

1 December 2000

**UNICE/IRU/ESC position on revision of
Regulation 2679/98 ("Strawberry Mechanism")**

Introduction

After the European Commission had been receiving complaints for over 10 years about the passive attitude of the French authorities towards the protest actions of French farmers against agricultural products from other member states, the Commission filed a case at the Court of Justice against the French Republic for infringement of the Treaty. The Court established on 7 December 1997 that France had not fulfilled its obligations under Articles 30 and 5 of the EC Treaty concerning the free movement of goods: France had not taken all necessary measures to prevent private persons' actions from obstructing the free movement of agricultural products.

As a follow-up to this case, on 7 December 1998, the Council adopted a Regulation (2679/98) and an accompanying Resolution, to better ensure the free movement of goods. The essence of this legislation is that, once more, it is confirmed that the member states have the obligation to ensure the free movement of goods, taking into account fundamental rights, including the freedom or right to strike. Furthermore, it established a procedure (the "strawberry mechanism", after the Spanish strawberries that were destroyed by French farmers) for dealing with obstacles to the free movement of goods, of which the key points are:

- In the event of obstacles to the free movements of goods, the member state involved has to take all necessary measures for free movement to be re-established as soon as possible, and to inform the Commission and the other member states about what action it has taken;
- An "obstacle" means an obstacle to the free movement of goods, whether it involves action or inaction by a member state, that causes serious loss to the individuals concerned and requires immediate action to prevent continuation, increase or intensification of the disruption or loss in question;
- when the Commission establishes that there is an obstacle, it informs the member state concerned, requesting that it takes all necessary and proportionate measures to remove the said obstacle within a determined period;
- within five working days of receiving this message, the member state involved informs the Commission about the measures it has taken or plans to take (or why it considers there is no obstacle);
- member states commit themselves to informing their economic operators about disruptions and the efforts to overcome them;
- member states ensure that rapid and effective review procedures are available for the harmed individuals, and that they are informed about the existence of and procedure for legal means of redress.

As a matter of principle, UNICE, IRU and ESC disapprove of road blockades, and traditionally have demanded that EU governments do everything to prevent them.

This paper aims to list the obstacles that have occurred since end-1998, and to clarify the consequences in terms of economic damage. Furthermore, suggestions will be made to improve the functioning of the strawberry mechanism.

Functioning of the “strawberry mechanism”

Despite the fact that the information exchange as established by the Regulation and Resolution have worked fairly well in our view, it is not clear whether they have really helped to remove or prevent obstacles. In any event, there have been numerous obstacles since December 1998 (when the Regulation came into force), with enormous negative economic consequences.

Both the Court’s decision and the Resolution itself recognise that the free movement of goods is a matter of the internal market and no longer the exclusive competence of the member states. However, since this legislation has clearly not had the desired preventive effect, any revision of Regulation 2679/98 should strengthen the Commission’s role in the handling of obstacles to the free movement of goods.

With respect to the recent actions all over Europe in relation to fuel prices, the Council seems to recognise the existing Regulation is insufficient to deal with these actions, confirming in its meeting on 20 September 2000 the “need, in the event of obstruction of traffic in a Member State, for an effective mechanism allowing undertakings, the public, the Commission and the other Member States to be immediately informed and specific measures to be taken to remedy such situations, taking into account the arrangements that have existed since 1998”.

Statistics on obstacles since December 1998

Source: Transport en Logistiek Nederland (TLN)

<u>Cntr.</u>	<u>Start date</u>	<u>Duration</u>	<u>Group</u>
--------------	-------------------	-----------------	--------------

1999

F	March/9	4 days	French farmers, diverse actions
GB	March/22	2 days	English transporters blockade London
F	April/7	2 days	French pig farmers
F	May/5	2 days	French truckers/ blockade Fréjus
GB	May/18	2 days	BRHU blockade London
B	May/31	4 days	Belgian truckers
B	June/9	2 days	Belgian farmers B/F border
F	Oct/5	3 days	Trade unions
F	Oct/26	2 days	French farmers at Calais

2000

F	Jan/10	3 days	FNTR/UNOSTRA/TLF/CSD, over 80 blockades
S	Jan/25	2 days	Spanish farmers, blockade Cadiz and Algeciras
F	Jan/31	2 days	Trucker trade unions, over 110 blockades
I	May/9	2 days	Customs Chiasso
I	June/19	4 days	CUNA/UTI, blockade frontiers, tunnels, roads
A	June/23	2 days	Transitforum Tirol, blockade Brenner Autobahn
Gr	July/16	2 days	OFAE members
GB	Aug/1	1 day	Farmers and transporters, blockade Dover
F	Aug/30	2 days	Fishermen, blockades ports Atlantic and Med. coasts, transporters, blockades refineries
F	Sep/4	7 days	FNTR, taxis, farmers, blockades around Paris, ports, all frontiers closed, over 110 blockades
B	Sep/10	5 days	FABETRA/SAV/UPTR, blockade Brussels, after

			two days all frontiers closed
NL	Sep/11	4 days	Minor "spontaneous" blockades
IR	Sep/14	2 days	"spontaneous" blockades ports
G	Sep/14	2 days	BGL actions in Berlin
GB	Sep/15	8 days	Transporters blockades refineries and depots
IR	Sep/15	3 days	IRHA
GR	Sep/25	11 days	OFAE, blockades all connection roads, ports, traffic whole country paralysed
Lux	Oct 1	1 days	Syndicates various countries, all frontiers blocked
S	Oct/1	5 days	CETM, Spanish/French border totally closed
F	Oct/2	1 days	French drivers block Calais
I	Oct/4	5 days	"spontaneous" strikes, all traffic paralysed
A	Oct/11	6 days	Farmers and environmentalists block border with Czech Republic
Total		103 days	

Note: this overview does not include numerous "unofficial actions", which are generally spontaneous and short, and therefore difficult to locate and register

Description and estimate of damage caused by obstacles

- driver's salary
- driver's expenses
- injuries of drivers
- costs of standstill transport material (depreciation on rolling stock, insurance)
- costs of renting additional trucks and drivers
- damage to freight (perishables)
- damage to vehicles
- loss of turnover and customers
- alternative and longer routes are chosen to avoid blockades (which causes additional transport costs and may result in loss of customers because of delays)
- goods are delivered by more expensive air freight transport
- costs due to problems caused in buyer's production process as a result of late delivery

To get a true notion of the impact of road blockades, it is important to assess the whole logistics chain involved: shippers, transporters and buyers of goods.

The amount of damage caused is therefore very difficult to estimate, amongst other reasons because much of the damage is not expressed in any statistics (keeping trucks at home, delays or loss of customers). We therefore do not wish to give cost estimates for the road blockades mentioned in the overview, simply because we lack information to do so in an accurate manner. However, we do include a few estimates of operational transport costs, referring to the situation in France, that may serve to give an idea of the magnitude of the costs of these protest actions.

It is estimated (source: Transport en Logistiek Nederland) that around 22,000 non-French trucks circulate daily on French territory. The average operational cost of one truck per day is around € 450. The value of the goods they transport is estimated at around € 950 million (€ 43,000 per truck). If, say, a third of these trucks come to a standstill because of road blockades, this incurs a direct operational cost of € 3,300,000 per day. A week (seven days) of standstill in this situation causes a loss of € 3,150 per truck, and over € 23 million for these foreign trucks. Even this excludes the costs to French transport companies (an estimated 400,000 French trucks circulate daily on French territory), and seeks only to illustrate that the operational cost of 103 days of actions in two years has cost hundreds of millions of Euros. If we take

into account the losses sustained in the entire logistics chain, and thus by the EU economy as a whole, we are most probably looking at billions of Euros in damage.

Legal actions

Following the protest actions in France at the end of 1996, a large number of foreign companies (over 2,500) filed damage claims with the French Authorities. From this experience, we know the procedures are very complicated and time-consuming, and that compensation is limited to trucks that come to a standstill on French territory.

Since then, we have not seen large-scale action for compensation again. Companies now refrain from trying to secure compensation if their trucks were held up outside France. But, apart from that, the duration of protest actions across Europe seems to have shortened, and fewer action days means less damage, and less willingness on the part of companies to invest their money and energy in time-consuming procedures: they just take their losses. When a few big strikes are replaced by many small ones, however, business is off worse, since the overall cost is the same or more, and compensation becomes less interesting because the required investment compared with the damage is too high.

Revision of Regulation 2679/98

As stated before, we consider that any revision of Regulation 2679/98 should strengthen the Commission's role in the handling of obstacles to the free movement of goods, firstly by giving it the authority to convene a Council meeting or other measures that increase political pressure to prevent and remove the said obstacles.

Furthermore we propose that Regulation 2679/98 be revised as follows:

Article 5

4. The member state shall, within **one working day** 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

Reasoning: considering the fact that only one day of blockades leads to millions of Euros in damage, European business considers it is not too much to require the member states to respond to the Commission's information request within 24 hours, as the Dutch government did in September 2000.

Said article however, only refers to the period in which a member state has to respond, not to the period in which it is required to remove the obstacle to the free movement of goods. This period is determined by the Commission *with reference to the urgency of the case*. It is the opinion of European business, shippers and road haulage, referring to the same reasoning as above, that any such case is extremely urgent, and that **the period to be determined by the Commission should never exceed two working days**.

Other proposed measures

Furthermore, European business, shippers and road haulage consider that the Commission and the member states should do more to enable and encourage companies to obtain their rightful compensation, either by:

- creating a facility for damage compensation, to be managed by the Commission and to be paid for by the concerned member states;

or by:

- providing an overview of national procedures (Commission) for damage compensation;
- ensuring procedures are completely dealt with within 12 months, and do not limit compensation to damage suffered on the territory of the member state where the obstacle to the free movement of goods has occurred. Here we refer to Commissioner Bolkestein's written reply dated 20 March 2000 to the question asked by MEP Ms Karla Peijs (E-0331/00), indicating that "the Commission also believes that this right to compensation should not be limited only to material damage suffered on French territory. Such an interpretation would call into question member states' fundamental responsibility for infringements of Community law, which ensures the full effectiveness of Community legislation and the effective protection of the rights recognised therein";
- providing an overview of legal instruments which interested parties (e.g. trade/transport associations) can use to prevent a planned action from starting or a blockade from being erected.