



The notifications procedure under the Services Directive 2006/123/EC

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DG GROW – Unit E3 Notification of regulatory barriers

Content

- 1. The internal market for services and the Services Directive**
- 2. The obligation to notify**
- 3. Notification procedure**
- 4. Data**
- 5. Concluding remarks**



1. The internal market for services and the Services Directive

- Services markets account for **70% of the economy**

- Legal barriers, complex administrative procedures and lack of information on applicable rules make it **difficult** for businesses **to offer their services abroad**

- **Commission study** “mapping & assessment of legal and administrative barriers in services sector”:
 - Developments in regulation of services markets
 - Overview of remaining barriers
 - main conclusions:
 - a)** small decrease in absolute level of barriers
 - b)** most authorization schemes in place - some underlying restrictions removed
 - c)** more efforts needed

Directive 2006/123/EC on services in the internal market (SD)

- Applies to services supplied by providers (natural or legal persons)
- Covers **all** service activities, **except** those explicitly excluded
(e.g., financial services, transport services, electronic communication services, private security services, gambling, healthcare services);
- General provisions facilitating the exercise of the freedom of **establishment** (Art. 9-15) and the **free movement of services** (Art. 16-21)
- **Main obligations** for Member States
 - justify authorization schemes and make the procedures transparent (Articles 9 - 13);
 - justify requirements restricting the provision of services (Articles 15 – 16), with an objective of general interest and explain, based on evidence, their proportionality.

Most restricting requirements are completely prohibited - cannot be justified (Article 14)

2.The obligation to notify under the Services Directive

Preventive enforcement mechanism

- **Long term action plan on better implementation and enforcement** [COM(2020) 94 final]

MAKING THE BEST USE OF PREVENTIVE MECHANISMS

Action 11:.... *the Commission will take steps to ensure that Member States comply with the existing notification obligation under the Services Directive in order to identify and eliminate new potential regulatory barriers.*

- **Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery** [COM(2021) 350 final]

The full enforcement of the Services Directive will ensure that Member States comply with their existing obligations, including the notification obligation in order to identify and eliminate new potential regulatory barriers.

Legal basis for notification of requirements

Article 15(7) SD – requirements to establishment

Article 39(5) SD – requirements to temporary cross-border provision of services

➔ Obligation for Member States to notify **requirements** under Articles 15(2) and 16 SD.

Requirement:

- any obligation, prohibition, condition, limitation;
- on service providers / recipients of services;
- provided by law, regulation or administrative provisions;
- affecting access or exercise of a service activity.

Which requirements to notify

- Requirements for **establishment of providers** Article 15 (2) SD

Quantitative and territorial restrictions; obligation for a specific legal form; shareholding requirements of a company; requirements reserving access to a service activity; ban on more than one establishment; requirements fixing minimum number of employees; fixed, minimum /maximum tariffs; obligation for joint services

- Requirements for **temporary provision of services** Article 16 SD

Any requirement affecting the temporary provision of services, this including ...

Obligation to establish; registration /authorization requirement; restriction to set up infrastructure; specific contractual arrangements; obligation for specific identity document; restrictions affecting use of equipment; discriminatory limits on grants of financial assistance

- Requirements **provided** in national, regional or local level regulation

When to notify

- ✓ Whenever there is a change in legislation:
 - when a **new requirement** is introduced in an area where no regulation existed before,
 - when an **existing requirement** is **amended**.
- ✓ Measures can be notified at a **draft stage** or **if adopted**.

Assessment of notified requirements

- ✓ Commission examines the compatibility of notified measures with EU law
- ✓ Commission and the other Member States can provide **comments** within **3 months period**
- ✓ Notifications under Article 15(7) SD: the Commission may if appropriate, adopt a Commission decision
- ✓ Commission publishes on website a summary of new notifications (**transparency**)
- ✓ Commission comments are without prejudice for further action if needed
- ✓ Notifications do **not prevent Member States from adopting** draft measures

Services Directive / Transparency Directive notifications: Main similarities & differences

Similarities:

- legally binding obligation to notify
- 3 months deadline
- Commission comments without prejudice for further action

Differences:

- stage of notified measures (draft /adopted)
- SMTD: TRIS data base; SD: IMI data base (as a rule)
- different procedure
- standstill period for SMTD

3. Notification procedure

- ✓ Notifications under SD take place via the **Internal Market Information (IMI)** system
- ✓ Possibility to notify requirements under Art. 15(7) also in TRIS
(currently insufficient information for assessment under SD criteria)
- ✓ Updated IMI module → detailed assessment according to SD, facilitates the process, transparency
- ✓ Commission communicates notification to other Member States

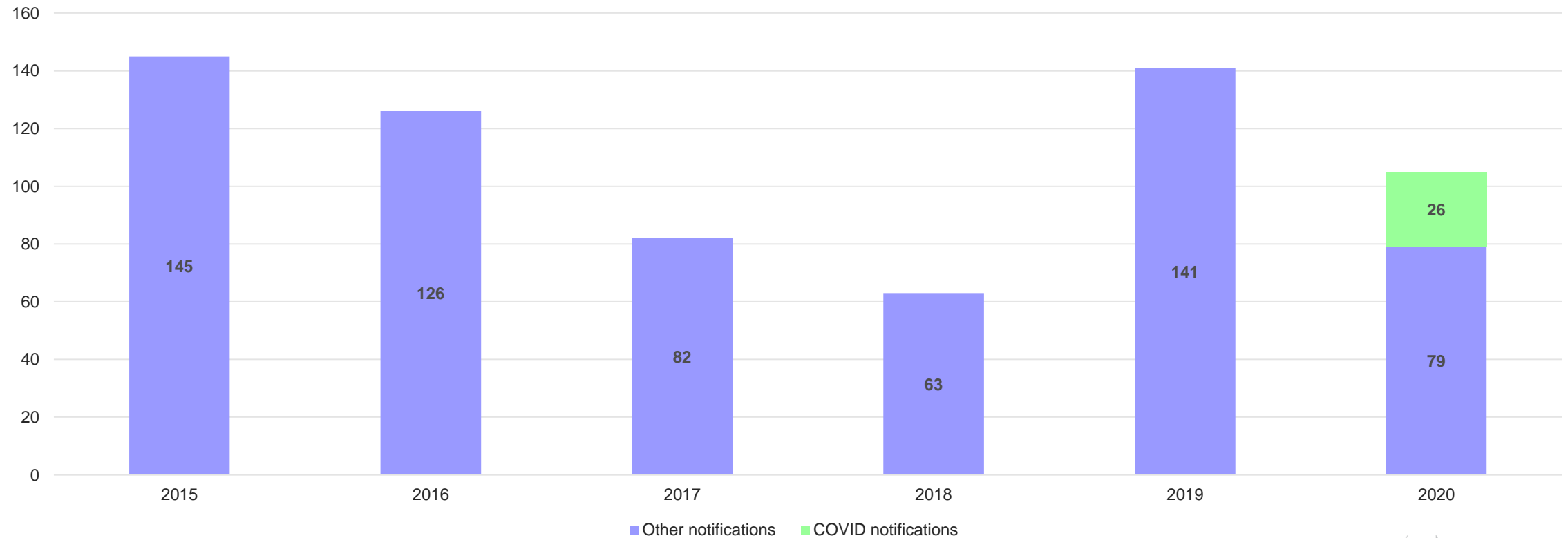
Notification information in IMI

- ✓ Sufficient description of the requirement;
- ✓ Requirement non-discriminatory (directly or indirectly);
- ✓ Justified by overriding reason of public interest (necessity);
- ✓ Justified as regards suitability to attain the policy objective and the absence of less restrictive means (proportionality).

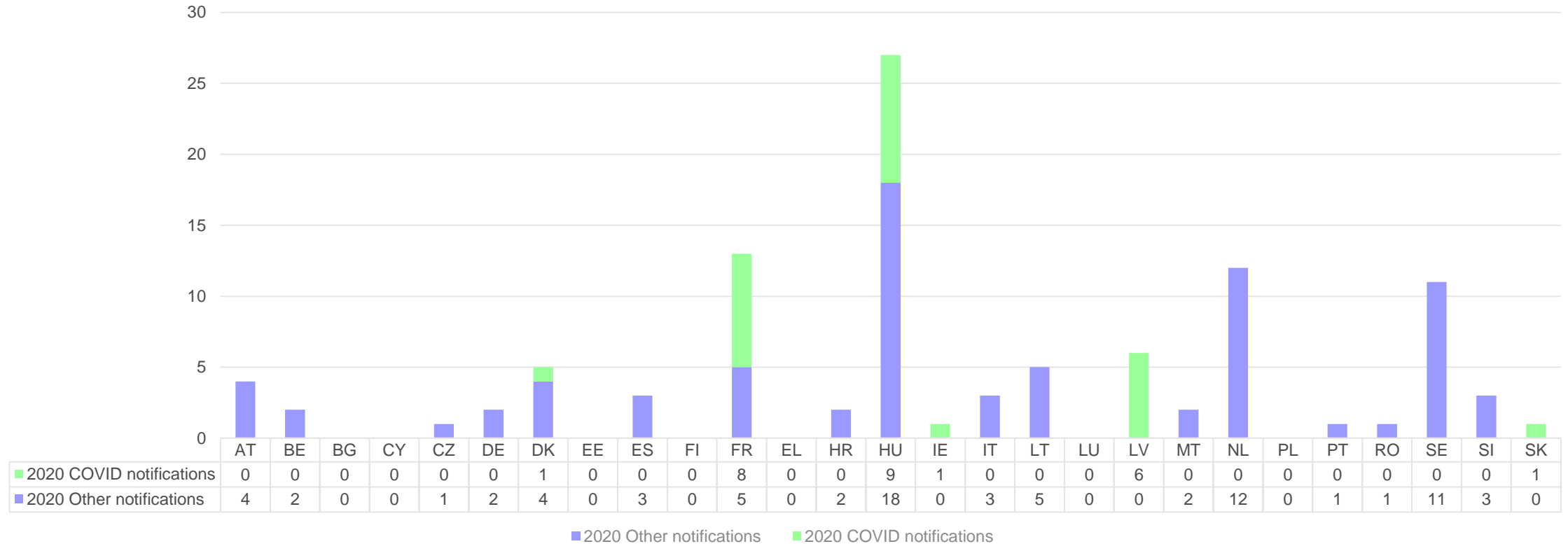
Comments in IMI visible to all Member States.

4. Data

Total number of notifications under the Services Directive in 2015 - 2020



Number of notifications by Member State in 2020



5. Concluding remarks

Commission objective: to improve the application and efficiency of the existing notifications process

- guidance to Member States
- seminars and trainings
- increased transparency of notifications
- annual reporting on the application of notification obligation
- update of the Services Directive Handbook (under preparation)
- explore tools with Member States to ensure better compliance of notification obligation under Services Directive

Thank you



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