

# **ICSC EUROPE POSITION PAPER: COMMUNICATION ON “A EUROPEAN RETAIL SECTOR FIT FOR THE 21<sup>ST</sup> CENTURY”**

**London, 6 July 2018 — The International Council of Shopping Centers (ICSC Europe) commends the European Commission for the extensive fact-finding exercise carried out over the past four years, and welcomes the Communication on "A European retail sector fit for the 21<sup>st</sup> century".**

**The accumulation of regulatory frameworks set at the national, regional and local level have seriously hampered the productivity of the European retail sector and limited consumer choices. This is a complex, regrettable reality, which our members have commonly experienced when investing in Europe.**

**This paper outlines our preliminary considerations and recommendations on the Communication on "A European retail sector fit for the 21<sup>st</sup> century".**

---

## **The Services Directive must be enforced**

The Services Directive 2006/123 has been poorly implemented by EU Member States, and its enforcement would help solve a large number of the issues identified by the Commission. This is certainly what stands out from the Communication, and what ICSC Europe has been advocating for years.

Retail is covered by the Services Directive, as the Court of Justice of the EU confirmed in the landmark Visser case. This is critical for restrictions to establishment to be proportionate, non-discriminatory and justified. What was obvious to the Commission and to ICSC Europe was regularly challenged by national, regional and local authorities.

ICSC Europe welcomes the guidance set out under the “Facilitating retail establishment” section of the Communication and were pleased to see our recommendations reflected in the guidelines. To a certain extent, the Communication resembles a handbook on the implementation of the Services Directive.

## **The Commission’s guidance must go hand-in-hand with enforcement of EU law.**

The guidance “should help public authorities assess their regulatory frameworks and identify less restrictive measures,” the Commission writes. Better implementation does entail further dialogue with authorities. However, when authorities show a lack of goodwill in revising their regulatory framework, the Commission should use all legal means to ensure enforcement of EU law.



## **A competitive retail sector calls for consistent rules between brick-and-mortar and e-commerce**

A competitive, but also dynamic and innovative retail sector. The Communication, which addresses barriers that prevail mostly in brick-and-mortar retail, specifically calls for a level playing field between e-commerce and face-to-face retail. ICSC Europe is glad that the Commission's message is clear and unambiguous.

Besides concerns in terms of fair competition, what is at stake here is a smooth transition to omni-channel business models, driven by new shopping behaviour, requiring major restructuring across the retail value chain, and urging for consistency between the rules governing in-store sales and those governing online retail.

When designing and implementing relevant regulations, national, regional and local authorities should take into account that omni-channel will remain the trend for retail in the coming years, the Communication suggests. There is however still a long way to go before we could declare a level-playing-field between e-commerce and in-store retail.

### **Safeguarding a level-playing-field between online and offline retail must become an underlying principle of policy-making.**

Building on the conclusions of the High-Level Group on Retail Competitiveness of July 2015, ICSC Europe recommends the Commission runs omni-channel commerce tests and systematic examinations of regulatory burdens for brick-and-mortar when legislating in a field with an impact – direct or indirect – on the retail sector. Typically, such an evaluation could be carried out in the impact assessment phase of law-making.

## **Conservative, misguided rules hurt European cities**

ICSC Europe can only agree with the Commission: authorities should consider a wide range of actions to attract consumers to city centres which do not rely exclusively on restrictions on establishment. Too often, outdated rules and conservative behaviours towards new retail formats, allegedly to protect city centres, have the opposite effect to the one intended.

When eager to develop projects in the heart of the urban fabric, our members are frequently limited by the scarcity of available land. This can only be overcome by progressive policies of the local authorities, as well as systematic dialogue and collaboration with real estate developers, who comprehend the complexity of the urban environment.

As retail areas seek to broaden their appeal not just as a shopping location, the tenant mix has expanded to include more experiential and consumer services, such as F&B and leisure operators, educational and cultural facilities. Besides and as the industry evolves, shopping centres are expected to become by 2025 a platform with a dual purpose – as a shopping and leisure destination, and logistics centre and manufacturing facility.



**Dialogue with authorities is key to tackling misconceptions and developing retail projects for the benefit of cities.**

A dynamic, diverse retail and experiential offer, with businesses large and small, is key to keeping cities vibrant. The role played by retail real estate in this respect is regrettably too often misrepresented, leading to conservative policies being either maintained or introduced.

Sustained dialogue with authorities would help overcome these misconceptions, as evidenced by several projects in Europe, where retail properties eventually acted as catalysts for the regeneration of urban areas, becoming local landmarks and improving the social fabric of urban communities.

**ICSC Europe will continue to work with the Commission towards a European retail sector fit for the 21<sup>st</sup> century.**

ICSC Europe has recently stepped up cooperation with retail real estate national councils and committees. Our revised agreement will help enhance information flowing from our national members, thus allowing ICSC Europe to help the Commission keep the retail restrictiveness indicator up-to-date, accurate, and as dynamic as possible.

ICSC members are at the cutting edge of a rapidly evolving environment, and have experience and know-how in realising projects in all administrative and legal frameworks across Europe. As such, ICSC Europe would be glad to further support the European Commission in turning the best practices for retail establishment and operations into reality on the ground.

**ABOUT ICSC**

ICSC serves the global retail real estate industry. We provide our 70,000+ member network in over 100 countries with invaluable resources, connections and industry insights, and actively work together to shape public policy. For more information about ICSC visit <http://www.icsc.org/www.icsc.org>.

**MORE INFORMATION**

**William Kistler**, Executive Vice President & Managing Director – EMEA  
ICSC Europe  
+44 20 7976 3100 | [wkistler@icsc.org](mailto:wkistler@icsc.org)

**Peter Wilhelm**, Chair ICSC Europe Public Affairs Committee, CEO Wilhelm & Co.  
Wilhelm & Co.  
+32 25 35 1010 | [peter.wilhelm@wilco.be](mailto:peter.wilhelm@wilco.be)

**François Barry**  
Cambre Associates  
+32 26 45 7991 | [fbarry@cambre-associates.com](mailto:fbarry@cambre-associates.com)

ICSC Europe | 29 Queen Anne's Gate | SW1H 9BU | London | United Kingdom  
Tel: +44 (0)20 7976 3100 | Fax: +44 (0)20 7976 3101 | Email: [icsc.europe@icsc.org](mailto:icsc.europe@icsc.org) | Website: [icsc.org](http://icsc.org)

ICSC Europe is the trading name of the International Council of Shopping Centers/Europe LLC | A company registered in the USA with limited liability | Registered in England & Wales with number FC020643 | VAT Number: GB702110118 | Transparency Register number: 275338728561-26 | ICO Registration Number: Z7241858