

**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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

- (1) Whereas, as provided for in Article 7a of the Treaty, the internal market comprises an area without internal frontiers in which, in particular, the free movement of goods is ensured in accordance with Articles 30 to 36 of the Treaty;
- (2) Whereas breaches of this principle, such as occur when in a given Member State the free movement of goods is obstructed by actions of private individuals, may cause grave disruption to the proper functioning of the internal market and inflict serious losses on the individuals affected;
- (3) Whereas, in order to ensure fulfilment of the obligations arising from the Treaty, and, in particular, to ensure the proper functioning of the internal market, Member States should, on the one hand, abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade and, on the other hand, take all necessary and proportionate measures with a view to facilitating the free movement of goods in their territory;
- (4) Whereas such measures must not affect the exercise of fundamental rights, including the right or freedom to strike;
- (5) Whereas this Regulation does not prevent any actions which may be necessary in certain cases at Community level to respond to problems in the functioning of the internal market, taking into account, where appropriate, the application of this Regulation;
- (6) Whereas Member States have exclusive competence as regards the maintenance of public order and the safeguarding of internal security as well as in determining whether, when and which measures are

necessary and proportionate in order to facilitate the free movement of goods in their territory in a given situation;

- (7) Whereas there should be adequate and rapid exchange of information between the Member States and the Commission on obstacles to the free movement of goods;
- (8) Whereas a Member State on the territory of which obstacles to the free movement of goods occur should take all necessary and proportionate measures to restore as soon as possible the free movement of goods in their territory in order to avoid the risk that the disruption or loss in question will continue, increase or intensify and that there may be a breakdown in trade and in the contractual relations which underlie it; whereas such Member State should inform the Commission and, if requested, other Member States of the measures it has taken or intends to take in order to fulfil this objective;
- (9) Whereas the Commission, in fulfilment of its duty under the Treaty, should notify the Member State concerned of its view that a breach has occurred and the Member State should respond to that notification;
- (10) Whereas the Treaty provides for no powers, other than those in Article 235 thereof, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation:

1. the term 'obstacle' shall mean an obstacle to the free movement of goods among Member States which is attributable to a Member State, whether it involves action or inaction on its part, which may constitute a breach of Articles 30 to 36 of the Treaty and which:
 - (a) 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,

⁽¹⁾ OJ C 10, 15. 1. 1998, p. 14.

⁽²⁾ OJ C 359, 23. 11. 1998.

⁽³⁾ OJ C 214, 10. 7. 1998, p. 90.

- (b) causes serious loss to the individuals affected, and
 - (c) requires immediate action in order to prevent any continuation, increase or intensification of the disruption or loss in question;
2. the term 'inaction' shall cover the case when the competent authorities of a Member State, in the presence of an obstacle caused by actions taken by private individuals, fail to take all necessary and proportionate measures within their powers with a view to removing the obstacle and ensuring the free movement of goods in their territory.

Article 2

This 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. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States.

Article 3

1. When an obstacle occurs or when there is a threat thereof
- (a) any Member State (whether or not it is the Member State concerned) which has relevant information shall immediately transmit it to the Commission, and
 - (b) the Commission shall immediately transmit to the Member States that information and any information from any other source which it may consider relevant.
2. The Member State concerned shall respond as soon as possible to requests for information from the Commission and from other Member States concerning the nature of the obstacle or threat and the action which it has taken or proposes to take. Information exchange between Member States shall also be transmitted to the Commission.

Article 4

1. When an obstacle occurs, and subject to Article 2, the Member State concerned shall

- (a) take all necessary and proportionate measures so that the free movement of goods is assured in the territory of the Member State in accordance with the Treaty, and
- (b) inform the Commission of the actions which its authorities have taken or intend to take.

2. The Commission shall immediately transmit the information received under paragraph 1(b) to the other Member States.

Article 5

1. Where the Commission considers that an obstacle is occurring in a Member State, it shall notify the Member State concerned of the reasons that have led the Commission to such a conclusion and shall request the Member State to take all necessary and proportionate measures to remove the said obstacle within a period which it shall determine with reference to the urgency of the case.
2. In reaching its conclusion, the Commission shall have regard to Article 2.
3. The Commission may publish in the *Official Journal of the European Communities* the text of the notification which it has sent to the Member State concerned and shall immediately transmit the text to any party which requests it.
4. The Member State shall, within five working days of receipt of the text, either:
- inform the Commission of the steps which it has taken or intends to take to implement paragraph 1, or
 - communicate a reasoned submission as to why there is no obstacle constituting a breach of Articles 30 to 36 of the Treaty.
5. In exceptional cases, the Commission may allow an extension of the deadline mentioned in paragraph 4 if the Member State submits a duly substantiated request and the grounds cited are deemed acceptable.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 December 1998.

For the Council

The President

J. FARNLEITNER