



## European Retail Trade Is on the Verge of Change

On January 30, 2018, the European Court of Justice ("ECJ") rendered a judgment with far-reaching consequences for the European retail trade (ECLI:NL:C:2018:44).

The judgment (in two joined cases) centered on the question of whether retail trade is a service to which the Services Directive 2006/123 ("Directive") applies. The judgment is in answer to requests for a preliminary ruling made by the Supreme Court of the Netherlands (C-360/15) and by the Council of State of the Netherlands (C-31/16).

Earlier judgments of the ECJ already pointed to a wide interpretation of the definition of "service" for the purpose of the Directive. On January 30, 2018, the ECJ cast the die: the activity of retail trade in goods constitutes a "service" as set forth in the Directive. In addition, the ECJ ruled that the Directive applies to purely domestic situations (hence, a cross-border element is not required).

Because of the ECJ ruling, parties in proceedings under administrative law relating to, for instance, zoning plans, will now have to meet the licensing requirements of articles 14 and 15 of the Directive, in addition to the already applicable requirements. For private law proceedings, all sorts of specific rules (e.g., rules on general terms and conditions) to which only specific service providers previously have had to comply, now apply to a considerably larger group of entrepreneurs. Thus, the consequences of this ruling are extensive, for the Netherlands as well as for the rest of Europe, especially since the judgment appears to have retrospective effect.

It remains to be seen whether wholesale trade or even all trade will qualify as "service." That may be desirable, since otherwise different rules will apply to different sectors of trade, and boundaries may not always be easy to establish.

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