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A specific enforcement and policy example: retail and the services directive

Explanatory meeting – 11 December 2018

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Economic background

- Retail sector is a key economic sector: 4,5% of value added, 8,6% jobs, 3.6 million enterprises;
- It is undergoing fundamental changes: e-commerce and changing consumers habits;
- Its performances are lagging behind;
- Retail sector has an impact on the quality of life of consumers: prices, choice of products;
- Impact on other sectors, incl. manufacturing. A boost to the retail sector = a boost to the entire economy.

Legal background

- Art 49 TFEU – freedom of establishment
- Directive 2006/123 – the Services Directive (SD)
- Case-law on retail establishment:
  - C-400/08 Commission/Spain
  - C- 31/16 – NL - Visser – retail establishment

The Visser judgement C-31/16 of 30.01.2018

The Court confirmed that:

- the SD applies to purely internal situation
- retail is a service and fall within the scope of the SD
- the SD applies to retail establishment irrespective of the way Member States regulate it whether through authorisation or planning rules
- Restrictions laid down in urban plan constitute territorial restrictions within the meaning of Art. 15.2 (a) SD
  - Justification: planning including maintaining the vitality of city-centres
  - Proportionality -

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The Services Directive

The most relevant provision for retail are:

- Article 10 – conditions for the granting of authorisations
- Article 14(5) – prohibition of economic need tests
- Article 15 (2) a – quantitative or territorial restrictions - Member States have an active obligation to examine whether the conditions on non-discrimination, necessity and proportionality are fulfilled (Article 15(3)):

The Commission Communication on Retail

The Commission Communication

A European retail sector fit for the 21st century

adopted on 19 April 2018 (COM(2018 219 final)

is accompanied by:

- A staff working document with underpinning evidence in particular as regards the retail restrictiveness indicator

as well as by

- A Guide for revitalising and modernising the small retail sector

http://ec.europa.eu/growth/single-market/services/retail_en

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The Commission Communication on Retail

- Provides best practices to guide MS' reforms towards less restrictive regulatory frameworks without prejudicing public policy objectives pursued by MS by
  - offering advice on how best to apply EU rules
  - providing example of tried-and-tested reforms in EU countries
- Main objectives:
  - Facilitating retail establishment
  - Reducing restrictions to daily operation of shops
  - Proposing new approaches to promote city-centres in line with EU law.

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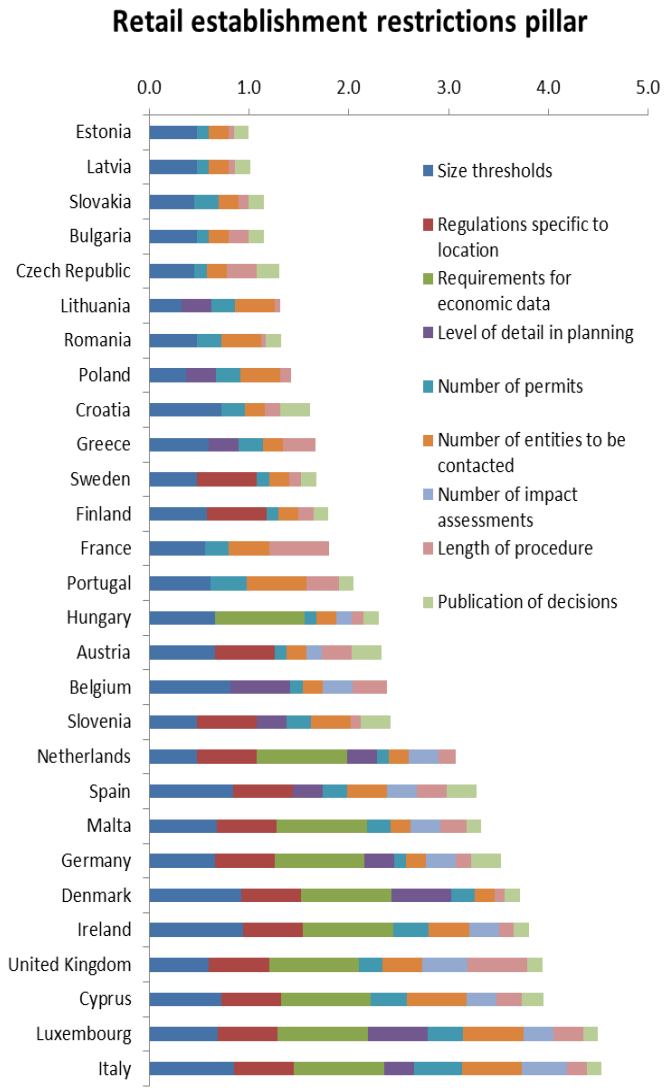
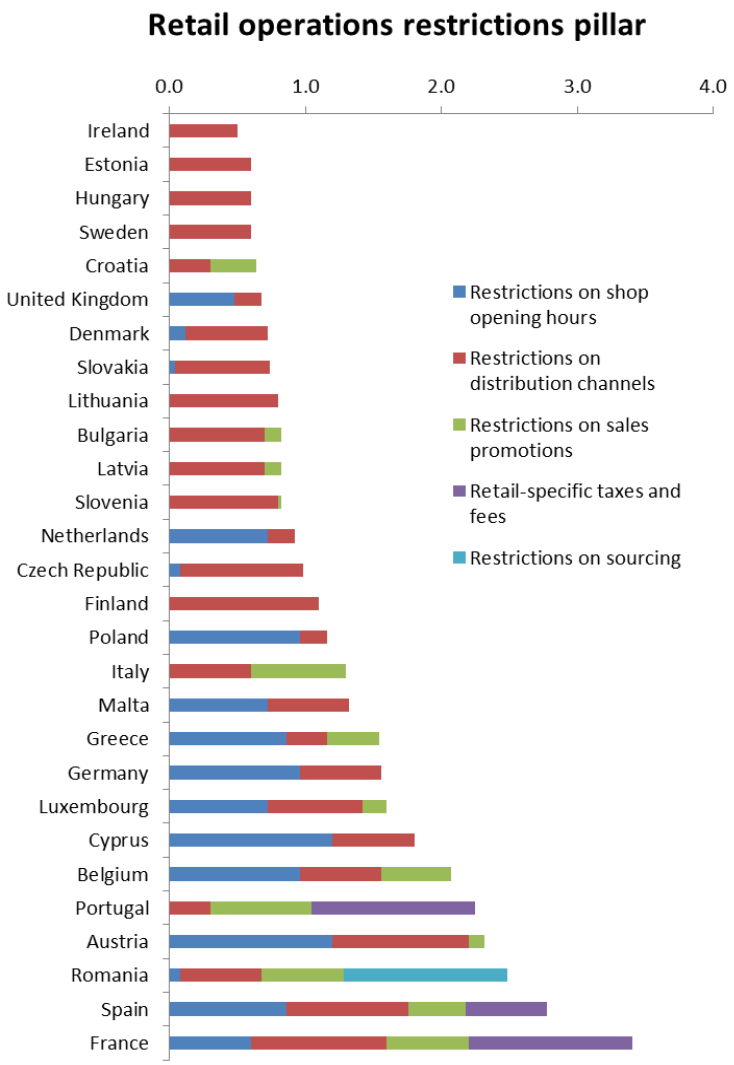
A Retail Restrictiveness Indicator





Follow-up

- Partnership with Member States
  - Bilateral meetings
  - Services Directive Expert Group
- Involvement of stakeholders
- June 2019 – event to take-stock of the progress.

Thank you for your attention.

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