

**Limits to the regulation of establishment of real estate through urban plans
the hotel sector and retail as examples**

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Publication date

2017

Document Version

Final published version

Citation (APA)

Hobma, F. (2017). *Limits to the regulation of establishment of real estate through urban plans: the hotel sector and retail as examples*. 142-142. Abstract from ERES 2017: 24th Annual Conference of the European Real Estate Society , Delft, Netherlands.

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BOOK OF ABSTRACTS



EUROPEAN REAL ESTATE SOCIETY
24TH ANNUAL CONFERENCE
28 JUNE - 1 JULY
DELFT / NETHERLANDS



133 Limits to the regulation of establishment of real estate through urban plans - the hotel sector and retail as examples

In many countries, local governments feel the need to regulate the supply of a certain segment of the real estate sector in a defined geographical area. Usually, their main objective is to prevent the oversupply of for instance hotels or retail in a specific area. As a consequence, the existing suppliers receive (economic) protection, in the form of limitation of competition.

An important way for local governments to regulate the establishment of real estate is through urban plans. For example, the local urban plan limits the accession of new hotels or retail to a certain number, percentage or other unit in a distinct geographical area.

This paper addresses the question to what extent it is legally allowed to regulate an economic sector, like hotels or retail, by way of an urban plan. Under which conditions is it allowed to restrict the maximum number of activities of a specific economic sector in an urban plan and thereby limit competition between suppliers? This question appears in many countries.

To answer this question, the paper will take into account European law (in particular the Services Directive) and Dutch planning law. Also, the most important European and Dutch case law will be discussed. To make it tangible, the hotel sector and the retail sector are taken as examples. It is in these segments of the real estate market, that the question to which extent regulation of establishment is allowed, is most often asked.

In the framework of this paper, in particular article 14, para. 5 Services Directive is relevant. The article in principle forbids restriction of competition by member states (including local authorities). It prohibits the case-by-case application of (a) an economic test making the granting or authorisation subject to proof of the existence of an economic need or market demand, (b) an assessment of the potential or current economic effects of the activity or (c) an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority. Yet, this kind of assessments are regularly applied in practice by local authorities in their urban plans. The scope of article 14 Services Directive, including case law, will be part of this paper.

The answers to the questions of this paper are of relevance to prospective investors in real estate in EU countries.

KEYWORDS: Regulation, Services Directive, Urban plans, Economic planning, Limitation of competition