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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY of the Evaluation of Regulation (EC) 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States

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Delegations will find attached Commission staff working document SWD(2019) 372 final.

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**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY**

**of the Evaluation of Regulation (EC) 2679/98 on the functioning of the internal market  
in relation to the free movement of goods among the Member States**

{SWD(2019) 371 final}

## EXECUTIVE SUMMARY

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 (TFEU).

Experience has shown that the free movement of goods is or may be compromised by the actions of Member States or by their inaction in the case of demonstrations, border blockages and assaults by private individuals. Member States are not always able to prevent such obstacles, and the associated disruption caused to the free movement of goods or even in some cases, the damage caused to the goods themselves. This may then lead to serious economic losses for the affected parties.

Council 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<sup>1</sup>, known as the ‘Strawberry Regulation’ (hereafter ‘the Regulation’) 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 into France.

The overall objective of the Regulation is to ensure the free movement of goods within the EU by preventing, and dealing effectively, with cases of obstacles involving the immobilisation or destruction of goods within the territory of another Member State (for example, obstacles to transport at borders, on motorways, in ports or at airports, along with blockades of warehouses). To face those obstacles the Regulation is based on three approaches: i) an early warning mechanism in the event or risk of an obstacle; ii) an obligation by the Member States to take necessary and proportionate measures needed to ensure the free movement of goods; and iii) the Commission notifying Member States and urging them to take action.

The Regulation celebrated its 20<sup>th</sup> anniversary in 2018 and it is therefore a good occasion to evaluate its overall functioning in a Staff Working Document. The evaluation covers the period 1999-2019 and builds on the findings of the previous stock-taking exercises carried out by the Commission in 2001 and 2007.

According to the evaluation, the Regulation has been effective in enabling the exchange of information between the Commission and the Member States (through the national contact points (hereafter ‘NCPs’)) via the early warning mechanism enshrined in Article 3, even if such exchange mechanism is considered in some aspects insufficient. Since the adoption of the Regulation up until June 2019, 244 obstacles have been reported to the Commission under the early warning mechanism, after which the Commission could inform the other Member States. However, the evaluation has also shown that there are many incidents that have not been reported under the Regulation.

The evaluation has also shown that the Regulation has a deterrent effect and thus has exerted pressure on Member States’ public authorities to address cases of disruptions in the physical movement of goods, and has therefore improved the management of obstacles under Article 4 of the Regulation. However, the evaluation has identified a number of shortcomings, which overall undermine the value, efficiency, coherence and added value of the Regulation.

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<sup>1</sup> OJ L 337 of 12.12.98, p. 8. ELI: <http://data.europa.eu/eli/reg/1998/2679/oj>

More precisely, 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 fails to ensure that other stakeholders are informed. In addition, there is no direct communication channel between the NCPs of different Member States when an obstacle occurs. Moreover, real-time information related to ongoing or future obstacles is not publicly available or accessible.

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

To keep the Regulation coherent, relevant and with EU added value, it needs some adaptation to embrace new technological developments, to ensure faster communication of the obstacle and also inform interested parties and stakeholders. In terms of coherence, the Regulation is considered to be a useful instrument that does not interfere with other EU or national policies, in particular it is consistent with the EU transport and environmental policies.

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 those benefits, as mentioned above, is 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. Finally, the Regulation does not foresee an EU compensation mechanism for the losses suffered by individuals. Some operators complain that the national procedures available are too long, complicated, or limited in their scope.

To conclude, and according to the evaluation, the issues mentioned above could possibly be mitigated through a better definition of the key concepts of the Regulation (e.g. '*obstacles*'), the introduction of a monitoring mechanism to check Member States' compliance with their obligations under the Regulation, the introduction of a unified digital solution with real time information accessible to businesses and national associations to speed up information exchange and reduce the asymmetry of information, and the introduction of a transparent, and non-discriminatory and effective procedure to compensate economic operators for any losses or damage related to the obstacles. In the past, the EU institutions and relevant stakeholders were deterred from engaging in actions to strengthen the policy embodied in the Regulation due the unanimity rule required to revise the current Regulation. However, it should be noted that not all actions to further strengthen the policy would necessarily require legislative change and also alternative Treaty bases might be investigated.