



**European Committee
of the Regions**

The EU's notification procedure under the Services Directive – implications for local and regional authorities in the light of the January 2018 ECJ ruling

Revised Final Report

28 April 2020 · Erich Dallhammer, Ursula Mollay, Joanne Tordy



Background of the study

- The **Services Directive** (adopted 2006) removes legal and administrative barriers to cross-border service provision in the EU, and aims to establish an integrated Internal Services Market. It addresses stakeholders at all governance levels – national, regional and local authorities.
- For its improved notification, the **proposed Notification Directive** was presented in 2017.
- In 2018, the ECJ's '**Visser judgement**' ruled that plans regulating retail may fall under the Services Directive, introducing major uncertainties for authorities concerning notifications.
- The combined impact of the Services Directive, the proposed Notification Directive and clarification of applying the Services Directive to local spatial planning in certain cases, as highlighted by the '**Visser judgement**' causes **specific challenges for local and regional authorities**.

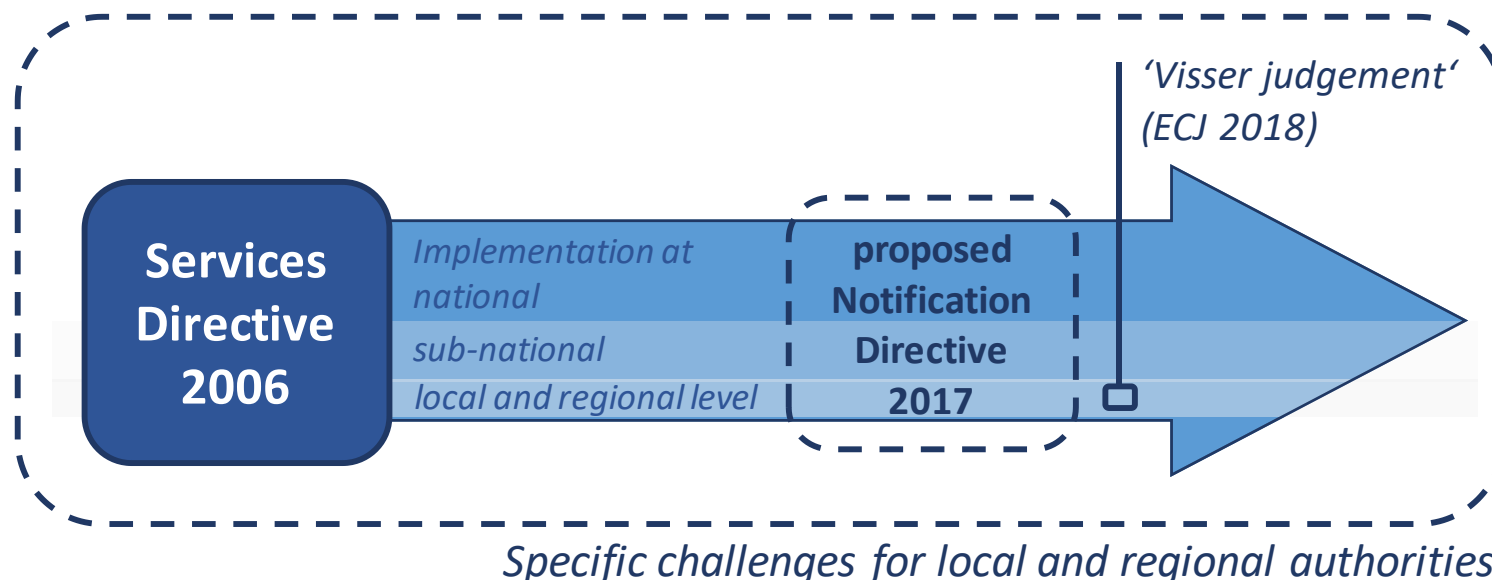


Diversity of local self-government responsibilities and spatial planning systems

- **Wide range of responsibilities** held by local authorities, considerably differing between Member States. The Services Directive may be applicable on many local acts and ordinances
(based on an exemplary analysis in Germany: e.g. statues in public markets /cemeteries, advertising in the ‘old town’, sale of goods at open-air swimming-pools and public parks, etc.).
- The rapid development of **platform economy businesses increases challenges** for authorities – cities need the ability to react quickly to uphold quality of life.
- **Spatial planning** is a core area of local self-government. Its decision-making **hierarchies and legally binding spatial planning instruments** at local, regional and national level **vary widely** between Member States.
- **Retail** is subject to national, regional and/or local **regulations in many Member States**.
- Local spatial planning is characterised by the **need for regular amendments** (up to several times a year).



Source of the challenges: The combined impact of the Services Directive, the proposed Notification Directive and the ‘Visser judgement’



→ Discussions of the consequences of the ‘Visser judgement’ has increased awareness for the consequences of the Services Directive notification obligation in combination to the proposed Notification Directive - for spatial planning but also for other measures restricting services at local and regional level.



Identified challenges and concerns at regional and local level

- The wide scope of the Services Directive puts a lot of additional workload on local and regional authorities. Implementation of the proposed Notification Directive would increase these far-reaching obligations and cause a number of challenges:
 - High degree of **legal uncertainty** with complexities of assessing Services Directive applicability beyond the means of many local authorities;
 - Administrative burden due to a **high number of relevant planning regulations**;
 - **Limited potential for improving the Single Market implementation by notifying local spatial planning regulations** due to its character as an instrument to pursue public interest;
 - **Serious delay** to spatial planning processes;
 - **Very low EU Single Market relevance** of most local level regulations not equaling the additional effort needed;
- In addition, local and regional stakeholders question the proportionality of the proposed Notification Directive.



Specific needs of local and regional stakeholders related to the application of the Services Directive

- Finding an appropriate solution regarding the implementation of the proposed Notification Directive is important for both the European Commission and local and regional stakeholders.
- To meet specific challenges for local and regional authorities, the application of the Services Directive should:
 - include certainty and validity;
 - be appropriate, pragmatic and workable;
 - consider the large share of very small municipalities across Europe with scarce resources;
 - avoid extending processes;
 - provide transparent and reliable information;
 - provide noticeable added value;
 - avoid interfering in democratically legitimised decision processes;
 - be adaptable.



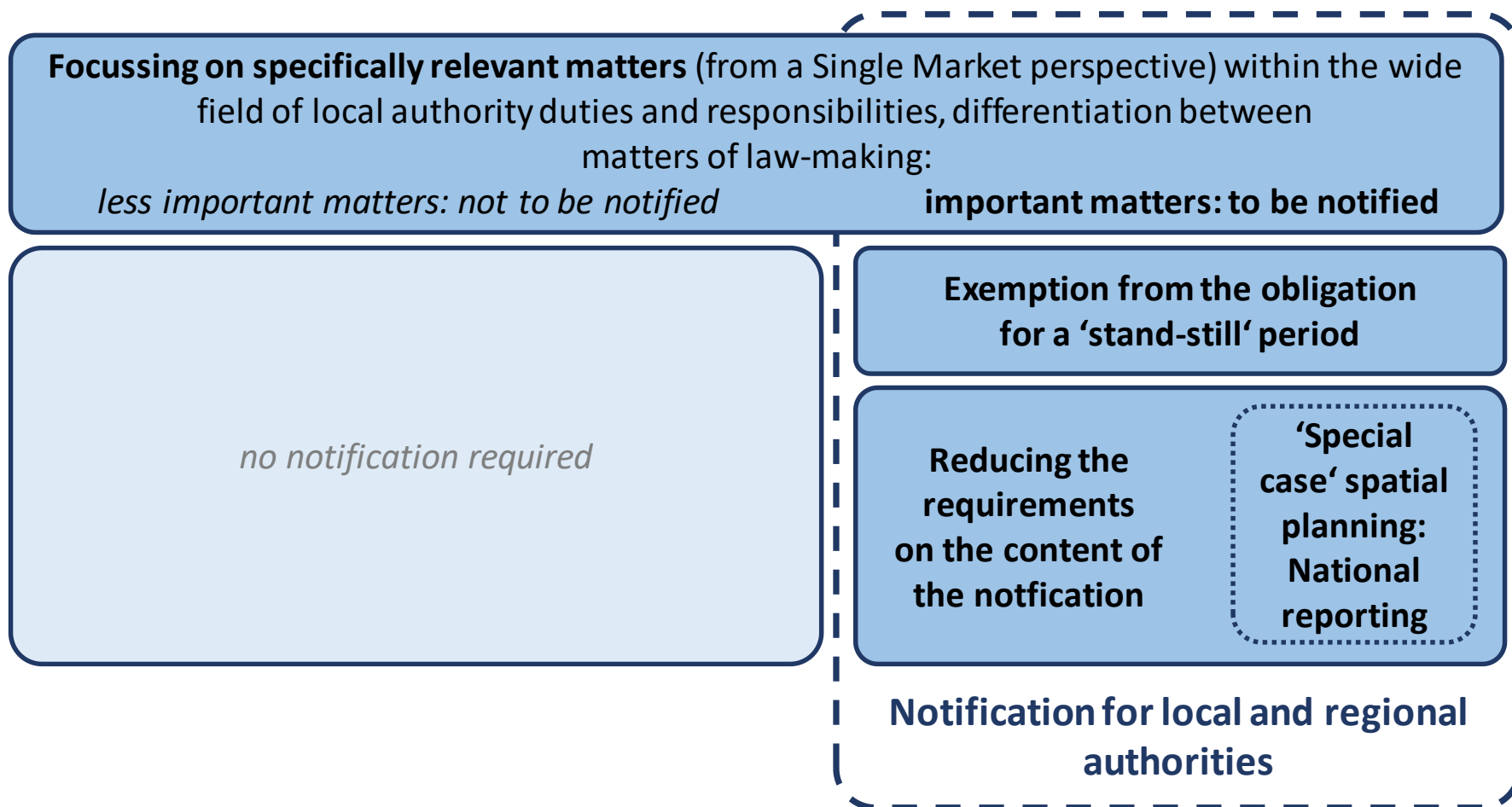
Suggestions for changes to the proposed Notification Directive in order to deal with identified challenges

The suggestions aim at taking into account both, the objectives of the Commission and the perspective of local and regional stakeholders:

- (1) Suggestion to deal with the broad scope of the Services Directive – *focussing on specifically relevant matters*
- (2) Suggestion to deal with the challenge of the consultation and ‘stand-still’ period – *exemption from the obligation for a ‘stand-still’ period*
- (3) Suggestion to deal with the challenge of more detailed justifications for notified regulations – *reducing the requirements on the content of the notification*
- (4) Suggestion to deal with the ‘specific case’ of local spatial planning and the Services Directive – *‘special case’ spatial planning: national reporting*



Overview on suggestions for changes to the proposed Notification Directive concerning local and regional stakeholders





(1) Suggestion to deal with the broad scope of the Services Directive – *focussing on specifically relevant matters*

- Reducing the number of notifications at regional/local level by focusing the Commission’s attention on the most important fields of action (where local and regional authorities are important implementation partners)
- This would require:
 1. EU-wide ‘information gathering phase’ to analyse provisions to be considered;
 2. Setting up ‘mutual discussion’ between the Commission, Member States and local/regional authorities to agree on an explicit list of ‘most important fields of action’;
 3. Specifying the ‘most important fields of action’ at regional and local level;
 4. Implementing the list e.g. by adopting a delegated act;
 5. Evaluating the approach in the framework of article 11 (Report and review) of the proposed Notification Directive;
 6. Revising the delegated act if necessary.



(2) Suggestion to deal with the challenge of the consultation and ‘stand-still’ period – *exemption from the obligation for a ‘stand-still’ period*

- Enabling local and regional authorities to act and react quickly (if needed). The rapid development of the platform economy with partly adverse effects on life quality in cities underlines the importance of this ability.
- Measures would have to be notified when they are enacted at latest.
- The Commission shall still examine notified requirements within 3 months and (if necessary) request a measure be withdrawn.



(3) Suggestion to deal with the challenge of more detailed justifications for notified regulations – *reducing the requirements on the content of the notification*

- The requirements to clarify and justify the public interest objective and necessity of a regulation and an analysis of the proportionality (with evidence) go beyond the resources and means of many local and regional authorities.
- Less information should be requested from local and regional authorities – in particular proportionality analysis.
- This should be partially offset through supporting tools to increase quality of reporting (e.g. guidance with clear guiding questions).



(4) Suggestion to deal with the ‘specific case’ of local spatial planning and the Services Directive – ‘special case’ spatial planning: national reporting

- Requirements for notification and a high number of notifications resultant from constant amendments of local spatial planning regulations would lead to hundreds of thousands of annual notifications.
- Local spatial plans must act within national and/or sub-national legal frameworks, and are thus implementing acts of already notified primary laws.
- The suggestion is:
 - notification of primary law on spatial planning (if containing relevant regulations);
 - but, exemption of local level spatial planning documents (with an accompanying self-assessment process instead);
 - with mandatory reporting about ongoing implementation at local level (based on a self-assessment process) to be provided by the Member State.