

# **Retail – Methodology of assessment of retail establishment barriers and their economic impact**

## **I. Introduction**

This note provides an explanation of the methodology used in assessing retail establishment barriers and their economic impact presented in the Staff Working Document underpinning the Single Market Strategy<sup>1</sup>.

The objective of the analysis was to identify barriers to retail establishment, i.e. barriers to open retail outlets, across 28 Member States and to assess on this basis the level of restrictiveness of Member States' regulations in this area. The analysis covered also the economic impact of such restrictions.

### **Scope of the assessment**

The overall assessment of restrictiveness is based on the analysis of the following 7 regulatory aspects of retail establishment:

#### 1. Number of permits required to establish

The authorisation<sup>2</sup> to set up a retail outlet may require applying for several permits. A large number of permits may constitute a burden for the applicant.

The assessment takes into account the permits that are most frequently required, such as the planning permit, the building permit, the environmental permit and the special retail authorisation. In some MS the procedures for the opening of retail outlets are processed through an all-in-one permit, combining all of the necessary permits or some of them into one procedure. This is reflected in the analysis.

The analysis does not take into account trade licences, registrations with a register of economic activities, permits linked to the opening of the premises to the public or to the type of assortment sold (e.g. food licences).

#### 2. Number of administrative entities to be contacted, incl. the existence of one-stop- shops

To apply for an authorisation to set up a retail outlet companies may need to contact several administrative entities. An administrative entity taken into account in the assessment is a public body whose opinion or decision is required in the establishment process. It includes for example a municipality, an institute for cultural heritage, environmental authority in case an environmental permit is required, etc.

A large number of entities that need to be contacted may constitute a burden for the applicant. In some MS authorisation procedures are processed through a one-stop-shop, meaning that retailers submit all applications or some of them through one entity. This is reflected in the analysis.

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<sup>1</sup> European Commission (2015): A Single Market Strategy for Europe – Analysis and Evidence, SWD(2015)202 final

<sup>2</sup> The term "authorisation" does not only refer to special retail establishment authorisations that exist in some Member States, but in line with the provisions of the Services Directive (article 4) it encompasses any procedure under which a provider or a recipient is in effect required to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity, or the exercise thereof. In those Member States where retail establishment rules are imbedded in the planning rules, all permits, irrespective of the terminology used at national level, which have an impact on retail establishment, constitute "authorisations" for the purpose of this assessment.

The analysis does not take into account company registration in a trade register or other necessary steps concerning the setting up of a company, but only steps in a procedure for opening of a particular retail outlet.

### 3. Number of market studies and impact assessments required in the establishment procedure

In the framework of an authorisation procedure, companies may be required to carry out studies and/or impact assessments concerning the planned setting up of an outlet. Such a requirement may constitute a burden for the applicant.

The analysis includes the most often required studies, such as retail impact assessment, impact assessment related to employment, traffic impact assessment as well as other impact assessment, e.g. related to construction.

Only studies and assessments carried out or provided by the applicant are taken into account. Studies done by authorities themselves are excluded.

### 4. Existence of regulations specific to the location of the outlet (city centre/ outside city centre)

Establishment regulations may contain specific requirements concerning the location of a retail outlet. Such requirements often concern locations in the city or town centre or, on the contrary, outside the city/town centre, in the periphery or the so-called green field locations. Such a requirement reduces the flexibility of location choice for retailers, making establishment more difficult or even impossible in some cases.

### 5. Requirement to provide economic data

In the framework of an authorisation procedure, companies may be required to provide economic data in support of their application. Such a requirement is often part of a market study or an impact assessment covered under point 3<sup>3</sup>, however here it is assessed separately. In some cases, there is a risk that such data may be used for economic need tests which are prohibited under Article 14 of the Services Directive.<sup>4</sup>

### 6. Potential involvement of representatives of trade interest

Under Article 14 of the Services Directive, the direct involvement of representative of trade interest in individual authorisations is prohibited. Sometimes, authorisation procedures include participation of the public which may potentially also involve representatives of trade interest. This may raise doubts as regards the objectivity of the decision. In certain cases, the representatives of trade and commercial interests may be involved in consultations regarding preparatory works concerning the drawing up of general rules relating to the planning of urban development or similar initiatives which are not as such cover by the prohibition in the Services Directive.

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<sup>3</sup> Requirement to provide economic data is a qualitative assessment. Under point 3 a retail impact assessment, often based on a requirement to provide economic data, counts only as one of the many market studies adding up to the administrative burden

<sup>4</sup> Art.14.5 of the Directive 2006/123/EC (the Services Directive) states that, which prohibits the case-by-case application of an "economic need test"., making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority. This prohibition does not apply to planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest.

## 7. Specific requirements linked to size thresholds

The requirements of establishment authorisations are often linked to the size of the planned outlet. The requirements are typically more complex and burdensome for large outlets. This appears to be justified as large shops have potentially more impact on the traffic, the environment, etc.. However, the proportionality and appropriateness of such requirements may raise doubts.

## II. Scoring methods and data sources

### 1. Number of permits

The assessment is based on the number of permits required in an authorisation procedure. The analysis is limited to 4 permits most frequently required, i.e. the planning permit, the building permit, the environmental permit and the special retail authorisation. It also takes into account the existence of all-in-one processes.

#### Scoring method:

a planning permit is required in legislation	<u>1 point</u>
a building permit is required in legislation	<u>1 point</u>
an environmental permit is required in legislation <sup>5</sup>	<u>1 point</u>
a special retail authorisation is required in legislation <sup>6</sup>	<u>1 point</u>
All-in-one process (covering all the 4 permits) <sup>7</sup>	<u>1 point</u>
All-in-one process (covering two or three of the above permits)	<u>1 point + 1 point for every additional permit required</u>

The maximum score is 4.

Source: data gathered by the Commission in the retail establishment peer review process and in the framework of an external study.<sup>8</sup>

### 2. Number of administrative entities to be contacted

The assessment is based on the number of entities that the applicant needs to contact in an authorisation procedure. It also takes into account the existence of one-stop-shops.

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<sup>5</sup> 0 points are allocated when only an environmental IA (EIA) is required

<sup>6</sup> Other than a trade licence

<sup>7</sup> It is assumed that the burden of an all-in-one process for the applicant equals the burden when one permit needs to be obtained, therefore 1 point

<sup>8</sup> Holland van Gijzen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment

Scoring method:

<u>Each entity that needs to be contacted</u> <sup>9</sup>	<u>1 point</u>
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Source: data gathered by the Commission in the retail establishment peer review process and in the framework of an external study.<sup>10</sup>

3. Number of market studies and impact assessments required in the establishment procedure

The assessment is based on the number of studies and impact assessment that an applicant is obliged to submit in an authorisation procedure. It includes studies most often required in such cases, such as retail impact assessment, impact assessment related to employment, traffic impact assessment as well as other impact assessment, e.g. related to construction.

Scoring method:

<u>Each study or impact assessment required</u> <sup>11</sup>	<u>1 point</u>
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Source: data gathered by the Commission in the retail establishment peer review process and in the framework of an external study.<sup>12</sup>

4. Existence of regulations specific to city centre/ outside city centre

The assessment takes into account the existence of regulatory requirements for a specific location of an outlet. The scoring does not differentiate between regulations specific to city centre and regulations specific to periphery.

Scoring method:

<u>Existence of requirement specific to location</u>	<u>6 points</u>
<u>No requirement specific to location</u>	<u>0 points</u>

Source: data gathered by the Commission in the retail establishment peer review process and in the framework of an external study.<sup>13</sup>

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<sup>9</sup> Excluded: trade register (or trade licensing office), tax register, entities contacted (consulted) by the authorities and not by the entrant directly, environmental authority in cases an EIA (not permit) is required. One-stop-shop equals the burden of contacting one authority.

<sup>10</sup> Holland van Gijzen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment

<sup>11</sup> Excluded: environmental impact assessment (given that these requirements or covered by the Directive [2014/52/EU](#) ) and requirements to provide data or replies to checklists, which do not require the entrant to carry out an additional analysis. All studies and analyses carried out by the authority are also excluded.

<sup>12</sup> Holland van Gijzen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment

<sup>13</sup> Holland van Gijzen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment

## 5. Requirements for economic data

The assessment is based on the existence of regulatory requirements to provide economic data in the framework of an authorisation procedure.

### Scoring method:

Economic data is required	6 points
Economic data is not required	0 points

Source: data gathered by the Commission in the retail establishment peer review process and in the framework of an external study.<sup>14</sup>

## 6. Potential involvement of representatives of trade interest

The assessment is based on whether professional bodies or representatives of trade and commercial interests are somehow involved in authorisation decisions (authorisations for engaging in commercial activity or for outlet siting) or decisions about regulation specific to large outlets.

### Scoring method:

Representatives of trade interest involved	6 points
Representatives of trade interest not involved	0 points

Source: The data and scoring are based on the OECD's PMR indicator.<sup>15</sup>

## 7. Specific requirements for entry linked to size thresholds

This question assesses the specific authorisation requirements linked to the size of the planned outlet. The requirements are ranked according to their restrictiveness, from the least restrictive (rank 1) to the most restrictive one (rank 6).

### Scoring method:

<b>Notification</b> (there is no authorisation procedure, the retailer notifies the establishment to the relevant authorities)	rank 1
<b>Simple authorisation</b> (the retailer needs to apply for an authorisation, but the procedure is relatively simple (e.g. does not require an opinion of a special committee))	rank 2
<b>Authorisation plus</b> (the retailer needs to apply for an authorisation, but the process is more complex, e.g. the decision depends on an opinion of a special committee)	rank 3

<sup>14</sup> Holland van Gijzen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment

<sup>15</sup> <http://www.oecd.org/eco/growth/indicatorsofproductmarketregulationhomepage.htm#indicators>

<b>Ban with derogation</b> (above a certain size threshold it is in general not possible to establish a retail outlet, but derogations exist, e.g. for certain areas or certain types of shops)	rank 4
<b>Ban with derogation plus</b> (above a certain size threshold it is in general not possible to establish a retail outlet, but a very limited derogation exists)	rank 5
<b>Ban without derogation</b> - above a certain size threshold it is not possible to establish a retail outlet.	rank 6

The procedures are assessed for 6 outlet size categories (in m<sup>2</sup> of selling area): 0 – 499 m<sup>2</sup>, 500 – 999 m<sup>2</sup>, 1000 – 2499 m<sup>2</sup>, 2500 – 4999 m<sup>2</sup>, 5000 – 9999 m<sup>2</sup> and greater than 10000 m<sup>2</sup>. Results per country are then computed depending on the type of requirement in each of the size categories.

For each size category the relevant requirement is identified. If the requirement applies to the whole size category, 1 point is attributed; if the size threshold above which the requirement changes differs from the given categories, the relevant proportion of points is attributed. The final score is a sum of the scores given for the coverage of each requirement among the six threshold categories multiplied by the importance score (rank) of each requirement.

Example:

Member State X applies a notification procedure for outlets up to 400 m<sup>2</sup> (score of 0.8 in the column 0-499m<sup>2</sup>), a simple authorisation for outlets between 400 and 1000 m<sup>2</sup> (score of 0.2 in the 0-499m<sup>2</sup> column and score 1 in the 500-999 m<sup>2</sup> column) and a more complex authorisation ("authorisation plus") as of 1000 m<sup>2</sup>.

The score is computed in the following way:

The notification category has a coverage score of 0.13 (0.8 divided by 6, i.e. the maximum coverage score) multiplied by the importance score 1 (=0.13)

The authorisation simple category has a coverage score of 0.2 (1 + 0.2 divided by 6) multiplied by the importance score 2 (=0.4)

The authorisation + category has a coverage score of 0.66 (4 divided by 6) multiplied by the importance score of 3 (=2).

The total score is a sum of the scores for each requirement, which for Member State X equals to 2.53.

	Importance score	Greater than 10000 m <sup>2</sup>	9999 – 5000 m <sup>2</sup>	4999 – 2500 m <sup>2</sup>	2499- 1000 m <sup>2</sup>	999 – 500 m <sup>2</sup>	499 – 0 m <sup>2</sup>	Coverage	Score
No restriction								0	0
Notifications	1						0.8	0.13	0.13
Authorisation simple	2					1	0.2	0.2	0.4
Authorisation +	3	1	1	1	1			0.66	2
Ban with derogation	4							0	0
Ban with derogation +	5							0	0
Ban	6							0	0

Source: data gathered by the Commission in the retail establishment peer review process and in the framework of an external study.<sup>16</sup>

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<sup>16</sup> Holland van Gijzen Advocaten, Legal study on retail establishment through the 28 Member States: Restrictions and freedom of establishment.