** aimed at examples of different obstacles to the free movement of goods that are covered by the Regulation and have occurred in France, Bulgaria, Slovakia, Austria, and Belgium in the past years. The purpose of the case studies was to gather a deeper understanding of the potential impacts of the Regulation. Each case study required interviews and desk research for in-depth investigation.

There were **interviews** conducted with 70 stakeholders involved in, or affected by, the Regulation, including Commission officials, national contact points (NCPs), European and national agriculture/food associations, European and national transport associations and other industry associations, trade unions and chambers of commerce.

The **Open Public Consultation** was launched by the European Commission online on 9 October 2017, for a period of 12 weeks. The public consultation was closed on 31 December 2017. The aim of the Public Consultation was to assess the effectiveness, efficiency, relevance, coherence and EU added value of the Regulation. It focused especially on the three-fold aspects, i.e.

- (i) establishment of the current situation with regard to the serious disruption of the free movement of goods within the EU;
- (ii) evaluation of damages caused by serious obstacles to the free movement of goods since the application of the Regulation (EC) 2679/98; and
- (iii) identification of best practices aiming to improve the functioning of the Regulation (EC) 2679/98 as a means to ensure the free movement of goods without serious disruption.

In total, there were 20 respondents to the Public Consultation who represented the following Member States, i.e. Austria, Belgium, Croatia, Cyprus, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Slovenia, Spain, and the United Kingdom. Among those, one answered as an individual in his own personal capacity and the others in their professional capacity or on

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<sup>86</sup> The interviewees included Commission officials, national contact points (NCPs), European and national agriculture/food associations, European and national transport associations and organisations comprising industry associations, trade unions and chambers of commerce.

behalf of an organisation. The respondents comprised: (i) 7 transport companies or a federation/association of transport companies; (ii) 7 government institutions; (iv) 4 national contact points; and (v) 2 who did not specify their role.

- **Evaluation questions**

The table below lists all final evaluation questions used in the Study on the Evaluation of the Regulation.

<b>EFFECTIVENESS</b>
EQ 1/2/3: What results (impacts) have actually been obtained? How far have they contributed to achieving the free movement of goods in the face of serious disruption? To what extent is it linked to the Regulation?
EQ 4/5: How successful EU action has been in achieving or processing towards its objectives. To what extent have these results (impacts) contributed to fulfilling the needs and/or solving the problems, which lead to the adoption of the Regulation?
EQ 6: How is the Regulation applied in Member States?
EQ 7: To what extent have Member States actually complied with the requirements of the Regulation and the need to safeguard the free movement of goods, within the principle of proportionality?
EQ 8: Has the Regulation improved the free movement of goods within the internal market in the face of serious disruption?
EQ 9: How much has the existence and/or use of the Regulation made it possible to change behaviour and to actually ensure the free movement of goods in the face of serious disruption?
EQ 10/11/12: Have any provisions of the Regulation provided particularly good results regarding obstacles hindering the free movement of goods? Have any provisions of the Regulation provided been particularly ineffective? Are there any lessons to be learnt from them?
EQ 13: To what extent are interested parties informed of the existence of the Regulation and the possibilities it provides?
EQ 14: Is the information exchange procedure set up by the Regulation effective, particularly in light of rapid technological change with regard to the availability of information?
EQ 15: To what extent has the Regulation been useful in facilitating the free movement of goods in the face of serious disruption?
EQ 16: Should additional and/or alternative measures be taken to improve the situation?
EQ 17: To what extent did different factors influence the progress and achievements observed?
<b>EFFICIENCY</b>
EQ 18/19/20: Are the costs induced by the Regulation worth the investments? Are the savings made by interested parties through quicker resolution of obstacles higher than the costs of implementation of the Regulation? If this is not the case, is the better functioning of the free market a sufficient reason which justifies the existence of the Regulation?
EQ 21: To what extent are the costs proportional to the benefits achieved?
EQ 22: To what extent has the application of the Regulation been cost effective?
EQ 23: What factors influenced the efficiency of the implementation of the Regulation?
EQ 24: How justifiable were the costs borne by different stakeholders' groups, given the benefits they received?
EQ 25: Are there significant differences in costs (or benefits) between Member States, what is causing them?
<b>COHERENCE</b>
EQ 26: Is there a coherent relationship between the needs and problems in society and the objectives of the Regulation?
EQ 27: To what extent is the Regulation coherent with wider EU policy (transport and environmental policy in particular)?
EQ 28: Are there overlaps or complementarities between the measure and any other EU action which have similar objectives?
EQ 29: Is there any issue of internal coherence of the measure (i.e. between various components of the measure)?
<b>RELEVANCE</b>
EQ 30/31: To what extent does the actual Regulation address the needs and problems in the area of free movement of goods? Is there a mismatch between the objectives of the Regulation and the current needs and problems in the area?
EQ 32: To what extent is the Regulation still relevant?

EQ 33/34: To what extent have the original objectives proven to have been appropriate for the Regulation? How well do the original objectives still correspond to the needs within the EU?
EQ 35: How well adapted is the Regulation to subsequent technological advances?
EQ 36/37: How relevant is the Regulation to EU citizens? Are there areas of specific needs for free movement of goods that remain to be unaddressed?
<b>EU ADDED VALUE</b>
EQ 38: To what extent can the changes observed reasonably be attributed to EU intervention rather than any other factors?
EQ 39: What is the additional value resulting from the application of the Regulation, compared to what could be achieved by Member States at national and/or regional levels?
EQ 40: To what extent do the issues addressed by the Regulation continue to require action at EU level?
EQ 41: What would be the most likely consequences of stopping or withdrawing the application of the mechanism introduced by the Regulation?

## EVALUATION GRIDS

The study methodology is based on the so-called “evaluation grids”.

The evaluation grids present all the elements of our methodology, and namely:

- The **evaluation questions**;
- The **judgment criteria** used to specify the meaning of the evaluation question;
- The **analytical approach** used to answer the evaluation question, given the judgement criteria;
- The **indicators and descriptors** used to evaluate the achieved results as well as to identify potential shortcomings;
- The **sources of information**, including both primary sources (i.e. stakeholders) that directly provide data and information on the specific issue, and secondary sources that are based on documents, publications, reports or tools that analyse or comment on existing data or information.

Moreover, they include specific reference to the questions (Q, QPUB, QPRIV) regarding the interviews addressed both to public and private entities (I)<sup>87</sup> and the public consultation (PC)<sup>88</sup> that fed the answers to the evaluation questions. In instances of the lack of correspondence between the evaluation questions and the questions deployed in the public consultation activities, the ‘N/A’ (for not applicable) acronym has been used.

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87 For the complete lists of similar questions in the form of an ‘Interview guide for EU officials and National Contact Points’ (QPUB) as well as in the form of an ‘Interview guide for European and national associations’ (QPRIV), see Annex 2 to the *Final Report on 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*, pp.61-63.

88 For the complete list of similar questions in the form of a ‘Public Consultation’ see Annex 3 to the *Final Report on 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*, pp.66-72.

▶ Criterion	▶ Question	▶ Judgment Criteria	▶ Analytical framework	▶ Indicators and descriptors	▶ Sources	▶ I	▶ PC
▶ Effectiveness	▶ Q1/2/3. What results (impacts) have actually been obtained? How far have they contributed to achieving the free movement of goods in the face of serious disruption? To what extent is it linked to the Regulation?	▶ JC1/2/3. Existence and use of specific mechanisms fulfilling the Regulation objectives at Member State level e.g. National Contact Points, early warning system mechanism; Differences in the number of notifications received by the EC since the adoption of the Regulation; Differences observed in Member States' behaviours with regards to the management of obstacles; Differences observed in the implementation of a specific Regulation provision compared to another; Level of awareness of stakeholders (notably enterprises) in the Regulation; Length of time observed between an event and the dissemination of information to final parties (enterprises) before and after the implementation of the Regulation; Evolution in the duration of obstacles; Capacity for preventing	▶ Desk-based research; Semi-structured interviews with national authorities, associations, chamber of commerce and businesses; Case studies; Public consultation.	▶ Share of Member States complying with the Regulation; Range of mechanisms existing across Member States to ensure the implementation of the Regulation; Obstacles by type (immobilisation of goods / destruction of goods) and by mode of transport (water, railroad, road, airport, at storage or multiple mode); Average time elapsed between the occurrence of an incident and its resolution; Differences observed in the freight transport statistics; Best practice mechanisms to solve serious disruptions; Cases of serious	▶ Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	▶ I (QPUB 1/2/3/4/ 5) (QPRIV 1/2/3/4/ 5)	▶ PC (Q10)

		obstacles; Level of influence of external and internal factors in the progress and achievements observed.		disruptions and mechanisms to resolve them; Effective and non-effective mechanisms used to address cases of serious disruption, and provisions of the Regulation linked to such mechanisms;			
► <b>Effectiveness</b>	► Q4/5. How successful EU action has been in achieving or processing towards its objectives? To what extent have these results (impacts) contributed to fulfilling the needs and/or solving the problems, which lead to the adoption of the Regulation?	► JC4/5. Existence and use of specific mechanisms fulfilling the Regulation objectives at Member State level e.g. National Contact Points, early warning system mechanism	► Desk-based research; Semi-structured interviews with national authorities, associations, chamber of commerce and businesses; Case studies.	► Share of Member States complying with the Regulation; Range of mechanisms existing across Member States to ensure the implementation of the Regulation playing field;	► Cases reported and notified to the Commission by national or regional authorities.	► I (QPUB 1/2/3/4/5) (QPRIV 1/2/3/4/5)	► PC (Q10/11/14)
► <b>Effectiveness</b>	► Q6/7. How is the Regulation applied in Member States? To what extent have Member States actually complied with the requirements of the Regulation and the need to safeguard the free movement of goods, within the principle of	► JC6/7. Existence and use of specific mechanisms fulfilling the Regulation objectives at Member State level e.g. National Contact Points, early warning system mechanism	► Desk-based research; Semi-structured interviews with national authorities, associations, chamber of commerce and businesses; Case studies.	► Share of Member States complying with the Regulation; Range of mechanisms existing across Member States to ensure the implementation of the Regulation playing field.	► Cases reported and notified to the Commission by national or regional authorities.	► I (QPUB 1/2/3/4) (QPRIV 1/2/3/4/5)	► PC (Q9/11)

	proportionality?						
► Effectiveness	► Q8/9. Has the Regulation improved the free movement of goods within the internal market in the face of serious disruption? How much has the existence and/or use of the Regulation made it possible to change behaviour and to actually ensure the free movement of goods in the face of serious disruption?	► JC8/9. Differences in the number of notifications received by the EC since the adoption of the Regulation; Differences observed in Member States' behaviours with regards to the management of obstacles.	► Desk-based research; Semi-structured interviews with national authorities, associations, chamber of commerce and businesses; Case studies.	► Obstacles by type (immobilisation of goods / destruction of goods) and by mode of transport (water, railroad, road, airport, at storage or multiple mode); Average time elapsed between the occurrence of an incident and its resolution; Differences observed in the freight transport statistics.	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	► I (QPUB 1/2/3/4/5) (QPRIV 3/4)	► PC (Q10/11)
► Effectiveness	► Q10/11/12. Have any provisions of the Regulation provided particularly good results regarding obstacles hindering the free movement of goods? Have any provisions of the Regulation provided been particularly ineffective? Are there any lessons to be learnt from them?	► JC10/11/12. Differences observed in the implementation of a specific Regulation provision compared to another.	► Desk-based research; Semi-structured interviews with national authorities, associations, chamber of commerce and businesses; Case studies.	► Cases of serious disruptions and mechanisms to resolve them; Effective and non-effective mechanisms used to address cases of serious disruption, and provisions of the Regulation linked to such mechanisms.	► Cases reported and notified to the Commission by National or regional authorities Other stakeholders (associations, chambers of commerce and businesses).	► I (QPUB 1/2/3/4/5) (QPRIV 1/2/3/4/5)	► PC (Q10/11/17)
► Effectiveness	► Q13/14. To what extent are interested parties	► JC13/14. Level of awareness of stakeholders (notably	► Desk-based research; Semi-structured interviews with	► Share of respondents to the public	► National or regional authorities; Other stakeholders	► I (QPUB 5)	► PC (Q9/11)



	<p>informed of the existence of the Regulation and the possibilities it provides? Is the information exchange procedure set up by the Regulation effective, particularly in light of rapid technological change with regard to the availability of information?</p>	<p>enterprises) in the Regulation; Length of time observed between an event and the dissemination of information to final parties (enterprises) before and after the implementation of the Regulation.</p>	<p>national authorities, associations, chamber of commerce and businesses; Case studies; Public consultation.</p>	<p>consultation and of interviews informed with the Regulation possibilities; Length of time between an event and the dissemination of information to final parties; Information exchange procedure applied in the Member States and evolution (notably towards a digital procedure).</p>	<p>(associations, chambers of commerce and businesses); Cases reported and notified to the Commission by national or regional authorities.</p>	<p>(QPRIV 1/2/3/4/5)</p>	
<p>► <b>Effectiveness</b></p>	<p>► Q15/16. To what extent has the Regulation been useful in facilitating the free movement of goods in the face of serious disruption? Should additional and/or alternative measures be taken to improve the situation?</p>	<p>► JC15/16. Evolution in the duration of obstacles; Capacity for preventing obstacles.</p>	<p>► Desk-based research; Semi-structured interviews with national authorities, associations, chamber of commerce and businesses; Case studies.</p>	<p>► Length of time observed between an event and resolution of the event; Timing for notification (before, during or after the obstacle); Best practice mechanisms to solve serious disruptions</p>	<p>► Cases reported and notified to the Commission by national or regional authorities Other stakeholders (associations, chambers of commerce and businesses)</p>	<p>► I (QPUB 1/2/3/4) (QPRIV 3/4)</p>	<p>► PC (Q10/11/17/18)</p>
<p>► <b>Effectiveness</b></p>	<p>► Q17. To what extent did different factors influence the progress and achievements</p>	<p>► JC17. Level of influence of external and internal factors in the progress and achievements observed.</p>	<p>► Desk-based research; Semi-structured interviews with national authorities,</p>	<p>► Internal factors influencing the achievements observed; External factors</p>	<p>► Cases reported and notified to the Commission by national or regional authorities;</p>	<p>► I (QPUB 1/3/4) (QPRIV 3/4/5)</p>	<p>► N/A</p>

	observed?		associations, chamber of commerce and businesses; Case studies; Public consultation.	influencing the progress and achievements observed.	Other stakeholders (associations, chambers of commerce and businesses).		
► <b>Efficiency</b>	► Q18/19/20. Are the costs induced by the Regulation worth the investments? Are the savings made by interested parties through quicker resolution of obstacles higher than the costs of implementation of the Regulation? If this is not the case, is the better functioning of the free market a sufficient reason which justifies the existence of the Regulation?	► JC18/19/20. Overall level of costs incurred by the Regulation compared to benefits to enterprises; Factors affecting the achievements positively or negatively; Differences in the obstacles observed since the adoption of the Regulation; Distribution of costs among the different stakeholders' groups; Comparison of costs between the different Member States.	► Data analysis; Desk-based research and analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies; Public consultation.	► Costs incurred by the implementation of the Regulation on Member States; Costs incurred by the implementation of the Regulation on the EU; Costs incurred by the events / obstacles on the enterprises; Influencing factors (e.g. technology development, cultural approach with regards to social conflicts, etc.); Number of obstacles reported; Stakeholder costs; Stakeholders benefits; Member States costs; Member States benefits; Factors	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	► I (QPUB 6)	► N/A

				explaining the distribution of costs (and benefits) between Member States.			
► <b>Efficiency</b>	► Q21/22. To what extent are the costs proportional to the benefits achieved? To what extent has the application of the Regulation been cost effective?	► JC21/22. Overall level of costs incurred by the Regulation compared to benefits to enterprises.	► Data analysis; Desk-based research and analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies; Public consultation.	► Costs incurred by the implementation of the Regulation on Member States; Costs incurred by the implementation of the Regulation on the EU; Costs incurred by the events / obstacles on the enterprises.	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	► I (QPUB 6)	► PC (Q12)
► <b>Efficiency</b>	► Q23. What factors influenced the efficiency of the implementation of the Regulation?	► JC23. Factors affecting the achievements positively or negatively ; Differences in the obstacles observed since the adoption of the Regulation.	► Data analysis; Desk-based research and analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies.	► Influencing factors (e.g. technology development, cultural approach with regards to social conflicts, etc.); Number of obstacles reported.	► National or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	► N/A	► N/A
► <b>Efficiency</b>	► Q24. How justifiable were the costs borne by different stakeholders' groups, given the benefits they received?	► JC24. Distribution of costs among the different stakeholders' groups.	► Data analysis; Case studies	► Stakeholder costs; Stakeholders benefits	► National or regional authorities; Other stakeholders (client groups, transport operators).	► I (QPUB 6)	► N/A
► <b>Efficiency</b>	► Q25. Are there significant	► JC25. Comparison of costs	► Data analysis; Desk-based research	► Member States costs;	► National or regional authorities;	► N/A	► N/A

	differences in costs (or benefits) between Member States, what is causing them?	between the different Member States.	and analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies.	Member States benefits; Factors explaining the distribution of costs (and benefits) between Member States.	Other stakeholders (associations, chambers of commerce and businesses).		
► <b>Coherence</b>	► Q26. Is there a coherent relationship between the needs and problems in society and the objectives of the Regulation?	► JC26. Complementarity or redundancy with other EU pieces of legislation; Complementarity or redundancy between the various components of the measure.	► Desk research analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses.	► Other EU pieces of legislation linked to the Regulation; Provisions of the Regulation.	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	► N/A	► N/A
► <b>Coherence</b>	► Q27/28. To what extent is the Regulation coherent with wider EU policy (transport and environmental policy in particular)? Are there overlaps or complementarities between the measure and any other EU action which have similar objectives?	► JC27/28. Complementarity or redundancy with other EU pieces of legislation.	► Desk research analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses.	► Other EU pieces of legislation linked to the Regulation.	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses).	► I (QPUB 12/13) (QPRIV 13/14)	► N/A
► <b>Coherence</b>	► Q29. Is there any issue of internal coherence of the measure (i.e. between various components of the measure)?	► JC29. Complementarity or redundancy between the various components of the measure.	► Desk research analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses.	► Provisions of the Regulation; Measures linked to the Regulation and their component.	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of	► N/A	► N/A

					commerce and businesses.		
► <b>Relevance</b>	► Q30/31/32/33/34/35/36/37. 30) To what extent does the actual Regulation address the needs and problems in the area of free movement of goods? 31) Is there a mismatch between the objectives of the Regulation and the current needs and problems in the area? 32) To what extent is the Regulation still relevant? 33) To what extent have the original objectives proven to have been appropriate for the Regulation? 34) How well do the original objectives still correspond to the needs within the EU? 35) How well adapted is the Regulation to subsequent technological advances? 36) How relevant is the Regulation to EU citizens? 37) Are there areas of specific needs for free movement of goods that remain to be	► JC30/31/32/33/34/35/36/37. Remaining occurrence of incidents/ events; Change in the nature of incidents; Change in the duration of incidents; Existence of alternative warning mechanisms; Existence of additional stakeholders' needs.	► Desk research analysis; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies; Public consultation.	► Features and evolution of events / obstacles; Losses due to obstacles; Extent to which the provisions of the Regulation have reduced the frequency and impact of disruptions.	► Cases reported and notified to the Commission by national or regional authorities; Other stakeholders (associations, chambers of commerce and businesses.	► I (QPUB 8/9/10/11) (QPRIV 9/10/11/12)	► N/A

	unaddressed?						
<b>► EU Added Value</b>	<b>► Q38.</b> To what extent can the changes observed reasonably be attributed to EU intervention rather than any other factors?	<b>► JC38.</b> Comparison of costs and benefits of Regulation implementation at EU level and at national level; Non-financial benefits from the improvement of free movement of goods; Comparison between national measures in place and the Regulation; Existence of effective warning mechanisms and mechanism ensuring the free movements of good at national level.	<b>► Data analysis;</b> Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies.	<b>► Cost of the implementation of the Regulation at national and EU levels;</b> Benefits from the application of the Regulation at EU level; Distribution of cases by source of information; Relative share of EU and Member States as sources of information on cases; Mechanisms put in place to implement the Regulation; Impact of these mechanisms on resolution of serious disruption and on ensuring the free movement of goods.	<b>► Regulation management costs (human resources, operational costs etc.)</b> National or regional authorities; Cases reported and notified to the Commission by national or regional authorities; Synthesis of investigations.	<b>► I (QPUB 14)</b>	<b>► N/A</b>
<b>► EU Added Value</b>	<b>► Q39.</b> What is the additional value resulting from the application of the Regulation, compared to what could be achieved by Member States at national and/or regional levels?	<b>► JC39.</b> Comparison of costs and benefits of Regulation implementation at EU level and at national level; Non-financial benefits from the improvement of free movement of goods.	<b>► Data analysis;</b> Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies.	<b>► Cost of the implementation of the Regulation at national and EU levels;</b> Benefits from the application of the Regulation at EU level.	<b>► Regulation management costs (human resources, operational costs etc.)</b> National or regional authorities.	<b>► I (QPUB 15)</b>	<b>► N/A</b>

▶ <b>EU Added Value</b>	▶ Q40. To what extent do the issues addressed by the Regulation continue to require action at EU level?	▶ JC40. Comparison between national measures in place and the Regulation.	▶ Data analysis; Case studies.	▶ Distribution of cases by source of information; Relative share of EU and Member States as sources of information on cases.	▶ Cases reported and notified to the Commission by national or regional authorities.	▶ I (QPUB 14) (QPRIV 15)	▶ N/A
▶ <b>EU Added Value</b>	▶ Q41. What would be the most likely consequences of stopping or withdrawing the application of the mechanism introduced by the Regulation?	▶ JC41. Existence of effective warning mechanisms and mechanism ensuring the free movements of good at national level.	▶ Desk based research; Semi-structured interviews with national authorities, associations, chambers of commerce and businesses; Case studies.	▶ Mechanisms put in place to implement the Regulation; Impact of these mechanisms on resolution of serious disruption and on ensuring the free movement of goods.	▶ Synthesis of investigations.	▶ I (QPUB 17)	▶ N/A