Simplification and mutual recognition in the construction sector under the Services Directive

MARKT/2014/087/E

Final Report

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1 Executive Summary

1.1 Study Objectives and Overview

1.1.1 Main study objectives

The Services Directive (2006/123/EC) aims to remove obstacles to cross-border provision of services in the internal market, either on a temporary basis or on the basis of secondary establishment. The Directive also benefits service providers who are active in a domestic market only. In this context, the main thrust of the Directive is to ensure that authorisation schemes and controls that apply to service providers are aligned to the Directive's rules that support administrative and regulatory simplification and mutual recognition.

The main objective of this study was to determine whether Member States make full use of the principles of administrative and regulatory simplification, including by way of mutual recognition, as part of their relevant authorisation schemes for construction service providers.

With this objective in mind, the study compared the relative administrative and regulatory burden associated with the Member State authorisation schemes examined. In addition, good practices were identified that illustrate how better alignment with Services Directive can be obtained across all Member States. The overall study findings informed the development of recommendations to encourage legislative reforms.

1.1.2 Types of authorisation schemes in the study scope

In terms of the types of authorisation schemes of interest to this study, the research examined those schemes that are imposed on contractors and developers (although authorisation schemes that apply equally to all sectors were not examined). This study has considered private works only. [1]

In line with the scope of the research, the two types of schemes examined are horizontal authorisation schemes and building permits:

- A horizontal scheme concerns all, or certain, construction service providers which need authorised access to the construction services market;
- The building permit procedure, as described further in section 4, that has been subject to examination relates to the process of:
  - Preparation of applicant submission demands for a building permit including necessary plans;
  - Plan approval by a relevant authority.
- The following aspects of the building permit procedure (which are often considered in the broader context of building control) have also been covered:
  - Site inspections;
  - Completion and official sign-off of the building works.

This study does not address professional qualification requirements, for example regarding architects, engineers and craftsmen. A study was recently conducted on an

[1] Public works are understood as execution, or both design and execution, of a work by or for the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.

'Inventory of reserves of activities linked to professional qualifications requirements in 13 EU Member States and assessment of their economic impact', and this study targeted construction service professionals.[2] A 'Mutual evaluation of regulated professions' is also ongoing.[3] Moreover, the research scope does not cover controls targeting the employment relationship of workers with employers in the construction services sector.[4]

1.2 Analytical Framework and Methodological Steps

1.2.1 Analytical framework

The analytical framework for this study was designed to support an in-depth assessment of national legislation against the principles of simplification and mutual recognition of the Services Directive.

The principle of administrative simplification aims to ensure that authorisation schemes operate in an efficient and less burdensome manner, thereby reducing bureaucratic barriers. Under Articles 5, 8 and 13 of the Services Directive, procedures should be simple to follow, not subject to undue delays, have clear deadlines and not allow unjustified extensions. Any submission demands should be requested in simple copy and electronic form, certified documents should be required only when justified by an overriding reason relating to the public interest, and equivalent documents must be accepted as proof that a requirement has been met. Tacit approval should apply as a rule.

Regulatory simplification of authorisation schemes, as required by Articles 9, 10, 11 and 16 of the Services Directive, aims to ensure that requirements are necessary, suitable and proportionate in attaining public interest goals.

Mutual recognition, as governed by Article 10 and 16, guarantees that cross-border service providers are not subject to duplicate requirements and controls where the same service providers have already complied with equivalent or essentially comparable requirements in their home Member State.

1.2.2 Indicators used to measure the extent of procedural restrictiveness

The analytical framework was underpinned by a series of indicators for the purpose of evaluating the extent of Member States' restrictiveness against the Services Directive. This methodological approach scored the extent of legislative and procedural restrictiveness on a scale from 0 to 6,[5] in a similar way as the indicator framework developed by the OECD to monitor Product Market Regulation (PMR).[6]

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2 The study report is available at http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf.

3 Under Article 59 of Directive 2005/36/EC on the recognition of professional qualifications – further information at http://ec.europa.eu/growth/single-market/services/free-movement-professionals/transparency-mutual-recognition/index_en.htm.

4 For example, controls on posted workers put in place under the Enforcement Directive for the Posting of Workers Directive (2014/67/EU). This Directive should be implemented by 18 June 2016.

5 A score of 0 indicates a good level of compliance with the Services Directive. A score of 6 indicates a very poor level of compliance with the Services Directive.

6 http://www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm.

1.2.3 Methodological steps: country selection, legal mapping, application of the indicator framework, stakeholder interviews and identification of good practices

The methodological steps established to structure the research and legal analysis were:

1. Fourteen Member States were selected with representative approaches[7] to establishing horizontal authorisation schemes and/or building permit /control procedures for in-depth analysis; the countries selected (and regions/cities in decentralised Member States) were: Bulgaria, the Czech Republic, Germany (region Nord-Rhein Westfallen), Denmark, Greece, Spain (Madrid), Finland, France, Italy (Milan), the Netherlands, Poland, Portugal, Slovenia and the United Kingdom (England);
2. Legal analysis was performed with the support of the indicator framework to identify the extent to which the selected Member States (or regions/cities in those Member States with more decentralised construction sector regulation) are making full use of the principles of simplification and mutual recognition as established under the Services Directive in their horizontal authorisation schemes and building permits procedures for construction service providers;
3. In this context, the indicator framework was used to measure the extent of regulatory and administrative restrictiveness in relation to key features of the national authorisation schemes against individual Articles. An overall score was allocated to each Member State to indicate the extent of compliance with the Services Directive;
4. With a view to considering alternative methods that encourage simplification and mutual recognition, the study analysed a number of different voluntary certification schemes for construction service providers that are recognised by authorities as providing an alternative to regulatory compliance and/or help service providers to meet requirements set in law;
5. In order to strengthen the evidence base, an interview programme was implemented with a limited number of stakeholders in the fourteen Member States;
6. In the context of the principles of simplification and mutual recognition, good practice, as well as recurrent problems, were identified.

1.3 Overview and Analysis of Horizontal Authorisation Schemes

A key study objective was to perform a legal mapping exercise and analysis of national legislation relating to horizontal authorisation schemes against relevant Articles of the Services Directive.

[7] In accordance with the following criteria: 1) geographical spread and size of countries; 2) Countries with horizontal authorisation schemes as indicated in the 'Performance check of the Services Directive'; 3) Distribution of countries with comparable regulatory features (building permit area) – e.g. National vs regional level regulations; Strong technical enforcement of projects vs. reserving activities to regulated professions; Countries with regular procedures only for submitting building permits vs. countries with optional lighter procedures for documentary requirements; Whether checks are performed by more than one or more authorities; Whether or not a declaration of completion is required from the owner / builder or architect;; 4) All selected countries were included in the 'Study to provide an Inventory of Reserves of Activities linked to professional qualification requirements in 13 EU Member States (2002)'.

1.3.1 Categories of horizontal authorisation schemes examined

The legal mapping exercise identified that in 6 countries (Bulgaria, Denmark, Greece, Spain, Italy and Portugal) horizontal authorisation schemes are in operation controlling a range of different requirements and conditions. They fall into the following categories:

- Company registration schemes that grant authorisation to companies (contractors and developers) to enter the construction services market in Bulgaria, and Portugal. These schemes control a wide range of requirements such as:
    - financial and economic capacity (requirements are in place to restrict insolvent or bankrupt entities and, in Portugal, 10% of equity is required according to the value of the category of works);
    - technical and professional requirements (for example equipment requirements are in place in Bulgaria and qualified personnel in both countries);
    - and insurance requirements (although all Member States impose insurance requirements for the performance of construction works, only Bulgaria and Portugal, as well as Denmark mentioned below, -out of the 14 Member States covered by the study -control insurance coverage in the context of a horizontal authorisation scheme, and define the segment of the construction sector that service providers are permitted to operate within).
- While less broad in scope, Spain requires service providers to demonstrate that construction health and safety requirements have been complied with. Spain is the only Member State covered by the study which imposes a targeted control on health and safety for the construction sector in the framework of an authorisation procedure. Other Member States also impose organisational health and safety requirements to be respected by a company in order to implement Article 7 of Directive 89/31/EEC but do not link them to a prior authorisation specific to construction service provision;
- *Company registration schemes that grant authorisation to companies (contractors and developers) to enter specific segments* of *the construction services market:* in Denmark, an authorisation scheme controls access to the trade activities of electrical, gas, plumbing and sewerage installation. It relates to the registration of electrical, gas, plumbing and sewerage installation companies;
- *Authorisation schemes that grant authorisation to construction professionals involved in construction works (going beyond just the control of professional qualifications):* the scheme identified in Denmark for registration of electrical, gas, plumbing and sewerage installation companies imposes conditions specifically referring to professional;
- A proposed scheme in Greece, the 'Register of building design engineers and construction supervising engineers', seeks to link building permit applications to the designer responsible for preparing the technical plans by issuing a designer ID to architects and engineers;
- *Mandatory certification schemes relating to contractors, developers and professionals:* For instance, a legal requirement identified in Italy demands services providers that enter into contracts with a value equivalent to or greater than €500,000, to hold EN:ISO 9001:2008 quality management system certification. Another Italian scheme is the Certificate of Undeclared Work (DURC) which demonstrates that construction companies have complied with their tax and social security obligations and must be submitted as part of the

application for a building permit. The Danish scheme mentioned above is also a mandatory certification scheme.

These authorisation schemes apply to establishing and temporary cross-border providers in 5 Member States. In Denmark and Italy (DURC scheme), authorisation schemes are more stringent for temporary provision of services, compared to establishment situations. Bulgaria introduced a less onerous notification procedure specifically to (first-time) temporary cross-border service providers. Portugal's controls on incoming temporary service providers are only slightly different than those imposed on establishing service providers.

1.4 Key findings on horizontal authorisation schemes

1.4.1 Simplification and mutual recognition requirements of the Services Directive

The main requirements of the Services Directive supporting regulatory and administrative simplification are:

- Authorisation schemes should be justified by an overriding reason of public interest. In order for them to prove proportionate, it should be demonstrated that the same function cannot be realised through alternative less restrictive methods;
- Regarding the provision of temporary cross-border services, authorisation schemes are justifiable only under reasons of public policy, public health, public safety and the protection of the environment.[8]

With these requirements in mind, it seems difficult to justify the imposition of a horizontal authorisation scheme in proportionate terms considering the widespread implementation of building control authorisation procedures during individual works. This is certainly the case for the temporary cross-border provision of services.

As a result, the study has generally concluded that none of the horizontal authorisation schemes identified appear to be justified and proportionate under the Services Directive given that temporary cross-border providers are already subject to controls such as, where relevant, initial building permit procedures and in particular, site inspections. Considering that horizontal authorisation schemes are similar (although in some case more burdensome such as in Denmark and Italy), their lack of regulatory simplicity, mutual recognition and even simplification makes subsequent building permit procedures unduly complex and unsuited for temporary l cross-border service provision. Bulgaria does require just the prior notification of temporary cross-border providers, focusing only on technical and professional capacity. While the procedure is in itself less burdensome, a justification of this underlying condition under the Services Directive remains doubtful.

However, at the same time, it should be recognised that under the right of establishment, construction companies might benefit from simpler building permits if there are synergies with previous controls implemented by a horizontal authorisation scheme enabling firms to access the market. For instance, building permits could then focus on on-site aspects of service provision only so that the number of regulatory conditions can be reduced and duplication could be avoided. Ultimately, service

[8] As prescribed by Article 16 of the Services Directive.

providers would, be faced with less burdensome regulatory and administrative requirements altogether.

1.4.2 Regulatory burden

In terms of the number of administrative procedures to complete an authorisation process, with the exception of Denmark, all horizontal authorisation schemes operate in the context of a single administrative procedure managed by a single authority. While this is a positive finding, this does not mean that horizontal authorisation schemes are simple overall, as required by the Services Directive.

However, the six Member States that have adopted horizontal authorisation schemes require specific professional qualifications of key construction personnel such as architects and/or engineers involved in the construction works. Such professionals are subject to their own authorisations and, throughout their performance, to a number of exercise requirements pertaining to quality of services and ethics. But none of the six Member States do away with the horizontal authorisation schemes for contractors and developers making use of key construction personnel which are appropriately qualified and/or certified.

None of the horizontal authorisations issued in any of the six Member States are valid indefinitely. The Italian DURC authorisation is valid for 90 days, and the Bulgarian authorisation is valid for one year, as is the standard Portuguese authorisation (while the simplified authorisation is valid for 5 years). Danish authorisations are valid for 2 years (due to the expiration of the underlying certification scheme). Both the Italian mandatory ISO certification scheme and the Spanish authorisation regarding health and safety are valid for 3 years.

In Denmark, Spain and Italy, the limited duration of the authorisations issued means reinitiating the initial procedure with all costs implied, including the relevant fees.

In Portugal (regarding insurance) and Spain (regarding health and safety), some of the conditions imposed for granting these horizontal authorisations seem to be broadly duplicated in the context of building permit procedures.

1.4.3 Mutual recognition

Mutual recognition principles for cross-border service providers are in place for both insurance and other requirements, with the exception of Bulgaria. However, procedures that ensure an equivalence assessment on the ground are not formally described in the law and are generally inoperative.

Portugal (with specific rules in place for technical/professional and financial capacity) and Italy (regarding the ISO scheme, based on European and international standards) are the exceptions.

Regarding insurance requirements, Bulgaria, Denmark and Portugal have foreseen a mutual recognition principle which could apply in the context of horizontal authorisation schemes, but it is not operational in practice.

In contrast, there are no mutual recognition rules in place for other requirements regarding technical/professional capacity in Bulgaria, registration and certification in Denmark and organisational health and safety requirements in Spain.

1.4.4 Administrative burden

In terms of the overall level of **administrative burden**, the horizontal authorisation schemes proved excessively restrictive.
While E-procedures and equivalent documents seem to be accepted everywhere, simple copies are only accepted in half of the countries. In Portugal originals or certified copies may be required where there are cases of doubt, and in Bulgaria and Spain certified translations by professionals registered in those countries are always required.

In addition, the administrative burden in terms of the number of documents required varies across Member States, whether or not information is made available in English and whether English language documents are permitted for submission. In 4 out of 6 Member States (Bulgaria, Denmark, Italy and Portugal) fees are not proportionate to the cost of administering the approval process. Tacit approval is the rule only in Italy (with regard to its DURC scheme) Portugal and Spain.

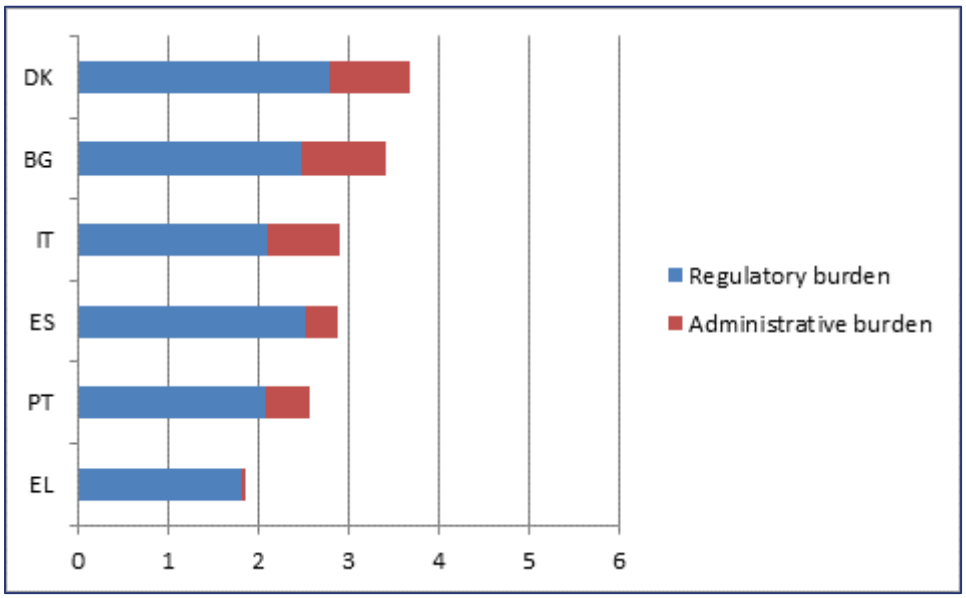
1.4.5 Overall level of restrictiveness of horizontal authorisation schemes

The overall results of the assessment of the extent of the administrative and regulatory burden of horizontal authorisation schemes led to the ranking of the fourteen study countries. The key findings are:

- The Czech Republic, Germany, Finland, France, the Netherlands, Poland, Slovenia and the United Kingdom appear to offer a higher level of compliance with the Services Directive because in these countries, horizontal authorisation schemes have not been established as building control procedures are deemed to offer a sufficient level of control;
- Bulgaria and Denmark have the most restrictive horizontal authorisation schemes. The Danish scheme combines an authorisation procedure with a mandatory certification process and therefore has performed less well against a number of indicators;
- While the Italian horizontal authorisation schemes individually performed comparatively better than others, the cumulative impact of these should be considered;
- Spain and Portugal are comparatively less restrictive mainly because they apply tacit approval and to some extent mutual recognition;
- Greece appears to also offer a less restrictive environment. However, this scheme has been defined in the context of a legislative proposal and is not operational at this stage. A full assessment against all of the indicators could not be undertaken.

Figure 1.1 provides the combined results of the indicator assessment of the overall restrictiveness of horizontal authorisation schemes. This assessment combines the results around the assessment of administrative and regulatory burdens. The least restrictive countries are associated with low scores, while the reverse is true for countries with high scores. A colour-coded break down is provided of the individual indicator results in relation to the individual scores for administrative and regulatory burdens.

Figure 1.1 Overall restrictiveness of horizontal authorisation schemes in 6 Member States



1.5 Overview and Analysis of Building Permit Procedures

1.5.1 Description of the building permit procedure

A legal mapping and evaluation exercise was also undertaken to examine building permit legislation in all 14 Member States covered by the study. A building permit is recognised by the study as a legal requirement and procedure which ultimately allows for the construction work of a certain building, its renovation as well as an engineering work to take place in a given location. To ensure consistency, two types of reference construction works were used as benchmarks so that similar situations could be compared: a one storey two bedroom house (100m^2) and a ten storey office block (2000m^2). Furthermore, the study focused on requirements for the performance of a construction project[9] only, but not on other rules, such as spatial planning rules.

The building permit application procedures were analysed in the context of the following typology[10]:

- Regular procedure: in relation to building work that requires a building permit, plans are submitted to a relevant authority for assessment against the technical requirements for building works. If approved, construction works may proceed in line with the design specifications agreed;
- Building notice*:* building work may commence on the basis of a notification to the relevant authority or on the basis of tacit approval if an official response is

[9] in this study "requirements for the performance of a construction project" comprise all rules (requirements, as defined under the Services Directive), irrespective of their nature (environmental, energy efficiency, real estate/cultural heritage protection, use of equipment, professional capacity, insurance, health and safety and others), specifically governing the performance of a certain construction work, from design to execution, except for those rules referring to the use of building materials or waste management; it does not include rules on the employment relationship of workers or rules directed at the technical features of the future building or civil engineering work, once completed, which do not simultaneously govern the respective construction process; it does not refer to land-use requirements or the use of a building, once completed.

[10] This typology was heavily informed by previous research undertaken by Frits Meijer, TU Delft University (OTB).

not given in the comparatively short fixed period. In some cases, the submission demands may relate to a limited set of documentation (which may not include technical drawings);

- Light procedure: compliance of the building design with building regulations is not examined in-depth by building control authorities (as the design has been verified already by a registered third party). Alternatively, an authority may grant a type approval for a building design which can be used for subsequent applications without further approvals required;
- Self-certification*:* plan approval and designated types of construction works are not subject to public building control procedures if qualified or certified persons self-certify their own work. Self-certification may be combined with any one of the procedures indicated above;
- Exemptions for minor works: construction works can start without any previous building control procedure.

Using this typology, it was possible to categorise the country systems examined. As Table 1 indicates, each Member States has opted for its own particular combination of possible building permit application procedures and in some cases these are combined with the practice of the self-certification of plans by designers (or self-certification of on-site works by contractors).

Table 1.1 Overview of Member States' building permit application procedures

Member State	Regular procedure	Building notice	Light procedure	Self-certification of plans by designers / of own works by contractors	Exemptions for minor works
BG	X	X	X		X
CZ	X	X		The building notice procedure is combined with self certification of plans.	X
DE (NRW)	X	X	X		X
DK	X	X		Construction of transportable structures can be self certified by certified service providers.	X
EL	X	X		The regular procedure is combined with self certification of plans.	Notification
ES (Madrid)	X	X	X	The building notice procedure (Declaration of Responsibility) enables self-certification of plans.	X
FI	X	X			X
FR	X	X			X
IT (Milan)	X	X		The building notice procedure is combined with self certification of plans.	X
NL	X				X
PL	X	X			X
PT	X	X		The regular and building notice procedures are combined with self certification of plans.	X
SI	X (Smaller works)		X (for complex works)	Self certification of the plans for smaller works.	X

Member State	Regular procedure	Building notice	Light procedure	Self-certification of plans by designers / of own works by contractors	Exemptions for minor works
UK (England)	X	X	X (Type approval)	Installation work can be self certified by certified contractors	X

1.5.2 Key findings on building permits

Building permits apply equally to establishing and temporary cross-border providers. This means the building permits (as well as building controls in general) and their underlying requirements can only be justified by reasons of public policy, public safety, public health and the protection of the environment.[11]

Furthermore, because building permits control on-site aspects of service performance, the authorisation procedure is repeated every time construction services are provided to commercial or residential clients. In order to achieve proportionality and to limit any burdensome effects, these procedures must operate as simply as possible. In particular, conditions for granting the building permit which do not relate to on-site aspects of service provision should not be repeated, but rather controlled once only.

1.5.3 Regulatory burden

Building permit procedures across the 14 Member States analysed often present a high level of regulatory restrictiveness.

Nation-wide validity for building permits is only an issue for non-site specific aspects of service performance. Although most Member States do not differentiate, Germany and the United Kingdom have put in place a nationwide approval process for building designs that are non-site specific.

No Member State controls building activities through a single one-off building permit control, eventually coupled with on-site inspections. Instead, they impose a number of administrative control procedures from the initial application, to the commencing of the works on the ground until final completion. With the exception of the Netherlands, all Member States impose 3 or more separate control procedures that collectively constitute the building permit / control process. However, most Member States have put in place alternative procedures for simpler building works (except for Denmark, Finland, France, the Netherlands and Poland), and all exempt minor works[12] from building permit procedures, except for Greece which imposes a notification for such works.[13]

1.5.4 Mutual recognition

Technical standards play a key role in how to conduct building works. In view of their complex nature, mutual recognition of these technical rules across Member States is only feasible if performance-based standards are adopted by Member States. This is the case for Greece, Spain, France and the United Kingdom. Other Member States

[11] As prescribed by Article 16 of the Services Directive.
[12] However, the concept of "minor work" varies greatly across Member States.
[13] The scores for these indicators are included in the graph for administrative barriers, given their relevance for Article 5 of the Services Directive.

have adopted a combination of prescriptive and performance-based standards to varying extents, with the exception of Portugal.[14]

The existence of rules permitting the use of equipment as part of a service activity in a host Member State according to regulations established in a home Member State do not seem to be common. However, given that many substantive rules on equipment use are based on European or International Standards, there seems to be no real problem on the ground when using equipment across borders.

Insurance requirements are widespread and divergent across Member States.[15] However, mutual recognition is not applied in practice due to the absence of a specific procedure for assessing equivalence of insurance coverage.

Companies follow organisational rules for health and safety according to their home Member State requirements implementing Article 7 of Directive 89/31/EEC.[16] These rules oblige companies to set up internal health and safety structures comprising certain professionals with the necessary capabilities, aptitudes and means, including equipment. Companies may avoid setting up such structures by hiring external health and safety service providers in a home country. It appears that companies are often not in a position to obtain mutual recognition by being allowed to keep their organisational arrangements (be it an internal or external service). Due to absence of specific mutual recognition rules, companies going cross-border to provide construction services need either to restructure their health and safety internal organisation locally (which is often too expensive and impracticable) or to hire a local external health and safety service provider (but not the service provider previously used in the home Member State).

1.5.5 Administrative burden

In terms of the extent of **administrative burdens**, building permit schemes proved particularly restrictive.

E-procedures are not available everywhere. Only Finland, the Netherlands and the United Kingdom provide for full-case handling online, while most Member States only allow for paper forms to be downloaded. The Czech Republic, Germany and Spain allow for some electronic intake. Information in English is partially available in the Czech Republic, Denmark, Finland and the Netherlands. Simple copies are accepted in 7 Member States. In Bulgaria and Spain, certified translations by professionals registered in those countries are required. Moreover, all other Member States require simple translations.

The number of documentary submission demands required varies across Member States. Fees vary even more, ranging from €35 in the Czech Republic (for a one-storey 2 bedroom house) to €125.000 in the Netherlands (for a 10-storey office block), where they do not seem to be proportionate to the cost of administering the authorisation procedure. In the majority of Member States, only one authority is involved in the process of approving submission demands necessary for a building permit (except for Bulgaria, the Czech Republic, Germany, France and Poland).

[14] Although Portugal seems to be in the process of moving in the direction of introducing performance based standards.

[15] Some Member States require insurance coverage for one or more types of insurance coverage (work performance, latent defects and tort liability).

[16] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Some Member States control planning issues in a separate procedure: these are the Czech Republic, Greece, Spain, the United Kingdom and, in the absence of spatial planning regulations for the area concerned, France and Poland. In these countries the duration of procedures should be shorter and tacit approval more widespread. The duration of procedures in these countries range from 2 days in Greece to 12 weeks in Spain (for a 10-storey office block). Germany stands-out with short procedural durations (4 or 8 weeks) and tacit approval. However, 10-storey office blocks in the Netherlands take up to 26 weeks to receive approval. Twelve Member States (except for Finland and the United Kingdom) do not accept designs submitted by professionals operating from another Member State.

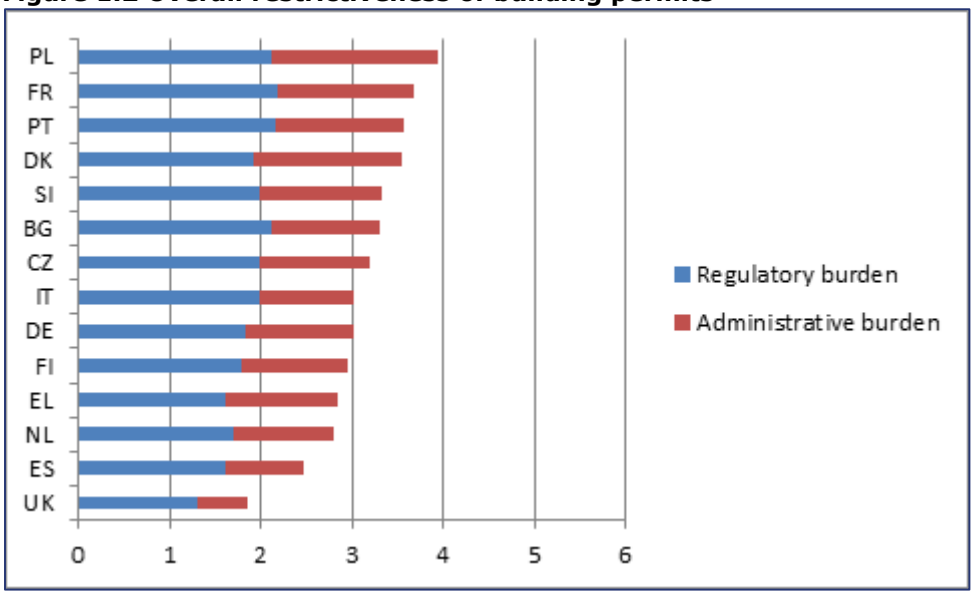
1.5.6 Overall Level of restrictiveness of building permit schemes

The key findings are:

- The United Kingdom (England) has the least restrictive building control regime when examined against the relevant Articles of the Services Directive. Better performance could be attained regarding mutual recognition and tacit approval;
- Finland, Germany, Greece, Italy, the Netherlands and Spain have performed in a satisfactory manner against the indicators. There are various strengths and weaknesses linked to each country. Finland, Greece, Spain and the Netherlands have relatively low scores regarding administrative simplification. Most of these countries have performed well on regulatory restrictiveness. Finland and the Netherlands have very good scores regarding e-procedures. However, better performance could be attained regarding mutual recognition;
- Bulgaria, the Czech Republic, Denmark, France Poland, Portugal and Slovenia have performed less well against the indicators. The Czech Republic, France and Portugal are more restrictive in terms of mutual recognition. The remaining countries have not performed well on administrative simplification.

Figure 1.2 provides the combined results of the indicator assessment of the overall restrictiveness of building permit legislation. This assessment combines the results around the assessment of administrative and regulatory burdens. The least restrictive countries are associated with low scores and the reverse is true for countries with high scores. A colour-coded break down is provided of the individual indicator results in relation to the individual scores for administrative and regulatory burdens.

Figure 1.2 Overall restrictiveness of building permits



1.6 Evaluation of Voluntary Certification Schemes against the Principles of Mutual Recognition and Simplification – Key Findings

A sample of different types of voluntary certification schemes in 12 Member States were selected for assessment and evaluated against the principles of mutual recognition and simplification.[17] The evaluation took into account whether authorities recognise such voluntary certification schemes as an alternative to regulatory compliance or help service providers to meet requirements set in law.

In terms of the voluntary schemes that act as an alternative to regulatory compliance, it was found that only a small proportion offer this feature namely those based on national standards with direct reference to national legislation. This category of voluntary certification scheme based on national standards performs well against the principle of simplification. However, such schemes do not support mutual recognition of service providers since construction regulations and standards vary widely across Member States.

In contrast, voluntary certification schemes based on international (ISO) or European standards offer the potential for the mutual recognition of service providers, given that the relevant certification bodies operate under Regulation 765/2008, on accreditation. Therefore, certification issued in one Member State should be recognised in another Member State. However, it is normally the case that certification of this nature does not provide an alternative to regulatory compliance. Therefore it performs less well regarding their potential for simplification of formalities accessing foreign markets. Voluntary certification schemes can only be tools for simplification and mutual recognition if certain conditions are met, of which the most important are:

- The use of an initial and one-off control procedure (e.g. type approval of plans or certification of service providers) to enhance the potential for simplification of subsequent authorisations made in the context of recurrent building permit procedures;

[17] Suitable voluntary certification schemes that would add value to the sample could not be identified in CZ and EL.

- Restriction to standard / recurrent activities or construction works where it is easier to develop internationally accepted norms to enhance the potential for mutual recognition in building permit procedures;
- Accreditation, to signal to cross-border clients the ability to comply with national regulations, both for management systems and for professional qualifications.

1.7 Stakeholders Interviews: Key Findings

The final study task was to conduct interviews with stakeholders located in the fourteen Member States to collect feedback on:

- Where the main problems and costs for going cross-border reside;
- Whether electronic document submission, procedures and formalities are available as part of horizontal authorisation schemes and building permit processes;
- The practical implementation of the mutual recognition principle in the context of cross border authorisation and how it can be improved.

Only a total of thirty interviews were conducted with European and national level associations, architects, building engineers and construction services companies. Due to the limited number of interviewees per Member State, the interview results should be seen as illustrative only and not as representative of the construction services sector. When companies work cross-border, the main problems relate to:

- Understanding the requirements of specific local regulations, for example those related to cultural heritage and environmental issues, since these differ per country, municipality and city;
- Understanding what documents need to be submitted and in which way, for example who needs to sign? Is an official translation needed or not?
- Unidentified risks that have to be taken into account due to unfamiliarity with local administrative practices or unexpected delays in procedures;
- Where only locally-registered professionals may submit designs while applying for building permits;
- Where only very large companies have access to (very costly) international insurance policies which may be recognised across Member States;
- The local languages that are used by legislative documents and documented procedures and have to be followed in the context of the building permit application.

It was found that many companies choose not to work cross-border due to these problems. If cross border services are provided, a number of different strategies are used to circumvent problems, such as setting up a joint venture with a local company, or hiring a local architect or firm to handle administrative procedures. This can explain why regulatory hurdles regarding organisational aspects of the cross-border operation (such as equipment and professional capacity requirements, health and safety service structures) are not highlighted as common obstacles. A local structure according to host Member State rules is commonly set up precisely to avoid such barriers.

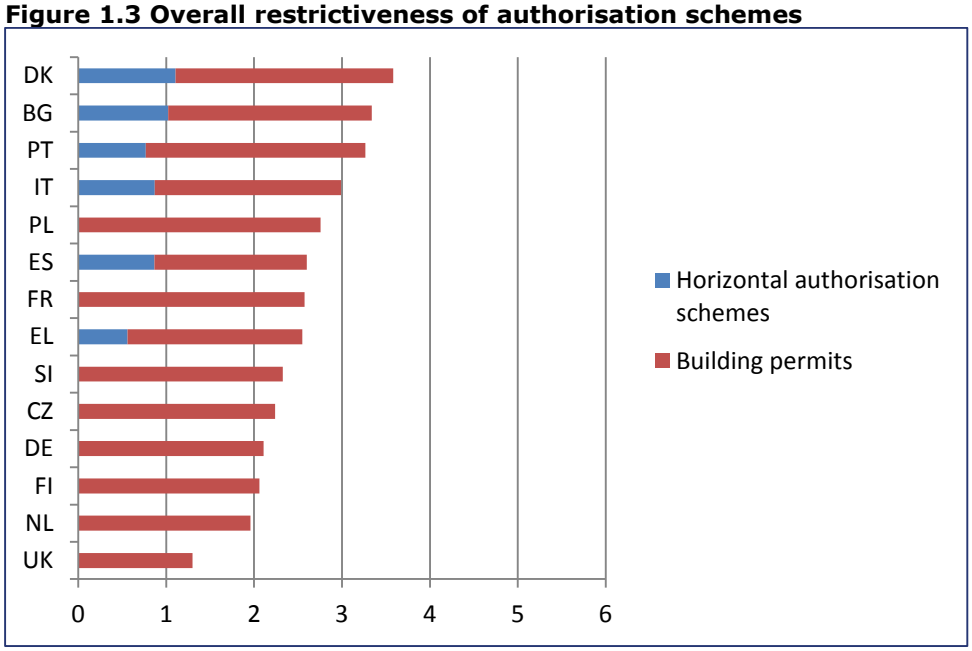
Most interviewees think that online case handling has significant benefits for improving the efficiency of application processes. Almost all interviewees are in favour of EU-level reforms aimed at harmonising and simplifying cross border procedures that apply

to the construction sector. The scope of such reforms could include streamlining regulatory conditions with respect to economic and financial capacity, insurance, health and safety, and good repute of service providers. To address this issue, interviewees were of the opinion that EU-level forms and procedures could be introduced.

1.8 General conclusions

The table below provides an overview of the indicator results for each of the Member States examined in terms of the level of compliance with the Services Directive regarding legislation for horizontal authorisation schemes (weighted to 30%) and building permit legislation (weighted to 70%). An overall score is also provided. The least restrictive countries are associated with low scores, and the reverse is true for countries with high scores.

Figure 1.3 Overall restrictiveness of authorisation schemes



Based on the research findings, there is considerable room for simplification of procedures imposed on cross-border service providers of construction services, in terms of establishment and those offering temporary cross border services.

Horizontal authorisation schemes: In the 6 Member States that impose them, they have little or no impact in simplifying subsequent building control procedures and operate as barriers to service provision.

In most cases, horizontal authorisation schemes apply equally to temporary cross-border providers. Authorisations are not valid indefinitely and often require service providers to undergo the initial procedure (whether completely or partially) on subsequent occasions. Their proportionality is also questionable given their uniform application to all kinds of works, simple or complex.

Building permits, are also in need of considerable simplification.

- They apply unevenly to categories of works across Member States. Alternative procedures and the exemptions available should be expanded upon to cover a greater variety of works;
- In the same way as horizontal authorisation schemes, declarations and self-certifications are generally not used by building permit procedures;
- Non-site specific issues are often controlled repeatedly for each building project.

A common element for both **horizontal authorisation schemes** and **building permits** seems to be the lack of clear mutual recognition principles and procedures:

- For example, a cross-border service provider is forced to restructure its approach to service provision when going cross-border, even temporarily. Or it must adapt to new requirements, in view of technical and professional capacity requirements, and associated certifications, that are imposed whilst disregarding safeguards previously complied with in a home Member State. Health and safety service structures have to be set up irrespective of home Member State facilities and resources. Technical standards which are not performance based may be more difficult to comply with and may require the advisory inputs of local professionals. Insurance coverage needs to be purchased locally, on top of every other previously acquired across Member States;
- The few exceptions are either linked to recognition of international standards (Italy), of professionals qualified according to home Member State rules (Portugal), in relation to horizontal authorisation schemes, and, more decisively, the widespread use of performance-based technical requirements (especially in Greece, Spain, France and the United Kingdom). Voluntary certifications schemes available in the market today, while helpful for providers complying with rules at a national level, where found not to offer potential for enhancing mutual recognition: either they focus on issues largely irrelevant for regulatory compliance or, if not, are not recognised cross-border given the disparity of the underlying standards they are based on.

From an **administrative burden perspective** regarding both **horizontal authorisation schemes** and **building permits**, a number of issues have been identified such as:

- e-procedures are only partially adopted;
- Evidentiary requirements are too stringent, with little room for simple declarations and self-certifications;
- Certified and authenticated copies are still required, and sometimes need to be produced in the host Member State;
- in some cases, fees are disproportionate to costs;
- and tacit approval is not a widely adopted practice, even for horizontal authorisation schemes and building permits not controlling zoning aspects.

2 Methodology for the legal evaluation of horizontal authorisation schemes and building permit legislation

2.1 Methodology

The objective of the study methodology is to evaluate national legislation for horizontal authorisation schemes and building permit legislation against relevant Articles of the Services Directive:

- Both horizontal authorization schemes and building permit legislation are evaluated against Articles 5, 8, 9(1), 10 (3)(4), 13(2)(3)(4), 16(2)(b) (f);
- The horizontal authorisation schemes are also evaluated against Article 11(1) (2).

A secondary objective was to evaluate voluntary certification schemes offered to construction service providers against the principles of simplification and mutual recognition established by the Services Directive.

This chapter indicates the approach used by the study to perform the analysis of 14 Member State legal frameworks and individual voluntary certification schemes.

2.2 Services Directive Indicators

With a view to examining the extent of compliance of national legislation with the Services Directive, the study performed its analysis with the assistance of an indicator framework directly linked to specific Articles of the Directive.

The indicator framework used by the study was informed by the principles and approach developed by the OECD to monitor Product Market Regulation (PMR).[18] Some of the key principles of the PMR indicator methodology are indicated in the following text box.

> ***Key Principles of the OECD PMR indicator methodology***
> *The OECD PMR indicators examine the performance of regulation that affect competitive pressures in areas where competition is economically viable.[19] The aspects of regulation that are focused on relate to requirements for curb efficiency-enhancing competition, whereas regulations in areas in which competition would not lead to efficient outcomes (e.g. natural monopolies) are not considered.[20]*
>
> *For the purpose of assessing regulations in the professional services sectors, the implicit assumption of the PMR approach is that barriers to entry, or constraints on conduct that exist in one country but not in others, are not needed to ensure service quality, protect workers or protect consumers and, hence, unnecessarily distort competition.[21]*

18 http://www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm.
19 http://www.oecd-ilibrary.org/content/workingpaper/362886816127.
20 http://www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm.
21 This seems a reasonable assumption to make when dealing with inherently competitive sectors in OECD countries, which have by and large similar degrees of development, institutional quality, social

However, the PMR indicators are silent on the quality of regulation according to criteria other than encouraging competition, or the extent to which regulations achieve non-economic policy goals.

The PMR indicators only examine the specific regulatory requirements when measuring performance, rather than analysing stakeholder responses on their suitability. The benefits of this approach are that the indicator results are isolated from context-specific assessments and can be compared between countries.[22]

The PMR indicator framework relies upon a system of coding, aggregation and weighting. In relation to each of the indicators, the results are coded by assigning a numerical value to each of the possible replies to a given question. For example, 0 to 6 reflecting increasing restrictiveness of regulatory provisions to competition.

For the purpose of aggregation, the individual indicators are grouped according to a specific hierarchy with for example a series of complementary 'low-level' indicators being collectively linked to a 'higher level indicator'. At each level of the hierarchy, the results are aggregated and a numerical value of 0 to 6 is given.

A weighting system is used to take into account the relationship between the specific legal feature(s) examined by the indicators at various levels of the hierarchy, and the extent to the indicators individually and collectively impact on market access and competition.

Furthermore, the 0 and 6 scores are relative to theoretical situations (best practice or worst practice, respectively) and do not necessarily reflect the extreme situations found in the sample of countries that are examined. Hence, the rankings are not sensitive to changes in country coverage if the assessment is extended to a different country sample.

With a view to ensuring conformity with the OECD PMR indicator methodology, a number of methodological features were adopted for the development of the indicator framework linked to the relevant Articles of the Services Directive:

- In order to examine whether specific regulatory features are apparent in national legislation, the indicators were based on 'Yes/No' questions or were linked to a sliding scale of procedural restrictiveness e.g. "Yes" – 0 points, "Partially" – 3 points, "No" – 6 points;
- The low level indicators were coded (from 0 to 6 in relation to increasing levels of restrictiveness) and weighted according to the extent to which the legal feature examined impacts on the efficiency of regulatory compliance with the relevant authorisation procedure;
- The first level of aggregation applies at the level of an individual Article (assuming that more than one indicator was used for a given Article). A score of 0 to 6 was given;
- The second level of aggregation relates to the sum of the Articles used for the indicator analysis. A score of 0 to 6 was given;

protection systems and product quality enforcement. This assumption is supported by a growing body of research showing that many of the entry and conduct restrictions observed in the professional services industries tend to benefit incumbents at the expense of productive efficiency and the welfare of consumers (OECD, 2000).

[22] Ibid.

- Each indicator was weighted according to the effects that certain legal features have in terms of impacting on the overall level of restrictiveness of the authorisation procedure;
- The indicator analysis was conducted objectively. It did not rely upon the evaluative inputs of stakeholders with regard to their views on the extent of restrictiveness of specific aspects of national regulation;
- The indicators are silent on the quality of regulation at national level;

Given the competitive position of the construction sector in Europe, it is assumed that where restrictions are not apparent in one country they are not needed in other countries in order to ensure service quality, protect workers or consumers and, hence, unnecessarily distort competition. The indicators used by this study are indicated below. Table 2.1 sets-out the indicators used to examine the horizontal authorisation schemes. Table 2.2 indicates the indicators used to assess national building permit legislation. In each of the tables, percentage figures are given which indicate the weighting system adopted for each of the indicators. The right hand column indicates the 'low level indicators' that relate to the specific legal features examined. The left hand column relates to the 'high level indicators' at the level of individual Articles. An overall weighting is given to the entire indicator framework for both horizontal authorisation schemes (30%) and building permit legislation (70%).

Table 2.1 Service Directive Compliance Indicators (the indicators for horizontal authorisation schemes).

Summarised Articles	Proposed Low level Indicators
Articles and indicators applicable to horizontal authorisation schemes (30%)	
Article 5 Simplification of procedures **(15%)**	Number of authorities involved in the process of approving submission demands necessary for a horizontal authorisation scheme (for example: 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points); -25%. How many categories of documents / statements apply to authorisation schemes? (for example: 1 – 1 points; 2: 2 points; 3: 3 points; 4-4 points; 5-5 points; 6 or more than 6: 6 points); - 20%. Are simple copies accepted? (0 Y/ some docs or after further formalities 3/ N 6) – 10%. Is EN accepted? (0 Y/ some docs 3/ N 6) – 10%. Where a certificate, attestation or other document proving that a requirement has been satisfied is demanded, do authorities accept equivalent documents issued in another Member State (Y 0/ some docs or with other supporting docs 3 N 6); – 15%. Are certified or authenticated documents (including translations) issued in other MS accepted? (Y 0/, only after further formalities are observed or some docs 3, N 6); - 10%. Is the legislation and website available in EN? (Y0/ partially 3 /N6) - 10%.
Article 8 Procedures by electronic means **(10%)**	Is the entire application process (from initial submission to final approval) supported electronically and can it be performed at a distance: ▪ There are no electronic procedures available 6; ▪ Paper forms can be downloaded 4; ▪ Electronic intake in some areas is possible 2;

Summarised Articles	Proposed Low level Indicators
	▪ Full case handling is possible 0.
Article 9 (1) Member States should not make access to a service activity or the exercise thereof subject to an authorisation scheme unless specific conditions are satisfied **(20%)**	Are construction service providers subject to approval through a horizontal authorisation scheme prior to applying for a building permit (Y 6 /N 0) (This does not include authorisation schemes that specifically control regulated professions). – 50% Number of horizontal administrative procedures to be completed by a contractor or developer (for example: 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points); – 25% Possibility of exemption from administrative procedures for certified or qualified service providers (for example: yes – 0 points, for some –points, no – 6 points). – 25%
Article 10 (3) The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. **(20%)**	Is there a country of origin and/or mutual recognition principle in place, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y 3) Or neither? (6) -70%. Is there a country of origin and/or mutual recognition principle in place for insurance, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y 3) Or neither? (6) -30%.
Article 10 (4) The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory. **(5%)**	Does the horizontal authorisation scheme enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory? (Y 0 / N 6).
Article 11 (1) An authorisation granted to a provider shall not be for a limited period, except where: (a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements; (b) the number of available authorisations is limited by an overriding reason relating to the public interest; or (c) a limited authorisation period can be justified by an overriding reason relating to the public interest. **(5%)**	Are authorisations granted for a limited period (N 0); If yes, A differentiation in the score should be made for the cases of: a) automatic renewal of the authorisation 1, b) renewal upon payment of a fee 2 c) renewal requires a new application 4, d) with the same procedure as for the initial authorisation 6.

Summarised Articles	Proposed Low level Indicators
Article 13 (2) Authorisation procedures and formalities shall not be unduly complicated or delay the provision of the service. Any charges which the applicants may incur from their application shall be reasonable and proportionate. **Article 13 (3)** Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly which is fixed and made public in advance **Article 13 (4)** Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. **(10%)**	Are fees proportionate to cost? (Y 0 / N 6) – 25% How long is the (initial) fixed period for decision (< 15 working days 0/ 15-30 working days – 3/ > 30 working days or not fixed 6) -25% Can fixed periods be extended by the competent authority for a minimum time (no extension 0 / 1 extension: 3/ more than one extensions: 6); -10% Are applicants notified of extensions before the original period has expired (Y/NA 0 / N 6); -10% If fixed periods have expired, are authorisations deemed to have been granted (Y 0 / N or no fixed periods 6); -30%
Article 16 (2)b Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing: an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register etc. **Article 16 (2) f** Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided; **(15%)**	Where service providers are established in another Member State and intend to provide temporary cross-border services, are horizontal schemes imposed (no requirement 0; notification 3 or authorisation 6)? (This does not include authorisation schemes that specifically control regulated professions) -70% Where service providers are established in another Member State and intend to provide temporary cross-border services, are requirements on the use of equipment imposed? (Y 6 / N 0); -30%

The table below relates to the indicators established for the analysis of building permit legislation.

Table 2.2 Service Directive Compliance Indicators (the indicators for building permit legislation).

Summarised Articles	Proposed Low level Indicators
Articles and indicators applicable to building permit legislation (70%)	
Article 5 Simplification of procedures **(25%)**	Number of authorities involved in the process of approving submission demands necessary for a building permit under the regular procedure (for example: 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points); - 15% How many categories of documents / statements apply to the regular procedure? (for example: 1 – 1 points; 2: 2 points; 3: 3 points; 4-4 points ; 5-5- points; 6 or more than 6: 6 points); - 10% Are simple copies accepted? (0 Y/ some docs or after further formalities 3 N 6) – 5% Is EN accepted? (0 Y/ some docs 3 N 6) – 5% Are there optional procedures available for the categories of buildings included in the study (one storey house, ten storey office block) such as regular procedures alongside building notices (0 Y/ N 6) – 10%; Are there procedural options to the applicant to comply with a regular procedure for the categories of buildings included in the study (one storey house, ten storey office block) that reduce the complexity of the submission demands(0 Y/ N 6) – 5%; Is minor work exempt from building permit requirements (Y0/ Notification 2 / simplified procedure 4 N 6) - 15%; Is the activity of applying for a building permit reserved to a regulated profession(s) (N – 0 points, Y, for more than one profession – 3 points ; for one profession – 6 points) -15% Where a certificate, attestation or other document proving that a Requirement to obtain the building permit (not to recognise professional qualifications) has been satisfied is demanded, do authorities accept equivalent documents issued in another Member State (Y 0/ some docs or with other supporting docs 3 N 6); -10% Are certified or authenticated documents (including translations) issued in other MS accepted to obtain the building permit (not to recognise professional qualifications)? (Y 0/, only after further formalities are observed or some docs 3, N 6); -5% Is the legislation and website available in EN including the listing of standards? (Y0 partially 3/N6) -5%
Article 8 Procedures by electronic means **(10%)**	Is the entire application process (from initial submission to final approval) supported electronically and can it be performed at a distance: ▪ There are no electronic procedures available 6; ▪ Paper forms can be downloaded 4; ▪ Electronic intake in some areas is possible 2; ▪ Full case handling is possible 0.

Summarised Articles	Proposed Low level Indicators
Article 9 (1) Member States should not make access to a service activity or the exercise thereof subject to an authorisation scheme unless specific conditions are satisfied **Article 16 (2)b** Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing: an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register etc. **(15%)**	Number of administrative procedures to be completed from building permit to final completion in the framework of a building permit application under the regular procedure (for example: 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points). – 70% Possibility of exemption from administrative procedures from building permit to final completion for certified or qualified service providers (for example: yes – 0 points, for some –points, no – 6 points). – 30%
Article 10 (3) The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. **(25%)**	Is there a country of origin and/or mutual recognition principle in place (for example, relating to equipment to be used, health and safety rules to follow, technical rules to follow (European or international standards or performance-based standards are considered mutual recognition clauses), in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y in a MS with performance-bases technical standards 3 in a MS with combined prescriptive and performance-based standards 4 in a MS with mainly prescribed standards 5) Or neither? (6) – 70% Is there a country of origin and/or mutual recognition principle in place for insurance, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y 3) Or neither? (6) – 30%
Article 10 (4) The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory. **(5%)**	In so far as building permits control compliance with requirements which are not site-specific, are such parts of the authorisation schemes valid nationwide? (Y or N/A 0 / N 6)
Article 13 (2) Authorisation procedures and formalities shall not be unduly complicated or delay the provision of the service. Any charges which the applicants may incur from their application shall be reasonable and proportionate. **Article 13 (3)** Authorisation	Are fees proportionate to cost? (Y 0 / N 6) -25% How long is the (initial) fixed period for decision (< 15 working days 0/ 15-30 working days – 3/ > 30 working days or not fixed 6) -25% Can fixed periods be extended by the competent authority for a minimum time (no extension 0 / 1 extension: 3/ more than one

Summarised Articles	Proposed Low level Indicators
procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly which is fixed and made public in advance **Article 13 (4)** Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. **(15%)**	extensions: 6); -10% Are applicants notified of extensions before the original period has expired (Y/NA 0 / N 6); -10% If fixed periods have expired, are authorisations deemed to have been granted (Y 0 / N 6); -30%
Article 16 (2) f Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided; **(5%)**	Where service providers are established in another Member State and intend to provide temporary cross-border services, are requirements on the use of equipment imposed? (Y 6 / N 0).

2.3 Legal evaluation of horizontal authorisation schemes and building permit legislation

The subsequent step in the assessment was the legal evaluation of the building permit and horizontal authorisation scheme legislation against relevant articles of the Services Directive where:

- Both legal inventories were evaluated against articles 5, 8, 9(1), 10 (3)(4), 13(2)(3)(4), 16(2)(b) (f);
- The horizontal authorisation scheme inventory was also evaluated against article 11(1) (2).

The legal evaluation further reinforced the findings of the quantitative indicator results highlighting areas of relative restrictive and non-restrictive measures in the context of the relevant Articles. The aim was to demonstrate that in relation to all Articles of the Services Directive, one or more Member States were very likely to have already adopted certain legal features that are compliant with the Directive and demonstrate high levels of procedural efficiency. Therefore, in this context, a key task of the legal evaluation was to pin-point areas of Member State legislation that are indicative of good (and poor) practice.

The legal evaluation was supported by feedback and analysis of interview results collected from 30 industry stakeholders, consisting of European and national level associations, architects, building engineers and construction services companies. The

interview questions were designed to complement the indicator framework and Articles of the Services Directive. The aims of the interviews were to establish 'on the ground':

- Where the main problems and costs for going cross-border reside;
- Whether electronic document submission, procedures and formalities are available as part of horizontal authorisation schemes and building permit processes;
- The practical implementation of the mutual recognition principle in the context of cross border authorisation and how it can be improved.

Based on these findings, a number of good practices were highlighted and suggested for adoption to meet the needs of the relevant Articles by all Member States.

As a result of the nature of the data obtained it was difficult to examine the costs quantitatively of going cross border for multiple reasons, including the fact that the costs differ widely depending on the nature of the business strategy and construction works implemented by individual companies.

3 Legal inventory and evaluation of horizontal authorisation schemes

A key study objective was to perform a legal mapping exercise and evaluation of national legislation relating to horizontal authorisation schemes.

According to the definition used by this study, a horizontal authorisation scheme is a legal requirement and procedure that all or certain construction service providers must fulfil in order to gain authorised access to the construction services market, although authorisation schemes controlling only professional qualifications and very closely related conditions are not the object of this study.

Importantly, the Services Directive does not restrict Member States from introducing horizontal authorisation schemes to control the establishment of service providers, particularly where their introduction can be justified by an overriding reason relating to the public interest.

Horizontal authorisation schemes can provide efficient methods of regulatory control for example by introducing one-off or national regulatory compliance processes, and restricting the need for further official assessments to be made as part of the control of specific aspects of service delivery.

However, where Member States have established horizontal authorisation schemes, these must comply with the requirements of mutual recognition and simplification of the Services Directive. The legal evaluation in this section therefore examines the extent of regulatory compliance with the Services Directive in this regard.

This chapter initially provides an overview of the legal inventory for horizontal authorisation schemes in the fourteen study countries. This is followed by an indicator analysis and legal evaluation of the horizontal authorisation schemes examining the extent of compliance against individual Articles of the Services Directive. Finally, an aggregate indicator analysis is undertaken assessing the overall degree of restrictiveness against the Services Directive for each country.

3.1 Identification and assessment of horizontal authorisation schemes

Country / regional overview

On the basis of a legal mapping exercise in the fourteen study countries, a number of different types of horizontal authorisation schemes that apply to the construction services sector were identified. These have one or more of the following attributes:

- *Company registration schemes* that grant authorisation to construction contractors and developers, broadly speaking to enter the construction services market in general or specific segments of the construction services market;
- *Authorisation schemes that grant authorisation to architects, engineers and other professionals* where there are activities reserved to these professions as indicated in the relevant building control legislation: for example, regarding the drawing of technical plans and submission of building permits. But, not those that enable construction professionals (natural persons) to access the construction market in general by controlling only their professional

qualifications and other conditions very closely related, as listed in Annex VII of Directive 2005/36/EC;

- *Mandatory certification schemes relating to contractors, developers and professionals*, but not those that enable construction professionals (natural persons) to access the construction market in general (that is, not in relation to reserved activities linked to building regulations), by controlling only their professional qualifications and other conditions closely related, as listed in Annex VII of Directive 2005/36/EC.

The results of a legal mapping exercise suggest there are only a small number of horizontal authorisation schemes that correspond with the definitions indicated above in the 14 study countries. Table 3.1 sets out the horizontal authorisation schemes identified and this is followed by a description of each.

Table 3.1 Identification of Horizontal Authorisation Scheme

Member State	Horizontal Authorisation Scheme		
	Registration schemes for contractors and developers	Authorisation schemes that grant authorisation to construction professionals	Mandatory certification schemes relating to contractors , developers and professionals
BG	Central Professional Builders Register	N/A	N/A
CZ	N/A	N/A	N/A
DE (NRW)	N/A	N/A	N/A
DK	Act on the approval of establishments in electrical, plumbing and sewer installation		
EL	N/A	Register of building design engineers and construction supervising engineers	N/A
ES (Madrid)	Register of Accredited Companies	N/A	N/A
FI	N/A	N/A	N/A
FR	N/A	N/A	N/A
IT (Milan)		N/A	(1) Certificate of Undeclared Work (DURC) (2) Mandatory Certification 9001.2008
NL	N/A	N/A	N/A
PT	Legal framework applicable to practice of construction activities	N/A	N/A
PL	N/A	N/A	N/A
SI	N/A	N/A	N/A
UK (England)	N/A	N/A	N/A

The **Bulgarian** horizontal authorisation scheme "Registration under the Chambers of Builders Act"[23] is managed by the Bulgarian Construction Chamber.[24] Article 3(2) of the Chambers of Builders Act indicates that contractors providing construction services from the first to fifth categories below must be registered:

[23] http://register.ksb.bg/normativni_dokumenti/2014/Chamber_of_Builders_Act.pdf.
[24] http://www.ksb.bg/en/.

1. Large infrastructure projects of national importance such as highways, railways; public ports and airports;
2. Smaller projects of national or regional importance such as certain categories of roads;
3. Municipal roads and low class primary streets; elements of the technical infrastructure, hydro-technical, hydro-ameliorative and other networks;
4. Private roads, secondary street networks, dwelling and multi-purpose buildings of average height, public service buildings and facilities of 1000–5000 m2 or for 100–200 visitors, industrial buildings with 50–100 working place, parks and gardens of up to 1 hectare, or immovable cultural heritage of local importance;
5. Low-height residential and multi-purpose buildings, villas, public service buildings and facilities of less than 1000 m2 or for less than 100 visitors, industrial buildings with less than 50 working place, and reconstruction and repair works of the buildings in this category.

However, construction companies are not required to register with the Builders Register if they provide services in relation to some types of buildings and works connected to category five above and those that fall into the sixth category below:

1. Temporary structures erected for construction purposes and other minor works for which design approval is not required.

According to Article 14 of the Chambers of Builders Act, service providers that are registered under the first category are entitled to provide services across all construction categories. Similarly, service providers registered under the second category can perform works in all other categories except the first category. Service providers registered under the third, fourth and fifth categories are entitled to carry out construction works as indicated in the relevant registration certificate. As mentioned in section 3.8, construction companies that intend to perform temporary cross-border services are not required to register. In this case, firms provide notification (which may include evidence of a building permit) to the Chamber responsible for the Builders Register.

A horizontal authorisation scheme is in operation in **Denmark** which controls access to the trade activities of electrical, gas, plumbing and sewerage installation as defined under two Executive Orders and supporting laws on authorisation of relevant service providers.[25] This is managed by the Danish Safety Technology Agency. While authorisation schemes that control professional qualifications are outside the scope of this study, the requirements which applicants are required to follow go beyond authorisation of qualifications alone, and impact on the approach to market participation. In relation to each of the trade activities, there are two cumulative application procedures for individuals to register as a 'technically responsible person' and one for companies:

- Application for working permanently in Denmark as an individual, under Authorisation of temporary and occasional pursuit of profession for individuals – see section 3.8;
- Company application. There are slightly different conditions for companies seeking to register permanently and those wishing to provide temporary or occasional services – see section 3.8.

A key feature of the application procedure for 'technically responsible persons' is that individuals must be affiliated with an authorised company for a minimum of 30 hours

[25] https://www.sik.dk/Global/English/Authorisation-and-approval/Relevant-regulation.

per week. In addition, the application procedure for individuals demands that the company application procedure is also completed. Therefore, the company application procedure is mandatory for all individual applicants.

A key feature of the company application procedure is that evidence must be provided that the firm operates an approved quality management system for production and end control: that is a mandatory certification scheme as defined by this study. The certification for the quality management system is available from certification bodies approved by the Danish Safety Technology Agency - not an Accredited Body under the EU Accreditation Regulation. However, as stated in the supporting text explaining the application procedure, if the company already operates a quality management system that is based on European or national standards, evidence of this approved by a registered certification body can be provided in order to seek compliance with the procedure. Compliance is granted after an assessment is made to verify the suitability of the existing quality management system.

In **Greece**, the building permit legal framework has been reformed recently with the introduction of Law 4030/2011[26] and Law 4067/2012.[27] These pieces of legislation have identified the need for the future introduction of a horizontal authorisation scheme for architects and engineers performing key reserved activities namely plan preparation and submission of applications for building permits. This proposed authorisation scheme will not control professional qualifications specifically. This procedure is performed under an existing authorisation scheme and is outside the scope of this study. Rather, the objective of this proposed scheme is to create an electronic register of building designers on the basis of a personal Building ID that will be necessary for indication as part of the application for a building permit. The aim is to link completed construction works to the architect or engineer responsible ensuring that any building defects are traceable to the relevant designer. This may include publication of track records of works performed. Currently, given that the initiation of this horizontal authorisation scheme is dependent upon the issuing of a Ministerial Decision, it remains a legislative proposal at this stage and the scheme's requirements are not fully known. However, it is foreseen that the scheme will support mutual recognition of cross-border service providers.

With regard to **Italy** (Milan), a horizontal authorisation scheme is in operation known as the DURC (Documento Unico di Regolarità Contributiva) as supported by Law No. 266/2002 and Decree Law No. 276/2003.[28] [29] [30] DURC certificates are issued by the Cassa Edile (Construction Fund) which has branches across Italy.[31] The aim of the DURC is to address the problem of the black economy in the construction sector and applies to both national and cross-border construction service providers, operating through secondary establishment or providing temporary cross-border services. The DURC is a certificate indicating compliance with legal obligations to pay social security, welfare and insurance contributions. Regarding private works, a DURC certificate is required as part of the submission demands for a building permit. As part of the procedure to issue a DURC certificate, Cassa Edile gathers relevant data from social security agencies. This includes data linked to all building sites and workers in the geographical area of the relevant branch of Cassa Edile. If the company is identified as compliant on the basis of a regional examination and is not included in the national

[26] http://www.ypeka.gr/Default.aspx?tabid=778&sni%5B1155%5D=1556&language=el-GR.
[27] http://www.ypeka.gr/LinkClick.aspx?fileticket=WsLJDdwJvpw%3d&tabid=506&language=el-GR.
[28] http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-09-10;276!vig=.
[29] http://www.tuttocamere.it/modules.php?name=Content&pa=showpage&pid=271.
[30] http://www.ambientediritto.it/Legislazione/appalti/2002/l%202002%20n.%20266.htm.
[31] http://www.cassaedile.it/.

database of non-compliant companies, Cassa Edile issues the certificate (enabling the application for a building permit to be made). A DURC certificate is valid for 90 days.[32]

A second horizontal authorisation scheme is in operation in **Italy** (Milan) as defined by Decree Law 163/06.[33] This law demands mandatory EN ISO 9001:2008 quality management system certification of construction firms in relation to operators providing services on the basis of private sector contracts with a value equivalent to or greater than €500,000. This requirement seeks to ensure that construction service providers have established organisational measures appropriate to the scale of the contracts they are seeking to manage. The aim of EN ISO:9001 is to support ongoing improvement of organisational quality management systems with a view to meeting customer requirements and ensuring a high level of service quality.[34] The certification is obtainable from an accredited certification body. The certification process can be quite lengthy and may take several months to complete with several applicant visits and assessments made by the certification body. Often, after receiving advice, applicants are initially required to implement the ISO:9001 standard. The progress made is then examined by the certification body on the basis of a series of audits. The certification is awarded when the applicant is in a position to demonstrate compliance with the requirements.

In **Portugal**, a horizontal authorization scheme is in operation as defined by the 'Legal Framework Applicable to Practice of Construction Activity' (*Regime jurídico aplicável ao exercício da atividade da construção*).[35] This includes Government Ordinance no 18/2004 which indicates the documents required to access categories of construction service activities.[36] The Portuguese Institute of Construction and Real Estate (Instituto da Construção e do Imobiliário – InCI) manages the authorisation process. Service providers established in Portugal intending to provide construction services on a permanent basis should apply for a licence. Services providers established in other Member States should apply for a declaration but this provides authorisation in connection with the services provided for an individual contract for a construction project.

However, prior to the finalisation of the study a new piece of legislation was introduced in July 2015 (Law no. 41/2015) that has revoked the existing legal framework for the horizontal authorisation scheme. Hence, it should be recognised that the analysis undertaken in the context of the Portuguese horizontal authorisation scheme may not be in line with the current requirements and conditions.

The horizontal authorisation scheme identified in **Spain**, through the Register of Accredited Companies, which operates under the Ministry of Employment and Social Security. This register supports the authorisation of contractors and subcontractors seeking to offer services to the construction market.[37] It includes cross-border service providers operating on the basis of secondary establishment or providing temporary cross-border services. In Madrid, the Registry or Accredited Companies was established by Decree 91/2008, of July 10th, published in the Official Bulletin of the

[32] http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/certification-of-labour-compliance-italy.

[33] Decree Law 163/06: Codice dei Contratti Pubblici dei lavori, servizi e forniture in attuazione delle direttive 2004/17CE e 2004/18CE. http://www.bosettiegatti.eu/info/norme/statali/2006_0163.htlm

[34] ISO 9001:2008 is based on eight quality management principles: Customer focus: Leadership: Involvement of people: Process approach: System approach: Continual improvement: Fact-based decision making: and Mutually beneficial supplier relationships.

[35] *https://dre.pt/application/file/217215.*

[36] *https://dre.pt/application/file/240965.*

[37] http://rea.mtin.gob.es/rea/.

Community of Madrid on July 14, 2008.[38] The Registry of Accredited Companies aims to ensure that contractors and subcontractors can demonstrate their solvency, prove an appropriate level of health and safety organisational capacity, and indicate completion of health and safety training. Since 26th August 2008, companies that contract or subcontract the performance of any work on a construction site must certify that its contractors or subcontractors are registered in the Registry via a request for a certificate of registration. This activity must be fulfilled prior to the commencement of the contracting or subcontracting procedure.

Table 3.2 lists the categories of submission demands required for each of the horizontal authorisation schemes. This table is analysed as part of the Article 5 indicator assessment.

Table 3.2 Number of documents by categories of submission demands for horizontal authorisation schemes[39]

Member State	Standards	Profession and technical capacity	Health and Safety	Equipment	Insurance	Economic and financial capacity	Good repute	Application form / letter	Other
BG	N/A	4	N/A	1	1[40]	3	1	1	N/A
CZ	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
DE (NRW)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
DK	1 (Firms only)	2(individuals)	N/A	N/A	N/A	N/A	1 (permanent workers and firms)[41] 1 (permanent and occasional workers)[42]	2 (individuals and firms)	1 (Passport – permeant workers)
EL	N/A	2	N/A	N/A	N/A	N/A	N/A	1	
ES	N/A	N/A	2	N/A	N/A	2	N/A	1	N/A
FI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
FR	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IT (DURC)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1[43]	N/A
IT (ISO:9001)[44]	N/A	1	N/A	N/A	N/A	N/A	N/A	1	N/A
NL	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

38 http://www.madrid.org/cs/Satellite?c=CM_InfPractica_FA&cid=1142349804727&idConsejeria=1142697631805&idListConsj=1109266100973&idOrganismo=1109266228548&language=es&pagename=ComunidadMadrid%2FEstructura&pv=1142349819283&sm=1109266100977.

39 This table refers to documents required for primary/secondary establishment and not temporary cross-border providers.

40 Please see section 4.7 on insurance for further details.

41 This relates to a criminal record check.

42 This is related to evidence of non-exclusion from the sector.

43 After data is provided in the form, the authorisation body requests information from social security bodies to check the data provided in the form is accurate.

44 Certification bodies independently establish their own requirements for submission demands that may go beyond the minimal requirements set by accreditation bodies. Therefore, the data presented is indicative.

Member State	Standards	Profession and technical capacity	Health and Safety	Equipment	Insurance	Economic and financial capacity	Good repute	Application form / letter	Other
PT	N/A	4	N/A	N/A	1[45]	2	N/A	1	N/A
PL	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
UK	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Table 3.3 details the fees imposed to complete a horizontal authorisation procedure. This table is analysed as part of the Article 8 indicator assessment.

Table 3.3 Fees imposed to complete a horizontal authorisation procedure

Member State	Fees	Renewal
BG	Applicants pay 0.1% of their net revenue for the last financial year but not less than €613. The maximum fee rate is €15,338.	To change construction category, a fee of €255.65 is required. An annual fee is imposed linked to the construction category.
CZ	N/A	N/A
DE	N/A	N/A
DK	€334 (This relates to the joint fee for two authorisation procedures for companies and individuals applying for permanent status[46]) €1500 approx. (Certification fee for the mandatory quality management system)[47]	€1000 approx. [48](a recertification fee is imposed every two years for the quality management system)
EL	Not known at this stage.	N/A
ES	Free of charge[49]	N/A
FI	N/A	N/A
FR	N/A	N/A
IT (DURC)	Free of charge[50]	N/A
IT (EN:ISO9001:2008	€4000-5000 approx.[51]	€3000-4000 approx.(a recertification fee is imposed every three years for the quality management system)
NL	N/A	N/A
PT[52]	The fee system in PT for registration is complex and is	To change construction category, a fee is imposed dependent on the

45 Please see section 4.7 on insurance for further details.

46 This relates to €167 for each procedure. There is no processing fee for notification of temporary and occasional pursuit of profession for individuals.

47 The fees are indicative as they depend on the sector, the specific services the firm wishes to be approved for, and the number of visits required before the firm is found to meet the requirements. The fees indicated relate to the general estimated costs for a small business (up to 10 persons) and include registration, initial visit, a follow-up visit, and assessment of company documentation.

48 This fee relates to recertification visits to the same firm assuming other conditions are found to be compliant.

49 Free of charge in Madrid but not all regions e.g. Catalonia.

50 The authorisation process is free of charge. There is an annual cost of ten euros (€10) relating to each 100 mega-bytes of storage needed to maintain data on applicants.

51 This relates to the approximate costs for a small firm (up to 10 persons).

52 Please note that this assessment applies to the previous piece of legislation which has been replaced by a new law introduced in June 2015.

Member State	Fees	Renewal
	linked to a small percentage cost of the wage salary index for specific groups of contractors.	category. A revalidation fee is imposed based on a similar calculation methodology as the initial fee.
PL	N/A	N/A
SI	N/A	N/A
UK	N/A	N/A

3.2 Indicator analysis and legal evaluation Article 5

The section below provides the indicator analysis and legal evaluation of the horizontal authorisation schemes identified. Member States that appear to have not established horizontal authorisation schemes in line with the study definitions are indicated as not applicable in the assessment (CZ, DE, FI, FR, NL, PL, SI, UK). To begin with, an indicator analysis and legal evaluation is performed under Article 5 of the Services Directive.

Summary of Article 5

- Article 5 (simplification of procedures) Member States shall examine the procedures and formalities applicable to access a service activity and to the exercise thereof. Where procedures and formalities examined under this paragraph are not sufficiently simple, Member States shall simplify them;
- Article 5 (simplification of procedures): Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may not require a document from another Member State to be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

Interpretation of the articles above in the context of horizontal authorisation scheme legislation

Article (5) requires Member States to establish authorisation procedures that offer efficient routes to regulatory compliance for service providers established nationally and cross-border. In doing so, the legislation and relevant websites should be provided in EN. In addition, where the submission of professional certificates or similar are required, non-bureaucratic mutual recognition procedures should be established, permitting the use of simple copies, EN language documents, and requesting a limited range of submission demands.

Indicator analysis Article 5 (Simplification of procedures)

The table below provides an analysis of the horizontal authorisation schemes identified against a number of indicators developed under Article 5 (simplification of procedures). These aim to assess whether:

- Procedures are sufficiently simple for example in terms of the number of authorities involved in the process and the number of categories of documents accepted;
- Simple copies (e.g. photocopies of original documents) are accepted;
- EN language versions of documents are accepted;
- Certified or authenticated copies are requested. For example, official documents issued by competent authorities in other Member States or documents that have been verified as authentic by a legal authority in other Member States;
- Equivalent documents are accepted. For example, documents that contain equivalent content that equally demonstrate the relevant requirements have been met.

Table 3.4 Indicator analysis Article 5

Article 5 Simplification of procedures																
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**[53]	**IT**[54]	**NL**	**PL**	**PT**	**SI**	**UK**
Number of authorities involved in the process of approving submission demands necessary for a horizontal authorisation scheme (for example: 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points);	0	N/A	N/A	2	0	0	N/A	N/A	0	0	N/A	N/A	0	N/A	N/A
How many categories of documents / statements apply to authorisation schemes? (for example: 1 – 1 points; 2: 2 points; 3: 3 points; 4: 4 points; 5: 5 points; 6 or more than 6: 6 points);[55]	6	N/A	N/A	4	2	3	N/A	N/A	1	2	N/A	N/A	4	N/A	N/A
Is the legislation and website available in EN? (Y0 / partially 3 /N6)	3	N/A	N/A	3	N/A	6	N/A	N/A	6	3	N/A	N/A	3	N/A	N/A
Are simple copies accepted? (0 Y/ some docs or after further formalities 3 / N 6)	3[56]	N/A	N/A	0	N/A	3	N/A	N/A	0	0	N/A	N/A	3[57]	N/A	N/A
Is EN accepted? (0 Y/ some docs 3 / N 6)	6	N/A	N/A	3	N/A	6	N/A	N/A	6	6	N/A	N/A	3	N/A	N/A
Where a certificate, attestation or other document proving that a requirement has been	0	N/A	N/A	0	N/A	0	N/A	N/A	0	0	N/A	N/A	0	N/A	N/A

[53] This corresponds to the DURC scheme.
[54] This corresponds to the EN:ISO 9001:2008 scheme.
[55] Please note that the analysis of categories of documents relates to the number of different categories overall not the number of individual documents (please see table 3.2).
[56] Certified translations must be submitted in original format.
[57] If there are doubts, original copies may be requested by the authority and therefore a score of 3 has been given.

Article 5 Simplification of procedures															
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**[53]	**IT**[54]	**NL**	**PL**	**PT**	**SI**	**UK**
satisfied is demanded, do authorities accept equivalent documents in another Member State (Y 0/ some docs or with other supporting docs 3 N 6);															
Are certified or authenticated documents (including translations) issued in other MS accepted? (Y 0/, only after further formalities are observed or some docs 3, N 6);	3[58]	N/A	N/A	0	N/A	3[59]	N/A	N/A	0	0	N/A	N/A	0	N/A	N/A

In **Bulgaria**, engagement with one authority is required as part of the horizontal authorisation procedure (Bulgarian Construction Chamber). The legislation is available in a non-official EN version.[60] The website and application form is available in BG.[61] There are several categories of documents required suggesting a score of 6 should be allocated against the relevant indicator. The categories are an application form, four types of professional capacity documents, an equipment inventory, copies of insurance documents, a document of good repute, and three types of economic and financial capacity documents. Simple copies of all documents are accepted but not official translations which must be submitted in original format and certified by a translator registered in BG (as a result a score of 3 has been awarded). EN documents and procedures are not accepted as all foreign language documents must be supported by official translations, and therefore a score of 6 has been given.

The legal text makes it clear that where relevant certified documents issued by a relevant authority in another Member State are accepted as meeting the requirements, for example a document on the right to perform construction works and payment of social security and tax obligations. However, a score of 3 applies in this instance due to translations issued in the home MS not being accepted. The requirements support the submission of equivalent documents. For example, Article 17, paragraph 3, of the Chamber of Builders Act indicates that applicants must submit a document, certifying the right of the applicant to perform construction works, issued by a competent authority of a Member State of the European Union, or of another country which is party to the Agreement in the European Economic Area, or the Swiss Confederation.[62] Similarly, with regard to financial and economic capacity requirements, documents may be submitted proving fulfilment of tax and social security obligations issued by a competent authority in another Member State.[63] Where relevant, equivalent documents can be prepared by representatives of

[58] Translations must be certified in the host MS (by translators registered in BG).
[59] Translations must be certified in the host MS (by translators sworn in in ES).
[60] http://register.ksb.bg/normativni_dokumenti/2014/Chamber_of_Builders_Act.pdf.
[61] http://register.ksb.bg/normativni_dokumenti/2013/Zayavlenie_parvona4alno_foreign_company_502.doc.
[62] Alternatively, applicants may provide indication of the relevant home Member State legislation that gives the applicant the right to provide construction services.
[63] or of another country - party to the Agreement on the European Economic Area, or of the Swiss Confederation.

economic entities established in the EU such as annual financial reports for the previous three years. A score of 0 has been awarded.

In **Demark**, the authorisation procedure is managed by a single authority, the Danish Safety Management Authority. However, in the case of the authorisation procedure for companies, a third party is required to initially participate in the process with a view to certifying the firm's quality management system. A score of 2 has been given relating to the number of authorities involved in the approval process. The relevant legislation is in DK and the website is in EN and therefore a score of 3 has been given.[64]

It is stated that the authorisation procedure corresponds to the requirements of the Professional Qualifications Directive (2005/36/EC). Translations of essential documents are required if genuinely needed for processing the application, given that translations may be required a score of 3 has been allocated to the indicators relating to EN documents. A number of categories of documents are required for submission by both individuals and firms. These are two application forms, ID, two professional capacity documents, evidence of non-exclusion from the profession, an approved quality management system, a criminal record, and certified evidence of non-exclusion from the sector. Therefore an overall score of 5 has been awarded for the number of categories of documents required given that both types of authorisation processes must be followed to access the market (for individuals and for firms).

Simple copies of documents are accepted in all cases therefore a score of 0 has been awarded. Certified documents are required, such as the document requested certifying lawful establishment in another Member State. A certified document is also required certifying that the applicant has not been formally excluded from providing relevant services even temporarily in the Member State where the service provider is established. Given their nature, they are all issued in the home MS. A score of 0 has been given in the context of acceptance of certified documents. The requirements make it clear that equivalent documents issued by the relevant authorities in the home Member State should be submitted (namely the documents indicated above). A score of 0 has been awarded in this regard.

The indicator results for **Greece** are speculative as the horizontal authorisation scheme is not yet operational. It is assumed the submission demands will include at least a completed application form, evidence of professional qualifications and proof of registration with a professional body or a competency statement from a public authority. A score of 2 has been given against this indicator. It is premature to assess the prospective scheme against the other indicators, however, it is assumed that one authority will manage the process and therefore a score of 0 has been awarded.

The DURC scheme in **Italy** (Milan) is managed by regional branches of Cassa Edile. It is clear that only one authority manages this scheme. Therefore, a score of 0 has been given. A form needs to be completed indicating the complete list of the operational building sites, the name of each worker and the specific building site where each worker is located. A score of 1 has been given in terms of the number of documents required and a score of 0 in terms of whether simple copies are accepted. The legislation and website are available in IT.[65]

From a cross-border perspective, a slightly different procedure is followed. Instead, certified documents issued by an authority in another Member State need to be

64 http://www.sik.dk/Global/English/Authorisation-and-approval.

65 http://www.madrid.org/cs/Satellite?c=CM_Tramite_FA&cid=1142439094166&definicion=Inscripcion+Registro&pagename=ComunidadMadrid%2FEstructura&tipoServicio=CM_Tramite_FA.

provided that meet the legislative requirements demonstrating fulfilment of tax and social security obligations. Therefore a score of 0 has been awarded in relation to the indicator for certified documents. The documents provided need to be translated in IT. Therefore a score of 6 has been given against the indicator for EN documents. The indicator examining the number of categories of documents could possibly need to increase if multiple documents are required to meet the needs of the legislation (see section 3.8). Regarding equivalent documents, the requirements demand the submission of documents (mentioned above) issued by the relevant authorities in the home Member State. A score of 0 has been awarded.

The mandatory **Italian** certification scheme, EN:ISO 9001:2008, is managed by a number of certification bodies that are accredited by a state-sponsored accreditation body. Applicants need to only engage with one certification body. While the number of categories of submission demands may vary according to the needs of the certification body, as a minimum, applicants will need to complete an application form and submit a report outlining their existing quality management system.[66] The legislation is available in IT. A certification body based in Milan has made available its website in EN, and therefore a score of 3 has been awarded.[67]The submission demands are very likely required for submission in IT. A score of 6 has been given as all certification bodies are unlikely to be able to manage EN documentation. Simple copies of documents are required and a score of 0 has been awarded (normally certified documents are not demanded). Regarding equivalent documents, the documents required to meet the requirements of the application can be prepared by a company representative based in the home Member State (e.g. descriptions of existing quality management approaches) and therefore a score of 0 has been awarded against this indicator.

The horizontal authorisation scheme in **Portugal** is managed by one authority, the Portuguese Institute of Construction and Real Estate.[68] The scheme requires completion of an application form, four documents proving professional identity and capacity, a copy of an insurance document, two financial and economic documents including a copy of the accounts for the previous financial year, and a certified declaration of an accountant attesting the firm's good financial standing. A score of 4 has been given for the number of categories of documents. EN documents are accepted but only if they have been made available by the applicant online. Documents that were originally written in EN can be submitted as long as they are not regarded as highly technical. Therefore, a score of 3 has been given in this regard. Simple copies are permitted of all documents and therefore a score of 0 has been awarded.

Certified documents are requested such as a declaration made by an accountant attesting the firm's good economic and financial standing and a document attesting the provider's qualification to carry out construction activities issued by the relevant competent authority in the Member State of establishment. A score of 0 has been awarded in terms of certified documents. Equivalent documents (namely those described above) issued in another Member State either by a relevant competent authority or where relevant prepared by an economic entity established cross-border

[66] This is likely to contain an overview of their organisation structure; staff responsibilities and processes for managing and recording information and issues; lines of communication throughout the company; what actions are required and are normally taken; processes for managing clients; how continuity is maintained as staff change etc.

[67] http://www.sgsgroup.it/EN/Construction/Quality-Health-Safety-and-Environment/Quality/Quality-Management-Systems/ISO-9001-Certification-Quality-Management-Systems.aspx.

[68] It is understood that a new piece of legislation will come into force from August 2015 related to this Horizontal Authorisation Scheme and therefore the results of the indicator analysis may no longer apply in some areas.

are accepted. A score of 0 has been awarded. The legislation is in PT.69. The website is available in EN.70.

In **Spain** (Madrid) the Register of Accredited Companies is managed by the labour authority where the registered office of the company is located. The legislation and website are in ES in Madrid.[71] The documents demanded include a completed application form (including data indicating that the firm is solvent), proof of compliance with health and safety legislation, proof of appropriately trained staff in health, and safety matters and proof of representation, if any. A score of 3 has been given that these documents fall into 3 categories. The document indicating proof of compliance with health and safety legislation relates to a form available online that must be signed by the service provider. The proof of appropriately trained staff in health and safety requirements relates to submission of a certificate of training completed. However, cross-border service providers have the option of providing a signed statement instead of submitting a training certificate, but this must confirm that an equivalent type of training course has been completed. A certified document by a relevant authority must be submitted indicating that 30% or above of the total number of staff have a permanent contract. A score of 0 has been awarded in relation to certified documents. Simple copies of the submission demands can be submitted, and a score of 0 has been awarded. However, a score of 6 has been given in relation to EN language versions of documents as the submission demands must be translated in ES. The certified documents requested need to be translated in certified form by a sworn translator in ES. Therefore some certified documents (translations) issued in another MS are not accepted in ES, a score of 3 has been awarded. In all cases, equivalent documents (relating to those described above) issued by the relevant authority or where relevant produced by the relevant economic entity based in the home Member State are accepted. A score of 0 has been awarded.

Legal Evaluation Article 5 (Simplification of procedures)

Where Member States have established horizontal authorisation schemes, the Services Directive requires their operation to comply with a specific set of simplified procedures. For example, a key requirement is ensuring that the number of authorities involved in the process of authorisation is limited to a small number. The horizontal authorisation schemes identified correspond well with this demand broadly speaking. However, the scheme in **Demark** is slightly more restrictive given that authorisation by a nationally registered third party is required in order to receive approval of the quality management system as part of the authorisation process.

With regard to **Bulgaria**, **Denmark** and **Portugal**, given that the focus of these schemes is to support authorisation of market access, the number of categories of documents required is numerous. This makes the procedures comparatively more burdensome than other schemes where the type of authorisation is focused on a specific area: for example, demonstrating that social security payments have been made (**IT -DURC**), or confirming compliance with health and safety standards (**ES**). However, in those countries, it is suggested that the number of categories of submission demands are reviewed to examine if they are essential to the authorisation process, given that similar authorisation procedures are not required in a number of other study countries.

There is an incongruity with the spirit of the Services Directive where legislation for horizontal authorisation schemes and relevant websites are not available in EN. This

69 http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=38484.
70 http://www.inci.pt/Portugues/EngVrs/Paginas/Declaration_ForeignEntities.aspx.
71 http://rea.mtin.gob.es/rea/.

provides an immediate obstacle to cross-border service provision. While the legislation is available in EN in **BG**, this is not the case in the remaining countries. However, **DK** and **PT** have made online provisions in EN explaining the authorisation procedure to be followed. To ease cross-border services, legislation for horizontal authorisation schemes and corresponding websites should be made available in EN.

It terms of whether EN versions of documents are permitted, there are certain circumstances where **DK** (a translation may not be required) and **PT** (if the document is available online, if the subject matter is not too technical and if the document was originally prepared in EN) permit the submission of EN versions. The remaining countries require translated versions in all cases. This makes the authorisation procedure more restrictive.

In most cases, simple copies of documents can be submitted. However, in PT the authority may request original documents if there are doubts. In addition, in BG, certified translations of all documents must be provided in original format and these must be prepared by a registered translator. These approaches are at odds with the needs of the Services Directive. In ES translations also need to be certified by translators sworn in ES (although, in this MS, simple copies of translations are allowed).

With the exception of these translation documents, certified documents issued in other Member States are frequently demanded and accepted without further formalities such as the Hague Apostille, and often even simple copies of these certificates are accepted. Moreover, the requirement to enable applicants to submit equivalent documents (issued by competent authorities or prepared by economic entities in the home Member State) is successfully complied with by all horizontal authorisation schemes.

3.3 Indicator analysis and legal evaluation Article 8

The following section provides an indicator analysis and legal evaluation of horizontal authorisation scheme legislation under Article 8 of the Services Directive.

Summary of Article 8 (Procedures by electronic means)

- Article 8 (Procedures by electronic means) Member States shall ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

Horizontal authorisation schemes must be supported by systems that facilitate full electronic case handling enabling the efficient submission of applications at a distance. Competent authorities should accept the submission of simple electronic copies relating to all submission demands.

Indicator analysis Article 8 (Procedures by electronic means)

Table 3.5 provides an indicator assessment of horizontal authorisation scheme legislation against Article 8 (procedure by electronic means). This aim is to examine

the extent of compliance with the Services Directive ranging from 'there are no electronic procedures available' to 'full case handling is possible'.

Table 3.5 Indicator analysis Article 8

Article 8 Procedures by electronic means																
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
Is the entire application process supported electronically and can it be performed at a distance. There are no electronic procedures available (6) Paper forms can be downloaded (4) Electronic intake is possible (2) Full case handling is possible (e-ID and e-signatures issued in other MS not always accepted) (0)[72]	2	N/A	N/A	0	0	0	N/A	N/A	0 [73]	0 [74]	N/A	N/A	0	N/A	N/A

The Central Professional Builders Register in **Bulgaria** is available online.[75] Online and downloadable templates of all required forms with corresponding instructions are available. The application form (if downloaded) should be sent by post along with the supporting documents requested. A score of 2 has been given as some electronic intake is possible but not in all areas.

In **Demark**, full case handling is available, and application forms can be completed electronically and the entire application can be emailed.[76] A score of 0 applies. In **Greece**, although not available yet, research suggests that the application system for the prospective horizontal authorisation scheme will be managed on-line exclusively. **Italy** (both the DURC and EN:ISO 2008 schemes) and **Portugal** provide full electronic case handling and have been given a score of 0. The system in **Spain** supports electronic case handling through eGovernment web and permits uploading of documents.

Legal evaluation Article 8 (Procedures by electronic means)

There appears to be good alignment with Article 8 across the relevant countries with investments being made in systems supporting full electronic case handling.

However, in the case of **BG**, while elements of the authorisation procedure can be completed online, paper versions of most of the submission demands are required. This provides an immediate obstacle to service providers particularly considering that many companies have electronic documents readily available.

3.4 Indicator analysis and legal evaluation Article 9(1)

The following section provides an indicator analysis and legal evaluation of horizontal authorisation scheme legislation under Article 9 (1) of the Services Directive.

[72] E-ID and e-signatures may be required and, if so, those issued in other MS may not be accepted.
[73] This corresponds to the DURC scheme.
[74] This corresponds to the EN:ISO 9001:2008 scheme.
[75] http://register.ksb.bg/.
[76] http://www.sik.dk/Global/English/Authorisation-and-approval/Application-forms.

Summary of Article 9(1) (Authorisation schemes)

Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

a. The authorisation scheme does not discriminate against the provider in question;
b. The need for an authorisation scheme is justified by an overriding reason relating to the public interest;
c. The objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

Horizontal authorisation schemes should not discriminate against services providers, they should be justified by an overriding reason to the public interest, and it should be demonstrated that the same function cannot be realised through alternative less restrictive methods. However, in the context of the construction sector, in some cases, it is difficult to imagine circumstances where a public interest reason would justify the introduction of a horizontal authorisation scheme. This is particularly so considering the implementation of building control authorisation procedures during individual works, unless building permits are made simpler by the previous control of a horizontal authorisation scheme: for example, reducing the number of regulatory demands and/or limiting the building permit to on-site aspects of service provision.

Indicator analysis Article 9(1) (Authorisation schemes)

The horizontal authorisation schemes identified are examined in Table 3.6 against a number of indicators developed under Article 9(1). These seek to examine whether authorisation schemes are imposed prior to the application for a building permit, the number of procedures to be completed, and the possibility of exemption from procedures for certified or qualified service providers.

Table 3.6 Indicator analysis Article 9(1)

Article 9(1) Access to a service activity															
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT[77]**	**IT[78]**	**NL**	**PL**	**PT**	**SI**	**UK**
Are construction service providers subject to approval through a horizontal authorisation scheme prior to applying for a building permit (Y 6 /N 0) (This does not include authorisation schemes that specifically control regulated professions).	6	N/A	N/A	6	6	6	N/A	N/A	6	6	N/A	N/A	6	N/A	N/A
Number of horizontal administrative procedures to be completed by a contractor or developer (for example: 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points);	0	N/A	N/A	4	0	0	N/A	N/A	0	0	N/A	N/A	0	N/A	N/A
Possibility of exemption from administrative procedures for certified or qualified service providers (for example:	6	N/A	N/A	6	6	6	N/A	N/A	6	6	N/A	N/A	6	N/A	N/A

[77] This corresponds to the DURC scheme.
[78] This corresponds to the EN:ISO 9001:2008 scheme.

Article 9(1) Access to a service activity																
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT 77**	**IT 78**	**NL**	**PL**	**PT**	**SI**	**UK**
yes – 0 points, for some –points, no – 6 points).															

With regard to all countries (**BG**, **DK**, **EL**, **ES**, **IT**, **PT**), in order for professionals and contractors to participate in construction works, authorisation is required under the relevant schemes. A score of 6 has been allocated to all countries against the first indicator as approval is required before a building permit is submitted.

In most cases, only one administrative procedure is required for completion (**BG**, **EL**, **ES**, **PT**). However, in **Demark**, the scheme requires companies to seek approval from a third party (not the competent authority granting the authorisation) regarding their quality management systems and their staff needs to undergo controls going beyond a mere control of professional qualifications. As such three administrative procedures need to be followed (corresponding to a score of 4). While the horizontal authorisation scheme in **IT** (DURC) can be completed through a single procedure (and a score of 0 has been given) it should be kept in mind, as stated below regarding the time validity of the scheme, that the DURC certificate has 90 days of validity and the same procedure is needed to be performed on several occasions annually.

With regard to all of the horizontal authorisation schemes examined, qualified or certified service providers are not exempt from the procedures, and a score of 6 has been given against the relevant indicator. This even includes the mandatory certification scheme in IT (EN:ISO 9001:2008), because even though a contractor may have already established independently a suitable quality management system, it would still require verification by a certification body.

Legal evaluation Article 9(1) (Authorisation schemes)

With regard to CZ, DE, FI, FR, NL, PL, SI and UK, it seems that no justifiable reason has been identified for the introduction of a horizontal authorisation scheme in line with definitions used by this study. Where issues of regulatory compliance are concerned, it seems that more efficient authorisation methods are used to approve the quality of service provision (e.g. the operation of building control procedures). As a result, it seems that these countries are examples of good practice in the context of Article 9(1).

However, other countries have established horizontal authorisation schemes which provide a more restrictive environment to accessing a service activity. This includes BG, DK, ES, (and EL, if the scheme identified is introduced) IT, and PT. While the Services Directive does not restrict the establishment of authorisation schemes, their introduction is dependent upon the identification of a need to protect the public interest and when *a posteriori* inspection would come too late to safeguard consumers.

As a result, considering the indicator results above demonstrate that authorisation is required in all countries prior to the submission of an application for a building permit and participation in construction activities. It should be examined if national building control mechanisms are sufficient to obtain an appropriate level of public protection in the absence of the relevant horizontal authorisation schemes. This recommendation particularly applies to BG, DK, and PT where the relevant horizontal authorisation schemes govern market access for contractors broadly speaking. This is particularly so

regarding insurance controls in PT and health and safety controls in ES, which again appear in the context of building permits (see section 4.3).

Moreover, the indicator results suggest that the horizontal authorisation schemes appear relatively efficient given that only one procedure needs to be followed. However, the scheme in Denmark demands the involvement of a third party which duplicates the administrative procedures required, making the approach more burdensome. Moreover, a certification requirement is usually linked to voluntarily meeting high quality standards and to impose it by law in the cases of DK and IT (EN:ISO 9001:2008), seems unjustified and disproportionate.

A practice not adopted by any of the horizontal authorisation schemes is the exemption of certified or qualified service providers from administrative procedures. As a suggestion, a notification procedure could be introduced based on a limited submission of qualifications or certificates with a view to providing service providers immediate access to the market.

3.5 Indicator analysis and legal evaluation Article 10(3)(4)

The following section provides an indicator analysis and legal evaluation of horizontal authorisation scheme legislation under Article 10(3)(4) of the Services Directive.

Summary of Article 10(3)(4) (Conditions for the granting of authorisation)

- Article 10(3) The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State;
- Article 10(4) The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

Horizontal authorisation schemes must not demand additional requirements which are comparable to similar requirements already imposed in the Member State where services are being provided or a Member State where a cross-border service provider is established. To meet this objective, Member States should establish mutual recognition principles and procedures for cross-border service providers operating in the construction sector ensuring that key requirements such as insurance, technical requirements, health and safety, and use of equipment are recognised cross-border. Moreover, horizontal authorisation schemes must not restrict service providers to a limited part of the national territory.

Indicator analysis Article 10(3)(4) (Conditions for the granting of authorisation)

Table 3.7 provides an indicator analysis of the horizontal authorisation schemes against three indicators developed under Article 10(3)(4). This assessment examines

whether suitable mutual recognition principles and procedures are in place for cross-border service providers enabling firms to access cross-border markets according to equivalent or essentially comparable home country requirements that have been previously complied with: for example, in relation to technical requirements, use of equipment, health and safety, and insurance requirements. In addition, the horizontal authorisation schemes are assessed as to whether they enable service providers to have access to the market throughout the national territory.

Table 3.7 Indicator analysis Article 10(3)(4)

Article 10 (3)(4) Conditions for granting authorisation and national access to a service activity																
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT[79]**	**IT[80]**	**NL**	**PL**	**PT**	**SI**	**UK**
Is there a country of origin and/or mutual recognition principle in place, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y 3) Or neither? (6)	6	N/A	N/A	3	N/A	3	N/A	N/A	N/A	0	N/A	N/A	0	N/A	N/A
Is there a country of origin and/or mutual recognition principle in place for insurance, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y 3) Or neither? (6)	3	N/A	N/A	3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3	N/A	N/A
Does the horizontal authorisation scheme enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory? (Y 0 / N 6)	0	N/A	N/A	0	0	0	N/A	N/A	0	0	N/A	N/A	0	N/A	N/A

In **Bulgaria**, the Chambers of Builders Act dictates that its scope applies to both national and foreign legal and natural persons registered as economic operators under their national legislation, as well as service providers operating through secondary establishment. The Chambers of Builders Act requires that foreign service providers, that have the right to offer construction services under the law of a Member State of the European Union, must submit an application for registration. The Chambers of Builders Act describes the requirements and authorisation procedure that should be followed but these do not indicate that entry to the market can be granted on the basis of the country requirements where the cross-border service provider is established: for example, technical requirements, health and safety requirements and use of equipment.

For example, the legislation states that the technical personnel should have a capacity in accordance with the acquired speciality and educational and qualification level, professional experience, knowledge of and technical competence established by the national legislation. In addition, the legislation explains that service providers must have the necessary personal for control of health and safety conditions. It is also indicates that companies should possess technical equipment necessary for carrying out the relevant construction works. As a result, the legislation is not clear that foreign professionals will be offered mutual recognition in principle and on the basis of a

[79] This corresponds to the scheme DURC.
[80] This corresponds to the scheme EN:ISO 9001:2008.

specific procedure. Therefore, a score of 6 has been given. It should be mentioned that the financial and economic capacity of EU cross-border service providers is recognised regardless of the Member State(s) of establishment and this seems to be better aligned with the concept of mutual recognition.

The Chambers of Builders Act requests service providers to submit copies of equivalent insurance documents as part the registration process. The Spatial Planning Act demands compulsory insurance of all parties responsible for the construction project (please see section 4.7). However, this requirement does not apply to persons from another Member State established on the territory of the Republic of Bulgaria that have equivalent insurance of professional liability or a guarantee. A score of 3 applies to BG as a mutual recognition principle but not a procedure have been established for insurance requirements.

In **Portugal,** the legislation specifically describes its scope as applying to cross-border service providers. Equivalent insurance obtained in other Member States is accepted given that professional liability insurance is mandatory (see section 4.7). The online registration procedure echoes the actions to be followed in the legislation and indicates its recognition of equivalent documents including insurance products. A score of 3 for insurance applies to PT as a mutual recognition principle but not a procedure has been established. Regarding mutual recognition of other applicable requirements (including technical/professional capacity) a mutual recognition principle is in place and a specific procedure has been established (a score of 0 has been awarded) under which professionals hired in the home MS are accepted under home MS rules, except if they physically move to PT, in which case controls of the Professional Qualifications Directive (2005/36/EC) apply.

The **Danish** legislation relating to the authorisation procedure of installation professionals (electricity, plumbing, gas and sewerage installation) that have foreign professional qualifications has established mutual recognition principles and procedures for mutual recognition of foreign service providers in line with the Professional Qualifications Directive (2005/36/EC).[81] [82] However, in terms of the recognition of the required quality management system, only if a firm already holds certification based on European standards is mutual recognition operational. The relevant documentation can be submitted for assessment by an approved certifying body. On the basis of reports received from the recognised certification agency that originally issued the certification which the applicant already holds, the certifying body examines whether the company operates in accordance with its existing quality management system. For certifications based on national standards as well as other previous controls on similar requirements, no mutual recognition practice seems to be in place.[83] As a result, a score of 3 has been given against the first indicator above.

In the legislation and application form for occasional and temporary pursuit of a profession for individuals, it is requested that the applicant should submit information on any insurance cover or other means of personal or collective protection with regard to professional liability. However, it is not explicitly clear in the legislation that equivalent insurance products are recognised. Nonetheless, the national legislation that transposes the Services Directive indicates that equivalent professional liability

[81] The relevant legislation notes that the legal texts contain provisions implementing parts of European Parliament and Council Directive 2005/ 36 / EC of 7 September 2005 on the recognition of professional qualifications.

[82] https://www.retsinformation.dk/Forms/R0710.aspx?id=105216.

[83] Ad hoc recognition of equivalent certifications based on national standards have been known to take place, but no clear procedure is in place.

insurance products are recognised as sufficient.[84] This suggests that the authorisation procedure does permit equivalent insurance documents. However, it appears that there is no specific mutual recognition procedure in place for the recognition of equivalent insurance products issued by an insurer established in another Member State, and a score of 3 has been given.

With regard to **Italy** (DURC) in view of the type of requirements to be met by construction service providers, mutual recognition is not applicable. This authorisation scheme focuses on a very specific area of regulatory compliance (i.e. demonstration of fulfilment of tax and social security obligations) and is therefore not examined in the context of mutual recognition of cross-border service providers operating in the construction sector. With regard to the **Italian** scheme relating to EN:ISO 9001:2008, mutual recognition of European and international standards operates in the framework of Regulation 765/2008 (see chapter 5 on voluntary certification schemes).[85]A score 0 has been given in this instance.

Regarding **Spain**, the health and safety requirements to be met are based on those established by European legislation. There is recognition of cross-border service providers as long as firms have conducted equivalent types of training and have introduced health and safety organisational measures (as indicated by Law 32/2006). However, the law is not specifically clear as to whether firms that have already met their own national requirements will receive mutual recognition. A score of 3 has been awarded.

However, insurance products are not requested as part of the submission demands by the horizontal authorisation schemes in **Italy** and **Spain**. While mandatory insurance requirements are imposed on construction service providers in these countries (see section 4.7), the authorisation schemes in question do not govern market access broadly speaking (rather they have a specific focus on demanding that social security payments have been made or that health and safety requirements have been met). As a result, these schemes are not appropriate mechanisms through which mutual recognition procedures for insurance products should be established. Consequently, the indicator analysis relating to recognition of insurance requirements has not been extended to these countries.

Given that the horizontal authorisation scheme in Greece is not yet operational, the indicator analysis cannot be performed under Article 10(3)(4).

In all countries, the horizontal authorisation schemes examined give access to service providers to operate in all parts of the national territory and are compliant with the Services Directive in this regard.

Legal evaluation Article 10(3)(4) (Conditions for the granting of authorisation)

The analysis of horizontal authorisation schemes legislation suggests that there are mixed results regarding whether specific principles and procedures are established supporting mutual recognition. In terms of the mutual recognition of requirements examined under the first indicator in table 3.7, **Portugal** has established principles and procedures that correspond well with the needs of the Services Directive. **Denmark's** requirements for mutual recognition are limited to professional qualification issues, while for the rest of the applicable conditions mutual recognition is

[84] http://danishbusinessauthority.dk/file/38199/Danish_law_on_services_EN_110509.pdf.

[85] Setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

limited to situations where the provider was previously certified under European standards. The **Italian** mandatory certification scheme (EN:ISO 9001:2008) already operates in the context of a legal framework under Regulation 765/2008 that supports mutual recognition of European and international standards. However, the legal texts are less clear in **Bulgaria** and **Spain** regarding whether service providers can operate cross-border according to the same or essentially comparable requirements already complied with and therefore these horizontal authorisation schemes are comparatively more restrictive.

Where insurance requirements are established for market participation, the relevant legal texts suggest that the principle of mutual recognition has been established. However, they are not accompanied by specified procedures to make mutual recognition operational (**BG**, **DK**, **PT**) and therefore there is lack of clarity around the processes by which the requested insurance products will be assessed and the criteria that will be followed.

In addition, the horizontal authorisation schemes reviewed provide access to service providers to the relevant national territories and are therefore compliant with Article 10(4).

3.6 Indicator analysis and legal evaluation Article 11(1)

The following section provides an indicator analysis and legal evaluation of horizontal authorisation scheme legislation under Article 11(1) of the Services Directive.

Summary of Article 11(1) (Duration of authorisation)

An authorisation granted to a provider shall not be for a limited period, except where:

(a.) The authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;

(b.) The number of available authorisations is limited by an overriding reason relating to the public interest;

(c.) A limited authorisation period can be justified by an overriding reason relating to the public interest.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

Horizontal authorisations schemes should not grant authorisation to construction service providers for a limited period (unless for the reasons indicated above).

Indicator analysis Article 11(1) (Duration of authorisation)

The table below provides an indicator assessment of the horizontal authorisation schemes reviewed against an indicator developed under Article 11(1). This examines the extent of compliance from 'automatic renewal' to 'the same procedure must be followed as the initial authorisation'.

Table 3.8 Indicator analysis Article 11 (1)

Article 11 (1) Duration of authorisation																
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT[86]**	**IT[87]**	**NL**	**PL**	**PT**	**SI**	**UK**
Are authorisations granted for a limited period (N 0); If yes, a differentiation in the score should be made for the cases of a) automatic renewal of the authorisation 1, b) renewal upon payment of a fee 2 c) renewal requires a new application 4, d) with the same procedure as for the initial authorisation 6	2	N/A	N/A	4	N/A	6	N/A	N/A	6	6	N/A	N/A	2	N/A	N/A

In **Bulgaria**, all construction service providers are required to pay an annual maintenance fee and therefore a score of 2 applies. In **Denmark**, service providers established nationally are not required to renew their application, however, the mandatory quality management system does need to be renewed every two years because the underlying certification scheme has a limited duration. A score of 4 has been given. In **Italy**, (DURC) the same procedure must be followed by service providers on every occasion (after the relevant certificate has expired after 90 days). As a result, a score of 6 has been awarded. The Italian mandatory certification scheme (EN:ISO 9001:2008), requires a new application every three years and follows the same procedure (a score of 6 has been awarded). In **Portugal**, entities registered nationally are subject to a revalidation fee. A score of 2 is relevant in this case. In **Spain**, renewal is required every three years and the applicant is required to submit updated documents and provide a newly completed application form. A score of 6 has been awarded. Given that the horizontal authorisation scheme in **Greece** is not yet operational, the indicator analysis cannot be performed in this case under Article 11(1).

Legal evaluation Article 11(1) (Duration of authorisation)

In **Bulgaria** and **Portugal**, while the administrative step of payment of an annual fee is less burdensome than the initial authorisation procedure, it does impose ongoing requirements on service providers. Eliminating this requirement is suggested.

In **Denmark**, the authorisation procedure is not required to be followed on subsequent occasions for those seeking permanent establishment but applicants need to ensure their quality management system is kept up to date meaning that repeat approvals by a certification body are necessary. This process seems to be at odds with the spirit of the Services Directive.

Similarly, given that ISO certification often requires verification by certification bodies every three years, in the context of the Services Directive, it seems disproportionate to require service providers to obtain the standard EN:ISO 9001:2008 (as is the case in **Italy**) on a mandatory basis.

In the cases of **Italy** (DURC) and **Spain**, the procedures are comparatively more burdensome given that the same steps need to be followed repeatedly. These authorisation processes would benefit if their duration of authorisation are extended.

[86] This corresponds to the DURC scheme.
[87] This corresponds to the EN:ISO 9001:2008 scheme.

3.7 Indicator analysis and legal evaluation Article 13(2)(3)(4)

The following section provides an indicator analysis and legal evaluation of horizontal authorisation scheme legislation under Article 13(2)(3)(4) of the Services Directive.

Summary of Article 13(2)(3)(4) (Authorisation Procedures)

- Article 13 (2) Authorisation procedures and formalities shall not be unduly complicated or delay the provision of the service. Any charges which the applicants may incur from their application shall be reasonable and proportionate;
- Article 13 (3) Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible in a reasonable period which is fixed and made public in advance. When justified by the complexity of the issue, the time period can only be extended once for a limited time;
- Article 13 (4) Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

In the context of horizontal authorisation scheme legislation, Member States must ensure that authorisation procedures are efficient and non-burdensome, approval processes are linked to fixed periods which can only be extended once and ideally tacit approval is granted if a decision on the application is not issued in the appropriate period. Any fees imposed must be directly linked to the costs of managing the authorisation procedure.

Indicator analysis Article 13(2)(3)(4) (Authorisation Procedures)

The table below provides an indicator assessment of the horizontal authorisation schemes against a number of indicators developed under Article 13(2)(3)(4). This analysis examines whether fees are proportionate to costs, the length of fixed periods, whether application periods are fixed and made public, and whether notification of time extensions and tacit approval apply.

Table 3.9 Indicator analysis Article 13(2)(3)(4)

Article 13(2)(3)(4) (Authorisation Procedures)															
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**[88]	**IT**[89]	**NL**	**PL**	**PT**	**SI**	**UK**
Are fees proportionate to cost? (Y 0 / N 6)	6	N/A	N/A	6	N/A	0	N/A	N/A	0	6	N/A	N/A	6	N/A	N/A
How long is the (initial) fixed period for decision (< 15 working days 0/ 15-30 working days – 3/ > 30 working days or not fixed 6	0	N/A	N/A	6	N/A	0	N/A	N/A	3	6	N/A	N/A	3	N/A	N/A

[88] This corresponds to the DURC scheme.
[89] This corresponds to the EN:ISO 2008 scheme.

Article 13(2)(3)(4) (Authorisation Procedures)															
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**[88]	**IT**[89]	**NL**	**PL**	**PT**	**SI**	**UK**
Can fixed periods be extended by the competent authority for a minimum time (no extension 0 / 1 extension: 3/ more than one extensions: 6);	0	N/A	N/A	6	N/A	0	N/A	N/A	0	6	N/A	N/A	0	N/A	N/A
Are applicants notified of extensions before the original period has expired (Y/NA 0 / N 6);	0	N/A	N/A	6	N/A	0	N/A	N/A	0	6	N/A	N/A	0	N/A	N/A
If fixed periods have expired, are authorisations deemed to have been granted (Y 0 / N or no fixed periods 6)	6	N/A	N/A	6	N/A	0	N/A	N/A	0	6	N/A	N/A	0	N/A	N/A

In **Bulgaria**, the certificate of registration or the refusal thereof must be issued within 15 days following the receipt of the application. Extensions of the authorisation procedure are not available. According to the Administrative Procedure Code, when the competent authority does not issue a decision/written statement, it should be considered as a tacit refusal. In this case, the method of fee calculation is not directly linked to the costs of authorisation but rather company revenue (see table 3.3).

With regard to **Denmark**, a triple fee is imposed: two relating to the company and individual authorisation schemes that need to be jointly followed which are relatively small and relate to the administrative costs of processing the application borne by the authority; however the procedure relating to the underlying mandatory certification scheme is high cost and profit-driven (see table 3.3). A score of 6 has been given in this instance. The authorisation process (proper) can take up to 60 days and if the application is determined as complicated the procedure can be extended with the applicant being notified. However, the certification scheme has no fixed period for decision and is subject to variation as to a large extent the completion of the procedure rests upon the applicant to introduce appropriate systems to demonstrate to the certification body full compliance with the requirements. Given that formal arrangements are not in place for notifications and extensions in the context of certification processes, a score of 6 has been awarded. Tacit approval does not apply in this instance.

In **Italy** (DURC), the authorisation procedure lasts for 30 days. There are no extensions and the certificate is granted automatically at the end of this period even if the authority has not been able to complete the assessment. The authorisation procedure is free of charge.[90]

With regard to the **Italian** EN:ISO 9001:2008 scheme, the fees are not proportionate to costs as certification services are profit driven. The certification process does not operate in a fixed period as the process largely rests upon the applicant to introduce appropriate systems to demonstrate to the certification body full compliance with the requirements. Formal arrangements are not in place for notifications and extensions in

[90] However, a small annual fee of €10 is charged for annual storage of applicant's data relating to each 100 mega-bytes.

the context of the certification process. A score of 6 has been awarded against all criteria.

In **Portugal**, the method of fee calculation is not linked to the costs of the authorisation procedure. Rather, the fee is calculated on the basis of a small percentage of an indexed wage salary linked to the various categories of construction services.[91] The approval process is restricted to 20 days with no extensions. If a reply is not issued in this period, tacit approval applies.

In relation to **Spain** (Madrid), the procedure lasts for a maximum of 15 days. Single extensions and timely notifications to applicants feature as part of the authorisation process but these are only used in circumstances where the applicant has submitted an incorrect application and therefore a score of 0 has been given. Tacit approval applies. The authorisation procedure is free of charge.[92]

Given that the horizontal authorisation scheme in **Greece** is not yet operational, the indicator analysis cannot be performed under Article 13(2)(3)(4).

Legal evaluation Article 13(2)(3)(4) (Authorisation Procedures)

With regard to the issue of fees, it appears that attempts have been made in some instances (**DK**) to ensure that the fees imposed are linked to the costs of the authorisation procedure managed by the competent authority. However, in this case, the costs are profit driven for the mandatory quality management system element that needs to be followed initially to meet the needs of the authorisation scheme. This finding also applies to the mandatory EN:ISO 9001:2008 certification scheme in Italy.

Similarly, the research has revealed that some methods of fee calculation are not linked to the costs of the authorisation procedure (**BG**, **PT**). Reform of these methods is required to ensure compliance with Article 13(2).

The fixed period for decision is relatively efficient in most cases with designated timeframes of up to 15 days (**BG**, **ES**) or up to 30 days (**IT -**DURC, **PT**). However, in the case of **Denmark**, the approval period is up to 60 days and the underlying certification scheme has no fixed period for decision (as is the case with the Italian EN:ISO 9001:2008 certification scheme). As a result, these horizontal authorisation schemes seem to perform badly compared to the efficiency of authorisation procedures in other Member States. Shortening of the relevant period in line with wider practice and replacing the certification requirement with other (lighter) controls is suggested.

In most cases, extensions are not used for reasons other than incomplete applications (**BG**, **ES**, **IT-**DURC **PT**). In **Denmark**, an extension can be employed if the application is considered complex. However, considering that the fixed period in this case is up to 60 days, this does not seem appropriate and a modification of the procedure based on the approach used in other countries is suggested. Moreover, certification schemes (e.g. **IT**:EN:ISO 9001:2008, **DK**) do not normally formally establish fixed periods, extensions and notifications given that such approval processes are designed specifically to meet the needs of the applicant. However, this type of practice runs counter to the requirements of the Services Directive.

[91] https://dre.pt/application/file/240955.

[92] However, it is noted that in some Spanish regions fees may be imposed by this horizontal authorisation scheme.

The principle of tacit approval seems to be regarded as good practice by some countries (**ES**, **IT –**DURC, **PT**). However, **Bulgaria, Denmark** and **Italy** - EN:ISO 9001:2008 have not adopted this preferential legal feature as suggested in the Services Directive. Moreover, it is difficult to see how tacit approval could be offered under a certification process further suggesting that mandatory certification is not a justifiable legal requirement.

3.8 Indicator analysis and legal evaluation Article 16(2b)

The following section provides an indicator analysis and legal evaluation of horizontal authorisation scheme legislation under Article 16(2b) of the Services Directive.

Summary of Article 16(2b) (Freedom to provide services)

- Article 16(2b) Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register etc.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

Requirements imposed on temporary cross-border service providers to register with a competent authority are generally incompatible with the requirements described by Article 16(2b). Member States should ensure that temporary cross-border service providers are not subject to controls, or, while not ideal, restrict the authorisation processes to non-burdensome procedures such as notifications.

Assessment of the horizontal authorisation schemes to support the indicator analysis under Article 16(2b)

To support the indicator analysis under Article 16(2b), further background information is provided on the horizontal authorisation schemes in this section. The main reason for this is that some of the key requirements have a slightly different focus for temporary cross–border service providers and these should be taken into account when examining the extent of procedural restrictiveness in this context. Table 3.10 indicates the number of documents by individual categories requested from temporary cross-border service providers.

Table 3.10 Number of documents by categories of submission demands for horizontal authorisation schemes with regard to temporary cross-border service providers

Member State	Standards	Profession and technical capacity	Health and Safety	Equipment	Insurance	Economic and financial capacity	Good repute	Application form / letter	Other
BG	N/A	1	N/A	N/A	N/A	N/A	N/A	1	1 (Building permit)
CZ	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
DE (NRW	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Member State	Standards	Profession and technical al capacity	Health and Safety	Equipment	Insurance	Economic and financial capacity	Good repute	Application form / letter	Other
)									
DK	1 (Firms only)	2 (individuals)	N/A	N/A	1[93] (non-permeant / occasional individuals)	N/A	1 (firms)[94] 1)[95]	2(individuals and firms)	1 (Passport)
EL	N/A	2	N/A	N/A	N/A	N/A	N/A	1	
ES	N/A	N/A	2	N/A	N/A	2	N/A	1	
FI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
FR	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
IT (DURC)	N/A	N/A	N/A	N/A	N/A	2	N/A	1[96]	
IT (EN:ISO 9001: 2008)	1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NL	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PT	N/A	4	N/A	N/A	1[97]	2	N/A	1	N/A
PL	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SI	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
UK	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

With regard to the **Bulgarian** control process for temporary cross-border services, a notification procedure has been made available for the provision of services related to individual projects. This includes a notification letter indicating the details of the construction project, a simple copy of a certified document indicating the right of the service provider to provide services in the Member State where they are established (including its certified BG translation in original format) and a simple copy of the relevant building permit (applicants may also opt to submit a simple copy of the client contract).

In **Denmark**, the authorisation scheme requests a similar set of documents for temporary cross-border service providers as those seeking permanent establishment (please see section 3.2). However, an additional requirement is imposed as applicants need to submit evidence of professional indemnity insurance.

[93] This is a professional indemnity insurance for non-permeant / occasional individuals.
[94] This relates to a criminal record check.
[95] This is related to evidence of non-exclusion from the sector.
[96] After data is provided in the form, the authorisation body requests information from social security bodies to check the data provided in the form is accurate.
[97] Please see section 4.7 on insurance for further details.

In **Greece**, it is assumed the same requirements will relate to temporary cross-border service providers but this cannot be verified as the horizontal authorisation scheme is not yet operational (please see section 3.2).

In relation to **Italy** (DURC), the procedure applies to all service providers but temporary cross-border service providers are exempt from the authorisation procedure for services consisting of less than 3 months. In addition, it is likely that temporary cross-border service providers will be requested to submit additional documents namely certified documents indicating fulfilment of tax and social security obligations (rather that completing the application form only as the relevant authority is not in a position to independently verify fulfilment of these conditions). It is estimated that this relates to at least two certified documents but the exact number is likely to vary depending on the arrangements for each Member State.

In **Italy** (EN:ISO 9001:2008) if the temporary cross-border service provider already holds the relevant certification, the documentation approved by the certification body that managed the initial certification procedure can be submitted to a certification body in Italy (this activates the mutual recognition procedure).

In terms of **Portugal**, there are slightly different requirements for temporary cross-border service providers. Applicants established in other Member States are requested to apply for a declaration (Registo).[98] This provides temporary access to the market in connection with an individual contract. However, according to interview feedback received, in practice, if the applicant intends to provide similar construction services in connection with a subsequent contract and a limited period of time has passed since the previous application, the service provider may use the declaration previously obtained in order to access the market. In terms of the categories of documents required, these are equally as numerous as those required by the authorisation procedure facilitating permanent access to the market (see section 3.2).

In **Spain**, the same number of categories of documents are required from temporary cross-border service providers as those established permanently (please see section 3.2). However, with regard to temporary cross-border services consisting of less than 8 days, an exemption is offered from the authorisation scheme. In relation to the first application, a completed application form is required along with evidence of solvency (the company is regarded as registered until the labour authority resolves the application). Subsequent authorisation procedures require all documents to be submitted.

Indicator analysis Article 16(2b) (Freedom to provide services)

Table 3.11 provides an indicator assessment of the horizontal authorisation scheme in relation to Article 16 (2b) (freedom to provide services). This examines whether temporary cross-border service providers are subject to horizontal authorisation requirements on the basis of no authorisation, notification or full authorisation.

[98] http://www.inci.pt/Portugues/Construcao/Documents/REQUERIMENTO_%20LPS.pdf.

Table 3.11 Indicator analysis Article 16 (2b)

Article 16 (2b) freedom to provide services cross-border																
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT[99]**	**IT[10]**	**NL**	**PL**	**PT**	**SI**	**UK**
Where service providers are established in another Member State and intend to provide temporary cross-border services, are horizontal schemes imposed (this does not include authorisation schemes that specifically control regulated professions) (no requirement 0; notification 3 or authorisation 6)?	3	N/A	N/A	6	6	6	N/A	N/A	6	6	N/A	N/A	6	N/A	N/A

The horizontal control scheme in **Bulgaria** permits temporary cross-border service providers to follow a notification procedure. In this case, the submission demands are much lighter and permission to provide services is given upon submission of a copy of the relevant building permit and a limited number of other documents. A score of 3 appears relevant given that a notification procedure has been made available.

There are no exemptions made for temporary cross-border service providers in **Demark** as a specific authorisation procedure has been established for this group. This procedure is more onerous than the procedure for permanent workers as insurance products are requested. In addition, if a temporary cross-border service provider already holds certification it will need to be authorised as compliant by a certification body. If a temporary cross-border service provider does not hold relevant certification, the applicant will need to comply with a designated certification procedure. A score of 6 has been awarded.

Given that the horizontal authorisation scheme in **Greece** is not yet operational, the indicator analysis cannot be performed under Article 16(2b) with accuracy. However, given that the focus of the horizontal authorisation scheme is to link building work with specific designers on the basis of a designated ID, an assumption has been made that procedural exemptions will not be offered to temporary cross-border service providers and therefore a score of 6 has been given.

In **Italy**, (DURC) the procedure applies to all service providers but temporary cross-border service providers are exempt from authorisation for works on sites for less than 3 months. However, a score of 6 has been given as exemption is not offered to all categories of temporary cross-border service providers. With regard to the **Italian** EN:ISO 9001:2008 scheme, authorisation is required of temporary cross service providers that already hold the relevant certification. If a temporary cross-border service provider does not hold the relevant certification, the applicant will need to comply with a designated certification procedure. A score of 6 has been awarded.

In **Portugal**, authorisation is required on the basis of a request for a declaration which is specific to temporary cross-border service providers. However, this procedure does not seem significantly lighter than the procedure to apply for a permanent license given that a similar number of categories of documents are required. Therefore, a score of 6 applies in this case.

In **Spain**, while there are beneficial arrangements for companies providing temporary cross-border services for a very limited duration (i.e. 8 days) or making their initial

[99] This corresponds to the DURC scheme.
[100] This corresponds to the EN:ISO 9001:2008 scheme.

application (this procedure can be initiated on the basis of a limited number of submission demands), these are not offered to all categories of temporary cross-border service providers. Therefore, a score of 6 applies in this case.

Legal evaluation Article 16(2b) (Freedom to provide services)

Overall, the results tend to indicate that the same requirements imposed on service providers established nationally are demanded of temporary cross-border service providers (**DK, EL, ES, IT, PT**). This approach is at odds with the requirements of Article 16(2b) given that Member States should not establish horizontal authorisation schemes for temporary cross border service providers.

There are, nonetheless, examples of slightly better practice whereby temporary cross-border services providers are subject to notification procedures in **BG** (or exemptions in **ES** and **IT,** although in these cases the circumstances where these practices apply are very limited). A limited degree of compliance with Article of 16b could be obtained if this practice is extended to other countries where detailed authorisation methods are used for this category of service provider (**DK**, **PT**). However, ideally, to obtain a very good level of compliance with Article 16(2b), temporary cross-border service providers should not be subject to any controls.

However, there could be some instances where authorisation processes that use notification procedures for temporary cross border service providers generate positive spill-over effects in some areas. For example, if a notification procedure supported a one-off control limiting the need for further repeat controls (for example, as part of building control procedures), simplification gains could be generated.

3.9 Aggregate indicator results and identification of good practice

This section provides an overall analysis of the indicator results examining the performance of national horizontal authorisation scheme legislation leading to the presentation of good practice identified.

Table 3.12 presents the indicator results. As mentioned previously in Chapter 1, the greater the score highlighted by the indicator analysis, the greater the level of procedural restrictiveness at country level for construction service providers in the context of the Services Directive. The relative percentage weightings of the indicators at the level of each Article are indicated in the left hand column.

Table 3.12 Horizontal Authorisation Schemes - overall indicator results

Article and weighting	BG	CZ	DE	DK	EL	ES	FI	FR	IT [101]	NL	PL	PT	SI	UK
Article 9 (20%)	4,50	N/A	N/A	5,50	4,50	4,50	N/A	N/A	4,50	N/A	N/A	4,50	N/A	N/A
Article 10 (3) (20%)	5,10	N/A	N/A	3,00	0	2,10	N/A	N/A	0	N/A	N/A	0,90	N/A	N/A
Article 10 (4) (5%)	0	N/A	N/A	0	0	0	N/A	N/A	0	N/A	N/A	0	N/A	N/A
Article 11 (1) (5%)	2,00	N/A	N/A	4,00	0,00	6,00	N/A	N/A	6,00	N/A	N/A	2,00	N/A	N/A
Article 16 (15%)	3,00	N/A	N/A	6,00	6,00	6,00	N/A	N/A	6,00	N/A	N/A	6,00	N/A	N/A

[101] This relates to the EN:ISO 9001:2008 scheme.

Article and weighting	BG	CZ	DE	DK	EL	ES	FI	FR	IT [101]	NL	PL	PT	SI	UK
Overall – regulatory burden	***3,80***	***N/A***	***N/A***	***4,31***	***2,77***	***3,88***	***N/A***	***N/A***	***3,23***	***N/A***	***N/A***	***3,20***	***N/A***	***N/A***
Article 5 (15%)	2,70	N/A	N/A	1,90	0,40	2,40	N/A	N/A	1,30	N/A	N/A	1,70	N/A	N/A
Article 8 (10%)	2,00	N/A	N/A	0,00	0,00	0,00	N/A	N/A	0,00	N/A	N/A	0,00	N/A	N/A
Article 13 (2) (10%)	3,30	N/A	N/A	6,00	0,00	0,00	N/A	N/A	6,00	N/A	N/A	2,25	N/A	N/A
Overall – administrative burden	***2,67***	***N/A***	***N/A***	***2,53***	***0,17***	***1,03***	***N/A***	***N/A***	***2,27***	***N/A***	***N/A***	***1,37***	***N/A***	***N/A***
Overall (regulatory and administrative burden)	**3,41**	N/A	N/A	**3,69**	**1,86**	**2,88**	N/A	N/A	**2,90**	N/A	N/A	**2,56**	N/A	N/A

The indicator results provide a clear overview of the relative ranking of each of the study countries:

- CZ, DE, FI, FR, NL, PL, SI, UK appear to offer the greatest level of compliance with the Services Directive. In these countries, horizontal authorisation schemes have not been established as official approvals of the quality of service provision where deemed necessary are implemented in the context of the building control process or through other measures;
- EL (1,86) appears to offer the least restrictive environment. However, the results should be interpreted with caution as this horizontal authorisation scheme relates to a legislative proposal at this stage and is not clearly defined or operational. A full assessment against all of the indicators could not be undertaken;
- The impact of the most restrictive Italian horizontal authorisation scheme (EN:ISO 9001:2008) has been considered only (2,90). It is not perceived as restrictive in relation to Article 10(3) but not does not perform well in the context of Article 11(1) and Article 16. PT (2,56) has received relatively low scores against Article 10(3) and Article 13(2). ES (2,88) also appears to have a moderate level of restrictiveness performing better than other countries in the context of Article 13(2);
- BG (3,41) and DK (3,69) have obtained the highest scores and are the most restrictive horizontal authorisation schemes. A key reason for this is that the BG scheme has performed less against Article 10(3). The DK scheme combines an authorisation procedure with a mandatory certification process and therefore has performed less well against a number of indicators including Article 13(2).

Figure 3.1 provides the results of the indicator assessment of the overall level of regulatory restrictiveness of horizontal authorisation schemes (i.e. the issues examined around regulatory burdens and mutual recognition). The least restrictive countries are associated with low scores (the reverse is true for countries with high scores). A colour-coded break down is provided of the individual indicator results in relation to specific regulatory demands of the Services Directive.

Figure 3.1 Overall regulatory restrictiveness of horizontal authorisation schemes

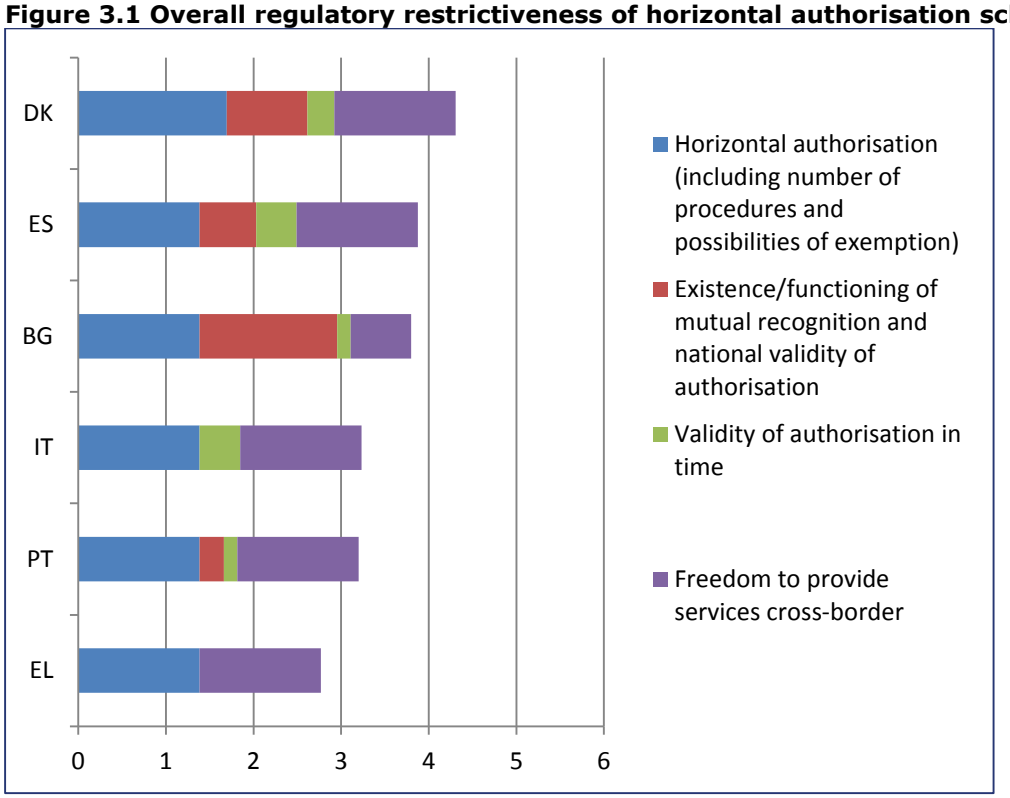


Figure 3.2 provides the results of the indicator assessment of the overall administrative restrictiveness of horizontal authorisation schemes. The least restrictive countries are associated with low scores (the reverse is true for countries with high scores). A colour-coded break down is provided of the individual indicator results in relation to specific procedural demands of the Services Directive.

Figure 3.2 Overall administrative restrictiveness of horizontal authorisation schemes

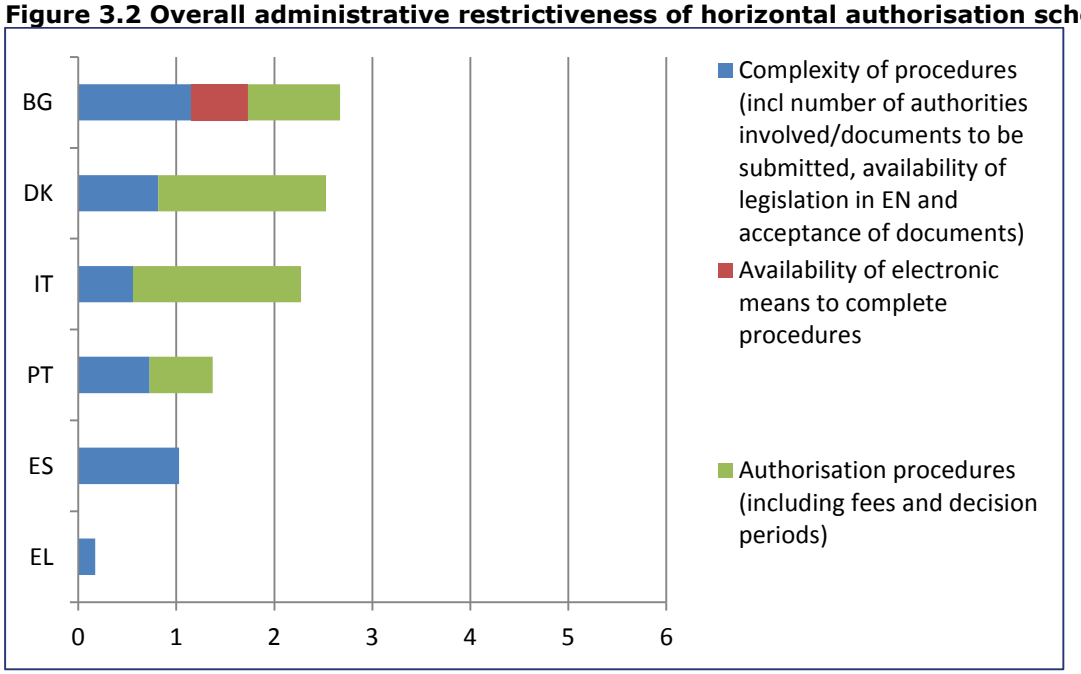
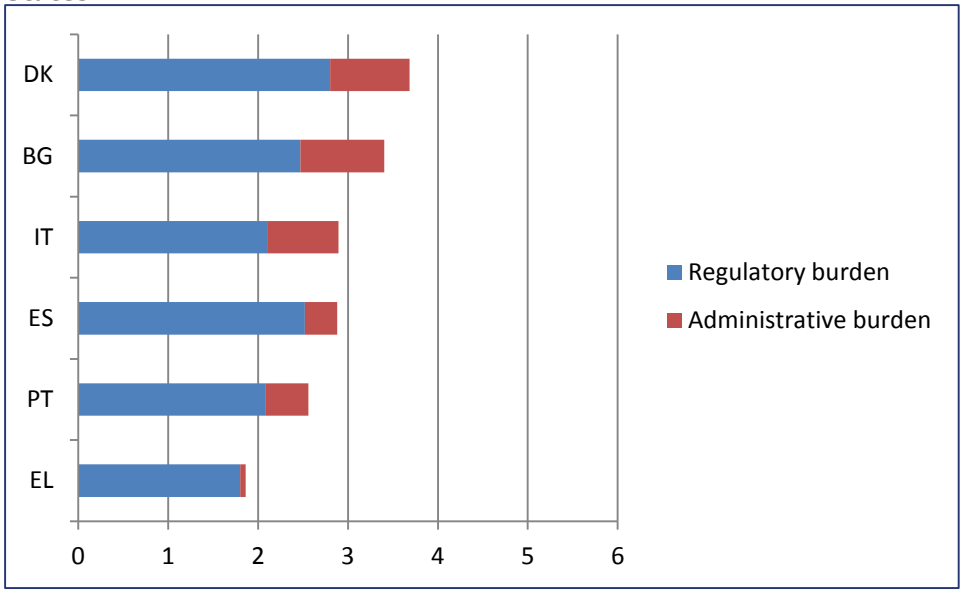


Figure 3.3 provides the combined results of the indicator assessment of the overall restrictiveness of horizontal authorisation schemes (this assessment combines the Figure 1 and 2 results around the assessment of administrative and regulatory burdens). The least restrictive countries are associated with low scores (the reverse is true for countries with high scores). A colour-coded break down is provided of the individual indicator results in relation to the individual scores for administrative and regulatory burdens.

Figure 3.3 Overall restrictiveness of horizontal authorisation schemes in 6 Member States



An overview of the good practice identified in line with the objectives of individual Articles of the Services Directive is presented below. This is accompanied by an account of less effective methods of compliance where these have been substantiated. It should be noted that for each Article, good approaches to compliance are established, suggesting that stronger levels of compliance with the requirements of the Service Directive can be realised for all Member States.

Table 3.13 Horizontal Authorisation Schemes – Identification of Good Practice and Areas of Less Effective or Non-compliance

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
Article 5	**The submission demands required are limited to a small number of categories of documents and are few in number reducing the overall administrative burden.**	A number of horizontal authorisation schemes request a small number of categories of documents and a limited number of documents in the relevant categories (e.g. EL).	A large number of categories of submission demands and a large number of documents overall are requested in other countries representing a significant administrative burden (e.g. BG, DK and PT).
	The legislation and websites supporting horizontal authorisation schemes are made available in English to enable efficient company compliance activities.	It is essential for cross-border service providers to get access to online information in English on authorisation procedures including both relevant legislation (BG) and websites (DK, PT).	Horizontal authorisation scheme legislation and websites are made available in the national language only which provides an immediate obstacle to the efficient access to cross-border markets (e.g. ES, IT).
	Simple copies should be accepted limiting the costs involved in producing certified copies or time wasted in managing the exchange of original copies.	Most countries permit the submission of simple copies of the submission demands requested (DK, ES, IT, PT).	BG requires translations to be presented in certified and original form.
	Documents should be accepted in EN or supported by EN translations (by non-certified translators) ensuring that the same documents can be used for authorisations EU-wide.	PT provides a good example of accepting EN versions of documents that are made available online or EN versions of documents that are originally produced in English but are not deemed as too technical or complex. However, accepting EN versions of all types of documents is the optimal approach.	In many cases, EN versions of documents are not permitted (e.g. BG, DK, ES, IT). This procedure forces companies to pay for multiple translations of documents where they are required if they wish to access more than one cross-border market where EN is not the national language. To eliminate this barrier, EN translations of all submission demands should be permitted (BG, DK, ES, IT, PT).
	Certified or authenticated documents issued in other MS should be accepted (without requiring further formalities) ensuring the efficiency of the submission procedure.	Although requirements for certified documents are imposed in many Member States (BG, DK, ES, IT, PT), those issued in the home Member States are generally accepted. Furthermore, as stated above, even for these documents (originally issued in certified form), a simple copy may be submitted (DK, ES, IT, PT).	BG and ES require translations of certified documents issued in BG/ES (by registered/sworn translators).
	Where a certificate, attestation or other document proving that a	In a small number of cases equivalent documents are accepted. For example, balance sheets prepared by a company representative may be	Many horizontal authorisation schemes do not accept equivalent documents at all (DK, ES, IT-DURC) or only a small number of such documents

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
	requirement has been satisfied is demanded, equivalent documents should be deemed acceptable in another Member State (without requiring further formalities) ensuring the efficiency of the submission procedure.	submitted in BG and PT. Descriptions of quality management systems may be submitted IT (EN:ISO 9001:2008).	(BG, IT –EN:ISO 9001:2008, PT).
Article 8	**Electronic procedures permit full case handling and uploading of electronic copies of documents to ensure efficient submission of all documents required.**	A number of countries have established online systems that permit full electronic case handling and uploading of documents (ES, PT). In other cases, applications can be emailed (DK).This ensures that submission of documents can be completed at a distance efficiently.	In Bulgaria, while online systems are available e.g. by enabling the downloading and submission of forms, its paper based system is less adept at meeting the needs of the modern business environment where full electronic case handling is often expected including the electronic submission of all documents.
Article 9(1)	**Contractors and developers are not subject to horizontal authorisation schemes, or where they are established, their operation is based on highly efficient authorisation procedures.**	It seems that a number of Member States have not established horizontal authorisation schemes as defined by this study. The assumption can made that these countries rely on other authorisation mechanisms (such as building control) to ensure that quality standards are met. This approach supports efficient access to the market for national or cross-border service providers (CZ, DE, FI, FR, NL, PL, SI, UK) if requirements are not repeated and refer to on-site specific issues. However, where there has been a perceived need in the public interest to justify their establishment, authorisation procedures should be made as efficient as possible including limiting the number of authorisation procedures to be completed to one procedure and addressing requirements not repeated in subsequent building permit controls.	Clearly, countries that have established horizontal authorisation procedures that need to be fulfilled prior to the application for a building permit and repeat the same kind of requirements in building permits subject service providers to a more legally restrictive environment (PT regarding insurance, ES regarding health and safety). In addition, it appears that exemptions from the authorisation process are not offered to qualified or certified service providers (BG, ES, IT, PT).
Article 10 (3)	**To avoid the need for additional requirements and**	The authorisation process extends to recognition of equivalent insurance documents (BG, DK PT).	However there are no specified procedures in place for the mutual recognition of insurance products

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
	controls imposed on service providers, mutual recognition principles and procedures should be adopted.	Mutual recognition of other requirements is limited to a small number of countries. The PT scheme offers mutual recognition of a range of technical requirements. The IT EN:ISO 9001 2008 scheme operates in a regulatory framework that establishes mutual recognition at EU-level.	(BG, DK). Mutual recognition of other requirements is non-existent in other cases (e.g. BG, ES IT-DURC).
Article 10 (4)	**Horizontal authorisation schemes should permit access to the market nationwide.**	The horizontal authorisation schemes examined (BG, ES, IT PT) offer service providers access to their national markets (thereby not restricting companies geographically).	N/A
Article 11(1)	**Authorisation of services providers should be given on a permanent basis.**	N/A	In some cases, authorisation procedures require service providers to pay renewal (BG) or revalidation (PT) fees. In other cases, subsequent authorisations are required that appear to be as equally burdensome as the initial procedure (ES, IT). In Denmark, services providers established nationally are required to renew their applications as authorisation is based on a certification with a 2 year validity limit. The same applies in Italy in relation to the 3 year ISO 9001 certification schemes.
Article 13 (2) (3) (4)	**Authorisation is granted in 15 days or less ensuring speedy access to the market for service providers.**	Efficient authorisation procedures can be detected in Bulgaria and Spain where the approval process is fixed to a period of 15 days.	Authorisation procedures are comparatively less efficient elsewhere with fixed periods of up to 30 days (IT -DURC, PT). Where other horizontal authorisation schemes rely upon certification requirements being met, there are no specified authorisation periods (DK, IT-ISO:EN 9001:2008).
	The fees imposed are low cost and reflect the time taken to manage an authorisation procedure involving assessment of simple documentation.	In some cases, the authorisation approval process is very low cost or free of charge (ES, IT-DURC).	The method of fee calculation in other countries (BG, PT) is divorced from the cost of resources required to authorise applications. In some cases (DK, IT- ISO:EN 9001:2008), fees are profit driven (for the underlying certification scheme imposed by law).
	Authorisation procedures are governed by fixed	A number of horizontal authorisation schemes do not permit the use of extensions supporting	While the horizontal authorisation scheme in Denmark can only make use of one extension and

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
	periods that ideally do not permit extensions or can only be used on one occasion ensuring that service providers have a clear understanding of when they are likely to be able to access the market.	efficient access to the market for service providers (BG, ES, IT, PT).	is therefore compliant with the Services Directive, it appears that more efficient approaches are used in other countries (DK).
	Applicants are notified of extensions before the original period has expired	Where extensions are used, applicants are notified accordingly during the course of the fixed authorisation procedure (DK).	N/A
	Ideally, tacit approval is given if a response has not been issued before the end of the fixed period	A number of horizontal authorisation schemes (ES, IT, PT) offer tacit approval if no response is given at the end of the fixed period thereby ensuring quick access to the market for service providers.	The less preferential practice of not offering tacit approval is conducted in other countries (BG, DK) potentially resulting in delays to service provision.
Article 16(2) (b)	**Ideally, temporary cross-border service providers are not subject to horizontal authorisation schemes, or where they have been established, lighter procedures for this category of service provider are imposed.**	A number of countries do not require authorisation of temporary cross-border service providers through horizontal authorisation procedures. This approach may offer a much less restrictive environment to the internal market for services (CZ, DE, FI, FR, NL, PL, SI, UK) provided requirements are not repeated in building permit controls (e.g.ES insurance requirements could perhaps be more efficiently controlled a priori, in a one-off control). It should be mentioned that controls for temporary cross-border providers should be truly exceptional, and justified by overriding reasons of general interest (only public policy, public health, public safety, protection of the environment). While a number of countries subject temporary cross-border service providers to horizontal authorisation procedures, in some cases lighter procedures are used offering exemptions,	In Portugal, temporary cross-border service providers are subject to a specific authorisation procedure but this is not significantly lighter than the process which firms established nationally need to follow. In Denmark, the process offered to temporary cross-border service providers is very similar to the one applicable to establishing providers although there is an additional demand to provide insurance documents.

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
		although for very for limited periods (ES, IT - DURC) or notification procedures combined with a reduction in the complexity of the submission demands (BG).	

4 Overview of the legal inventory of building permit legislation

Chapter 3 provides an overview of the legal inventory for building permit legislation in the fourteen study countries. To enable the comparison of the different country systems, the legal requirements were categorised into a number of core elements encompassing the:

- Overall legal framework such as whether the requirements are set nationally or regionally and if mutual recognition of requirements are established;
- Methods used by different types of building permit application procedures and their correspondence to different categories of building work;
- Extent of the submission demands requested and the type of information they require;
- Process of plan approval, site inspections and completion indicating the actors involved and corresponding procedures;
- Nature and extent of building control fees imposed;
- Building permit procedure times and related conditions;
- Liability and mandatory insurance requirements imposed on construction service providers.

Given that national building control legislation is subject to variation, to assist the indicator analysis and legal evaluation as provided in Chapter 4, two reference works were used as benchmarks to examine in what ways the legal framework impacts on similar types of building projects in different countries, as follows:

- A one storey two bedroom house 150m^2 (with a construction value of €150,000);
- A ten storey office block 2000m^2 (with a construction value of €5 million).

This chapter reviews the core elements of legal framework described above taking into account how the two reference works are exposed to different requirements across the Member States.

Before this section is introduced it is worthwhile to point out that that in relation to each core element of the building permit procedure (as indicated above) there are only a small number of approaches to establishing authorisation processes. Therefore, while each of the study countries have established a unique combination of procedures and requirements, there are only a small number of possible types of procedures and requirements across each of the core elements that make-up the building permit process.[102] [103]

As a result, it is unlikely if the remaining Member States that have not been examined by this study operate procedures and requirements that are significantly different to those identified.

Nevertheless, the findings suggest the Services Directive provides a number of solutions supporting mutual recognition and simplification that are suitable for

[102] This echoes the findings of a study conducted by the European Consortium of Building Control.

[103] An interesting feature of building permit / control legislation identified by the level of legal mapping and analysis performed by this study, is that when considering the fourteen study countries overall, Member State authorisation procedures cannot be easily linked to the relevant European model of public policy normally used to compare and assess policy traditions. The key reason for this is that the assessment of country characteristics demonstrated limited consistency between the countries usually grouped together in the context of individual policy models.

adoption by all national building permit / control systems. For these reasons, the study recommendations have broad implications for all Member States including those not analysed.

4.1 Overall legal framework for building permit procedures and technical building regulations, and the extent of the use of mutual recognition principles and procedures

Country / regional overview

Member States use a range of approaches to establishing building permit legislation and associated technical requirements for building works. In various combinations, legislation is set at national and/or regional levels as indicated below.

Table 4.1 Level of the legal framework for building permit and technical regulations

Member State	Nationally set building permit procedure	Nationally set technical regulations	Regionally set building permit procedure	Regionally set technical regulations
BG	x	x		
CZ	x	x		
DE (North Rhine-Westphalia)	x	x		x (minor divergence between Länder)
DK	x	x		
EL	x	x	x	x
ES (Madrid)	x	x	x	x
FI	x	x		
FR	x	x		
IT(Milan)	x	x	x	x
NL	x	x		
PL	x	x		
PT	x	x		
SI	x	x		
UK (England)			x (the procedures also apply to Wales)	x (very minor divergence with Wales)

In **Bulgaria**, the technical building regulations including building permit procedures are set at national level and are linked to several pieces of primary and secondary legislation and ordinances including the Spatial Planning Act.[104] Applications for a building permit are managed and approved by local authorities.

The national level Building Act establishes the requirements for building permit procedures and building regulations in the **Czech Republic**.[105] The Act establishes the supervision and designated powers of the system of local authority building control (Building Office), authorised inspectors, and the duties and responsibilities of participants in the construction process.

In **Denmark**, national legislation sets-out the principles and general requirements of the technical building regulations (Building Act).[106] The Building Regulations contain the technical building regulations and administrative provisions on building permit

[104] http://lex.bg/laws/ldoc/2135163904.
[105] http://www.uur.cz/images/uzemnirozvoj/stavebnirad/183_2006_EN.pdf.
[106] https://www.retsinformation.dk/forms/r0710.aspx?id=133389.

procedures.[107] The building permit process is managed by local authorities that have decision-making discretion in key areas.

Nationwide requirements controlling land use, spatial planning, construction and building permit procedures are established by the **Finnish** Land Use and Building Act 132/1999 and other supporting legislation.[108] The National Building Code contains detailed technical regulations and guidelines that complement the Act.[109] In addition, local technical building regulations subordinate to national laws are defined in municipal building codes.

In **France**, the Building and Housing Code and the Urban Planning Code are applicable nationwide and set out technical regulations and building permit procedures respectively.[110] However, there are local requirements established in the Plan Local d'Urbanisme related to building permit procedures. While most of the technical regulations apply nationally, some rules are set at municipal level such as requirements related to the building plot.

In **Germany** (North Rhine-Westphalia), the construction planning regulations are set at federal level and relate to several different pieces of legislation covering technical requirements and building permit procedures and this includes the Building Code.[111] However, there are complementary pieces of legislation establishing the legal framework at Länder level that empower the relevant authorities to carry out their tasks such as the Federal Building Act.[112] In addition, there are minor differences between the Länder in terms of the technical building regulations.

In **Greece**, technical building provisions are indicated in the national New Building Regulation 4067/2012.[113] These technical regulations may differ from municipality to municipality due to zoning rules, which are developed at local level, but approved at national level. The national law 4030/2011 determines the procedural aspects of issuing a building permit, including specific tasks and allocation of responsibilities to local authorities.[114]

In **Italy** (Milan), the national law DPR 380/2001 provides the basic principles and general rules of building permit procedures and defines the legislative powers of regional authorities and municipalities (which may establish their own requirements in compliance with regional and national rules).[115] The Technical Regulations for Construction 2008 define nationally the principles for the design, implementation and testing of buildings.[116] However, municipalities may set additional standards.

The building regulations apply nation-wide in the **Netherlands**. The procedures for applying for a building permit are established in the Housing Act[117] while technical building regulations are indicated in the Building Decree and other supporting pieces of legislation.[118] Building permit approval procedures are managed by municipalities.

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107 http://www.buildup.eu/publications/34282 http://w2l.dk/file/155699/BR10_ENGLISH.pdf.
108 www.finlex.fi/fi/laki/kaannokset/1999/en19990132.pdf.
109 www.ym.fi/.
110 www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074096.
111 http://www.bauordnungen.de/html/nrw.html.
112 http://www.bauordnungen.de/Baugesetzbuch.pdf.
113 http://www.ypeka.gr/LinkClick.aspx?fileticket=5nRUKLGlL8E%3D&tabid=506&language=el-GR.
114 http://www.ypeka.gr/LinkClick.aspx?fileticket=WsLJDdwJvpw%3d&tabid=506&language=el-GR.
115 http://www.bosettiegatti.eu/info/norme/statali/2001_0380.htm#003.
http://leg16.camera.it/561?appro=39.
116 http://www.bosettiegatti.eu/info/norme/statali/2008_dm1401.htm.
117 http://wetten.overheid.nl/BWBR0005181/geldigheidsdatum_19-01-2015.
118 http://vrom.bouwbesluit.com/Inhoud/docs/wet/bb2012.

In the case of **Poland**, two national laws direct the technical building regulations, the Building Law[119] and the Law on technical conditions to be fulfilled by buildings and their surroundings. Building permit requirements are defined in the Building Law [120]adopted in 1994 and apply nationally. Municipal authorities manage the building control process.

Portugal has established its main legal requirements at national level. The General Building Regulation is the main piece of legislation.[121] In addition, several national regulations, rules and measures are in place regarding specific technical requirements. The building permit procedures are established the Legal Framework for Urban Development and Construction Works and this has complementary provisions.[122] In addition, municipal authorities may establish ordinances and by-laws and have the role of managing the building control process.

All relevant legislation is set at the national level in **Slovenia**. The main piece of legislation is the Construction Act which regulates the roles of professionals involved in the construction process, building permit procedures, inspection procedures etc.[123] There are a number of regulations designated to technical requirements for buildings such as safety. Slovenia has a combined planning and building permit procedure system whereby both sets of requirements are examined under building permit procedures by local authorities.

In **Spain** (Madrid), legislation for building control are established at national, regional and local levels. The Ministry of Housing is responsible for setting requirements and procedures for building activities. The Building Act establishes the responsibilities of actors in the building process.[124] The national Technical Building Code provides the basic technical requirements for buildings and is applicable nationwide.[125] However, local authorities may define additional standards. The 17 Spanish Autonomous Communities are formally responsible for planning and building control including Madrid (with local authorities playing a key role in implementing the provisions).[126]

In the case of the **UK** (England), the Building Regulations 2010 and Approved Documents establish the building permission procedures and technical building regulations, and apply to England and Wales.[127] However, competencies for building regulations were recently devolved to the Welsh Assembly (2011). While interviewees considered that there are very minor differences emerging in terms of the technical building regulations between England and Wales, the procedures for applying for building permission remain unchanged between the two nations. A system of local authority building control manages the authorisation process. However, service providers may alternatively use private building control bodies known as Approved Inspectors to provide plan approval, site inspection and completion services.

Specific building regulations on mutual recognition of cross-border service providers

As part of the review of the overall legal framework at national and regional levels, the research sought to clarify whether there are any specific rules that address the needs of cross-border service providers. Notably specific rules designed to support cross-border service providers by recognising their right to provide construction services

119 http://isap.sejm.gov.pl/DetailsServlet?id=WDU19940890414.
120 http://isap.sejm.gov.pl/DetailsServlet?id=WDU20020750690.
121 https://dre.pt/application/file/289115.
122 https://dre.pt/application/file/655583.
123 https://zakonodaja.com/zakon/zgo-1.
124 www.boe.es/boe/dias/1999/11/06/pdfs/A38925-38934.pdf.
125 www.boe.es/boe/dias/2006/03/28/pdfs/A11816-11831.pdf.
126 www.madrid.org/wleg/servlet/Servidor?opcion=VerHtml&nmnorma=520&cdestado=P.
127 www.legislation.gov.uk/ukpga/1984/55.

based on national requirements established or already met in their home countries, in case of requirements that are not site-specific. Ideally, if an equivalence assessment is required between home and host Member State requirements (if justified and proportionate), the host Member State requirements would be complemented by mutual recognition procedures to facilitate service providers' efficient engagement with the relevant authorities.

However, no specific requirements relating to cross-border service providers were identified in national legislation on building permit procedures or building regulations. In response to this particular question, public authorities generally made it clear that national and/or regional legal requirements are not formally discriminatory to any form of service provider. While, it is a positive finding that no formal element of discrimination is present, given that no specific rules exist also means that Member States do not provide for a different treatment between established and cross-border providers as appropriate. It should be recognised that in the absence of country of origin principles or mutual recognition clauses for cross-border service providers, economic entities from another Member State will often be unable to provide services cross-border in line with the requirements (namely non-site-specific requirements) that were already (or at least partially) met or established in their home countries.

Extent of the use of performance based standards for building works

This line of analysis was taken further through an assessment of whether technical requirements for building works are established on the basis of performance based standards or whether certain types of standards prescribe the permitted technical solutions. The rationale for this is that performance based standards demand service providers to meet performance based requirements but without prescribing the method to attain the requirements defined. As a result, mutual recognition of technical solutions for building works is made possible as cross-border service providers are not constrained to a list of specific prescribed standards as long as evidence is provided to demonstrate that the performance based requirements are satisfied. The results of this assessment are indicated below:

Table 4.2 Approach to establishing technical requirements for buildings works

Member State	Vast majority of standards are performance based standards	Prescribed standards	A combination of performance based and prescribed standards
BG			x
CZ			x
DE (North Rhine-Westphalia)			x
DK			x
EL	x		
ES (Madrid)	x		
FI			x
FR	x		
IT (Milan)			x
NL			x
PL			x
PT		x	
SI			x
UK (England)	x		

An initial observation is that the study countries have not established performance based standards to a large extent in all areas. Moreover, it is difficult to position the study countries using the categories above given that one needs to consider the general weighting of these Member States towards either performance based or

prescribed standards systems or whether there is a decent enough mix of the two approaches for a country to be characterised as a combined system.

However, it is clear that certain country systems are generally reflective of the approach to define building regulations on the basis of performance based standards. This is the case in **France** and the **UK** where the vast majority of standards are performance based (except in a minority of areas for example electrical installation and testing).

In **Denmark**, the framework for standards has been described as a combination of performance based and prescribed standards. While the legislation permits deviation from the rules if it can be demonstrated to the relevant authority that it is safe to do so (paragraph 5 of the Building Regulations), the country researcher indicated that this practice is not often followed or well embedded in construction practice.

In **Greece**, in recent years, efforts have been made to move to a system based on performance based standards (although until recently the approach was not very well recognised). This has been facilitated by enabling registered designers to self-certify their own plans.

The **German** (NRW) technical requirements are a mix of prescriptive and performance-based technical standards. The trend towards using performance based standards has been ongoing for a number of years but this process is still underway. It is seems appropriate to describe this country as a combined system. The **Bulgarian**, **Dutch**, **Polish** and **Slovenian** systems can also be characterised in this way.

While **Portugal** is beginning to introduce performance based standards, most of the existing standards use prescriptive approaches (and therefore PT has been characterised as a prescriptive system).

Mutual recognition of health and safety requirements for building works

National health and safety legislation was examined with regard to whether mutual recognition principles or procedures have been established for cross-border service providers enabling provision of services based on their own national requirements. It should be mentioned that national health and safety legislation for construction sites are heavily informed by EU requirements (this includes among other requirements Directives 89/391/EEC[128] and 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites). However, the research suggests that there are not specific legal requirements or procedures in place to support the process of mutual recognition.

For example, to help clarify the problem, it should be kept in mind that companies are required to follow organisational rules for health and safety according to their home Member State requirements implementing Article 7 of Directive 89/391/EEC. These rules oblige companies to set up internal health and safety structures comprising certain professionals with the necessary capabilities, aptitudes and means, including equipment. In addition, companies may avoid setting up such structures by hiring external health and safety service providers in a home country.

However, it appears that companies are often not in a position to obtain mutual recognition by being allowed to keep their organisational arrangements (be it an internal or external service). As a result of absence of specific mutual recognition rules, companies going cross-border to provide construction services need either to restructure their health and safety internal organisation locally (which is often too

[128] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

expensive and impracticable) or hire a local external health and safety service provider (but not the service provider contracted in their home Member State).

Mutual recognition of the use of equipment for building works

Use of equipment legislation was examined with regard to whether mutual recognition principles or procedures have been established facilitating provision of cross-border services in line with the requirements of the Member State where the relevant service provider originates from. National legal frameworks on the use of equipment are informed by EU requirements (for example Directive 2009/104/EC – use of work equipment). However, a similar finding emerged as there appears to be a lack of specific mutual recognition principles in most Member States and procedures established in national use of equipment legislation for cross-border entities.

Mutual recognition requirements in legislation that transposes the Services Directive

National legislation that transposes the Services Directive was examined with a similar aim of identifying whether any mutual recognition principles or procedures are established for cross-border service providers. The table below examines whether national legislation makes it clear that equivalent home country requirements in general are recognised as acceptable, whether the use of equipment essential to a service activity is permitted cross-border and whether equivalent insurance products are deemed acceptable as a matter of principle.

Table 4.3 Mutual recognition requirements in legislation that transposes the Services Directive

Member State	Equivalent Requirements in general	Use of equipment	Insurance
BG	Principle	Principle	Principle
CZ	Principle		Principle
DE (North Rhine-Westphalia)	No horizontal law	No horizontal law	Principle
DK	Principle		Principle
EL	Principle	Principle	Principle
ES	Principle	Principle	Principle
FI	Principle		Principle
FR	No horizontal law	No horizontal law	No horizontal law
IT (Milan)	Principle	Principle	Principle
NL	Principle		Principle
PL	Principle		Principle
PT	Principle	Principle	Principle
SI	Principle[129]		Principle
UK (England)	Principle	Principle	Principle

On the basis of a review, it appears that many countries have established principles supporting mutual recognition of requirements in general and insurance (however, specific procedures to support these were not identified). However, in the legislation transposing the Services Directive, there appears to be some gaps in terms of recognition of the use of equipment as indicated above.

[129] Except documents concerning professional qualifications for regulated professions or professional activities.

4.2 Application procedures and categorisation of construction works

The Services Directive requires the simplification of authorisation procedures ensuring efficient access to the market for services providers. This section provides an overview of the application procedures for building permits in relation to corresponding categories of construction works established in the fourteen study countries as follows:

- Initially, an assessment is made of the range of application procedures for a building permit that are available in each country;[130]
- Secondly, the relevant application procedures relating to the two reference works (a one storey two bedroom house and a ten storey office block) are identified and examined.

To begin with, a summary overview of the different categories of application procedures identified are set-out below.

Country / regional overview

By building on the findings of previous research, this study has aimed to characterise the application procedures for a building permit in the fourteen study countries according to specific types.[131] The main reason for this is that different categories of application procedures are associated with different administrative requirements, procedural steps and controls. It should be stressed that all building permit procedures have their own idiosyncrasies, resulting in variation between procedures falling into the same category. However, on the basis of generalisations, building permit application procedures can be characterised according to the following categories:

- Regular procedure: in relation to building work that requires a building permit and/or official permission, plans are submitted to a relevant authority for assessment against the technical requirements for building works. If approved, construction works may proceed in line with the design specifications agreed;
- Building notice*:* building work may commence on the basis of a notification to the relevant authority or on the basis of tacit approval if an official response is not given in the comparatively short fixed period. In some cases, the submission demands may relate to a limited set of documentation (which may not include technical drawings). Moreover, official approval of the plans or works may not given by the relevant authority, resulting in the authorisation of the construction works taking place under the site inspection regime only;
- Light procedure: compliance of the building design with building regulations is not examined in-depth by building control authorities (as the design has been verified already by a registered third party). Alternatively, an authority may type approve a building design and this can be used for subsequent applications without further approvals required;
- Self certification*:* plan approval and designated types of construction work are not subject to rigorous building control procedures if qualified or certified persons self-certify their own work;
- Exemptions from the building permit procedure: construction works that have to meet planning demands and normally the designated technical requirements but are exempt from building control procedures.

As will be explained in more detail, the procedures indicated above are associated with different advantages and disadvantages in terms of their procedural efficiency. However, countries with multiple procedures available can offer service providers procedural flexibility regarding how they wish to engage with the building control

[130] This does not include the regularisation procedure which relates to building work initially conducted without building permission.

[131] This relates to definitions developed by the Research Institute for the Built Environment (OTB) TU Delft University.

process for certain categories of building works. This provides simplification benefits for particular types of applicants. Moreover, self certification of plans or construction works may also provide simplification benefits given that the service provider does not require official approval of services provided. An overview is provided below of the range of procedures that have been established in the fourteen study countries.

Table 4.4 The type of procedures available for applying for a building permit and exemptions from the procedure

Member State	Regular procedure	Building notice procedure	Light procedure	Self-certification	Exemptions for minor works
BG	X	X	X		X
CZ	X	X		The building notice procedure is combined with self certification of plans.	X
DE (NRW)	X	X	X		X
DK	X	X		Construction of transportable structures can be self certified.	X
EL	X	X		The regular procedure is combined with self certification of plans.	Notification
ES (Madrid)	X	X	X	The building notice procedure (Declaration of Responsibility) enables self-certification of plans.	X
FI	X	X			X
FR	X	X			X
IT (Milan)	X	X		The building notice procedure is combined with self certification of plans.	X
NL	X				X
PL	X	X			X
PT	X	X		The regular and building notice procedures are combined with self certification of plans.	X
SI	X (Smaller works)		X (for complex works)	Self certification of the plans for smaller works.	X
UK (England)	X	X	X (Type approval)	Installation work can be self certified.	X

In **Bulgaria**, most works are subject to the regular procedure. However, an applicant may opt to have the plans initially approved by a third party as described under the light procedure. A building notice procedure applies to agricultural works and some minor works (e.g. greenhouses, pools, fences). Under this procedure, a building permit is issued on the basis of an application submitted but approval of the design is not required. Minor construction work such as maintenance works and internal reorganisation of buildings are exempt from building permit procedures.

In the **Czech Republic**, the building notice procedure applies to simple structures and other categories of building works such as many types of residential buildings. In this case, a self-certified design is required from a registered designer but this is not assessed for compliance by the local authority. Tacit approval of the application is given if the authority does not respond in the fixed period. A range of non-residential

and industrial structures are exempt from building permission procedures. All other categories of works require a building permit and fall under the regular procedure.

In **Denmark**, the building notice procedure applies to a range of categories of works such as alteration of annexes of no more than 50 m², alterations of single residential units in multi-storey buildings and minor infrastructure works. In this case, the building design is not checked against conformity of the requirements and no inspections or completion processes are undertaken. Construction work exempt from building permit procedures include simple alterations to single-family houses, construction work performed on buildings of no more than 10 m², and construction work defined as having a limited urban significance. The regular procedure applies to all other construction works. Interestingly, service providers that construct transportable structures (such as concert stages and commercial tents) can do so based on self-certification.

In **Finland**, the two main types of procedures are the regular procedure and building notice procedure. Under the regular procedure, a building permit is required for works relating to the construction of a building, work which is comparable to the construction of a building etc. An action permit is required for measures altering the appearance of a building and rearrangement of dwellings in a residential building etc. However, a local authority may stipulate in its building ordinance that building activities with minor importance may commence upon notification. In this instance, building works may begin if the local authority decides that an application for a permit is not necessary.

In **France**, a regular procedure, a building notice procedure and exemptions are available. The list of exemptions is limited to certain types of minor and industrial works. The building notice procedure applies to minor construction works or works on existing buildings etc. In this case, building designs are checked for compliance with zoning demands but are not checked against conformity with the building regulations. Tacit approval is available under this procedure if a response is not issued by the authority in the fixed period. The regular procedure covers all other construction works.

In **Germany** (NRW), a light procedure is available for construction work relating to low rise residential buildings and certain types of one-storey commercial buildings. Under this procedure, a local building control authority does not check the plans if designers certify that they comply with the building regulations and verification of the plans has been made by a state recognised expert. National type approval of designs for buildings and industrial structures is also available (but this is infrequently used). An extensive list of construction activities are exempt from building permission procedures (including in some cases construction of residential properties that clearly meet the technical and zoning requirements, and in such cases notification is required only and tacit approval applies if no official response is given at the end of the fixed period). All remaining building work is subject to the regular procedure requiring the plans to be drawn-up by designated designers, verification of the design by recognised experts, and finally examination of the plans against the technical requirements by building control authorities.

In **Greece**, there is a two phase regular procedure for building permit applications for new construction works (the first step relates to building permission approval and the second step plan approval). Certain categories of installation works are subject to a 'small scale works approval'. For small scale internal or external maintenance, small repairs and other auxiliary work, there is a requirement to notify the municipal building authority 48 hours prior to commencing work.

In **Italy**, a building permit issued under the regular procedure is required for new construction works, renovation and urban developments. The Milan municipal authority indicates fifteen types of minor works that fall under the notification procedure (known as the C.I.A.L). However, Milan has extended the scope building notice procedure (known as the S.C.I.A) and this applies to many categories of work that would normally fall under the regular procedure. A key feature of the building notice procedure is that the designer guarantees the conformity of the building design with the technical requirements and work can commence immediately. The local authority does not verify the technical plans and tacit approval applies if the authority does not issue a response in the fixed period.

In the **Netherlands**, minor construction works as defined by the legislation are exempt from the building permit process. All remaining types of work are subject to the regular procedure requiring an application for a building permit.

In **Poland**, there are two categories of application procedure and. exemptions are in place for a small number of categories of minor works. A notification applies to renovation works and various small scale building works enabling service providers to commence work immediately unless the local authority objects in the fixed period. All other building works are subject to the regular procedure and require a building permit. However, the legislation is likely to be reformed with the possibility of the extension of the scope of the building notice procedure to larger works such as individual family houses.

In **Portugal**, the regular and building notice procedures have been adopted. Under both procedures, designers self-certify their own plans. The building notice procedure relies upon an administrative check of the application dossier and, if compliant, approval is given in an 8 day fixed period. In this case, the submission demands are more numerous than the requirements for the regular procedure. The regular procedure involves a two step process involving an administrative check of the architectural plans and a detailed assessment of the planning aspects (but these processes can be combined). Exemptions from the building permit procedure apply to interior construction works and works of 'small urban relevance'.

In **Slovenia**, exemptions are available for very simple construction works which have no impact on the environment. In the case of simple structures such as houses, designers self certify their own plans and the authority examines the completeness of the application dossier (this can be implemented within a shortened duration if there is no impact on neighbouring sites). Complex building works fall under the light procedure as an auditor may be required to examine the plans. Again, the authority examines the completeness of the application dossier only, however, there is a longer approval duration given the wider range of planning issues to consider for larger works.

In **Spain**, application for construction of new buildings are subject to a regular or light procedure where the plans are verified initially before the application for building permit is made. In Madrid, depending on the category of buildings, initial verification can be obtained from either the municipality or a collaborating institute composed of registered architects (Entidades Colaboradoras Urbanisticas). With regard to certain types of office buildings used by financial, insurance or legal services sectors, the construction service provider can optionally submit a Declaration of Responsibility with proof of insurance, which exempts the service provider from the building permit procedure. Work can commence immediately upon submission of the application and there is no need for official approval. This has been classified as a building notice procedure combined with the self-certification of technical plans.

In **UK** (England), the two main types of procedures are the regular and building notice procedures. Persons undertaking building work may follow either procedure unless the work falls under certain categories (e.g. where buildings are subject to the Fire Safety Order 2005) in which case the regular procedure is mandatory. Under the building notice procedure, work can commence immediately upon notification and technical plans are not required for submission. Moreover, twenty types of construction installation services may follow self-certification procedures. Exemptions are available for a wide range of relatively minor construction activities. In addition, a national type approval system is available for standard designs that can be used by service providers as part of the regular procedure nationally.

With a view to analysing the procedures available in the fourteen study countries, the table below indicates how they correspond to the two reference works. In addition, the table indicates whether zoning procedures are integrated with the building permit procedure or form separate procedures. The aim is to examine whether applicants are obliged to go through more than one procedure as part of the overall authorisation process for zoning and building permission.

Table 4.5 The type of procedures available for the construction of a one storey house and a ten storey office block

Country	Reference Building	Type of procedure				Combined or separate zoning and building permit procedures
		Regular	Building notice	Light	Self-certification of plans	
BG	1-storey house	X		X		Combined
	10-storey office	X		X		
CZ	1-storey house	X	X		X	Separate but can be combined in some cases
	10-storey office	X				
DE (NRW)	1-storey house	X	X	X		Combined
	10-storey office	X				
DK	1-storey house	X				Combined
	10-storey office	X				
EL	1-storey house	X			X	Separate
	10-storey office	X			X	
ES (Madrid)	1-storey house	X				Separate
	10-storey office	X	X	X	X	
FI	1-storey house	X				Combined
	10-storey office	X				
FR	1-storey house	X				Combined and but can be voluntarily separated
	10-storey office	X				
IT (Milan)	1-storey house	X	X		X	Combined

Country	Reference Building	Type of procedure				
		Regular	Building notice	Light	Self-certification of plans	Combined or separate zoning and building permit procedures
	10-storey office	X	X		X	
NL	1-storey house	X				Combined
	10-storey office	X				
PL	1-storey house	X				Separate but can be combined in some circumstances
	10-storey office	X				
PT	1-storey house	X	X		X	Combined
	10-storey office	X	X		X	
SI	1-storey house	X			X	Combined
	10-storey office	X		X		
UK (England)	1-storey house	X	X	X (type approval)		Separate
	10-storey office	X				

Five of the study countries only make available the regular procedure for applications for a building permit for both houses and office block (**Denmark, Finland, France, the Netherlands** and **Poland**). **Greece** follows a similar logic but the regular procedure involves the self certification of plans.

In **Bulgaria**, the light procedure is available if applicants wish to have their plans certified by a third party (otherwise, the regular procedure applies).

In the **Czech Republic**, a one-storey house qualifies for the building notice procedure (if less than 150m^2) involving the self certification of plans. Ten-storey office blocks are subject to the regular procedure.

In **Germany**, in relation to residential dwellings, the light procedure is most commonly used. There is also a notification procedure for small houses built in an area where a zoning plan is in force.[132] The regular procedure applies to office buildings. The type approval system is infrequently used for such structures and is not indicated as relevant.

In **Italy** (Milan) the regular procedure applies to residential properties and offices buildings but the building notice procedure (S.C.I.A) in Milan is also available to these types of works involving self certification of plans.

In **Portugal**, where zoning arrangements have already been satisfied, the building notice is available for both reference works. The regular procedure applies otherwise but this can be combined with the zoning procedure. Self certification of plans applies in both instances.

[132] This is the case when the building plan fits within the provisions and determinations of the zoning plan and there are no other contradictions with the building regulations. The applicant has to fill in a form for a preliminary building permission. If local authority building control does not declare within a month that is necessary to start a formal (simplified) approval procedure, the construction work can start.

In **Slovenia,** the regular procedure applies to one storey houses (involving the self certification of plans) and a light procedure to ten storey office buildings.

In **Spain** (Madrid) a one storey house is subject to the regular procedure. In Madrid, depending on the route taken and the use of the building, an office block can be approved under the regular, light or building notice procedure (Declaration of Responsibility). This former procedure supports enables the self-certification of plans.

In the **UK** (England) the regular procedure is available to work premises such as office blocks only. Both the building notice and regulator procedures are available for residential properties. A system of national type approval applies and in practice this is sometimes used for housing developments if a developer wishes to construct houses with the same design specifications in more than one locality.

Moreover, in the majority of study countries, the planning and building permit procedures are combined. However, in **Greece**, **Spain** and the **UK**, services provided need to follow separate authorisation procedures. In the **Czech Republic**, **France** and **Poland**, the procedures may be undertaken separately in certain circumstances. Clearly, separate procedures expose service providers to additional authorisation processes compared to a single procedure used as part of an integrated zoning and building permit approach.

4.3 Submission demands and online handling

Country / regional overview

As part of the application for a building permit, the range of categories of submission demands requested impacts directly on the extent of the administrative burden that service providers must manage. An examination of the number of categories of documents requested has been undertaken based on the following criteria:

- Building application form / notice (indicating the details of the applicant and construction work);
- Site plans (indicating the positioning of the construction work in relation to the boundaries);
- Technical plans (providing drawings and calculations demonstrating compliance with certain technical requirements);
- Declarations of any kind confirming that the applicant has followed certain rules (e.g. declarations conforming compliance with the building regulations, planning rules, structural stability, fire safety regulations, accessibility, parking rules, etc.);
- Certificates demonstrating professional capacity / standards / health and safety compliance;
- Proof of ownership of property;
- Insurance of services and latent defects;
- Equipment to be used;
- Environment and energy efficiency compliance documents;
- Proof of fees paid (e.g. architect fees or payment of the building permit fees);
- Zoning documents to demonstrating compliance with planning requirements and other items.

The table below provides a brief overview of the range of categories of submission demands that are expected as part of an application for a building permit. This is

examined in the context of the two reference works (a one storey house and a ten storey office block) and associated procedures that may be followed. (An attempt has been made to number the amount of documents requested for each of the categories but this may not be entirely accurate given the lack of detail in the legislation (e.g. an official request may be made for technical plans only and in practice service providers may provide three or four types of plans to demonstrate compliance in different areas).

Unlike horizontal authorisation schemes, good repute and financial/economic capacity are not checked under building permit procedures.

Table 4.6 The submission demands requested in relation to the procedures relevant to the reference work

MS	Procedure	Reference work	Technical plans	Site Plans	Building application form / notice	Declarations of compliance *	Voluntary certificates	Mandatory insurance document	Health and safety documents	Planning documents	Energy	Environment	Equipment	Proof of ownership	Proof of fees paid	Other
BG	Regular	10-storey office 1-storey house	1	2	1					3	1	1		1	1	
CZ	Regular	10-storey office	1	2						11				1		
	Regular	1-storey house	1	1						5				1		
DE (NRW)	Regular (office) / Light (house)	10-storey office 1-storey house	11	4	3	2[133]										2
DK	Regular	10-storey office	7	4						1	1					
	Regular	1-storey house	4	2				1			1					
EL	Regular	10-storey office	4	1	2	2[134]			1	3	1			1	1	1

[133] These are two fire safety declarations issued by the designer and state expert.
[134] A declaration from the architect regarding conformity with the building regulations. A declaration on parking areas.

MS	Procedure	Reference work	Technical plans	Site Plans	Building application form / notice	Declarations of compliance *	Voluntary certificates	Mandatory insurance document	Health and safety documents	Planning documents	Energy	Environment	Equipment	Proof of ownership	Proof of fees paid	Other
		1-storey house														
ES (Madrid)	Regular	10-storey office 1-storey house	2	1	1	2[135]		1	1	2					2	
	Building notice	Office buildings	1			1[136]		1								
FI	Regular	10-storey office 1-storey house	3	2	2					2	1			1		
FR	Regular	10-storey office	2	1	1	1[137]			1	2	1					
	Regular	1-storey house	2	1	1				1	2	1					

[135] A declaration from the designer regarding conformity with town planning and structural feasibility regulations. Declaration of the establishment of an onsite signpost indicating the building permit application and proposed activities.
[136] Sworn statement validating the Statement of Responsibility.
[137] A document from the applicant stating compliance with the requirements on fire safety and accessibility.

MS	Procedure	Reference work	Technical plans	Site Plans	Building application form / notice	Declarations of compliance *	Voluntary certificates	Mandatory insurance document	Health and safety documents	Planning documents	Energy	Environment	Equipment	Proof of ownership	Proof of fees paid	Other
IT (Milan)	Regular and building notice	10-storey office 1-storey house	4	3	1	3[138]			2	6	1	3				8
NL	Regular	10-storey office 1-storey house	3	1	1											
PL	Regular	10-storey office	1		1	1[139]				4		1		1		
	Regular	1-storey house	1		1	1[140]				3		1		1		
PT	Regular	10-storey office 1-storey house	2					1		1				1		1
	Building	10-storey office	2					3	1	1				1		2

[138] Certification of Conformity of the works to the Urban Planning Instruments and Building Regulations. Substitutive declaration of notary act of by filling form downloaded from the website. Declaration by the Owner/Construction Supervisor (appointed) attesting the verification of the technical-professional suitability of the Main foster Companies.

[139] A document certifying that the project designer is certified and registered in a professional chambers.

[140] Ibid.

MS	Procedure	Reference work	Technical plans	Site Plans	Building application form / notice	Declarations of compliance *	Voluntary certificates	Mandatory insurance document	Health and safety documents	Planning documents	Energy	Environment	Equipment	Proof of ownership	Proof of fees paid	Other
	notice	1-storey house														
SI	Light	10-storey office	3	1		1[141]								1		
	Regular	1-storey house	3	1		1[142]								1		
UK - England	Building notice	1-storey house		3	1				1							1
	Regular procedure	10-storey office 1-storey house	3	3	1		(maybe)		1							3

[141] Consent form from local authorities.
[142] Consent form from local authorities.

In **Bulgaria**, the individual complexity of the submission demands differ in respect of the construction category. However, an investor must provide the range of documents indicated above for a building permit under the regular procedure for both reference works. There is not a standard template of the application form and it should be kept in mind that the submission demands can differ from municipality to municipality.

In the **Czech Republic**, with regard to a ten storey office block, the opportunity to combine the planning and permit procedures results in a larger number of 'technical condition' documents required from planning authorities and a geodesic plan. Apart from these documents, there is continuity with the categories of documents requested between the two reference works.

In **Denmark**, the municipality determines the submission demands required and therefore it is not possible to provide a conclusive assessment. However, the range of documents requested depends on this technical complexity of the building and differences have been identified between the reference works with more technical plans required for large office blocks (for example detailed calculations of the performance of load bearing structures).[143]

In **Finland**, the application for a building permit for a one storey house and ten storey office building fall under the regular procedure and are generally similar. The submission demands for a building permit are the same in all municipal areas of Finland as indicated in the National Building Code.

In **France**, both the one storey house and ten storey office building require a building permit under the regular procedure. The submission demands are slightly different for the reference works. Two different application forms with their own requirements are used. There are certain documentary requirements that may need to considered for buildings open to the public that are not specified for small private buildings.

In **Germany**, there are no striking differences between the categories of documents required for either a house or an office building. However, the legislation is quite detailed and therefore in this case it is possible to determine with a greater level of certainty the types of technical plans requested.

In **Greece**, similarly, there are no major differences in the categories of submission demands required for either reference works. The categories of documents indicated above take into account the documents required for the two phase process to applying for building permission.

In **Italy,** (Milan) the same categories of documents are required under the regular and building notices (S.C.I.A) procedures. This includes a wide range of planning documents given the integrated approach to authorisation. However, the authority has the right to determine the scale and scope of the documents depending on the nature or the building and its location.

In the **Netherlands**, the regular procedure applies to the reference works and the submission demands are similar for both the one storey house and 10 storey office block. The most important documentation are the application, scale drawings and calculations to demonstrate minimal performances.

In **Poland**, the obligatory documents to obtain building permit differ slightly from a one storey house to a ten storey office building. However, there are a series of

[143] The declarations demanded include: certificate from a state-recognized expert indicating that the construction plan meets the demands on fire protection (this demand is not however not applicable for dwellings of a limited height). Also, a declaration of the designer/architect that the building plan meets the fire protection demands.

additional documents which may apply under certain circumstances to both buildings. The obligatory documents are indicated only above and it may be the case that there are more to consider.

In **Portugal**, the construction of a new house or office building can go through either a building notice procedure or regular procedure. Interestingly, there are more documents required under the building notice procedure such as a greater number of insurance and liability documents, however, the range of categories of documents are the same.

In **Slovenia**, the submission demands are the same both reference works and are determined at national level. However, an auditor's assessment may be required for a ten storey office block.

In **Spain** (Madrid), there are a different number of categories required in terms of whether the regular procedure or building notice procedure (Declaration of Responsibility) are used. In terms of the regular procedure which applies to both reference works, a detailed set of technical, site and planning documents are required. The building notice procedure largely relies on submission of a declaration and technical plans.

In the **UK** (England)**,** there are two procedures that relate to the reference works. Under the building notice procedure (which applies to a one storey house only) applicants need to provide a building notice and site plans. Under the regular procedure (which applies to both reference works) technical plans must also be given. A notification must be given to the health and safety authority in both instances for both categories of reference works (which are likely to meet the minimum requirements for submitting a notification). If an applicant wishes to use a type approved design for a house, a voluntary certificate may be submitted demonstrating that the technical plans have already been approved under a previous authorisation procedure.

4.4 Plan approval, site inspections and completion

Country / regional overview

A key objective of the building control process is to ensure construction work complies with the minimum technical standards for buildings. This objective can be realised through a variety of different processes and requirements depending on the type of building permit procedure followed. The three key three steps in the building control process include:

- Plan approval: the process of building control often commences with assessment of the technical plans and their approval (this activity may not be followed by some procedures);
- Site inspections: this is followed by site inspections by relevant authorities to ensure that the actual building work is compliant. It may be the case that some or all of the inspection duties are allocated to the person undertaking building work or private sector service providers;
- Completion or use: finally, a completion or use process is performed often on the basis of a final inspection (and in some cases submission of documentation) which is normally followed by the issuing of a completion or use certificate by the relevant authority.

This section explores areas of comparative restrictive and non-restrictive practice as defined under the Services Directive with regard to the three key steps indicated above. As will be examined in the legal evaluation, a key area of assessment has been

the issue of whether duplication of authorisation applies during the three key steps of the building control process. In particular, it is interesting to compare the extent to which certain responsibilities to demonstrate compliance are delegated to legally designated service providers and/or third parties in charge of supervision/inspection of building works or whether the person undertaking building work is obliged to meet the technical requirements.

In addition, it is also interesting to compare whether or not the process of building control is supplemented by further detailed inspections undertaken by public authorities particularly where designated service providers and/or third parties have been mandated to perform key tasks in the first instance. `

To begin with, an overview is provided below of the actors responsible for plan approval in the context of the regular procedure in relation to the two reference works (a one storey two bedroom house and a ten storey office block).

Table 4.7 The type of authorities involved in plan approval under the regular procedure

Member State	Reference works	Local authorities	Other public authorities as part of separate procedures	Private building control services / State registered experts
BG	10-storey office	x		x (optional)
	1-storey house	x		x (optional)
CZ	10-storey office	x	x	
	1-storey house	x		x (optional)
DE (NRW)	10-storey office	x		x (mandatory)
	1-storey house	x		x (mandatory)
DK	10-storey office	x		
	1-storey house	x		
EL	10-storey office	x		
	1-storey house	x		
ES (Madrid)	10-storey office	x	x (optional)	x (optional)
	1-storey house	x	x (mandatory)	
FI	10-storey office	x		x (potentially requested by the local authority)
	1-storey house	x		x (potentially requested by the local authority)
FR	10-storey office	x		x (mandatory)
	1-storey house	x		
IT (Milan)	10-storey office	x	x (optional)	
	1-storey house	x	x (optional)	
NL	10-storey office	x		
	1-storey house	x		x (a mandatory system has been proposed)
PL	10-storey office	x	x	
	1-storey house	x		
PT	10-storey office	x		
	1-storey house	x		
SI	10-storey office	State authority		x (potentially mandatory)
	1-storey house	State authority		
UK	10-storey office	x		X (optional)

Member State	Reference works	Local authorities	Other public authorities as part of separate procedures	Private building control services / State registered experts
(England)	1-storey house	x		X (optional)

Municipal authorities in **Bulgaria** issue building permits for both types of reference works (a one storey house and a ten storey office block) and the approach is similar in each case. The technical design must be signed by a registered architect and assessed initially by a municipal or a private building control body. The next step is to coordinate the application for a building permit with the municipal authority with a view to seeking approval. If, however, a private building control body has not been used for the initial plan assessment, the design is reviewed again by other officials as part of an internal procedure in the municipal authority (for example after the Chief Architect from the municipal authority has approved the plans a subsequent approval is required by the Municipal Expert Council on Spatial Planning).

In the **Czech Republic**, the technical plans need to be prepared and authorised by a registered architect or engineer for both types of reference works. The application for both types of reference works requires approval from the municipal authority but the plans are not checked against technical requirements for a one storey house. In the case of a ten storey office block, multiple authorisations from several authorities are required as part of the building permit application. According to practice, the services of an authorised inspector (private sector building control) are requested for small building works (e.g. a one storey house) and correspond to about 10% of building permit applications. Under this system, the authorised inspector will give a certificate to the municipal authority to indicate compliance of the plans. As part of plan approval, the authorised inspector and chief designer may be invited for interview by the municipal authority (at the expense of the authority).

In **Denmark**, plan approval conducted by a local authority is required for both types of reference works. The person submitting the plans is responsible for complying with the legal requirements. In the case of a ten storey office block, given that failure of the load bearing structure is a major safety hazard, a signed declaration is required from a certified structural engineer accompanying the structural plans. During plan approval, local authorities examine plans submitted against zoning, aesthetic and technical requirements.

Plans must be submitted for approval to a local authority in **Finland** by the owner of the building or a legally authorised representative for both types of reference works. The activities of plan preparation and submission are not reserved to a regulated profession. During the plan approval phase, the local authority examines the submission demands against the zoning, aesthetic and technical requirements. However, if there is uncertainty, the local authority may require an expert opinion on whether the suggested building design meets the legal requirements (if this possibility arises, the costs are borne by the applicant).

The legal framework in **France** dictates that it is not mandatory to request the services of a qualified architect for the development of the technical plans for buildings with a net floor area of less than 170m² (such as a one storey house). In this case, free technical advice is available to applicants from public bodies[144] (and it is recommended that this service is used as plan approval may take longer if the services of an architect are not employed). Buildings that are 170 m² or greater (such as a ten storey office block) are required to be designed and the plans signed-off by a

[144] An architect of the Council of Architecture, Urban Planning and Environment (*Conseil d'Architecture, d'Urbanisme et d'Environnement* - CAUE), the local building authority where the construction work is located, or the departmental offices of infrastructure (*Directions Départementales de l'Equipement et de l'Agriculture - DDEA*).

qualified architect. In addition, with regard to very tall buildings (e.g. ten storey office blocks), as part of comprehensive schemes for building control, the services of a registered building surveyor are required to cross examine the design. During the plan approval process, under the regular procedure, the municipality checks whether the application complies with submission, zoning and aesthetic requirements. However, the municipality only examines compliance with the technical requirements for buildings open to the public and very tall buildings (e.g. ten storey office blocks) and such checks are limited to fire safety and access to disabled persons. As part of an internal procedure, other authorities are consulted on the application in relation to their official competencies.[145]

The plan approval process in **Germany** operates according to two steps. Firstly, plans must prepared and certified by a registered architect or engineer and then assessed and approved by a state registered expert. Secondly, the relevant architect or engineer is needed to submit the plans to a local authority to seek approval. With regard to one storey houses, the local authority will not check the plans if designers certify compliance with the building regulations. However, in relation to ten storey office blocks, the local authority will check the plans against aesthetic, zoning and technical requirements. If the application is determined as compliant, a building permit will be issued which may be subject to certain conditions.

In **Greece**, the technical plans for both types of reference works are required to be certified by a registered engineer or architect. Municipal building authorities undertake an assessment of the completeness of the building permit application but they do not undertake a detailed assessment of the technical plans as it is the responsibility of registered architects or engineers to ensure compliance with the technical requirements. If the submission dossier is accurate, approval is granted automatically.

The process of plan approval in **Italy** initially relies upon a registered designer certifying that the plans meet the technical requirements. The plans are submitted to a local authority for approval against the technical requirements. An internal procedure with subordinate authorities (i.e. historical and environmental protection) takes place to examine compliance with the full arrange of relevant legal requirements. Alternatively, the applicant may choose to receive approval from these authorities in the first instance as part of separate procedures. The process of plan approval is similar for both reference works.

The activities of plan preparation and submission are not reserved to a regulated profession in the **Netherlands**. Municipal authorities are responsible for plan approval relating to both reference works (but it is expected that a mandatory private building control system will be introduced in the future initially for smaller scale construction works such as one storey houses). An assessment is made against all technical requirements including zoning requirements.

Registered designers are required to certify technical plans for both reference works as part of building permit applications in **Poland**. Country Governor's issue building permits after an assessment of the application against the technical requirements is made by the District Inspector. The General Inspector supervises and controls the work of lower ranking officials and occasionally this may lead to examination of building permit applications initially assessed by the District Inspector. In addition, in relation to a ten storey office block, as part of separate procedures, plan approval is required from the sanitary and fire safety authorities.

Design liability declarations are required to be submitted by designers as part of building permit applications in **Portugal**. As a result, while this is not always the case,

[145] The police, the highways service, the fire service and the Architects of the Buildings of France (Architectes des Bâtiments de France – ABF).

there is a trend for the municipal authority not to perform a detailed assessment of the plans against the technical requirements (rather the approval process focuses on the zoning aspects). Coordination takes place with other relevant authorities (e.g. cultural heritage) that may be called upon to provide an assessment of the appl**i**cation if it falls into their field of competency. [146]

In **Slovenia**, plan approval is initially subject to the design being prepared and authorised by a registered architect or engineer. With regard to complex structures, (this may relate to a ten storey office block) a certified auditor may be required to assess the building permit application. The application is subsequently submitted to the State Authority for approval. This public body has the role of examining the submission dossier and planning requirements but does not perform a detailed assessment of the plans against the technical requirements.

Responsibility for drawing-up technical plans is designated to registered architects in **Spain**. A seal of approval ('visado colegial') confirming the technical compliance of the plans needs to be submitted with the application for a building permit. In Madrid, in terms of the construction of new office buildings, a 'visado colegial' can be obtained either from the municipality or from a collaborating institute composed of registered architects (Entidades Colaboradoras Urbanisticas). With regard to the construction of houses, a 'visado colegial' is obtainable from the municipality. The building permit application is submitted to the municipal authority that has the role of examining the completeness of the submission dossier (but a subsequent detailed assessment of the technical plans is not undertaken).

In the **UK** (England), local authorities are responsible for building control but applicants may opt to receive building control services from a private sector third party (known as an Approved Inspector). The activities of plan preparation and submission are not reserved to a regulated profession. Local authorities are responsible for the assessment of technical plans against the building regulations and will either give building permission if they are found to be compliant or will request changes to the plans to be made. Alternatively, if private building control is opted for, an Approved Inspector will notify the local authority regarding the commencement of building work and submit plans (however, the local authority will not undertake a detailed technical assessment of the plans as Approved Inspectors are responsible for their accuracy). Local authorities and Approved Inspectors engage with other authorities such as fire safety (where relevant) and sewer management bodies but these steps are managed internally as part of the same approval process.

The actors involved in the site inspection process in relation to the two reference works are indicated in table 4.8:

Table 4.8 The type of authorities involved in site inspections

Member State	Reference works	Local authorities	Other public authorities	Private building control services / State registered experts	Architects / Engineers	Technical advisor / contractor
BG	10-storey office	x	x	x (mandatory)		
	1-storey house	x	x	x (mandatory)		
CZ	10-storey office	x				

[146] In the case of the building notice procedure, external public authorities have to be consulted by the applicants themselves as part of a separate procedure.

Member State	Reference works	Local authorities	Other public authorities	Private building control services / State registered experts	Architects / Engineers	Technical advisor / contractor
	1-storey house	x				
DE (NRW)	10-storey office	x		x (mandatory)		
	1-storey house	x		x (mandatory)		
DK	10-storey office	x	x			
	1-storey house	x	x			
EL	10-storey office			x (mandatory)		x
	1-storey house			x (mandatory)		x
ES	10-storey office	x			x	
	1-storey house	x			x	
FI	10-storey office	x			x (potentially)	x
	1-storey house	x			x (potentially)	x
FR	10-storey office	x		x		
	1-storey house	x		x		
IT	10-storey office	x	x		x	
	1-storey house	x (potentially)			x	
NL	10-storey office	x				
	1-storey house	x				
PL	10-storey office	x		x	x	
	1-storey house	x		x	x	
PT	10-storey office	x		x	x	
	1-storey house	x				
SI	10-storey office		x	x		
	1-storey house		x	x		
UK (England)	10-storey office	x		x (optional)		x
	1-storey house	x		X (optional)		x

In terms of the allocation of building control responsibilities, the distribution of actors indicated above are positioned against key tasks in table 4.9.

Table 4.9 Site inspection tasks allocated to authorities and other service providers

	Structural safety	Fire safety	Energy conservation	Approval of installations
Authorities				
Municipal	Bulgaria Czech Republic Denmark England Germany (NRW) Finland France Netherlands Portugal Spain Italy	Czech Republic Denmark England Germany (NRW) France Netherlands Portugal Spain	Czech Republic Denmark England Germany (NRW) Netherlands Portugal Spain Italy	Bulgaria Czech Republic Denmark England Germany (NRW) Finland France Netherlands Portugal Spain Italy
Other Authority	Bulgaria Poland Slovenia Italy	Bulgaria Czech Denmark England Finland Portugal Slovenia Italy	Slovenia Italy	Finland Poland Portugal Slovenia
Service providers				
Architect/designer	Czech Republic Finland Spain Italy Portugal	Czech Republic Finland Spain Portugal	Czech Republic Finland Spain	Czech Republic Finland Spain
(Technical) advisor/contractor	Bulgaria Czech Republic Germany (NRW) Finland Poland Portugal	Czech Republic Germany (NRW) Finland Poland Portugal	Czech Republic Germany (NRW) England Finland Poland Portugal	Czech Republic Germany (NRW) Greece England Finland Poland Portugal Italy
Private sector building control / State recognised expert	Bulgaria England Finland France Germany (NRW) Greece Portugal Slovenia	Bulgaria England Finland France Germany (NRW) Greece Portugal Slovenia	Bulgaria England Finland France Germany (NRW) Greece Portugal Slovenia	Bulgaria England Finland France Germany (NRW) Greece Portugal Slovenia

The approach in **Bulgaria** dictates that in relation to both of the reference works, site inspections are performed by a private building inspector appointed by the investor. This is on the basis of five inspections phases (relating to both reference works). In addition, at appropriate intervals, site inspections are carried out by municipal and state authorities namely the Regional Construction Control Directorate and the District Directorate "Fire Safety and Civil Protection".

In the **Czech Republic**, the municipal authority performs site inspections. Site inspections are only conducted by the authority on small constructions works (e.g. one storey houses) if complaints are made e.g. with regard to noise, dust etc. Site inspections are carried out on large construction works (e.g. ten storey office blocks)

at fixed construction phases and at regular inspection points by several authorities (including the municipal authority, traffic authority, fire safety and sanitation).

In **Denmark**, the local building authority has the role of supervising all construction work and may carry out site inspection of individual sites at random without previous notification (although this does not apply to all construction works). Moreover, the building control authority may specify the timing of site inspections in line with certain project intervals or conduct an inspection on an unannounced basis. If deeded necessary, inspections may be conducted by fire or sewerage authorities. Ongoing building control is carried out by the principal contractor or alternatively a building surveyor may be appointed to perform this task. The principal contractor or building surveyor normally conduct site inspections upon completion of key construction phases.

It is the responsibility of local authorities in **Finland** to carry out site inspections and these can take place at any point during the construction works as deemed appropriate. However, on the basis of a legally designated start-up meeting (attended by the local authority, the owner of the building or a representative, the principal designer and the site manager), building control may be delegated to the principal designer depending on the complexity of the construction works and providing that sufficient expertise to meet the legal requirements can be demonstrated (this does not include the final inspection). If the building control activities are delegated, reporting obligations are placed on the parties undertaking building work on the basis of a reporting logbook to be submitted to the local authority. Other inspections may need to be conducted by technical specialists e.g. for heating, plumbing and air-conditioning etc.

The approach to site inspections differs in **France** regarding the two types of reference works. In relation to tall buildings (e.g. a ten storey office block) a registered private building control service provider is required to perform site inspections e.g. for structural safety, fire safety and installation. A building control plan is agreed with the developer at the outset of the project. Compliance may also be examined for non-statutory requirements (e.g. mechanical and engineering services, sound insulation etc.). On a voluntary basis, with regard to construction work associated with fewer risks (e.g. a one storey two bedroom house) the developer may choose to hire a registered building control service provider. Local building authorities have the legal power to stop construction work where there are indications of non-compliance.[147] Normally, site inspections conducted by local authorities examining legal compliance are conducted randomly either during the performance of the construction works or up to 3 years after the building has been completed.

The site inspection process in **Germany** requires the applicant to appoint a contractor and a site manager. The contractor must carry out the construction work in line with the technical requirements and the site manager should ensure this objective is met. Site inspections are conducted by the local authority to ensure compliance of the building work in relation to two legally designated points (after the building shell is completed and upon completion). However, the local authority may enter the site at any point during the construction works. Moreover, inspections of structural stability are normally delegated to a state registered expert. Building surveyors are required to examine sound insulation and energy conservation.

Site inspections in **Greece** are conducted on two or three occasions depending on the size of the building. This includes an initial inspection (of the foundations and cellar walls) and a final inspection of the whole building. In relation to buildings larger than 2,000 m^2 (e.g. a ten storey office block), an interim inspection takes place of the load bearing structure and masonry. Prior to the designated inspection phase, the

[147] Ministry of Ecology, Energy, Sustainable Development and Spatial Planning and the Ministry of Housing.

contractor must submit notification to the municipal authority. Site inspections are conducted by a registered private building control inspector selected randomly by the municipal authority. Different private building control inspectors are selected for each of the inspection phases. An inspection of the energy performance of the building is conducted by a qualified energy inspector.

There is a private system of building control in terms of site inspections in **Italy**. The applicant appoints a building surveyor (normally the designer or someone from the design team) to ensure that on an ongoing basis the building work is compliant with the conditions of the building permit. The building surveyor is not responsible for any non- compliance identified if s/he informs the local authorities. In addition, the local building authority can perform site inspections at any time but normally this only relates to large construction works (such as ten storey office blocks) i.e. when the concrete/steel structure is in place and when the construction is completed. Building authorities conduct site inspections on structural safety, energy conservation and installations. Other authorities are required to perform inspections according to their competencies e.g. fire safety.

Only municipalities in the **Netherlands** carry out site inspections with regard to all aspects of technical compliance. The intensity of the inspection regime is determined on the basis of a risk assessment and clearly this will lead to a different number of site inspections required in relation to a one storey house and a ten storey office block. There are no legal obligations imposed on the applicant to appoint a service provider to oversee ongoing compliance with the technical requirements.

The approach to building control in terms of the site-inspection process in **Poland** is multi-layered. There is a legal requirement to establish a number of designated persons with corresponding qualifications and duties as part of the process ensuring compliance of the construction works i.e. the investor, the investors supervisory representative (a private building control representative) a designer and a construction site manager. In terms of complex building work (e.g. in some cases this may relate to a ten storey office block), it may be necessary for the investor to appoint private building control supervision of the designer. In addition, the District Inspector is required to perform site inspections of the construction works at random intervals corresponding with the completion of key phases e.g. foundations, load bearing walls, external structure and installations.

In **Portugal**, site inspections may be performed by public authorities (e.g. the municipality, sanitation, labour and real estate and construction authorities) to verify compliance with the legal requirements where deemed appropriate (construction sites are selected randomly for inspection and when complaints have been made but the sanitation authority performs a mandatory final inspection). In addition, a technical director is required to be appointed by the service provider. With regard to small construction works, such as one storey houses, the technical director is often a representative of the contractor. Regarding large construction works, such as a ten storey office building, there is usually a separation of responsibilities between the technical director, a building surveyor (appointed by the applicant to assess if the construction works complies with the approved building design) and a designer (appointed to provide technical assistance).

During the construction phase, in **Slovenia**, the investor is legally required to appoint a registered construction site manager and a registered supervisor to perform site inspections. The Construction Inspectorate performs site inspections at random but does not investigate all construction projects. The Construction Inspectorate has the powers to halt construction work if non-conformity with the legal requirements is identified.

In terms of the situation in **Spain**, support with ensuring ongoing compliance of the construction works with the technical requirements is provided by a registered architect. During the construction phases, a 'building book' is assembled indicating how technical compliance has been attained. A single site inspection is carried by the local authority at the end of the project.

Recent adaptations to the regulations in the **UK** (England) empower local authorities to determine the frequency and timing of site inspections on the basis of a risk based approach relevant to the nature of the construction work. Inspections can correspond to various stages of the building project from the initial foundations being prepared to the finalisation of the building. If private sector building control is opted for, inspections may be carried out by an Approved Inspector. Similarly, the Approved Inspector will determine the nature of the inspection regime. There are no legal obligations imposed on the applicant to appoint a service provider to oversee ongoing compliance with the technical requirements. In relation to a ten storey office block, a fire safety officer may examine the site but these are conducted as part of risk based market wide surveillance. An energy assessment must be conducted by an approved energy assessor and the assessment made must be approved by a local authority or an Approved Inspector. Moreover, in relation to technical installation activities (e.g. electrical installation), these are not subject to site inspections if the work is conducted by a Competent Person as compliance with the technical requirements is self-certified.

The table below provides an overview of the bodies responsible for issuing completion certification.

Table 4.10 The type of authorities involved in issuing completion certificates

Member State	Reference works	Local authorities	Other public authorities	Private building control services / State experts
BG	10-storey office	x		
	1-storey house	x		
CZ	10-storey office	x		
	1-storey house			
DE (NRW)	10-storey office	x		
	1-storey house	x		
DK	10-storey office	x		
	1-storey house	x		
EL	10-storey office			X (mandatory)
	1-storey house			X (mandatory)
ES	10-storey office	X		
	1-storey house	X		
FI	10-storey office	X		
	1-storey house	X		
FR	10-storey office	X		X (optional)
	1-storey house			
IT	10-storey office	X		
	1-storey house	X		
NL	10-storey office	X (this applies to the user of the building only)		
	1-storey house	N/A		
PL	10-storey office	X		
	1-storey house	X		
PT	10-storey office	X		
	1-storey house	X		

Member State	Reference works	Local authorities	Other public authorities	Private building control services / State experts
SI	10-storey office		x	
	1-storey house			x
UK (England)	10-storey office	X		
	1-storey house	X		

In **Bulgaria**, 10 storey office buildings are commissioned by obtaining a use permit issued by the National Construction Control Directorate (within the Ministry of Regional Development and Public Works). Dwellings are commissioned on the basis of a use permit issued by the body that has approved the construction works (normally a municipal authority). To obtain a use permit, a final examination is conducted and a technical passport and drawing of the building are prepared for approval.

In the **Czech Republic**, the completion process relates to large construction works only (e.g. a ten storey office building) with completion certificates issued by the municipal authority. This is subject to a final inspection being made by several authorities (municipal, traffic authority, sanitation, the fire authority) determining compliance with the regulatory requirements.

The approach in **Denmark** dictates that as soon as the construction work is completed the applicant submits a completion notification to the local building authority. The applicant must confirm to the local authority that the construction works has been conducted in accordance with the building permit. Technical documentation is submitted to prove that the building is compliant with the building regulations. Interestingly, the local building authority does not have to carry out a final inspection and often relies on the building control results indicated in the documentation provided by the contractor or building surveyor.

Completion certificates are issued by local authorities in **Germany** (NRW). The site manager is required to notify that the building work is ready for a final inspection. The local authority examines whether the building work is compliant with the technical requirements and zoning plan, and provides the certificate if the building is deemed fit for use.

In **Greece**, a completion certificate is issued by the private building control inspector after the final inspection is performed and legally compliant results are identified. Receipt of the certificate enables the owner of the building to submit an application to the municipal authority for a connection to the public utility networks.

The approach is similar in **Finland**. The activity of issuing a completion certificate is an obligatory task of local authorities providing the construction work complies with the legal requirements (this is determined through a final inspection).

However, the approach is slightly different in **France**. In relation to both reference works, within 30 days after the completion of the construction works, a declaration attesting that compliance with the building permit application must be submitted to a local authority. This should be complemented by a certificate indicating compliance with the building regulations regarding access to disabled persons, seismic safety and thermal performance issued by a designer (but not the designer of the building) or a building surveyor. However, with regard to tall buildings (e.g. a ten storey office block), a use permit is also required which is issued on the basis of the successful completion of a final site inspection conducted by the local authority. Normally, to support the process of final site inspection, a building surveyor is hired to prepare a safety report.

The completion process in **Italy** (Milan) dictates that the building surveyor must notify the local authority that the construction work has been carried out in accordance with the building permit. Subsequently, a final site inspection is carried out by the local building authority and other building authorities for public buildings (potentially this could apply to a ten storey office block if it is a public works). The building surveyor should request a use permit and this application should contain supporting documents such as land registry documentation, installation certificates, a structure certificate, a declaration attesting conformity with the technical requirements, energy performance certification etc. An approval from the Public Health Agency certifying the sanitation requirements have been satisfied is required or alternatively this can be self-certified (although self-certification may delay the issuing of the use permit up to 60 days as oppose to up to 30).

In the **Netherlands**, after satisfactorily complying with the inspection regime, the applicant must notify the local authority upon completion of the construction works. After this notification is made, the relevant official closes the file on the building permit application. It should be noted that final inspections are not mandatory and completion certification is not issued. However, with regard to a ten storey office building, a request for a use permit should be made by the user of the building (and therefore this requirement does not apply directly to the construction service provider). This permit requires demonstration of compliance with fire safety requirements.

Utilisation of a building in **Poland** requires the construction team to notify the District Inspector that the construction work is finalised (this is subject to the authority not raising any objections 21 days after the receipt of the notification). However, if the building falls under certain categories including office buildings, it is required to obtain a final utilisation permit. In this case, the applicant/investor must also notify the State Sanitation Inspectorate and the State Fire Service. The utilisation permit is issued by the District Inspector of Building Control.

In **Portugal**, an occupancy permit must be issued by the municipality before the building can be used legally by the applicant. There is a statutory list of submission demands required including an updated set of design documents (if the design has been amended since the submission of the building permit), the construction log book and a liability declaration prepared by the construction director. A liability declaration by the designer may also be submitted. Within 10 days, the municipal authority informs the applicant whether the permit will be granted or if deemed necessary a final site inspection will be performed (which may result in demands for modification work to be made).

In terms of **Slovenia**, residential buildings such as a one storey house are not subject to completion certification requirements but the designer or supervisor must confirm that the building has been completed in accordance with the building permit (but the option is available to the investor to apply for a completion certificate). With regard to office buildings, the State Authority makes a technical inspection attended by representatives of those organisations which gave prior consent to the project, and representatives of other Inspection Authorities (if applicable) after which a certificate of completion is issued.

In **Spain** (Madrid), all buildings are subject to a use permit inspection, including office buildings that have been built on the basis of a Declaration of Responsibility (for which no building permit is required). This is the only external inspection that is carried out. In terms of residential houses, this is performed by the municipality. With regard to office buildings, this is either the municipality or a collaborating institute depending on the body selected to perform building control by the applicant. Receipt of the use permit is also dependent on submission of the 'building book' to the municipal authority.

With regard to the **UK** (England), completion certificates are issued by local authorities when they have been notified that the building work has been completed and the requirements are satisfied. There is no legal requirement for a final inspection but the local authority may consider this as necessary. If a private sector building control body (Approved Inspector) has managed the building control process, this third party service provider notifies the local authority that the technical requirements have been met when the appropriate stage is reached.

4.5 Fees

Country / regional overview

The fee system is a key element of the building control process that impacts directly on the performance of service providers. The Services Directive aims to ensure that the costs associated with approval process are proportionate to the extent of the authorisation activities undertaken. This section provides a comparative assessment of the legal framework for public authority fees.

It appears that the vast majority of countries have established legislative frameworks for the fee system for building control. There does, however, appear to be some divergence (which is very minor in some areas) in terms of whether there is:

- General legal framework for the fee system in place;
- Reference to specific fee rates;
- Exact method of calculation;
- Need to avoid making a profit.

The table below indicates how the fourteen study countries regulate their fee system for public authority building control with the above factors in mind.

Table 4.11 The legal framework for building control fees

Member State	Is the general framework for fees regulated	Are specific fees rates determined in the legislation	Is the exact method of calculation determined in the legislation	Can profit be made by the relevant authority
BG	Yes	No	Yes	No
CZ	Yes	Yes	Yes	No
DE (NRW)	Yes	Yes	No	No
DK	Yes	No	No	No
EL	Yes	Yes	Yes	No
ES	N/A	N/A	N/A	N/A
FI	No	No	No	No
FR	N/A	N/A	N/A	N/A
IT	Yes	No	No	No
NL	Yes	No	Yes	No
PL	Yes	Yes	Yes	No
PT	Yes	Yes	Yes	No
SI	Yes	Yes	Yes	No
UK (England)	Yes	No	No	No

In **Bulgaria**, the rules for setting fees are determined in the State Fees Act and Local Taxes and Fees Act. There are also municipal fee ordnances established. Municipal authorities are required to adopt and make public an ordinance on the rules for setting and collecting local fees for services. The fees for obtaining a use permit are usually

calculated on the basis of the gross floor area and the type of construction works (this includes the costs of plan approval and the final approval phase). However, specific fee rates are not set at national level. In addition, the costs of private building control apply in relation to site inspections (there are no regulations relating to fees although guidelines have been published by the Bulgarian Association of Architects and Engineers).

With regard to the **Czech Republic**, both the fee system and rates are set at national level and different rates are established for different categories of buildings. The fees cover plan approval but inspections are free of charge where they occur e.g. the mandatory final inspection.

In **Denmark**, the principles for setting fees are determined at national level (Building Act and the Building Regulations). The fees established must also follow the general rules for setting and collecting fees. Danish law provides that any fee must not exceed the total expenditure by the authority in relation to the delivery of the service (otherwise it would be considered as a tax). The fee rates are fixed at local level and there is very wide variation in the actual costs that apply. The Building Regulations state that municipalities can decide to charge fees for all works or only charge fees for certain works. Therefore, there are no harmonised calculation methods relating to the reference works (charges could relate to fixed fees, floor area, cubic area, or hourly rates). If costs apply, it is likely the authority will charge for plan approval and not inspections (estimations are provided below taking into account the variation between municipalities).

Under the **Finnish** Land Use and Planning Act (132/1999), municipal authorities are required to impose fees for inspection, supervision measures and other official duties connected to building control. However, the general framework for fee calculation is not regulated. The method of calculating the building permit fee along with designated rates are determined by each separate local municipal authority. However, the system in Helsinki relies upon fixed fee rates multiplied by the floor area of the building. In addition, an architect may be deemed fit to perform inspection duties negating the need for site inspections conducted by the authority.

In **France**, there are no fees imposed for the submission of a building permit and subsequent public authority inspections (however, successful applications are subject to a planning tax - t*axe d'aménagement* - which is not directly related to the costs of the building permit procedure and is therefore outside the scope of the Services Directive). A system of mandatory private sector building control applies for certain types of construction works such as office buildings (over 280 metres high).

The situation in **Greece** is similar as building authorities do not impose fees for plan approval and the issuing of the building permit. A mandatory system of private building control governs the site inspection and completion process and there is a regulated system of fixed fees in this regard. The costs are defined on the basis of a simple formula taking into account the combined floor area of the building and the point in the construction phase where inspections occur.

In **Germany** (NRW)**,** the legally established principles for setting fees are determined in the Federal Building Act. The value of the fee rates are determined at state level. The basis of the fee calculations is the volume of the construction multiplied by the building costs. The exact calculations vary however between the individual states leading to variation in the charges imposed on service providers for the same types of buildings. The legislation indicates that the fees should be based on the costs incurred by the authority.

The principles for setting the fees are determined at national level in **Italy** (Milan). The fee rates are determined regionally and locally. Fees to obtain a building permit

are determined based on the planning costs to integrate the building into a range of systems and services and the construction costs. The general approach determined by the authority in Milan is to request the fees related to the planning costs during the issuing of the building permit and the fees related to the construction costs are paid up to 60 days after the completion of the works.

In the **Netherlands**, there are general principles in place regarding how local authorities can establish their own fixed charges for building control based on a percentage of the construction cost (approx. 2.5%). The extent of building control revenues must be equal to the costs incurred to the authority. However, larger construction projects (i.e. € 100,000 or more) are charged at disproportionately higher fee rates (thereby subsidising smaller building projects). The Dutch Council of Municipalities (VNG) has drawn-up a calculation scheme that municipalities may use on a voluntary basis. There are proposals under consideration regarding reform of the fee system. However, it needs to be kept in mind that this includes all possible permits and charges under the planning and building permit systems as the Netherlands operates an integrated system.

In **Poland**, the calculation methodology is established nationally. A number of charges apply for both reference works including an application fee, a building permit fee (which has a maximum upper limit cost associated with it) and a use permit. A ten storey office block also requires a health and safety permit, fire authority permit, sanitary authority permit and a geodetic survey. In relation to larger works, it may be necessary to pay for the services of a private building control supervisor. Public authority site inspections are free of charge.

In **Portugal** the legal principles for setting fees are determined at national level and the value of the fee rates are fixed at local level. The municipalities must justify the value of the fees rates in relation to the administrative costs they incur. The fees to obtain a building permit are usually determined based on the floor area and the use of the building. There is also a fee for the use permit. There are obligations to appoint private persons such as technical directors, building surveyors and designers to perform building control duties for complex works.

In **Slovenia**, the building permit fee calculation method and rates are set at national level. In addition to a small administrative fee, a percentage (0.01%) of the construction works is charged above certain thresholds linked to the category of works. Site inspections performed by private building control service providers are mandatory.

The approach in **Spain** (Madrid) is quite different. A system of taxes under the Royal Legislative Decree 2/2004 approving the revised text to the Law Regulation Local Taxation has been established which is linked to the building control system but it does not relate directly to the costs of managing the authorisation process. The taxes relate to the costs of planning for buildings, using municipal services and public spaces. As a result, these are outside the scope of the Services Directive.

In the **UK** (England), there are specific regulations related to the charging schemes that local authorities can establish independently. Local authorities determine their own fixed charges but on an annual basis these, as near as possible, should equate to the costs incurred by the local authority in providing chargeable functions. There are a wide variety of factors that local authorities have the right to consider when establishing their method of calculation (e.g. frequency of inspections, floor area, duration of the work etc.). Local authorities must publish their fixed charges and indicate how they apply as part of a charging scheme. Local authorities are not permitted to apply charges for building work solely for disabled persons. The costs of services provided by private building control bodies (Approved Inspectors) are not regulated.

The table below provides an overview of the costs incurred as part of public authority building control in the fourteen study countries. Please note that these costs have been obtained through interviews with stakeholders and desk research, and should be perceived as generally indicative of the types of costs that may apply to the reference works.

Table 4.12 Estimated building control fees for a one storey two bedroom house (150m2 with a construction cost of €150,000) and a ten storey office block (2000m2 with a construction value of €5 million)

Member State	Fees for Reference works	Calculations and issues for consideration
BG (Sofia)	10-storey office *€20941*	Design visa – 76.89 € ; Application for design co-ordination and approval – €200 (0.10 €/m2 gross floor area e.g. 2000m^2); Issuing of a building permit –€12280; Issuing of a use permit €384.45. €8000 - site inspections performed by a private building control company(€4 /m2).
	1-storey house *€1803*	Design visa – 20.50 €; Application for design co-ordination and approval e.g. €6 (0.04 €/m2 gross floor area e.g. 150m^2). Issuing of a building permit €921 (6.14€/m2). Issuing of a use permit €255.65. €600- site inspections for a private building control company (€4 /m2).
CZ	10-storey office *€3500*	Building permit (€1500) and geodesic plan (€2000).
	1-storey house *€35*	Issuing a decision on the building only€35.
DE (NRW) Euskirchen	10-storey office *€ 33.000*	Fee for application € 9.487 (including additional cost for the height of the building). Fee for plan approval € 12,.506. Fee for inspections € 2,087. State expert verification: €11,000 (check on structural design structural stability, and fire safety).
	1-storey house *€2300*	Fee for application € 535. Fee for plan approval €643. Fee for two inspections € 130. Assumptions have been made regarding the features of the building in order to apply the calculation methodology. State expert verification: €1015 (check on structural design structural stability, and fire safety).
DK	10-storey office €16,000	Based on an average of different calculation methods the costs are €16,000 (however, the costs could vary across the country from €4000 to €40000).
	1-storey house €800	Based on an average of different calculation methods the costs are €800 (however, the costs could vary across the country from €150 to €2000).
ES	10-storey office	N/A there is a tax based system in Spain with the charges not directly linked to the authorisation costs of building control.
	1-storey house	
EL	10-storey office *€1700*	The initial inspection fee is set to €300; The intermediate inspection fee is €0.3/m^2, €600; The final inspection fee is set at: €0.4/m^2 €800.
	1-storey house *€400*	In relation to a house 150m^2.The initial inspection fee is set to €200. The final inspection fee is €0.5/m^2 with a minimum fee of €200.
FI (Helsinki)	10-storey office €13259	Permit fee for one building = €548 Area fee 6.5x2000 m^2 = €13,000. This includes any inspection costs.
	1-storey house *€1235*	Permit fee = €259 Area fee 6.5x150 m^2 = €975 This includes any inspection costs.

Member State	Fees for Reference works	Calculations and issues for consideration
FR	10-storey office *€30,000*	A planning tax applies in France. Depending on the height of the building, private building control is mandatory. An estimate of €30,000 has been provided by the country researcher.
	1-storey house	A planning tax applies in France.
IT	10-storey office €38,661	This has been difficult to identify. A world bank estimate has been given.[148]
	1-storey house €16150	This is an estimated figure.
NL	10-storey office *€ 125,000*	The fee for a10 storey office building is around 2.5% of the construction costs (based on gross floor area of 2.000 m2 and initial building cost of € 5.000.000).
	1-storey house *€3750*	The fee for a single family house is around 2.5% (based on initial building cost of € 150.000)
PL(Warsaw)	10-storey office *€1310*	Acceptance of building project: €11 Document confirming appointment of an attorney. €4. Building permit (1 PLN per m^2 but a max of 539PLN) €128. € Fire safety permit €239 Sanitary permit: free. Work safety assessment: €418 € Use permit €32. State inspection: free Geodetic survey. €478
	1-storey house *€82*	Acceptance of building project: €11 Document confirming appointment of an attorney. €4. Building permit (1 PLN per m^2) €35. Use permit €32, State inspection: free.
PT (Oeiras)	10-storey office *€8690*	The building permit is: 357,25 € + 2000 m² x 4,02 €/m² = €8397 €292.69 for the use permit. Any inspections are free of charge.
	1-storey house *€975*	The building permit 57,25 € + 150 m2 x 3,32 €/m2 = € 855 for the building permit. €120 for the use permit. Any inspections are free of charge.
SI	10-storey office €1220.8	For an office building with construction costs of €5 million there is a fee of 725 EUR. A percentage charge 0.01% of the construction costs applies but only to the costs over the sum of €420,000 (€495.8). There is also requirement for a private supervisory professional the costs for which are not indicated here.
	1-storey house €292.8	For a one storey two room residential property (estimated construction costs 150,000 EUR) an admin fee of 282 EUR applies. A percentage charge 0.01% of the construction costs applies but only to the costs over €42,000 (€10.8). There is also requirement for a private supervisory professional the costs for which are not indicated here.
UK - England (Manchester)	10-storey office €6682	In relation to the local authority charging scheme reviewed and interviewees, charges are individually determined for complex commercial buildings exceeding 250 m^2 therefore the figure provided is not based on a published methodology.

[148] http://www.doingbusiness.org/data/exploreeconomies/italy/dealing-with-construction-permits/.

Member State	Fees for Reference works	Calculations and issues for consideration
		However, an estimate has been provided related to plan approval, a building notice and 10 inspections (but approval of the installation work is not considered as the self certification procedure is assumed to apply).
	1-storey house €2331	This figure assumes the house is less than 250 m^2, the building notice procedure has been followed only, two site inspections are undertaken but the installation work is regarded as self-certified.

4.6 Procedure times

Country / regional overview

In the context of the Services Directive, building control systems must demonstrate efficient procedural timeframes within which building permit applications are examined and approved if complaint. This includes limiting the number of possible extensions to the approval process, issuing notifications to applicants if the approval process is extended and the possibility of tacit approval if a non-response by the authority has occurred at the end of the specified authorisation period. An overview of the approach adopted by the fourteen study countries / regions is indicated below.

Table 4.13 Procedures times and tacit approval

Member State	Reference works	Are there fixed procedure times?	Is tacit approval granted?
BG	10-storey office	2 to 4 weeks (design visa, building permit)	No
	1-storey house	2 to 4 weeks (design visa, building permit)	No
CZ	10-storey office	4 weeks	No
	1-storey house	4 weeks	No
DE (NRW)	10-storey office	8 weeks	Yes
	1-storey house	4 weeks	Yes
DK	10-storey office	No (average time 11 weeks)	No
	1-storey house	No (average time 9 weeks)	No
EL	10-storey office	2 days	Yes
	1-storey house	2 days	Yes
ES	10-storey office	8 weeks	Yes
	1-storey house	12 weeks	Yes
FI	10-storey office	No (average time 4 to 12 weeks)	No
	1-storey house	No(average time 12 to 20 weeks)	No
FR	10-storey office	12 weeks or 26 weeks depending on the category of building	Yes
	1-storey house	8 weeks	Yes
IT	10-storey office	20 weeks	Yes
	1-storey house	20 weeks	Yes
NL	10-storey office	Up to 26 weeks for complex projects that are not part of the zoning plan and those associated with significant environmental impacts e.g. office blocks.	Yes in some circumstances
	1-storey house	8 weeks	Yes
PL	10-storey office	9 weeks	No
	1-storey	9 weeks	No

Member State	Reference works	Are there fixed procedure times?	Is tacit approval granted?
	house		
PT	10-storey office	1 week (building notice) 15 weeks (regular procedure)	No
	1-storey house	1 week (building notice) 15 weeks (regular procedure)	No
SI	10-storey office	8 weeks	No
	1-storey house	4 weeks	No
UK - England	10-storey office	5 weeks (regular procedure)	No
	1-storey house	Immediate after notice is given by the applicant (building notice procedure) 5 weeks (regular procedure)	No

The **Bulgarian** Spatial Planning Act sets out maximum procedure times for the approval of construction documents and the issuing of building permits which are applicable to both reference works. A municipality must issue an initial building design visa within 14 days after the application has been received. Investment projects (building designs) have to be approved or rejected within 14 days of their submission or within one month if the initial plan compliance assessment is made by the municipality and not a third party. A building permit can be issued along with the approved investment project (building design), providing that the investor has requested it in his/her application. If not, the building permit is issued within 7 days after receiving a written application. The Spatial Planning Act does not provide for an extension of the deadlines for the issuing of the design visa and the approval of investment projects. If these deadlines are not met (i.e. a written statement is not issued by the authority) the applicant should regard the non-response as a tacit refusal of the application (but the applicant can appeal to the relevant authority as a result of this outcome).

In the **Czech Republic**, for buildings where the building permit procedure applies (this can relate to both a one storey house and an office block) the authorisation period has a duration of up to 30 days. Interestingly, the application for a building permit can be applied for simultaneously with the zoning permit (known as a location permit) after other authorisations have been obtained and there is a combined period of 37 days to obtain both of these. Extensions are available if the applicant does not provide correct submission demands.

A different approach is in operation in **Denmark** as there are no designated periods set in law for the approval and issuing of building permits. The period for approval is subject to the applicant providing the correct documents and the time taken for the local authority to perform the authorisation procedure. The Danish Energy Agency has conducted research that indicates that the average application processing period for a house is 9 weeks and an office building is 11 weeks. A working group has recommended that the building permit processing procedure should be made more efficient.[149] Tacit approval is not available given that ultimately a response is issued when the authority deems it appropriate.

Similarly, in **Finland**, no binding procedure times are indicated in law. However, after an assessment of the application, local authorities determine the extent of the authorisation period. Based on the results of interviews, the average application

[149] http://www.ens.dk/sites/ens.dk/files/byggeri/byggesagsbehandling/anbefalinger-effektiv-byggesagsbehandling/Afrapportering%20til%20arbejdsgruppen%20FINAL.pdf.

processing time in the Helsinki area is 4 to12 weeks for a house and 12 to 20 weeks for an office building. There is no system of tacit approval.

There are fixed periods linked to the authorisation process set in the Urban Planning Code in **France**. After the application is received, there is a period of two months for individual houses and three months for other projects. There is, however, an authorisation period of six months for buildings open to the public. Therefore, an office building may fall into either of these categories depending on its use. Possible extensions are available as indicated in the law:

- An extension of one month is available if the project requires examination under another piece of legislation;
- The authorisation period may be extended by two months if the project requires the consultation of a regional commission;
- In exceptional circumstances, an extension of one month is possible;
- Applicants must be informed of extensions during the month that follow the submission of the application.

If an applicant does not receive a response within the maximum procedure time, the application for a building permit is approved (i.e. tacit approval is granted) but this does not apply in all cases e.g. for proposed building work in conservation areas. In this eventuality, the municipality has up to two months to inform the applicant of any fees and other contributions. The overall period of time to receive approval of building works including the building permit procedure has been regarded as too time consuming by the French government.[150]

The Building Code of **Germany** (NRW) sets a maximum procedure time for the issuing of building permits. Under the light procedure, (e.g. a house) the maximum procedure time of a building permit is one month after submission. The maximum time for the local building authorities to process a regular building permit application is two months (e.g. an office block). If the deadlines are not met, the permit is automatically granted. According to the public authority interviewed, most applications are settled before the end of the maximum period.

With regard to **Greece**, in relation to the specific issue of requesting a building permit, there is a legally designated period of up to two days for the authority to give approval (according to interviewees in practice this takes up to 30 days). Tacit approval is available but this is hardly taken-up by applicants given the perceived legal uncertainties associated with it.

In **Italy** (Milan), as set out in DPR 380/2001, cities with over 100,000 inhabitants have a 120 day period to issue a 'proposal of decision' in response to a building permit application. Up to 15 days after this point, authorities must issue a 'final decision'. Local authorities (with over 100,000 inhabitants) can suspend the procedure up to 30 days to request further documentation. If the authority does not issue a response in the timeframe, Law Decree no. 70 2011 indicates a procedure of 'consent by silence' and the service provider is able to commence work. However, this does not apply in circumstances where there are restrictions on the construction site (e.g. environmental, cultural etc.).

In the **Netherlands**, there are two periods set in law for the authorisation of building permit applications:

- In terms of simple buildings (e.g. residential properties that are part of the zoning plan), the procedure lasts a maximum of eight weeks. Within this period, a municipal authority can extend the deadline once up to six weeks;

[150] http://www.atlantico.fr/pepites/permis-construire-francois-hollande-veut-reduire-delais-attribution-949108.html.

- Complex applications such as those that are not part of the zoning plan or with a high risk to the environment (e.g. office blocks) can last up to 6 months. Within the first eight weeks, the assigned authority can decide to extend the term once up to six weeks.

In terms of applications that are in the scope of the zoning plan, if the deadlines for both type of reference works are not met by the authority, the permit is granted automatically (i.e. tacit approval applies). A key factor to consider is that the planning system and building regulations are integrated under the Environmental Law and therefore the extended period of 6 months encompasses extensive planning deliberations normally associated with complex projects.

According to the Construction Act, in **Poland**, local authorities must issue a decision concerning an application for a building permit within 65 days. The authority has the right to suspend the application period if further explanations are required from the applicant. Tacit approval is not available.

In **Portugal**, there are two designated authorisation periods that apply to both reference works.

Under the building notice procedure, a decision on a complete application is issued in 8 days. After fees have been paid, the applicant may start work. In terms of the regular procedure, if the applicant submits the technical design and project documents jointly, the period given is 75 days. After fees have been paid, the authority has up to 30 days to issue the building permit. After a period of 8 days, extension of up to 15 days can be granted as a result of missing documents from the application. Tacit approval is not available but the applicant has the right to take legal action if the municipal authority does not issue a response in the designated timeframe.

In **Slovenia**, a building permit for a house must be issued within one month after a correct application is submitted. A building permit for complex buildings such as office blocks must be issued within two months. Tacit approval does not apply in both cases. The applicant has the right to appeal if the authority does not provide a response in the designated timeframe but this rarely occurs (and if it does the applicant normally chooses to request the authority to issue a speedy decision). Extensions to the authorisation period cannot be made.

In **Spain** (Madrid), there is a legally designated period (Law 9/2001 Madrid) for the authorisation of a building permit of up to 12 weeks for houses and 8 weeks for office buildings. The local authority confirmed that a period of up to 8 weeks operates in practice in both instances. There are circumstances where tacit approval applies as a result of administrative silence. However, tacit refusal should also be assumed as a result of administrative silence in cases of construction works for the public domain, where environmental controls apply, if earthworks need to be undertaken, if the project relates to new plant facilities, if tree are required to be felled and where the application is contrary to the urban planning strategy.

In the **UK** (England), local authorities have a five week period for plan approval that can be extended to eight weeks upon notification in writing to the applicant. The local authority must approve the plans unless defective or contravenes the building regulations (or plans can be passed subject to conditions). Plans submitted do not receive tacit approval if this deadline is not kept by the authority. In relation to the notifications made by Approved Inspectors to local authorities, the period within which a local authority may approve or rejection an Initial Notice is five days. However, Approved Inspectors can manage the plan approval process in a three week period according to interviewees. Under the building notice procedure (which applies to

houses), construction work can commence immediately after the applicant has given notice to the authority (unless the authority issues an objection).

4.7 Liability and insurance

Country / regional overview

The study sought to clarify the situation in the fourteen selected study countries/regions in relation to whether:

- Service provider liability for construction works is established in legal terms;
- Corresponding insurance products are mandatory in order to perform construction activities (apart from general insurance products applicable to all industries).

Article 10 (3) makes it clear that conditions for granting authorisation for a new establishment should not duplicate requirements that have already been imposed in another Member State such as insurance requirements. There is therefore a need to ensure that mutual recognition principles and procedures exist as part of relevant authorisation schemes to remove any obstacles to the use of existing insurance products in a cross-border context. The fourteen study countries are subject to this line of analysis examining whether suitable mechanisms are established to support mutual recognition. This can be found in the sections containing the corresponding indicator analysis and legal evaluation under Article 10 (3).

As pointed out by stakeholders interviewed, the table below provides an overview of the type insurance products that are mandatory during the performance of construction works.[151]

[151] Some of the data has been collected from: ELIOS (2010) Liability and insurance regimes in the construction sector: national schemes and guidelines to stimulate innovation and sustainability.

Table 4.14 Mandatory insurance requirements for developers and contractor

MS	Reference works	Legal liability for construction work imposed on developers and contractors	Type of liability • Work Performance • Tort Liability • Latent defects	Mandatory insurance of the construction works	Type of mandatory insurance • Work Performance • Tort Liability • Latent defects	Entity insured	Duration of the insurance (if mandatory) or liability if set in law
BG	10-storey office and 1-storey house	Yes	Work performance Latent defects	Yes	Work performance	Key service providers e.g. designer, contractors	10 years
CZ	10-storey office and 1-storey house	Yes	Work performance Latent defects	Yes for both types of liability	Not mandatory	N/A	3 years (work performance) 3 years (building defects)
DK	10-storey office	Yes	Latent defects	N/A	Not mandatory	N/A	N/A
	1-storey house	Yes	Latent defects	Yes	Building defects	Developer	10 years
DE (NRW)	10-storey office and 1-storey house	Yes	Work Performance Latent defects	Yes	Work performance Latent defects	Contractors Developers	Period of construction works (work performance) 5 years (building defects)
EL	10-storey office and 1-storey house	Yes	Work performance Latent defects	No	Not mandatory	N/A	10 years
ES	10-storey office and 1-storey house	Yes	Work performance Latent defects	Yes	Work performance Latent defects	Contractors Developers	10 years
FI	10-storey office	N/A	N/A	No	Not mandatory	N/A	N/A
	1-storey house	Yes	Work performance Latent defects	Yes	Work performance Latent defects	Developer / contractor	10 years
FR	10-storey office	Yes	Work performance	Yes	Work performance	All parties	10 years

MS	Reference works	Legal liability for construction work imposed on developers and contractors	Type of liability • Work Performance • Tort Liability • Latent defects	Mandatory insurance of the construction works	Type of mandatory insurance • Work Performance • Tort Liability • Latent defects	Entity insured	Duration of the insurance (if mandatory) or liability if set in law
	and 1-storey house		Latent defects Tort Liability		Latent defects Tort Liability	involved in the construction works	
IT	10-storey office and 1-storey house	Yes	Work performance Latent defects	Yes	Work performance Latent defects	Professionals / contractors	10 years
NL	10-storey office	Yes	Work performance Latent defects	No	No	N/A	
	1-storey house	Yes	Work performance Latent defects	Yes	Latent defects	Developer	10 years
PL[152]	10-storey office and 1-storey house	Yes	Work performance Latent defects	Yes	Work performance	Key professionals and contractors	5 years
PT	10-storey office and 1-storey house	Yes	Work performance Tort liability Latent defects	Yes	Work performance Tort liability	Key professionals and contractors	5 years
SI	10-storey office and 1-storey house	Yes	Work performance Latent defects Tort liability	Yes	Work performance	Main construction workers	10 years

[152] Data was provided by a Polish insurance firm on the cost of latent defects insurance:
An average cost of insuring the risks of construction for a building (up to 4 - 5 floors), assuming a standardized risk insurance during the warranty period of no longer than 36 months may be in the range of 0.9 - 1.3 parts per thousand of the contract value / sum insured. Buildings over 4 - 5 floors will be characterized by a different range of risks (e.g. fire hazard), so the price is higher. (1.6 - 2.0 parts per thousand). Price & insurance conditions may also vary depending on the depth of the building (the greater the number of floors underground the greater the risks). Ultimately, the final price is set individually and may differ from these parameters after taking into account specific data for risk assessment, including the experience of contractors, fire and flood risks, and assessment of geotechnical conditions. The price of insurance will also have an impact on the selected insurance coverage.

MS	Reference works	Legal liability for construction work imposed on developers and contractors	Type of liability • Work Performance • Tort Liability • Latent defects	Mandatory insurance of the construction works	Type of mandatory insurance • Work Performance • Tort Liability • Latent defects	Entity insured	Duration of the insurance (if mandatory) or liability if set in law
UK - England	10-storey office and 1-storey house	Yes	Work performance Latent defects	No	N/A (de facto mandatory for dwellings)	N/A	10 years (de facto mandatory for dwellings)

The **Bulgarian** Spatial Planning Act (Art. 171) requires service providers operating under the investor (designers, contractors, supervisors etc.) to hold professional liability insurance. This is to protect against any damages caused to other participants as a result of negligence. The duration of the insurance is 10 years. Under the Civil Code, there is also contractual liability requirements for latent defects (up to ten years) although no mandatory insurance requirements are imposed.

In the **Czech Republic**, the Civil Code (Art. 106) imposes liability requirements on construction service providers and injured parties can seek compensation two years from when the damages were identified but not more than three years from the actual event. In terms of intentional damages, there is a liability period of up to 10 years. Art. 646 of the Civil Code defines a statutory period of building defects warranty of 3 years (with a period or 18 months relating to repair work). However, there are no mandatory insurance requirements imposed on service providers.

In **Denmark**, a developer of new buildings mainly to be used for residential purposes is required to insure the buildings against building defects. The period of coverage is 10 years as indicated in the Danish Limitations Act. However, there are certain types of buildings that are excluded from compulsory insurance (e.g. buildings that fall under the legislation for city development or where a building is not a dwelling).

Normally, contractual liabilities for construction works are established as part of commercial contracts in **Finland**. However, under the Housing Transaction Act 843/1994, there are liabilities arrangements in place for dwellings and mandatory insurance is required. This relates to both contractual liability and latent defects (up to 10 years).

In **France**, under the Spinetta law (1978), all parties involved in construction works (contractors, architects, engineers, Bureaux de contrôle) are liable in all areas except penal responsibilities. Mandatory insurance is imposed and it is the responsibility of the architect to ensure that all liable parties are insured during the construction process covering the following areas:

- Responsibility of perfect achievement: introduced by the 1978 law and running for a period of one year starting from handover of the works to the client;
- Biennial responsibility for satisfactory functioning: introduced by the law of 1967 to cover minor works and lasting for a period of two years starting from handover of the works to the client;
- Decennial responsibility: as set out in articles 1792 and 2270 of the Napoleonic Code and lasting for a period of 10 years starting from the handover of works to the client;
- Third party responsibility under common law: starting from the moment the third party is damaged and (since 1985) lasting for a period of 10 years.

With regard to **Germany** (NRW), contractors must carry work performance insurance and such professionals are liable for any damages that occur during the performance of the construction works. Under the Civil Code, there is a mandatory requirement for latent defects insurance that applies to developers with a duration of 5 years and up to 10 years for intentional damages.

There are no mandatory insurance products that are imposed on construction professionals in **Greece**. However, there are contractual liabilities and latent defect rules that apply to construction professionals (engineers and contractors) with supervisory functions (for a period of up to 10 years as defined in the Civil Code).

Art.1662 of the Civil Code in **Italy** dictates that building contractors are obliged to perform construction works to professional standards with building defects being considered as non-compliant with this legal obligation (there is a liability period 2 years for defects and up to 10 years for stability defects). Under Law 210/2004, a decennial insurance obligation has been extended to the private sector. In addition, there is a system of mandatory third party liability insurance for principal and main contractors.

In the **Netherlands,** under the Housing Act there are liabilities imposed on the person constructing or demolishing a building including preventing the building or property, its use, or its construction or demolition from causing or continuing a situation which endangers public safety or public health. However, there are no mandatory requirements for insurance of construction sites. There are latent defect liability requirements under the Civil Code from a period of two to a maximum of 20 years. A majority of local authorities have made housing warranties mandatory (these have a duration of 6 years under the general warranty and 10 years in terms of serious structural defects).

In **Poland** architects, site managers and the investor's supervision representative are required to be members of professional bodies in order to have professional liability coverage. Persons who carry out independent technical functions bear professional liability (Building Law Art 95). In terms of insurance requirements, designers and site managers must possess liability insurance. Contractors must carry two types of insurance products (civil liability and insurance of material damage/loss). Under the Civil Code, there are liability arrangements in place in relation to latent defects (with a 5 year duration). However, there are no mandatory insurance requirements in this regard.

In **Portugal**, a liability declaration must be submitted as part of the application for a building permit. Portuguese law (Law no. 31/2009 Art 24 and 29.2) dictates that designers, building surveyors and technical directors must carry liability insurance. Contractors must have an insurance policy covering worker accidents. Contractors are liable to repair latent defects within 5 years after the building is completed (Decree Law 67/75). However, there are no mandatory insurance requirements in this area.

In **Slovenia**, the investor, project designer, construction site manager, supervisor and auditor are liable for damages which are caused to third persons and mandatory liability insurance is required (Construction Act, Article 32). Liability for damages is provided also in the general law on torts for the investor and project designer (Code of Obligations, Article 662). The Civil Code also indicates liability in terms of latent defects for up to 10 years. However, there are no mandatory insurance requirements in relation to the previous two items.

The **Spanish** (Madrid) Building Act (38/1999) holds participants in the construction process liable for their work in their respective fields. The duration of the liability relates to 1 year for deficiencies, 3 years for defects and 10 years with regard to structural damages. There is a compulsory system of mandatory insurance for dwellings and office blocks and as part of the application for a use permit, the developer / contractor has to submit a liability insurance contract (Madrid Ordnance Town Planning License, 2004). In cases where office buildings have been granted building permission with the use of a Declaration of Responsibility, the developer / contractor assumes the risk but this is complemented by a liability insurance policy held by the institute supporting the use of the Declaration.

In the **UK** (England), there are no legal requirements for persons conducting building work to procure specified insurance products. However, under the Building Regulations (2010) persons are liable to ensure their building work meets the regulatory

requirements during the construction phase. In addition, the Defective Premises Act 1972 indicates liability relating to dwellings for a period up to 6 years after the completion of works. In the Limitations Act (1980), there are legal principles established supporting the claims process for contracts under seal with a duration of up to 12 years. However, there are voluntary warranty and insurance schemes in place relating to dwellings and these are used widely by home builders and are often demanded by mortgage lenders (e.g. NHBC products have a duration of 10 years).

5 Evaluation of building permit legislation

This chapter examines the legal framework for building permit legislation in the 14 selected Member States against the relevant Articles of the Services Directive. Selected features of the building permit legal framework are examined in terms of their overall restrictiveness on the basis of an indicator analysis and legal evaluation. Finally, an aggregate indicator analysis is undertaken assessing the overall degree of restrictiveness against the Services Directive for each of the selected Member States.

5.1 Indicator analysis and legal evaluation Article 5

The following section provides an indicator analysis and legal evaluation of building permit legislation under Article 5 of the Services Directive.

Summary of Article 5

- Article 5 (simplification of procedures) Member States shall examine the procedures and formalities applicable to access a service activity and to the exercise thereof. Where procedures and formalities examined under this paragraph are not sufficiently simple, Member States shall simplify them;
- Article 5 (simplification of procedures): Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may not require a document from another Member State to be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

Interpretation of the article above in the context of building permit legislation

- **Procedures and categorisation of construction work**. Member States should establish procedures that offer routes to regulatory compliance that are sufficiently simple in terms of their processes and with sufficient variety to meet the needs of different categories of service providers;
- **Submission demands.** Member States should offer relevant legislation and websites in EN so that the procedures and submission demands can be easily understood. An appropriate number of categories of submission demands should be requested ideally limiting the request to essential documents only. Alternative routes to regulatory compliance could be made available that offer a reduced number of submission demands compared to the regular procedure or in relation to the complexity of the construction work. Moreover, the requirements should permit the submission of simple copies and recognition of equivalent and authenticated documents;
- **Plan approval, site inspections and completion.** The procedures supporting the building control process should be sufficiently simple to enable efficient engagement with the authorities and realisation of the use of the building. A key element is the avoidance of duplication of authorisation processes performed by multiple authorities under separate procedures in the context of plan approval, site inspections and completion.

Indicator analysis Article 5 -Procedures and categorisation of construction works

Two indicators have been developed under Article 5 examining procedural efficiency. The first examines whether optional procedures are available to service providers in relation to the reference works outside of the regular procedure. The second examines what minor work is exempt from building control.

Table 5.1 Article 5 Indicators – Procedures and categorisation of construction works

Article 5 Simplification of procedures														
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
Are there optional procedures available for the categories of buildings included in the study (one storey house, ten storey office block) such as regular procedures alongside building notices (0 Y/ N 6)	0	0	0	6	0	0	6	6	0	6	6	0	0	0
Is minor work exempt from building permit requirements (Y0/ Notification 2 / simplified procedure 4 N 6)	0	0	0	0	2	0	0	0	0	0	0	0	0	0

A number of countries have made available optional procedures other than the regular procedure relating to the reference works. This includes BG, DE, ES, SI and the UK (type approval) regarding the light procedure, CZ, (in some case DE) ES, IT PT, and the UK regarding the building notice procedure, and CZ, EL, ES, IT, PT and SI strengthen the efficiency of the approach on the basis of the self-certification of plans. The remaining countries rely heavily on the regular procedure in all instances (DK, FI, FR, NL and PL).

In the majority of the study counties, minor work is exempt from building control. However, in **Greece**, notification is required 48 hours before commencing work. It should be borne in mind that there are likely to be vast differences in terms of the scope of minor works that are exempt of building permit between the Member States.

Legal evaluation Article 5 - Procedures and categorisation of works

In relation to the two reference works, a key observation is that some countries have made available alternative procedures that offer certain categories of service providers a less restrictive authorisation process than the regular procedure. These procedures provide advantages to various extents. The light procedure removes the need for local authorities to approve plans as verification is performed by a third party (BG, DE, ES, SI). Self-certification provides an efficient approach to obtaining compliance given that official approval of the plans is not required (CZ, EL, ES, IT PT and SI).

> *A Czech architect commented that the self-certification of plans used alongside the building notice procedure that applies to dwellings, is much more efficient and less complicated to engage with than the more extensive approval process that applies to larger works requiring verification of designs.*
>
> *A German architect noted that the light procedure available for houses only reduces the restrictiveness of the building permit procedure slightly. This is because verification of the plans is still required by a third party and therefore architects need to demonstrate compliance with the requirements to a high standard.*

While the building notice procedure operates on a slightly different basis between the study countries, compared to the regular procedure, the approach offers a highly efficient approval method (CZ, PT) or enables service providers to commence work immediately (ES, IT UK).

> *A Portuguese association commented that building notice procedure in Portugal is much easier to deal with than the Portuguese regular procedure. While the amount of documents remain relatively complicated to produce, after submission, the project can commence in a much shorter timeframe (i.e. about 8 days) given. The regular procedure takes roughly 15 weeks to complete.*

Overall, alternative routes are likely to offer time and potentially cost savings when they are seen as preferable by some categories of service providers, for example if a designer is not required to prepare technical plans.

> *A Danish association mentioned that an alternative light procedure is missing from the Danish building permit system. The same procedure needs to be followed for every type of building permit which was described as lengthy. As a result, the system was labelled as restrictive.*
>
> *A Polish construction association welcomed the fact that the scope of the Polish building notice procedure will be extended to works of a bigger scale including individual family houses, enabling immediate access to service provision by removing the need to go through the regular procedure.*

However, where alternative routes are available, service providers may be exposed to greater risks if they do not have the necessary experience to comply with the technical requirements on-site: for example, under the building notice procedure in ES, IT and UK technical plans do not receive official approval.

> *An architect (UK) mentioned that England's building notice procedure benefits construction service providers that do not have internal design capabilities and have the capacity to successfully manage construction works without the approval of technical plans. This helps to avoid the costs associated with the services of an architect. However, under this procedure, it was confirmed that local authorities are more heavily involved in the site inspection process, with less room for manoeuvre for the service provider with the regard to the implementation of design solutions.*
>
> *A second architect from the UK commented that the building notice procedure is only likely to be beneficial for small contractors that wish to cut out the costs of an architect. It allows contractors to take control of the building control process by allowing them to start immediately and without the need for approval. However, it should be recognised that the procedure is only suitable for small projects and domestic work.*

In the majority of cases, minor work is exempted from building notice procedures. However, there appears to be greater emphasis on notifications in **Greece** for works that could be considered as falling into this category. It is suggested that this procedure is removed for works that are considered as minor. Moreover, Member States may wish to consider extending the scope of the concept of minor work to new areas to promote the efficient access to service provision.

A UK association representing construction SMEs mentioned that it is essential for the domestic works market to be exempt from building control or notice procedures to enable relatively low value projects to commence efficiently.

In terms of a general finding from the interviews, where alternative procedures are available, within certain contexts they can benefit certain categories of service providers and are to varying extents more efficient than the regular procedure.

Indicator analysis Article 5 -Submission demands

A number of indicators have been established under Article 5 (simplification of procedures) to examine whether the process of identifying the appropriate requirements and preparing submission demands are sufficiently simple. The assessment considers whether:

- Procedures are sufficiently simple for example in terms of the number of authorities involved in the process and the number of categories of documents requested;
- Simple copies (e.g. photocopies of original documents) are requested;
- EN language versions of documents are accepted;
- Certified or authenticated copies are requested (e.g. official documents issued by competent authorities in other Member States or documents that have been verified as authentic by a legal authority in other Member States);
- Equivalent documents are requested (e.g. documents that contain equivalent content that demonstrate the relevant requirements have been met).

Table 5.2 Article 5 Indicators – submission demands

Article 5 Simplification of procedures															
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
Is the legislation and website available in EN including the listing of standards? (Y0 partially 3/N6) -5%	6	3	6	3	6	6	3	6	6	3	6	6	6	0
How many categories of documents / statements apply to the regular procedure? (for example: 1 – 1 points; 2: 2 points; 3: 3 points; 4-4 points ; 5-5- points; 6 or more than 6: 6 points); -10%	6	4	5	4	6	6	6	6	6	3	6	5	4	5
Are simple copies accepted? (0 Y/ some docs or after further formalities 3 N 6) – 5%	3	0	6	0	6	6	0	0	6	0	6	3	0	0
Is EN accepted? (0 Y/ some docs 3 N 6) – 5%	6	6	6	6	6	6	6	6	6	6	6	6	6	0
Where a certificate, attestation or other document proving that a requirement to obtain the building permit (not to recognise professional qualifications) has been satisfied is demanded, do authorities accept equivalent documents in another Member State (Y 0/ some docs or with other supporting docs 3 N 6); -10%	N/A	N/A	3	0	N/A	0	N/A	N/A	N/A	N/A	N/A	0	N/A	N/A
Are certified or authenticated documents (including translations) issued in other MS accepted to obtain the building permit (not to recognise professional qualifications)? (Y 0/, only after further	6	6	6	6	6	6	0	6	6	6	6	6	6	0

Article 5 Simplification of procedures Indicator	BG	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
formalities are observed or some docs 3, N 6); -5%														
Are there procedural options to the applicant to comply with a regular procedure for the categories of buildings included in the study (one storey house, ten storey office block) that reduce the complexity of the submission demands? (0 Y/ N 6) – 5%	6	0	6	0	0	0	6	6	6	6	6	6	0	0
Is the activity of applying for a building permit reserved to a regulated profession(s) (N – 0 points, Y, for more than one profession – 3 points ; for one profession – 6 points) -15%	3	3	3	3	3	3	0	3	3	3	0	3	3	0

Regarding the first indicator, many Member States have yet to provide their legislation including the listing of standards and relevant local authority webpages in EN (**BG**, **DE**, **EL**, **ES**, **FR**, **IT**, **PL**, **PT**, **SI**) and have been given a score of 6. Countries that have been allocated a score of three appear to have translated the relevant legislation and list of standards (CZ) or parts of the legislation (DK, FI and NL) to EN.

Where EN is not a mother tongue language, submission demands cannot be submitted in EN (**BG**, **CZ, DE**, **DK, EL**, **ES**, **FI, FR**, **IT**, **NL, PL**, **PT**, **SI**). A score of 6 has been awarded.

In terms of the number of categories of documents requested, there does appear to be some variation between the study countries. For example, **BG**, **EL**, **ES**, **FI**, **IT** and **PL** require 6 or more categories of documents. This can be contrasted with the **Netherlands** that requires documents corresponding to three categories.

Where certified documents are required, such as technical plans, (and although simple copies of these documents are accepted at the time of submission in some countries, as highlighted below) it seems that documents certified in another Member State are not accepted. The main reason is that where certified designs are required, the relevant designer must be registered with a national body. As a result, there are obstacles to submit certified documents cross-border. Therefore, a score of 6 has been given where this is the case (**BG**, **CZ, DE, DK, EL, ES, FR, IT, PL, PT, SI**). Furthermore, translations are sometimes required to be certified by professionals registered/sworn in in the Member State in question (BG/ES).

The assessment of the submission demands suggests that certificates demonstrating technical/professional capacity (this does not include an assessment of professional qualifications) are not often requested as part of building permit applications. As a result, documents that could be regarded as equivalent in this regard are not normally required. The submission demands requested are normally specific to the construction project requiring bespoke information and completion of relevant forms. However, in the case of Germany, a map is required from the Land Registry. While it is not certain if an equivalent document could be obtained from an authority outside of Germany, a score of 3 has been given in this case.[153] In Demark, Portugal and Spain, insurance documents are required as part of the submission demands for a building permit. While no mutual recognition principles or procedures are established in building permit regulation, the national laws that transpose Services Directive in these countries

[153] A Dutch firm mentioned that preparation of applications for a building permit are project specific and that it is difficult to see how this could be changed.

establishes the principle that equivalent insurance products are recognised, which implies that supporting documents (equivalent to those specifically requested under national law) are accepted as issued under home Member State rules. Therefore, a score of 0 has been given.

Simple copies of documents are accepted in the study countries generally speaking (**BG, CZ, DK, FI, FR, NL, SI, UK**) and a score of 0 has been allocated. However, this is not the case in **Greece, Poland** and **Spain** (as the technical plans need to be in original format). In **Italy** (Milan) signed copies of the forms downloaded from the submission website are demanded. A score of 6 applies to these countries. **Portugal** has been given a score of 3 in relation to simple copies as originals may be requested by the authority if there are doubts. In **Bulgaria,** translations should be submitted in certified and original format and a score of 3 has been given. **Germany** (NRW) has been given a score of 6 as although it seems that the legislation does not restrict the submission of simple copies, two interviewees (one German and one Dutch) complained that original versions are demanded by authorities.

In many cases, the categories of submission demands required for both reference works are very similar (**BG, DE, FI, FR, IT, PL, PT**). However, other countries have introduced measures to reduce the complexity of submissions for certain types of works either as result enabling local authorities to have discretion over the submission demands required (**DK**), or to permit the self certification of plans (**CZ, EL, SI**) or to make available building notice procedures that are associated with a lower number of categories of documents than the regular procedure (**ES, UK**).

A number of countries have reserved the activities of plan preparation and certification to designers registered in the home Member State. However, it seems that in most cases more than one type of registered professional can provide these services, and as a result, a score of 3 has been allocated to these countries (**BG**, **CZ, DE, EL, ES, IT, PL, PT, SI**)**.** In France, such services are reserved specifically to architects but only with regard to buildings over 170m^2 and therefore a score of 3 has been given. A rule with a similar logic applying to engineers is apparent in **Denmark** but this only relates to larger buildings when deemed necessary and a score of 3 has been given.

In the case of the **FI, NL,** and **UK,** there are no reserved activities linked to professional qualifications regarding the development of plans and a score of 0 applies.

Legal evaluation Article 5 -Submission demands

Overall, there appear to be limited efforts made to ensure that the relevant information is available in EN with regard to the applicable standards, the application procedures, submission demands required and relevant webpages. The internal market for construction services would benefit if construction service providers have efficient access to information on the rules and procedures that they need to follow.

> *Two European construction associations mentioned that a key obstacle to the provision of cross-border services relates to understanding where the main differences are in the technical standards for building works. It was suggested that providing indication of which standards apply (in EN) would provide some support to address this issue, and that further EU assessments of the scale and nature of the differences between the relevant country standards would be helpful.*
>
> *A German contractor suggested that it is normally the duty of the client to manage the building permit process cross-border and nationally. However, it was clarified that the lack of available standards in EN is a costly issue as foreign languages are difficult to deal with. The example was given of the road building sector where there is variation in technical standards between countries and it was suggested*

that the lack of understanding of these requirements provide an immediate barrier to service providers (especially SMEs).

Similar, a Czech contractor mentioned that clients or developers normally manage the building permit application process and could not comment on specific issues related to this. However, it was considered necessary to operate alongside a local partner given that it is riskier to undertake business abroad without understanding the full range of legal issues that may emerge. While providing legislation in EN will not entirely solve this problem, it was suggested that it would provide assistance as part of initial assessments of market entry.

The number of categories of submission demands required under the regular procedure is a key issue when considering the extent of the administrative burden imposed on service providers. Again, there appears to be limited effort made to reduce the categories to essential documents only. The **Netherlands** is the strongest performer in this regard with only three categories of documents required.

Furthermore, by contrasting HAS and building permit document requirements, there appears to be duplication while controlling for insurance products in Portugal and health and safety requirements in Spain.

With regard to participating in building control procedures, a Polish association commented that the 'preparation of documents is the most burdensome part of the whole process'. It was considered that efforts could be made to reduce the burden imposed by the submission demands.

A Portuguese association mentioned that the costs for architects and engineers for preparing the administrative documents in Portugal are very high since there is a very long list of documents to be completed.

Establishing procedures that help to reduce the complexity of the submission demands relating to certain categories of works is likely to bring benefits to some service providers. The building notice procedure in Spain and the UK are good examples along with the discretionary approach adopted in Denmark. Self certification of plans is also likely to reduce the complexity of documents required (CZ, EL, ES, IT PT and SI). Administrative efficiency gains could be made in the remaining study countries if similar practice were adopted.

As part of the normal practice of modern authorisation processes, the submission of simple copies seems to be a generally accepted practice, even if a document needs to be specifically issued in certified or authenticated form for the submission at hand, such as technical plans (**CZ, DK, FI, FR, NL, PT, SI, UK**). However**, Greece, Italy** (Milan) **Poland** and **Spain** have not adopted this practice in all areas suggesting that service providers are subject to a greater administrative burden. Interviewee feedback also suggests that original copies must be submitted in Germany. In Bulgaria, any translated documents must be submitted in certified and original format.

A Spanish architect with experience of providing services to large projects in the Spanish, Italian and Polish markets suggested that the provision of original documents is a costly and time consuming feature of the building permit systems in these countries, particularly considering the range of documentation required. Moreover, a key problem identified is lack of consistent enforcement of standards regarding the format of the documents required across municipalities.

Similarly, a Polish association confirmed that simple copies are not accepted in Poland and often the documents need to be delivered in person, which was viewed as very unsatisfactory.

According to two interviewees (NL and DE) simple copies are not accepted in Germany. The relevant documentation needs to be stamped and submitted in

hardcopy. The German interviewee nuanced the comment slightly stating that it depends on what information needs to be provided, but that in general original documents are required.

It appears that the submission demands for a building permit cannot be submitted in EN in non-native speaking countries. The internal market for construction services would benefit if this were the case reducing the need for hiring local specialists to manage key processes.

A Dutch firm mentioned that partnering with a local service provider is normal practice as part of market entry cross-border. Management of national language issues around the submission of documentation is one reason for this practice (among others). In Poland, an association mentioned that documents would need to be submitted in Polish requiring the use of an official translator for cross-border service providers.

A Czech contractor suggested that not being able to submit documents cross-border in EN is a problem. This immediately necessitates the use of a local partner.

However, a French federation, a French architect and a Czech firm mentioned that while the submission of EN documents would help to slightly improve the efficiency of application processes, the use of a local partner would continue to be helpful for the completion of some tasks. This is because of the complexity of the rules around issues such as planning, building permits, contracts, sale of real estate assets, employment etc. In addition, national rules are normally made available in the home country language and require interpretation by an experienced professional.

While reserving plan preparation activities to registered designers offers the possibility of self-certification (which has been assessed as good practice in the following countries CZ, EL, ES, IT PT and SI), it also means that Member States restrict the preparation of submission demands to certain professionals. In most cases, it seems that more than one type of regulated profession can offer these services facilitating competition between service providers. A related issue when reserving activities to regulated professions is that certified plans cannot be submitted cross-border.[154]

A Dutch firm mentioned that one of the biggest costs of operating cross-border is the need to hire a local architect or engineer registered with a relevant professional body to engage in the building control process.

A Czech contractor operating in nine Member States suggested that the need to hire a national architect in Western European markets is a significant cost burden.

However, **FI**, **NL** and the **UK** have not reserved plan preparation activities to regulated professions which strengthens the possibility of increased competition and efficient market access to these countries.

Indicator analysis Article 5 -Plan approval site inspection and completion

The indicator in this section (Table 5.3) relates to the number of authorities involved in the plan approval process under the regular procedure. This takes into account whether one or more authorities are involved in the process and the extent to which third parties are necessary to verify compliance of the plans with the legal requirements.

[154] Although not the focus of this study, a cursory level investigation suggests that national professional bodies are open to recognition of architects and engineers based on equivalent qualifications, applying procedures similar or identical to those of the Professional Qualifications Directive (2005/36/EC). However, this is an additional authorisation procedure that must be followed prior to submitting plans and a misuse of that Directive if the professionals are not physically present in the host MS territory. Ideally home MS rules should determine whether a professional not present in the host MS is competent or not to draft technical plans.

Table 5.3 Article 5 Indicator: Number of authorities involved in the process of approving submission demands necessary for a building permit under the regular procedure

Member State	Number of authorities involved in the process of approving submission demands necessary for a building permit under the regular procedure
BG	2
CZ	6
DE (NRW)	2
DK	0
EL	0
ES	0
FI	0
FR	2
IT	0
NL	0
PL	4
PT	0
SI	0
UK (England)	0

a) 1 – 0 points; 2: 2 points; 3: 4 points; more than 3: 6 points).

A score of 2 has been given to **Bulgaria** given that technical plans need to be authorised on two occasions by the municipal authorities. However, if private sector control is opted for the municipal authority accepts the third party confirmation of compliance as given and a score of 0 is relevant in this instance.

A score of 6 has been allocated to the **Czech Republic** but this only relates to a ten storey office block. In this case, several authorisations are required from multiple authorities as part of separate procedures under the building permit approval process. A score of 0 is relevant in terms of a one storey house given that plans are submitted to the local authority and assessment against technical requirements is not undertaken given that registered designers provide professional sign-off. A similar situation applies to **Poland** in the case of a ten storey office block where multiple authorisations are required from several authorities as part of separate procedures (but not in the case of a one storey house).

In **Greece**, given that technical plans are certified by registered designers, confirmation of compliance is accepted as given by the municipal authorities and a score of 0 has been allocated. A similar situation is applies to **Portugal**.

In the case of **Germany**, a score of 2 has been given but this applies to the case of a ten storey office block as a state registered expert and a municipal authority examines the plans against the technical requirements. However, in terms of a one storey house, the municipal authority will accept the confirmation of compliance provided by the state registered expert as given and a score of 0 is relevant in this instance.

For **France**, with regard to a ten storey office block, a score of 2 has been given as both a building surveyor and municipal authority examines the plans against the technical requirements. However, it should be kept in mind that the authority only examines the plans against fire safety requirements and standards around access to disabled persons. A score of 0 could be allocated in the case of a one storey house as there is no requirement to involve a building surveyor.

With regard to **Denmark**, a score of 0 is relevant as only the municipal authority is required to examine plans against technical requirements. The same situation applies to **Finland** (but it may be the case that the authority requests a second opinion by a third party and a score of 2 could apply in some instances), **Italy** (Milan), the **Netherlands**, **Spain** (authorisation of plans can undertaken by a local authority or an architectural institute in Madrid) and the **UK** (authorisation of plans can be undertaken by a local authority or an Approved Inspector in England). A score of 0 also applies to **Slovenia** as municipal authorities do not check plans against technical requirements but in the case of a ten storey office block the services of a third party are called upon to verify compliance, however, this should be viewed as the involvement of one authority only in the plan approval process.

Legal evaluation Article 5 -Plan approval site inspection and completion

The legal experts recognised the need for appropriate practice or procedures to ensure that technical requirements are met by service providers as part of plan approval. These can be justified by overriding reasons relating to the public interest, such as assessments of structural safety, fire safety and health and safety.

However, the number of authorities involved in the detailed validation of the plans against the technical requirements is subject to variation. For example in some Member States, there is involvement of one authority in the detailed examination of technical plans against the requirements for building work (CZ, DK, EL, ES, IT, FI, NL, PT, SI, UK). However, under certain circumstances, there are occasions where more than one authority or a combination of an authority and a third party body are involved in this process (BG, FI, FR, DE, PL). Consequently, the level of compliance against Article 5 is less effective in these latter cases given the associated inefficiencies of obtaining more than one approval for a single submission demand. This line of analysis has been further developed under Article 10.

> *A German architect mentioned that the environmental control inspection process is a burdensome element of the building control process, given that a different government agency other than the building inspectorate is involved in the process. According to the interviewee, this inspection process can take up to 6 months before the building permit is validated.*

Similarly, where the expertise of more than one public authority is required to support the process of issuing a building permit (e.g. fire safety and sanitation authorities), there appears to be some variation in the approach. For example, some countries use an internal integrated procedure, with the local authority engaging with other authorities to gain their advice before offering an opinion on whether the project is technically compliant to the applicant (e.g. **France**, the **Netherlands** and **UK**). This offers a simplified approach to administrative procedures with only one application process for the applicant to deal with as envisaged under Article 5.

In other countries, several separate authorisations are required from different authorities as part of the approval of the building permit and these need to be collected separately by the applicant particularly with regard to ten storey office buildings (e.g. **Czech Republic**, **Poland**). This latter example does not offer a simplified approach to the same extent as an applicant is required to deal with separate administrative procedures and manage the decisions received from several authorities as part of the single process of attempting to gain building permission.

> *Given the number of authorisations that are required in Poland, an association mentioned that 'for a large residential development project, it takes up to two years to collect all of the approvals and related documents: for example, arrangements such as reports and environmental decisions, approval from the fire brigade, sanitary, entry to public roads, planting of greenery, gas, water etc.*

Most interviewees do not see the site inspection regime as representing a barrier to the provision of services. However, in general, it can be concluded that the biggest barrier to companies working cross-border is that they often are not initially familiar with the Member State-specific process. Therefore, companies do not know what to expect and what preparations needs to be made.

5.2 Indicator analysis and legal evaluation Article 8

The following section provides an indicator analysis and legal evaluation of building permit legislation under Article 8 of the Services Directive.

Summary of Article 8 (Procedures by electronic means)

- Article 8 (Procedures by electronic means) Member States shall ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means.

Interpretation of the article above in the context of horizontal authorisation scheme legislation

Building permit application procedures should be supported by systems that facilitate full electronic case handling enabling the efficient submission of applications at a distance. Competent authorities should accept the submission of simple electronic copies relating to all submission demands.

Indicator analysis Article 8 (Procedures by electronic means)

Table 5.4 provides an assessment of the horizontal authorisation scheme against an indicator developed under Article 8 (procedure by electronic means). This aims to examine the extent of compliance with the Services Directive ranging from 'there are no electronic procedures available', to 'full case handling is possible'.

Table 5.4 Article 8 Indicator (Procedures by electronic means)

Article 8 Procedures by electronic means														
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
Is the entire application process supported electronically and can it be performed at a distance. There are no electronic procedures available (6) Paper forms can be downloaded (4) Electronic intake is possible (2) Full case handling is possible (0)[155]	4	2	2	4	4	2	0	4	4	0	4	4	4	0

In **Bulgaria** municipalities often make available application form templates to download with instructions about the paper documents that have to be submitted. This

[155] E-ID and e-signatures may be required and, if so, those issued in other MS may not be accepted.

is also the case in **Demark, Greece, France and Portugal,** although digital systems are proposed in these four countries. A score of 4 has been given.

In **Germany** (NRW), systems are not in place to handle the entire procedure electronically but electronic intake in some areas is possible. The same is true in **Czech Republic.** A score of 2 has been given.

In **Madrid**, recent developments have led to the launch of an electronic system enabling full electronic case handling. However, according to interviewees, this system is not implemented across **Spain**, where paper copies are required for submission in some regions. A score of 2 has been given in this case.

In Italy (**Milan**), there are possibilities to download paper forms but signed copies must be submitted physically. A score of 4 applies.

In **Finland**[156] and the **Netherlands**[157], there are national systems available enabling full case handling. In the **UK** (England), local authorities are mandated to design their own electronic systems. The assumption was made by interviewees that the vast majority of municipalities are likely to have followed this requirement and at the very least applications can be submitted by email. It was confirmed that the municipalities that the interviewees have experience with have systems that permit uploading of documents. A score of 0 has been given to these countries.

In **Poland**, paper forms can be downloaded from the internet. Online handling is not possible as the documents need to be verified. Similarly, electronic intake is not possible in **Slovenia**. A score of 4 applies to these.

Legal evaluation Article 8 (Procedures by electronic means)

To ensure that authorisation procedures operate efficiently, full electronic case handling should be made available for building permit applications (simultaneously enabling the submission of electronic copies).

However, **Finland** and the **Netherlands** are the only countries providing national level electronic systems and are clearly examples of good practice. While it is strongly believed that full case handling is possible in the **UK** (England), given that local authorities may design their own systems, a more fragmented approach to electronic handling applies nationwide. To support simplification efforts, a centralised national submission portal is preferable.

> *A UK (England) architect commented that the process of electronic submission of an application for a building permit is much more efficient compared to the previous system of submitting paper copies. Previously, large technical plans needed to be printed out and submitted by post or in person resulting in higher submission costs and more time spent managing the process by different categories of staff. Another UK (England) architect echoed these findings and commented that the current approach to electronic submission is very efficient (and gave the system a score of 4 out of 5).*

The remaining countries are indicative of comparatively more restrictive practice either by enabling some form of electronic intake only or by making forms available online. To meet the needs of Article 8, these Member States could investigate how to better align their approach to electronic submission in line with the good practice examples. It is promising to learn that **Denmark**, **Greece, France** and **Portugal** are moving

[156] www.lupapiste.fi.
[157] www.omgevingsloket.nl.

towards the introduction of such systems and hopefully full electronic case handling will be made possible in due course.

A Greek SME welcomed the fact that there are plans to introduce the submission of electronic copies of documents as part of building permit application procedures given that the process is paper driven currently (and in some areas relies on original versions of documents). It was therefore viewed as burdensome.

A Polish association commented that there are provisions in national legislation that promote the use of electronic procedures for building permit submission but unfortunately electronic case handling has not been rolled-out as yet. The paper based approach to submission is regarded as 'not efficient' currently.

A German architect mentioned that the situation for documentary submission differs per region. In one area of Munich, documents can only be downloaded with three signed copies required for submission.

5.3 Indicator analysis and legal evaluation Article 9(1) and Article 16(2)b

The following section provides an indicator analysis and legal evaluation of building permit legislation under Article 9 (1) and Article 16 2(b) of the Services Directive. In the context of the evaluation of building permit legislation, these Articles have been applied jointly given the need to ensure efficient access to service provision for both nationally established and temporary cross-border service providers.

Summary of Article 9(1) (Authorisation schemes) and Article 16(2)b (Freedom to provide services)

Article 9(1) Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

a) The authorisation scheme does not discriminate against the provider in question;
b) The need for an authorisation scheme is justified by an overriding reason relating to the public interest;
c) The objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

Article 16(2)b Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register etc.

Interpretation of the article above in the context of building permit legislation

- **Procedures and categorisation of construction work.** The Services Directive indicates that official authorisations of building works should only be implemented when absolutely necessary. The reduced use of authorisations procedures could be realised through exemptions for qualified or certified service providers;
- **Plan approval, site inspections and completion**. The number of administrative procedures which service providers are subject to should be limited to those that are absolutely necessary, with a view to avoiding any

duplication of authorisation activities relating to horizontal authorisation schemes and prior building permit approval processes. Delegating building control functions to certified or qualified service providers should assist in reducing the administrative burden.

Indicator analyses Article 9(1) and Article 16(2)b

The indicator assessment in Table 5.5 examines whether there is the possibility of exemption from administrative procedures from building permit to final completion for certified or qualified service providers. This includes the use of registered designers for plan approval and construction workers broadly speaking whose work can be self-certified.

Table 5.5 Articles 9 (1) and 16(2)(b) Indicator (Exemption from administrative procedure for qualified or certified persons)

Member State	Possibility of exemption from administrative procedures from building permit to final completion for certified or qualified service providers (for example: yes – 0 points, for some –points, no – 6 points
BG	6
CZ	3
DE (NRW)	6
DK	6
EL	3
ES	3
FI	3
FR	6
IT	3
NL	6
PL	6
PT	3
SI	3
UK (England)	3

In the **Czech Republic and Slovenia**, plans for a one-storey house prepared by registered designers are not subject to third party verification or examination by a local authority against technical requirements. The same is true but in relation to both types of reference works in **Greece** and **Portugal**.

There is a scheme for the self certification of the construction of transportable structures which removes the need for a building permit in **Denmark,** but this does not relate to a one storey house or ten storey office block. Therefore a score of 6 has been granted.

In **Spain,** with regards to certain types of office buildings (financial institutes, insurance or legal services) the construction service provider can optionally submit a Declaration of Responsibility with proof of insurance, which provides exemption from the building permit procedure. Similarly, in **Italy**, the building notice procedure supports the self-certification of plans.

In **Finland** and **Spain**, site inspection activities are delegated to designers, apart from the final inspection.

In the **UK**, the Competent Person certification scheme enables twenty types of installation service providers (including electricians) to self-certify their own work, removing the need for site inspections conducted by local authorities.

In all other cases, the practice of exemption from administrative procedures for certified or qualified professionals has not been identified. A score of 6 has been given in these instances.

Indicator analyses Article 9(1) and Article 16(2)b

Under Article 9(1) and Article 16(2)b an indicator assessment (Table 5.6) examined the administrative procedures to be completed under the system of building control from start to finish under the regular procedure. This takes into account the initial administrative process of plan submission, any administrative processes to be completed during the site inspection phase, and finally whether it is mandatory to request completion certificates and submit any final documents. It has not been possible to take into account the frequency of site inspections given that these are subject to discretion in many cases. Where administrative activities or obligatory actions are required to be undertaken as part of these three steps, these are indicated in the text below and the extent of their restrictiveness assessed.

Table 5.6 Articles 9 (1) and 16(2)(b) Indicator – Number of Administrative Procedures

Member State	Number of administrative procedures to be completed from building permit to final completion in the framework of a building permit application under the regular procedure 1 – 0points; 2: 2 points; 3: 4 points; more than 3: 6 points
BG	6
CZ	6
DE (NRW)	6
DK	4
EL	4
ES	4
FI	4
FR	6
IT	6
NL	2
PL	6
PT	6
SI	6
UK (England)	4

In **Bulgaria**, there are two initial administrative procedures as part of plan approval: verification of the plans either by a public or private body and then coordination of the building permit application with a local authority). A mandatory regime of site inspection exists involving both private building control and two authorities. As part of the completion phase, a further administrative procedure to obtain a use permit takes place with technical documents required for submission. A score of 6 is relevant in this case.

In **Czech Republic**, plan approval relies upon one administrative procedure, and if deemed necessary this may be supplemented by an interview with the architect. In terms of ten storey office blocks, the inspection regime is fixed and overseen by both private actors and four public bodies. A request for final certification for a ten storey office building is required, with inspections being made by four authorities. A score of 6 has been given.

In the case of **Denmark**, there is only one administrative procedure to follow as part of plan approval. Site inspections are performed by the contractor (or building surveyor) supplemented by risk based supervisory activities by public authorities. In addition, technical documents are submitted by the applicant as part of the completion process and therefore a score of 4 has been allocated. However, given that submission of the documents often results in the absence of a final site inspection this could be viewed as an advantage.

The number of administrative steps is subject to variation in **Finland**. Plan approval is often subject to one administrative procedure: but, it may be the case that the local authority requests third party verification of the plans. In addition, if the local authority deems it appropriate to delegate the site inspection process to the principal designer, there is a need to submit a reporting logbook. While this is a further mandatory administrative procedure it could also be viewed as an efficiency gain. A completion inspection applies managed by the local authority. Given these variables, a score of 3 has been allocated.

In **France**, in terms of ten storey office blocks, technical plans are required for submission to both a building surveyor and local authority. Site inspections are managed by private building control and the local authority operates a system of market surveillance. As part of the completion process a declaration of compliance with the building permit and a certificate indicating compliance with various aspects of the technical requirements are submitted jointly. In the case of a ten storey office block, a safety report is often produced to facilitate the final inspection. A score of 6 has been allocated.

With regard to **Germany** (NRW), plan approval is required by a state registered expert initially and a municipal authority subsequently. There is a fixed inspection regime managed by the local authority with aspects delegated to private building control. A final inspection process leads to the issuing of completion certification, and a score of 6 applies in this case.

In terms of **Greece**, there is one administrative process to be followed only (as part of the plan approval stage) and site inspections are conducted by a private building control body. A final inspection is required with a view to determining if the completion certificate should be issued by the local authority. A score of 4 has been allocated.

A single administrative process governs the plan approval process in **Italy**. However, given that there is a private system of building control for the site inspection process (which could be viewed as an advantage) technical documents are required for submission to support the completion process. Ongoing building control is performed by a private building surveyor with a risk based approach to inspections conducted by the local authority and also an inspection by the fire authority. A score of 6 has been given.

Multiple authorities are involved in administrative procedures linked to the plan approval and completion processes for ten storey office blocks in **Poland**. A number of designated private actors are required to perform building control duties on site with the District Inspector undertaking random inspections of the site. A score of 6 appears relevant.

The system in **Portugal** demands submission of technical documents as part of plan and completion processes. Designated private service providers are required to manage the building control process on site with risk based site inspections conducted by the local authority and an inspection made the sanitation authority, and therefore a score of 6 appears relevant).

In the **Netherlands** there is one administrative process to be followed only (as part of the plan approval stage) and risk based site inspections are conducted by a public body. A final inspection may not be required, and a completion certificate is not issued. A score of 2 has been given.

The requirements in **Slovenia** dictate that for a ten storey office block, the technical plans are likely to require an initial verification by an auditor and then approval by a local authority. A private building surveyor is appointed to oversee the building control process and a local authority may consider inspecting the site. The relevant authorities conduct final inspections.

In **Spain,** there are two administrative procedures governing plan approval, an initial verification of the plans by a local authority or a private institute, and then coordination of the building permit application with a local authority. Given that responsibility for the site inspections phase is borne by the architect (and this could be seen as advantage), a 'building book' is submitted to a local authority as part of the completion process. A single inspection is performed at the end of the project by the local authority. A score of 4 has been allocated.

In terms of the **UK**, there is one administrative process to be followed only (as part of the plan approval stage) and risk based site inspections are conducted by a private or public body. A final inspection may not be required as part of the process of issuing the completion certificate. A score of 4 has been allocated.

Legal evaluation Article 9(1) and Article 16(2)b

A key objective of Article 9 (1) is to limit the number of administrative procedures to those which are absolutely necessary. In particular, authorisations should only occur where a posteriori inspection is too late to be genuinely effective. Moreover, cross-border service providers, whether established nationally or providing temporary cross-border services, should not be exposed to burdensome authorisation requirements. Therefore, systems which avoid the implementation or duplication of administrative procedures offer a strong level of compliance with the Services Directive.

As part of plan approval, there are a number of good examples where authorisation of technical plans takes place on one occasion. For example, in the **Netherlands** and **UK**, given that technical design activities are not reserved to regulated professions, local authorities are required to examine the plans on one occasion. Or in the case of the UK, Approved Inspector can be optionally called upon notify a local authority that the plans are compliant. The same is true in **Demark** and **France** in terms of small one storey houses where the design activity is not reserved and authorisation is required from the local authority only. This is also the case in **Finland** for both reference works (unless the local authority decides not to require the use of third party verification) and again the design activities are not reserved in this case. In other countries where technical design activities are reserved to regulated professions, qualified professionals can self certify their own work and a subsequent authorisation is not required from the local authority for either one or both of the reference works (the **Czech Republic**, **Slovenia**, **Greece** and **Portugal**). These systems generally demonstrate good practice.

However, in some cases administrative procedures supporting detailed examination of technical plans against the technical requirements (either by a local authority or third party) is required on one occasion in some countries even though design activities are reserved to regulated professions for either one (**Denmark**, **France, Germany**) or both or the reference works (**Bulgaria**, if private control is used, **Italy**, **Poland, Spain**). In one respect, as only one authorisation focusing on a detailed assessment of

compliance with the technical requirements is mandated, this approach does offer a level of compliance with Article 9 (1). However, as demonstrated by the countries above, the requirement of the use of registered designers is considered as sufficient in terms of ensuring that the technical requirements are satisfied and further examinations of plans against the technical requirements is not conducted. This alternate approach offers a stronger level of compliance and benefits industry given the associated efficiency gains.

There are cases where there appears to be assessment of drawings against the technical requirements on more than one occasion as part of duplicate administrative procedures either by local authorities or a combination of local authorities and third parties. This is the case in **Bulgaria** (if local authorities are called upon for the plan approval process), **Finland** (if a local authority calls upon the services of a third party) **France** (for a limited range of the technical requirements in terms of ten storey office blocks) **Germany** for ten storey office blocks and **Poland** (if cross examination is undertaken internally by public officials). Given that these systems demand technical plans to be prepared by registered designers in the first instance, it is not clear why two separate administrative procedures to perform assessment of technical requirements are required and such approaches demonstrate non-compliance with Article 9 (1).

In terms of the site inspection regime, at an overarching level, there are a number of systems that appear not to duplicate the site inspection process as either a local authority or private building control takes full responsibility: or, a combination of the two but with the local authority undertaking on-site inspections in certain circumstances, for example as part of market wide risk based assessments.

For example, in **Denmark**, the **Netherlands** and **UK**, no designated private actors are mandated to take responsibility for building control activities and site inspections are performed by a local authority (or alternatively an Approved Inspector in the UK) on a risk based approach.

> *All Danish interviewees mentioned that while the system of building control often runs smoothly, fire safety authorities are more burdensome to deal with and seem to be disjointed from the construction process. The rules around fire safety for buildings were also regarded as inflexible even in circumstances were sufficient or better design solutions could be identified.*
>
> *A Polish construction association suggested that fire safety regulations and fire safety authorities are some of the most difficult building control issues to deal with for cross-border service providers. The route to managing this issue from a cost and efficiency perspective is to hire local experts.*
>
> *Similarly, a Czech architect mentioned that the approval needed from the fire authority as part of the application for a use permit is the most difficult part of the process to manage.*
>
> *A UK (England) architect commented that engaging with local authorities as part of the site inspection process is a non-burdensome process to manage. However, it is believed that service providers that are unaware of the quality standards that need to be met are likely to face serious difficulties. In terms of temporary cross-border service providers operating in the UK, It seems that sometimes they are surprised of the level of involvement of public bodies in the site inspection process and that certain rules (such as fire safety) should be followed rigorously. The impression given is that some temporary cross-border services are used to operating in environments with weak levels of public enforcement.*
>
> *Another UK (England) architect suggested the site inspection process was generally non-burdensome and if the requirements are followed a good rapport can be*

established with the inspectors. A slight concern is that sometimes it take time to arrange appointments linked to specific build stages. Contractors may be delayed slightly given that they cannot proceed with their work until the particular stage is approved by the authority. However, it was mentioned that this does not occur often.

The same UK (England) architect suggested that private building control inspectors add more value to the building control process. This is because they can often better support the transfer of original and innovative solutions that meet the performance based requirements. On the other hand, local authorities may simply determine if a solution is compliant or not.

In the **UK**, twenty types of installation service providers (including electricians) can self-certify their own work. This means that the person undertaking the installation work can certify compliance with the regulations upon submission of documentation to the local authority.

A Polish association commented that most installation work conducted in Poland needs to be approved by external parties with larger buildings been subject to a higher frequency of examinations. Similarly, a Czech architect confirmed that installation work must go through a final inspection before official approval of the building is given. As such, installation activities were viewed as being subject to tight controls for all works.

In the **Czech Republic**, site inspections are performed by the local authority in terms of ten storey office blocks but inspections are only made of one storey houses if complaints are made. Whereas in **Finland** and **Spain**, site inspection activities are delegated to designers that take responsibility for building control. In **France**, there is no requirement to hire a private building control service provider for a one storey house, and the local authority may not perform site inspections in this instance. There appears to be one level of public or private building control in terms of overall responsibility in **France** (for ten storey office blocks) **Greece** and **Germany**. In **Italy**, **Portugal** and **Slovenia**, building control is generally delegated to private actors but local authorities may choose to perform inspections if needed as part of market-wide risk based assessments.

However, with regard to **Bulgaria** and **Poland,** there appears to be a strong aspect of duplication of administrative procedures as both designated private and public actors are heavily involved are required to take responsibility for the site inspection process. These are comparatively more restrictive according to Article 9 (1).

With regard to the number of administrative procedures around the completion process, again there appears to be some variance with some systems demonstrating high levels of efficiency. In the **Netherlands**, there is no mandated requirement for a final inspection but notification of completion must be given and completion certification is not issued. There is a similar approach in the **UK** (England) but completion certification is issued. There is no completion process in the **Czech Republic** with regard to one storey houses, and there is a notification of completion needs to be submitted to the local authority. In other systems, a final inspection and the issuing of completion certification takes place (**Germany**, **Greece**).

In the case of **Denmark** and **Portugal**, technical documents are submitted as part of the completion process but a final inspection may not take place, and therefore this process could be perceived as beneficial to some.

With regard to **Finland** and **Spain**, as part of the completion process, a final inspection by the local authority is undertaken and technical documents are required for submission, but building control is delegated to designated private professionals

prior to that point, and therefore there are efficiency benefits associated with this process.

Whereas in other countries the process is comparatively more burdensome as there are submission demands to be made by the person undertaking building work as well as final inspections and the issuing of completion certificates. This is the case in terms of ten storey office blocks in **France** and both reference works in **Bulgaria** and **Italy**. Moreover, several authorisations from different authorities are required as part of the completion process in **Italy** and **Poland** for both reference works and also **Czech** and **Slovenia** in the case of ten storey office blocks. These approaches perform less well against Article 9 (1).

> *In the experience of a Spanish architect working in Spain, Italy, Poland and Germany the biggest difficulty occurs when the architect is not always aware of all different inspection procedures in a country. Prior understanding is often needed.*

5.4 Indicator analysis and legal evaluation Article 10(3)(4)

The following section provides an indicator analysis and legal evaluation of building permit legislation under Article 10(3)(4) of the Services Directive.

Summary of Article 10(3)(4) (Conditions for the granting of authorisation)

- Article 10(3) The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State;
- Article 10(4) The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

Interpretation of the article above in the context of building permit legislation

- **Mutual recognition of services provided**. Authorisation of building works should be permitted on the basis of requirements equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. This suggests that mutual recognition principles and procedures could be established, ideally in building permit legislation, ensuring that key requirements such as insurance, technical requirements, health and safety, and use of equipment are recognised cross-border;
- **Procedures and categorisation of construction work**. Moreover, where elements of technical plans submitted for authorisation are not site specific, efforts should be made to ensure that national approvals are available to reduce the need for multiple authorisations for construction works based on the same technical designs.

Indicator analysis Article 10(3) Equivalent requirements

The indicator analysis in Table 5.7 examined whether there are mutual recognition principles and procedures in place to support recognition of cross-border service providers.

Table 5.7 Article 10(3) Indicator – Conditions for granting authorisation

Article 10 (3) Conditions for granting authorisation														
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
Is there a country of origin and/or mutual recognition principle in place, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y in a MS with performance-bases technical standards 3 in a MS with combined prescriptive and performance-based standards 4 in a MS with mainly prescribed standards 5) Or neither? (6)	4	4	4	4	3	3	4	3	4	4	4	5	4	3

Overall, there does not appear to be specific principles or procedures in place supporting mutual recognition of construction service providers in building permit legislation enabling firms to provide services according to their home country requirements. However, the use of performance based standards across most areas of construction works is strongly established in France and UK. Recently Greece introduced the approach supported by the procedure of self-certification of plans. Other countries have been characterised as relying on a combination of prescribed and performance based standards or heavily rely on prescribed standards only.

Similarly, mutual recognition principles and procedures are not established in health and safety legislation enabling firms to provide services according to their home country legislation.

National legislation was reviewed to examine whether country of origin or mutual recognition principles and procedures are established. The following results were identified:

- No country of origin principle was found;
- Mutual recognition procedures are not in place for cross-border service providers in any MS;
- Principles for the mutual recognition of equivalent requirements are indicated in the relevant legislation for BG, CZ, FI, IT, NL, PT and UK;
- No principles of mutual recognition for health and safety were found;
- Principles for the mutual recognition of the use of equipment are indicated in the relevant legislation for BG, EL, ES, IT, PT and UK;
- Performance-based technical standards, which by definition enable mutual recognition, are predominant in EL, ES FR and UK. In all other countries except PT, they are combined with prescriptive standards;
- Mutual recognition principles in legislation transposing the Services Directive are present in all Member States except where horizontal legislation implementing the Services Directive is not available (i.e. DE and FR).

Given that country of origin principles or specific mutual recognition procedures are not established, a score of 0 has not been given to any country. General principles of mutual recognition in legislation transposing the Services Directive along with systems using mainly prescribed standards were given a score of 5. Combined prescriptive and performance-based standards were awarded a score of 4, while predominant performance-based standards were awarded 3.

Legal evaluation Article 10(3) Equivalent requirements

Given that no mutual recognition procedures are established in national legislation, currently services providers are at risk of not being able to provide services on the basis of home country requirements. It is suggested that suitable procedures and principles are established particularly for construction service providers in the context of building permit legislation enabling firms to receive recognition prior to market participation.

> *A French architect commented that the key difficultly for cross-border service providers when entering a new market is learning about the regulatory environment including the building regulation and the technical standards for building works. The main issue is not that regulations in other Member Sates are more burdensome but rather instances where they are different and learning about such differences imposes costs.*
>
> *A Dutch firm mentioned that it is nearly impossible for Dutch service providers to apply for a building permit in Germany, simply because relevant activities are reserved to registered architects who are registered with the Architektenkammer. In Germany, the architect must apply for the permit, and he is ultimately responsible for the construction works. As a result, this practice was viewed as an obstacle to the provision of cross-border services.*

A limited number of countries use the approach of performance based standards across the vast majority of their technical requirements. France and the UK are good examples of countries that rely heavily of performance standards suggesting that similar practice could be adopted elsewhere providing designers with some flexibility in their proposed design solutions.

> *A UK architect suggested that on the basis of submitting plans for approval to the authorities, designers can develop imaginative solutions to meeting the performance based standards given that they are not constrained to a prescribed approach.*
>
> *A second UK architect mentioned that the performance based standards enable service providers to challenge local authorities in relation to design solutions that are not initially approved by providing appropriate evidence. The example was given where a local authority had declined the proposed installation of a new type of insulation system but on the basis of collecting evidence from the manufacturer, it was demonstrated that the performance based standards could be satisfied.*

It seems that mutual recognition principles and procedures enabling firms to provide services on the basis of home country requirements in relation to health and safety and use of equipment are not established. It is suggested that these are introduced as there may be instances in some countries (as indicated below) where service providers face specific issues that do not apply in their home Member State.

> *A Czech contractor considered that the health and safety rules for construction works in his own country are more complicated to deal with than those in neighbouring countries. The suggestion was made that a cross-border service provider would be exposed to a comparatively more burdensome regulatory environment in the Czech Republic.*

A French architect considered that EU health and safety legislation facilities cross-border service provision as there is common ground in this area, although there are minor issues to deal with specific to certain countries.

Indicator analysis Article 10(3) Equivalent requirements – Insurance

The indicator analysis in Table 5.8 examines whether there are any mutual recognition procedures or principles established in national legislation for insurance products.

Table 5.8 Article 10(3) Indicator – Conditions for granting authorisation

Article 10 (3) Conditions for granting authorisation														
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
Is there a country of origin and/or mutual recognition principle in place for insurance, in this case with a mutual recognition procedure? (Y 0) Or a mere mutual recognition principle with no mutual recognition procedure? (Y 3) Or neither? (6)	3	3	3	3	3	3	3	6	3	3	3	3	3	3

Based on a review of national legislation that transposes the Services Directive, in the majority of cases, principles have been established recognising suitable insurance products held by cross-border service providers. Moreover, building legislation in some countries echoes this principle e.g. BG, FI, SI. This is supported by practice in some countries where it is not mandatory to hold insurance products such as CZ, EL and the UK. However, no specific procedures recognising insurance products held by cross-border service providers were identified. Although, Germany has not implemented horizontal legislation transposing the Services Directive, the Trade Law supports the principle of recognition of cross-border insurance products.

The situation appears different, however, in France. The Spinetta Law dictates that a specific liability insurance product offered mainly by national insurance providers should be held by contractors to enable the site inspection process to go ahead. As a result, neither a principle nor a procedure are available to support mutual recognition in France. A score of 6 has been allocated.

Legal evaluation Article 10(3) Equivalent requirements – Insurance

The mapping exercise indicated in section 4.7 makes it clear that liability requirements are imposed on construction service providers related to service provision and latent defects. In most countries, it is mandatory for construction service providers to hold insurance products to ensure that the relevant liability requirements are appropriately covered. For these reasons, Member States could develop appropriate principles and procedures in their building permit legislation in this area.

With regard to France, it seems that the current regulatory framework does not correlate well with the obligations of the Services Directive. It is suggested that the Spinetta Law is reformed with a view to supporting mutual recognition of insurance products held by cross-border service providers.

A French architect explained that in relation to cross-border service providers, there are difficulties for contractors to procure the obligatory national insurance products that support market participation in France (but apparently this is not impossible). It was noted that German insurance companies had developed arrangements with

partner companies in France enabling Germany firms with recognisably high quality standards to enter the French market.

When asked about internal market barriers in relation to national insurance legislation, two European associations indicated that a major obstacle is apparent on the French market. For example, temporary cross-border service providers encounter difficulties given that they do hold the prescribed insurance products, and the annual cost of insurance was identified as prohibitive to temporary market participation for this category of service provider.

Indicator analysis Article 10(4) National access to a service activity

The indicator analysis (Table 5.9) under Article 10(4) examined whether efforts had been made to ensure national access to a service activity in the construction services sector.

Table 5.9 Article 10(4) Indicator – Conditions for granting authorisation

Article 10(4) National access to a service activity														
Indicator	**BG**	**CZ**	**DE**	**DK**	**EL**	**ES**	**FI**	**FR**	**IT**	**NL**	**PL**	**PT**	**SI**	**UK**
In so far as building permits control compliance with requirements which are not site-specific, are such parts of the authorisation schemes valid nationwide? (Y or N/A 0 / N 6)	6	6	0	6	6	6	6	6	6	6	6	6	6	0

Germany (NRW) and the **UK** (England) have established national type approval procedures for building designs. The use of the procedure in **Germany** (NRW) is generally limited in scope to certain types of buildings and industrial structures (e.g. wind turbines, (grain) silos or (small) prefabricated houses) although legally speaking it is not constrained to these categories. In the **UK** (England), the procedure is advertised as covering residential and non-residential buildings as well as building systems.[158]

In addition, in ES, health and safety certification is required for submission as part of the submission demands for a building permit. Similarly, insurance documents are required for PT and DK and ES. The DURC certificate examined under the analysis of horizontal authorisation schemes must be submitted as part of each building permit application. Given that these are not site-specific, a nation-wide one-off approval is preferable.

Legal evaluation Article 10(4) National access to a service activity

UK (England) has introduced a national type approval system that offers procedural efficiency gains to service providers wishing to build the same structure in more than one locality. After approval of the design is given by one authority, a certificate is issued that can be submitted to other authorities facilitating automatic approval of the design as part of subsequent building permit procedures. This enables the service provider to commence work quickly if the intention is to reuse the same approved design on a second occasion.

Given that technical plans that are normally demanded by building permit procedures contain features that are not site specific, similar approaches could be adopted in the

[158] http://www.rbwm.gov.uk/web/bc_registered_details_faq_21092.htm.

remaining Member States, providing certain categories of service provider with the option of receiving national type approval of their building designs.

> *A UK (England) architect suggested that although the procedure is used by a small part of the market, some housing developers are taking advantage of the type approval procedure. This enables service providers to quickly commence building work safe in the knowledge that their technical plans that have been approved already cannot be rejected by local authorities.*
>
> *Moreover, although not examined specifically by this study, the same UK (England) architect suggested that there are benefits associated with the system of private building control. For example, if an architect wishes to use an original design solution in the context of the performance based standards, the evidence required need only be provided to the private building control body on one occasion. The same approved solution could then be used on a project in a different part of the country. However, if local authorities were used, the evidence would need to be provided on two separate occasions.*

In addition, Member States should avoid requesting documentation which is not site-specific. Currently, some documentation (such as health and safety certification in ES, DURC certificate in IT and insurance documents in PT, ES and DK) are requested on repeated occasions under the building permit procedure. Preferably, such requirements should be subject to a one-off control. In addition, the requirements demanded in ES (health and safety) and PT (insurance) are also demanded as part of the horizontal authorisation schemes (see section 3.2).

5.5 Indicator analysis and legal evaluation Article 13(2)(3)(4)

The following section provides an indicator analysis and legal evaluation of building permit legislation under Article 13(2) (3)(4) of the Services Directive

Summary of Article 13(2)(3)(4)

- Article 13 (2) Authorisation procedures and formalities shall not be unduly complicated or delay the provision of the service. Any charges which the applicants may incur from their application shall be reasonable and proportionate and not exceed the costs of the authorisation procedure;
- Article 13 (3) Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once, by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired;
- Article 13 (4) Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

Interpretation of the article above in the context of building permit legislation

- **Fees**, Member States should ensure that the fees linked to the provision of building control services are reasonable and proportionate to the approval,

inspection and completion activities undertaken. Profit should not be made on building control functions managed by public authorities;

- **Procedure time**. The building permit authorisation period shall be fixed and advertised with extensions being made for a single limited period and for reasons of significance only. Ideally, building permit procedures should establish the principle of tacit approval if authorities do not provide response in the fixed period. A key objective is the avoidance of delaying the provision of construction services as a result of poorly designed authorisation processes.

Indicator analysis Article 13 (2)

An indicator developed under Article 13(2) is presented in Table 5.10.The indicator aims to examine whether fees are proportionate to costs. Since it is has not been possible to fully examine and compare the extent of building control activities undertaken by local authorities, the analysis centres on whether the legislation specifically constrains authorities from profit making activities.

Table 5.10 Indicator Article 13(2) – see table 4.1.1

Member State	Are fees proportionate to cost? (Y 0 / N 6)
BG	0
CZ	0
DE (NRW)	0
DK	0
EL	0
ES	N/A (Three taxes apply)
FI	0
FR	N/A (Planning taxes apply).
IT	0
NL	6
PL	0
PT	0
SI	0
UK (England)	0

In **Bulgaria**, authorities are required to establish their own fee rates linked to standardised calculation methods based on the floor area of the building (this relates to plan approval and issuing building permits and completion certificates). The estimated costs for Zone 2 of Sofia are €20,941 for a 2000m^2 office block and €1,803 for a 150m^2 one storey house. The costs of private building inspectors also apply. Given the clear legal framework, the fees have been regarded as proportionate.

The situation in the **Czech Republic** appears to be cost effective and the method of calculation and rates are fixed nationally. In relation to a one storey house, a fee of €35 is imposed but this relates to issuing a decision on the building and assessing the completeness of the submission dossier. The plans are not checked in detail and there are no site inspections or completion processes managed by the authority. In relation to a ten storey office, the costs are estimated at €3,500 for the building permit. In this instance, the site inspection regime is provided free of charge by authorities. A score of 0 has been given.

With regard to **Denmark**, while the general framework is established at national level, local authorities may establish their own fee rate and there is very wide variation in the actual costs that apply. However, based on broad estimates a fee of €16,000 could

be incurred for plan assessment and approval for a ten storey office block and €800 for a one storey house. The Danish legislation prevents authorities from generating a profit on any fees imposed, and therefore this system has been regarded as proportionate by the indicator analysis.

In **Germany**, the fees related to building control activities must be linked to the costs incurred by the authority. In relation to a one story house, taking into account the costs of the building permit, plan approval by the state expert and inspections, a fee of €1,300 has been estimated. Similarly, taking into account these three elements, a fee of €24,000 has been estimated for a ten storey office block. The legislation prevents authorities from making a profit and therefore the fees are regarded as proportionate.

The system of private building control is regulated in terms of the method of calculation and specific fee rates in **Greece**. It can therefore be stated that the costs of building control services provided are proportionate given a level playing field is established in the market. Based on the relevant methodology, the site inspection charges for a 10 storey office block are €1,700 and a house €400. Plan approval is provided free of charge by the authority but this relates to a simple check of the accuracy of the submission dossier. In Greece, designers are required to adopt a significant level of liability for their construction work and this seems to impact on the extent of the building control regime. A score of 0 has been allocated.

In terms of **Finland**, authorities are free to establish their own fee rates and calculation methods. In Helsinki, the approximate cost of the building permit equates to €13,259 for an office block and €1235 for a house. Inspections provided by an authority are free of charge. However, one needs to take into account that a designer may be deemed fit to perform building control duties during the construction phase and prepare submission demands for the completion phase and these are not accounted for here. However, the public authorities' fee system seems proportionate.

In **France** there is a system of planning taxes which are outside the scope of the Services Directive. Private building control are mandatory when the height of the building exceeds 280 metres. A cost of €30,000 has been estimated in the context of the office block reference works.

The principles for setting the fees are determined at national level in **Italy** (Milan). The fee rates are determined regionally and locally. Fees to obtain a building permit are determined on the planning costs to integrate the building into a range of systems and services and the construction costs. The general approach determined by the authority in Milan is to request the fees related to the planning costs during the issuing of the building permit and the fees related to the construction costs are paid up to 60 days after the completion of the works.

In the **Netherlands**, the fee rates for building control are determined by local authorities and normally this is a fixed percentage of the construction costs (e.g. 2.5%). Currently, there is a situation of cross subsidisation of the cost of building control for smaller works via fees paid by applicants of larger works. The cost of building control fees for a house is approximately €3750 (based on building costs of €150,000) and €125,000 for an office block (for a building costing €5 million to construct). Given the disproportionate costs incurred by major service providers, a score of 6 applies in this instance. It is understood that this system may be reformed.

In **Poland**, the calculation methodology is established nationally. It has been estimated that a building permit and related permits and documents for a ten storey office block has a cost in the region of €1,310 and €82 for a one storey house. Public

authority inspections are free of charge and there is a fee ceiling (of €128) for a building permit. The fees are regarded as proportionate.

In **Portugal**, building control functions are linked to fee rates determined by local authorities and these need to be proportionate to the services provided. The fees to obtain a building permit are usually determined in relation to the floor area and the use of the building. An office building (2000m^2) is associated with a cost of €8,690 and a house (150m^2) is in the region of €975. Authorities do not normally perform detailed assessments of technical plans and construction sites are selected randomly for inspection that are free of charge. There are obligations to appoint private persons such as technical directors, building surveyors and designers to perform building control duties for complex works and these costs are not considered above. A score of 0 has been given.

The fee rates for building control in **Slovenia** are based on a small administrative fee and a percentage (0.01%) of the costs of the construction works over a designated amount linked to the category of works. An office block with building costs of €5 million is likely to incur a charge of €1,221, and a house with building costs of €150,000 is associated with a cost of €293. However, a certified auditor may be required to assess the building permit application for a ten storey office block if requested by the authority and this cost is not considered here. Other costs not considered are the requirements to appoint a registered supervisor to perform site inspections and a qualified site manager to manage the project. Public authorities do not inspect all construction works. Overall, a score of 0 appears relevant given that costs are proportionate to the administrative services provided.

In **Spain**, three taxes apply as part of the authorisation for building permission that are not directly related to the cost of building control (and this system is not considered in the context of the indicator analysis given that it is outside the scope of the Services Directive). However, other costs not examined here include the fee for a 'visado colegial' to demonstrate conformity of the plans with the technical requirements. In addition, a registered architect is appointed to provide building control services during the site inspection phase. Spain is determined as not applicable under this indicator given that it uses a tax based system.

In relation to the **UK**, the costs for a one storey house under the building notice procedure are in the region of €2,711 (this includes a building notice and two site inspections). The costs of building control for a ten storey office block are estimated at €6,682, and this cost includes plan approval and ten inspections. A score of 0 has been provided as the system appears proportionate particularly considering that building authorities on an annual basis are not permitted to make a profit on chargeable functions.

Legal Evaluation Article 13(2)

Overall, the analysis indicates that fees are proportionate given that national legislation generally prevents local authorities from making a profit on the fees they charge for building control functions.

In addition, fee calculation methodologies often linked to specific building specifications have been established which provide transparency to applicants on the reason why certain costs have been imposed. In some countries, there are upper ceilings (such as **Poland**) on the costs for a building permit enabling low charges to be incurred for larger works. Moreover, public authority site inspections are free of charge in some Member States (e.g. **Czech, Poland** and **Portugal**).

However, while public authorities in the Netherlands are legally constrained to make a profit on their building control functions, the fee methodology negatively impacts on larger works given that it is based on a relatively high percentage of the value of the building costs. As a result, fees relating to larger works subsidise the costs of building control for smaller buildings. It is suggested that a proportionate system should be introduced in this Member State.

> *A Dutch contractor commented that the fees are an estimated 2% of total construction costs. It was mentioned that regardless of the type of building, service providers will incur more or less the same rates.*
>
> *Generally speaking, interviewees do not consider the building permit fees as a problem since the fees, if they have to pay them, are generally very low considering the overall costs of the building works.*

While the legal evaluation found that in many cases the fee system is proportionate, there were some issues raised by service providers that they may not be receiving value for money.

> *A Portuguese association commented that the inspection fees are not well considered. For example, if an apartment block is inspected, often a small proportion of the dwellings in the apartment block are examined e.g. 25% of the dwellings. However, the fees will relate to the whole building.*

Indicator analysis Article 13(3) Procedure times

The indicator assessment in Table 5.11 seeks to asses the time take taken for the (initial) authorisation process for an application for a building permit. Authorisation periods less than 15 working days are recognised as the least burdensome, followed by periods of 15 to 30 days, and finally, application processes that take longer than 30 days are considered as the most restrictive.

Table 5.11 Indicator Article 13(3)

Member State	How long is the (initial) fixed period for decision (< 15 working days 0/ 15-30 working days – 3/ > 30 working days or not fixed 6)
BG	3
CZ	3
DE (NRW)	6
DK	6
EL	3
ES	3
FI	6
FR	6
IT	0
NL	6
PL	6
PT	3
SI	6
UK (England)	3

Bulgaria and **Czech Republic** have been allocated a score of 3 given that their authorisation processes have a duration relating to the category of 15 to 30 days. It is possible, however, for plan approval to be issued in 14 days in **Bulgaria** if the plans are initially verified by a third party.

In **Denmark,** there are no fixed periods and therefore a score of six applies automatically. The Danish Energy Agency has conducted research which indicates that the average application processing period for a house is 9 weeks and an office building is 11 weeks.

In **Finland,** there are no fixed periods and therefore a score of six applies automatically. Based on the results of interviews, the average application processing time in the Helsinki area is 4 to12 weeks for a house and 12 to 20 weeks for an office building.

With regard to **France**, there is a period of two months for individual houses and three months for other projects. There is, however, an authorisation period of six months for buildings open to the public. A score of 6 is relevant in this case.

Although the approval of the building permit application is limited to 2 days in **Greece**, in practice, according to interviewees, this rarely occurs and normally approvals are made within 30 days. A score of 3 has been allocated.

In **Germany** (NRW), although the authorisation process for a one storey house is one month (given that the results of third party plan approval are accepted without further assessment), a period of two months is required for a ten storey office block. Therefore, a score of 6 has been given.

A period of up to 20 weeks is available in **Italy** (Milan) under the regular procedure. However, the building notice procedure can be used to commence work immediately. A score of 3 has been given.

In the **Netherlands**, a period of 8 weeks has been established for one storey houses and up to 6 months for complex projects such as office blocks. In **Poland**, local authorities should issue a decision within 65 days. In **Slovenia**, a building permit for a house must be issued within one month, however, a building permit for an office block must be issued within two months. All four of these countries have been given a score of 6.

Portugal has been given a score of 3 as its building notice procedure enables work to commence after an approval period of 8 days. However, under the regular procedure, the period for approval is around 15 weeks.

In **Spain** (Madrid), there is a period of up to 12 weeks for houses and 8 weeks for office buildings. However, given that the building notice procedure is available for certain types of office buildings enabling work to commence immediately, a score of 3 has been given.

The **UK** (England) has been given a score of 3 as even though the designated period is 5 weeks for a ten storey office block, construction work can commence immediately after notice is given under the building notice procedure in relation to a one storey house. In addition, according to interviewees, large service providers often call upon the services of private building control bodies (Approved Inspectors) and normally approval to commence work is issued in a three week period via this route.

Legal Evaluation Article 13(3) Procedure times

Article 13(3) demands that authorisation procedures operate as quickly as possible or in a reasonable period which is fixed and made public.

With the assistance of the building notice procedure, two countries (**IT** and **UK**) stand out as offering service providers very efficient access to the market subject to certain criteria. In **Italy** and the **UK**, after applicants have given notice, service providers may commence work immediately. In **Portugal** there is a very short fixed approval period of 8 days. Where planning and certain technical criteria are already satisfied, it is possible for service providers to have highly efficient access to their service activities as envisaged under the Services Directive.

> *A UK architect mentioned that for smaller works, the building notice procedure provides contractors with a quick means to commence work by cutting out the approval process. Another UK architect mentioned the building notice procedure could be used if the service provider is under pressure to commence work immediately.*
>
> *Another UK architect suggested that the system of private building control is comparatively more efficient than the authorisation process managed local authorities generally speaking, including during the plan approval phase.*

Currently, it seems that authorisation procedures supporting approval of a building permit can be sufficiently managed within a fixed for a period of 30 days for both reference works (**BG**, **CZ**) or 30 days for one storey house (**SI**). These examples employ integrated building permit and zoning procedures demonstrating that both types of approvals can be managed efficiently, and are indicative of good practice.

> *A Czech contractor with experience of working in several Member States suggested that the CZ building control authorities are normally efficient and meet their own approval deadlines (and are more efficient than similar authorities in neighbouring countries).*

There are several country examples where the involvement of private building control actors support the efficiency of the administrative approval process. For example, where third parties are called upon to verify plans, the fixed period for approval is shortened to 14 days in **Bulgaria** and one month in **Germany,** in this former case this relates to a one storey house. Moreover, private building control bodies in the **UK** (England) offer an alternative pathway to authorisation by shortening the fixed period from 5 weeks as performed by public authorities to approximately 3 weeks according to interviewees.

However, in the remaining countries, and for certain types of works, the fixed period for approval is slightly longer. It is acknowledged that in some cases building permit authorisation procedures are integrated with planning procedures and these clearly will have an impact on the issuing of approval to commence work. However, in countries where the authorisation procedure is longer than two months (either linked to one or more building permit procedures and for either one or both reference works) it is suggested that the fixed period is subject to review to identify where efficiency gains can be made to ensure that the period is regarded as reasonable (**FR**, **ES**, **NL**, **PL**, **PT**).

In **Greece**, the designated fixed period of 2 days is rarely kept according to interviewees. While this approach is in line with the requirements of the Services Directive, it is suggested that administrative procedures are reviewed to ensure that this fixed period is regarded as meaningful to applicants.

> *A Greek association commented that the 2 day fixed period is rarely kept and normally the authorisation procedure takes up to 30 days.*

With regard to **Denmark** and **Finland**, it is clear that the lack of fixed procedures defined nationally runs contrary to the requirement of Article 13(3). In addition, the

average duration for a building permit can exceed a period of two months for both types of reference works. Reforms are suggested for these countries in line with the relevant good practice identified and the needs of the Services Directive.

> *A Danish association mentioned that the most significant problem in engaging with the building control system in Denmark is the amount of time it takes to receive a permit. While statistics are published on this issue, it was mentioned that is not enough to improve the efficiency of the system.*

Indicator analysis Article 13(3) Extensions

The indicator analysis in table 5.12 below examines the extent of the use of extensions as part of the authorisation process. The benchmarks adopted for this assessment consider the least restrictive systems as those that do not use extension procedures, followed by systems that make available one extension only and finally, countries that have the option of implementing multiple extensions.

Table 5.12 Indicator Article 13(3)

Member State	Can fixed periods be extended by the competent authority for a minimum time (no extension 0 / 1 extension: 3/ more than one extensions: 6);
BG	0
CZ	0
DE (NRW)	0
DK	6
EL	0
ES	0
FI	6
FR	6
IT	0
NL	3
PL	6
PT	3
SI	0
UK (England)	3

In a number of countries, there are no possible extensions available as part of the authorisation process for a building permit (**BG**, **DE**, **EL, SI**). A score of 0 applies in these cases.

In other systems, extensions are available but in instances where the applicant submitted an incorrect or incomplete application (**CZ**, **IT**) or if technical deficiencies are identified (**ES**). However, these can only take place on one occasion. A score of 0 has been allocated given that these circumstances relate to where the applicant has made an error.

In **Denmark** and **Finland**, there are no legally designated fixed periods or extensions and therefore a score of 6 applies automatically in these cases as rules on the authorisation period are not clearly set out to applicants in a uniform manner.

With regard to **France**, there are three types of extensions that can be drawn upon depending on the circumstances associated with a building permit application. This includes a one month extension where other legislation applies, a two month

extension for consultations with the Regional Commission, and a six month extension for buildings open to the public. A score of 6 has been allocated.

In terms of the **Netherlands**, a municipal authority may choose to use an extension procedure but this can only be used once. A score of 3 applies in this instance.

In **Poland**, the procedure permits the authority to request further documents and/or clarifications from the applicant on as many occasions as deemed appropriate, in which case the authorisation procedure is suspended until the applicant provides the response. Given that requests for clarifications can be made on repeated occasions, a score of 6 applies.

With regard to **Portugal**, two types of extensions are possible in the cases of incomplete submission dossiers and if there is a need to consult with other public authorities (up to 45 days). A score of 3 is relevant in this case.

In the **UK** (England), as part of the procedure linked to the approval of plans, a municipal authority may choose to extend the authorisation period on one occasion, but this is not limited in the law to a specific circumstances. A score of 3 has been allocated.

Legal Evaluation Article 13(3) Extensions

In relation to the matter of extensions, as defined under Article 13(3), depending on the complexity of the issue, authorisation procedures are permitted to offer extensions on one occasion only for a limited time.

A number of countries appear to have established good practices with regard to this aspect given that they do not use extensions as part of their building permit procedures (**BG**, **DE**, **EL, SI**) or extensions are limited to circumstances where the applicant has submitted a non-compliant application and can be used on one occasion only (**CZ, ES, IT**). In the spirit of the Services Directive, this approach ensures efficiency of authorisation procedures given that public authorities are unable to extend designated periods for reasons other than where the applicant has submitted an aspect of their application in error. As a result, service providers are in a better position to plan their construction activities with the understanding that a response will be provided by the authority in a specified timeframe. Compliant applications will therefore result in the provision of services at a time originally foreseen.

> *All Italian interviewees confirmed that Italian authorities mostly respect the deadlines. Normally tacit approval is not given according to one of the Italian firms, however exceptions are made under the building notice procedure.*

Other counties appear to be less closely aligned with the requirements of Article 13(3). Given that there is not national legislation in place to govern possible extensions in **Denmark** and **Finland**, service providers are subject to an uneven system across municipalities and in some cases possibly in relation to individual applications with the same municipality. As a result, service providers do not benefit from the conditions stipulated under the Services Directive and could face delays to their project activities even if their application is legally compliant when first submitted.

> *All Danish interviewees confirmed that the process takes a long time, impacting negatively on the efficiency of project implementation.*

In the cases of **France** and **Portugal**, extensions are available for the purpose of consultation with other public authorities when required. Given this may delay

proceedings in some cases by up to 45 days (PT) and two to six months (FR), service providers could be subject to significant delays. It is possible to question whether these schemes are aligned to the notion of efficiency of authorisation processes.

> *A French architect commented that French authorities frequently use extensions, delaying the process, but notifications of such actions are given.*

In terms of the **Netherlands** and the **UK**, while it is the case that extensions can be made on one occasion only, it seems that authorities can use they own discretion in doing so. Without specifically restricting extensions to non-compliant applications only, service providers may experience delays to the provision of their services for reasons outside of their control. This approach does not seem to offer efficiency of authorisation processes as foreseen under the Services Directive.

While **Poland** permits extensions in circumstances of non-compliant applications only, clarifications can be requested of applicants on multiple occasions. This impacts negatively on service providers as the authorisation procedure has the potential to be suspended repeatedly resulting in uncertainty and potentially several delays.

> *A Polish association commented that Polish authorities are not being held accountable for the number of extensions to the procedure they make. The approval process was regarded as too slow for this reason.*

Indicator analysis Article 13(3) Notification of extensions

The aim of the indicator assessment in Table 5.13 is to benchmark the level of restrictiveness in terms of whether applicants are notified of extensions before the original period has expired (where they apply). If this is the case, country systems are classified as comparatively less restrictive than those that do not notify applicants with the timeframe.

Table 5.13 Indicators established under Article 13(3)

Member State	Are applicants notified of extensions before the original period has expired (Y 0 / N 6);
BG	N/A
CZ	N/A
DE (NRW)	N/A
DK	6
EL	6
ES	N/A
FI	6
FR	0
IT	N/A
NL	0
PL	0
PT	0
SI	N/A
UK (England)	0

A number of countries do not use extension procedures and therefore the indicator assessment is not applicable (**BG**, **DE**, **SI**).

A request for further documentation must be made by an authority in the relevant authorisation timeframe in the **Czech Republic**. In **France**, the relevant authority

must notify the applicant in the month that follows the submission of the application. In **Italy** (Milan) and **Poland**, official suspensions to the procedure can only be made during the specified authorisation period. In terms of the **Netherlands**, extensions are notified to applicants in the first eight weeks. In **Portugal**, notifications must be given to applicants. This is 8 days if the application is incomplete and up to 45 days regarding comments on the engineering project requested from other authorities. Notifications of extensions must be given to applicants within the first 10 days after submission in **Spain** (Madrid). In the **UK** (England) notification must be given to the applicant in the initial five week period if the extension procedure is to be used. A score of 0 applies to this group.

In **Denmark** and **Finland**, there are no legally designated fixed periods, extensions or uniform rules on notifications and therefore a score of 6 applies automatically in these cases.

According to interviewees, even though the use of extensions does not apply to **Greece**, the two day rule for plan approval is hardly kept and applicants are sometimes notified of extensions after the two day timeframe. Given these circumstances, a score of six has been allocated.

Legal Evaluation Article 13(3) Notification of extensions

The Services Directives dictates that official extensions to an authorisation scheme shall be notified to the applicant before the original period has expired.

Overall, there does seem to be a high level of compliance with this requirement across the 14 study countries given that a number of countries do not use extension procedures (**BG, DE, SI**) and those that do use extension procedures have mandated the use of notifications to applicants before the original period has expired (**CZ**, **FR**, **IT, PL**, **NL**, **PT**, **ES**, **UK**).

However, across the latter group of countries, there are distinctions that need to be made with regard to the timing of the use of notification of extensions. For example, in relation to incomplete applications, **Portugal** (8 days) and **Spain** (10 days) issue notifications in a very short timeframe. These are clearly examples of good practice and could be adopted by other countries.

Notification of extensions are issued at a much later stage in the authorisation procedure in other countries and the reasons for the use of the extension may relate to a wide range of issues. This includes the **Netherlands** (8 weeks) and **UK** (5 weeks) among others. It goes without saying that if notifications are issued towards the latter stages of the initial authorisation period, it may result in an unexpected delay to the provision of services.

In **Denmark** and **Finland**, given the absence of national rules that govern the functioning of authorisation processes, it is not clear how the notification procedure operates across all municipalities. The resulting lack of certainty is detrimental to service providers particularly if extensions are made without sufficient notification of applicants. This approach is not aligned to the principles of Article 13(3).

Although extensions are not available in **Greece**, according to interviewees, the two-day period for approval of the application is not often kept and notifications of extensions are not made in the initial period. This practice is not indicative of a strong level of compliance with Article 13 (3).

> *A UK architect commented that local authorities normally issue decisions in the period given and notify applicants when extensions are used. However, given that*

authorities can issue comments and conditions when permission is given, there is a feeling that sometimes authorities have not reviewed the applications in detail. For example, information requested may be contained in the original application. Applicants, however, need to prepare a note indicating where the authority can find the information.

A Greek association commented that notifications of extensions are not made in the 2 day fixed period. Rather, they take place after this timeframe.

Indicator analysis Article 13(4) Tacit approval

The Services Directive recommends the use of tacit approval subject to other needs that may need to be considered related to the public interest.

The indicator analysis in Table 5.14 examines if tacit approval features in building permit legislation. Systems that have adopted this practice are regarded as less restrictive than those that have not. Moreover, with a view to supporting the legal evaluation, the indicator analysis takes into account whether zoning approval is granted separately or as part of an integrated procedure combined with the approval of the building permit. This is to help identify where opportunities may be apparent for the uptake of the tacit approval principle.

Table 5.14 Indicator Article 13(4)

Member State	If fixed periods have expired, are authorisations deemed to have been granted (Y 0 /3 in some cases/ N 6); The issue of whether zoning approval forms part of the authorisation is highlighted to support the legal analysis.[159]	
BG	6	Combined planning and building permit procedures
CZ	6	Zoning approval is required under a separate procedure prior to applying for a building permit. However, in certain circumstances, the procedures can be combined e.g. where zoning plans are well established and for works such as one storey houses.
DE (NRW)	0	Combined planning and building permit procedures
DK	6	Combined planning and building permit procedures
EL	0	Planning approval is required first as part of a two step approach.
ES	0	Separate planning and building permit procedures
FI	6	Zoning approval and the building permit procedures are integrated.
FR	0	Combined and separate planning and building permit procedures are available optionally to applicants
IT	0	Combined planning and building permit procedures
NL	0	Combined planning and building permit procedures
PL	6	Separate planning and building permit procedures. However, zoning approval and the building permit procedures are integrated if a zoning plan is in place. (
PT	6	Zoning approval and the building permit procedures are combined.
SI	6	Zoning approval and the building permit procedures are integrated.
UK (England)	6	Separate planning and building permit procedures

[159] The data was collected from a study undertaken by OTB.

The legal mapping exercise suggests that six countries have made it clear in their legislation that a system of tacit approval applies and a score of 0 has been given in these cases.

In **Germany** (NRW), tacit approval is available if deadlines have not been kept but an interviewee commented that authorities work very efficiently normally. Tacit approval is available in **Greece** although interviewees suggested that applicants are not keen to commence building work under this procedure given the legal uncertainties associated with it. In this instance the 2 day deadline is not often met.

In relation to **France**, applicants can assume that tacit approval applies if a response within the maximum procedure time is not given, although this does not apply in all cases for example for proposed building work in conservation areas. In **Italy**, if the authority does not issue a response in the timeframe, a procedure of 'consent by silence' applies but this does not apply in circumstances where there are restrictions on the construction site (e.g. environmental).

In the **Netherlands**, in terms of applications that are in the scope of the existing zoning plan, if authorisation deadlines are not met by authorities, tacit approval applies. There are circumstances where tacit approval applies as a result of administrative silence in **Spain.** However, tacit refusal should also be assumed as a result of administrative silence as a result of a number of zoning matters as indicated in the section on procedure times.

In the remaining countries (**BG**, **CZ**, **DK**, **FI**, **PL**, **PT**, **SI** and **UK**), the legal feature of tacit approval is not indicated in their legislation and these countries have been allocated a score of 6.

Legal evaluation Article 13(4) Tacit approval

A number of countries have adopted the requirement of tacit approval failing a response by the relevant authority within the period set or extended.

A key example of good practice is **Germany** (NRW) where applications are automatically approved failing a response in the designated timeframe. It is assumed that a procedure of this nature provides an incentive to authorities to efficiently meet deadlines. However, interviewees mentioned that deadlines are normally kept by authorities.

> *Where approval deadlines are very occasionally not met by authorities, a German association mentioned that German firms do not feel legally secure to proceed with the building work when they are given tacit approval and prefer to wait for official approval to be given. However, a German firm mentioned that tacit approval is not available suggesting that there may be some confusion around the availability of this procedure.*

Other countries (**ES**, **FR**, **IT**, **NL**) offer tacit approval subject to certain zoning criteria. In these cases, there has been consideration to instances where there is a justified reason where tacit approval should apply. Similarly, such approaches demonstrate good practice according to Article 13(4).

> *A French architect commented that service providers do feel secure if they use the tacit approval procedure. However, it was mentioned that service providers must notify the authority of their intentions and wait two weeks in case an official response is issued before going ahead with the works.*

In the case of **Greece**, tacit approval is available and this demonstrates good compliance with the Services Directive. However, given that interviewees indicated

that tacit approval is not frequently assumed by applicants as a result of legal uncertainties, it would be helpful if the authorities clarified when it is appropriate for services providers to act on this procedure.

A number of countries have not adopted the principle of tacit approval in their legislation (**BG**, **CZ**, **DK**, **FI**, **PL**, **PT**, **SI** and **UK**). It is not clear if these countries have undertaken a review to identify circumstances where tacit approval could possibly apply. In some cases, such as **CZ** and the **UK** (England), planning permission is granted under a separate initial procedure suggesting that tacit approval could be adopted if authorities fail to respond within the period set or extended.

> *A Danish association mentioned that deadlines for a building permit are sometimes not kept and the procedure occasionally 'drags on'. Stronger mechanisms were recommended to enhance the efficiency and consistency of the process.*
>
> *A UK architect mentioned that tacit approval does not apply in England but the opinion of the interviewee was that it would not be an attractive feature given the risks. However, where delays in receiving approval have very occasionally occurred, it was indicated that developers have commenced work and notified the authority of their actions and that they wish to receive approval swiftly. Another UK architect mentioned that local authorities can independently establish tacit approval procedures but that it is better to commence work and request approval from the authority.*

5.6 Indicator analysis and legal evaluation Article 16(2)(f)

The following section provides an indicator analysis and legal evaluation of building permit legislation under Article 16(2)f of the Services Directive.

Summary of Article 16(2)(f)

- Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;

Indicator analysis Article 16(2)(f)

The indicator analysis is presented in Table 5.15.

Table 5.15 Article 16 (2f) Indicator (Use of Equipment)

Member State	Where service providers are established in another Member State and intend to provide temporary cross-border services, are requirements on the use of equipment imposed? (Y 6 / N 0);
BG	0
CZ	0
DE (NRW)	0
DK	0
EL	0
ES	0
FI	0
FR	0
IT	0
NL	0

Member State	Where service providers are established in another Member State and intend to provide temporary cross-border services, are requirements on the use of equipment imposed? (Y 6 / N 0);
PL	0
PT	0
SI	0
UK (England)	0

With regard to the indicator corresponding with Article 16 (2f), it appears that the building permit procedure does not impose requirements on the use of equipment based on non-harmonised national rules.

Legal evaluation Article 16(2)(f)

The countries analysed were found to be compliant with this particular Article demonstrating good compliance with the Services Directive.

5.7 Aggregate indicator results and identification of good practice

The indicator results relating to the overall assessment of building permit legislation are provided below. Overall scores are provided as well as scores for regulatory and administrative burden separately. All scores are expressed in a scale from 0 to 6.

Table 5.16 Building permit legislation - overall indicator results

	BG	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Article 9 (1) and 16 2 (b) (15%)	6,00	5,10	6,00	4,60	3,70	3,70	3,70	6,00	5,10	3,20	6,00	5,10	5,10	3,70
Article 10 (3) (25%)	3,70	3,70	3,70	3,70	3,00	3,00	3,70	3,90	3,70	3,70	3,70	4,40	3,70	3,00
Article 10 (4) (5%)	6,00	6,00	0,00	6,00	6,00	6,00	6,00	6,00	6,00	6,00	6,00	6,00	6,00	0,00
Article 16 f (5%)	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00
Overall – regulatory burden	***4,25***	***3,98***	***3,65***	***3,83***	***3,21***	***3,21***	***3,56***	***4,35***	***3,98***	***3,41***	***4,25***	***4,33***	***3,98***	***2,61***
Article 5 (25%)	2,70	2,50	3,05	2,20	2,55	2,25	1,95	3,15	2,55	2,40	3,30	2,30	1,75	*0,50*
Article 8 (10%)	4,00	2,00	2,00	4,00	4,00	2,00	0,00	4,00	4,00	0,00	4,00	4,00	4,00	*0,00*
Article 13 (15%)	0,75	2,55	1,50	4,50	1,35	0,75	4,50	2,10	0,00	3,30	3,90	2,85	3,30	*2,85*
Overall – administrative burden	***2,38***	***2,42***	***2,38***	***3,25***	***2,48***	***1,75***	***2,33***	***3,01***	***2,08***	***2,19***	***3,62***	***2,81***	***2,67***	***1,11***
Overall (regulatory and administrative burden)	**3,31**	**3,20**	**3,01**	**3,54**	**2,85**	**2,48**	**2,94**	**3,68**	**3,03**	**2,80**	**3,94**	**3,57**	**3,32**	**1,86**

- **UK** (England) (1,86) has the least restrictive building control regime when examined against the relevant Articles of the Services Directive. In particular, compared to other Member States, this country has performed well against Article 5, Article 8, Article 10(4), Article 9(1) and Article 162(b). However, better performance could be attained under Article 10(3) and Article 13;
- **FI** (2,94), **DE** (3,01), **EL** (2,85), **IT** (3,03) the **NL** (2,80) and **ES** (2,48) have performed quite well against the indicators. There are various strengths and weaknesses linked to each country. FI, EL, ES and NL have relatively low scores under Article 5. Most of these countries have performed quite well under Article 9 (1) and 16 2 (b). FI and NL have very good scores under Article 8. However, better performance could be obtained under Article 10(3)(4);
- **BG** (3,31), **CZ** (3,20), **DK** (3,54), **FR** (3,68), **PL** (3,94), **PT** (3,57) and **SI** (3,32) have performed slightly less well against the indicators. CZ, FR and PT are slightly more restrictive in terms of Article 10(3) and FR against Article 10(4). Apart from DK, the remaining countries have not performed well against Article 5. Generally speaking, these systems have generated more points under Article 9(1) and Article 8.

Figure 5.1 provides the results of the indicator assessment of the overall level of regulatory restrictiveness of building permit legislation (i.e. the issues examined around regulatory burdens and mutual recognition). The least restrictive countries are associated with low scores (the reverse is true for countries with high scores). A colour-coded break down is provided of the individual indicator results in relation to specific legal and procedural demands of the Services Directive.

Figure 5.1 Overall regulatory restrictiveness of building permits

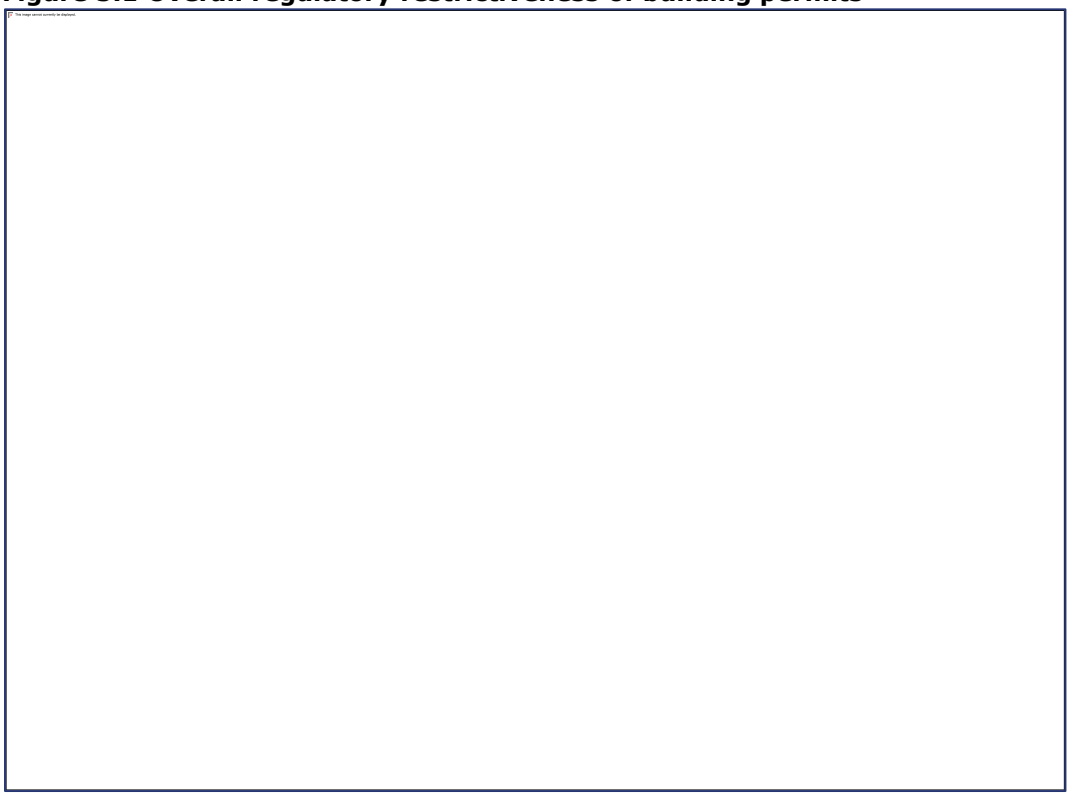


Figure 5.2 provides the results of the indicator assessment of the overall administrative restrictiveness of building permit legislation. The least restrictive countries are associated with low scores (the reverse is true for countries with high

scores). A colour-coded break down is provided of the individual indicator results in relation to specific legal and procedural demands of the Services Directive.

Figure 5.2 Overall administrative restrictiveness of building permits

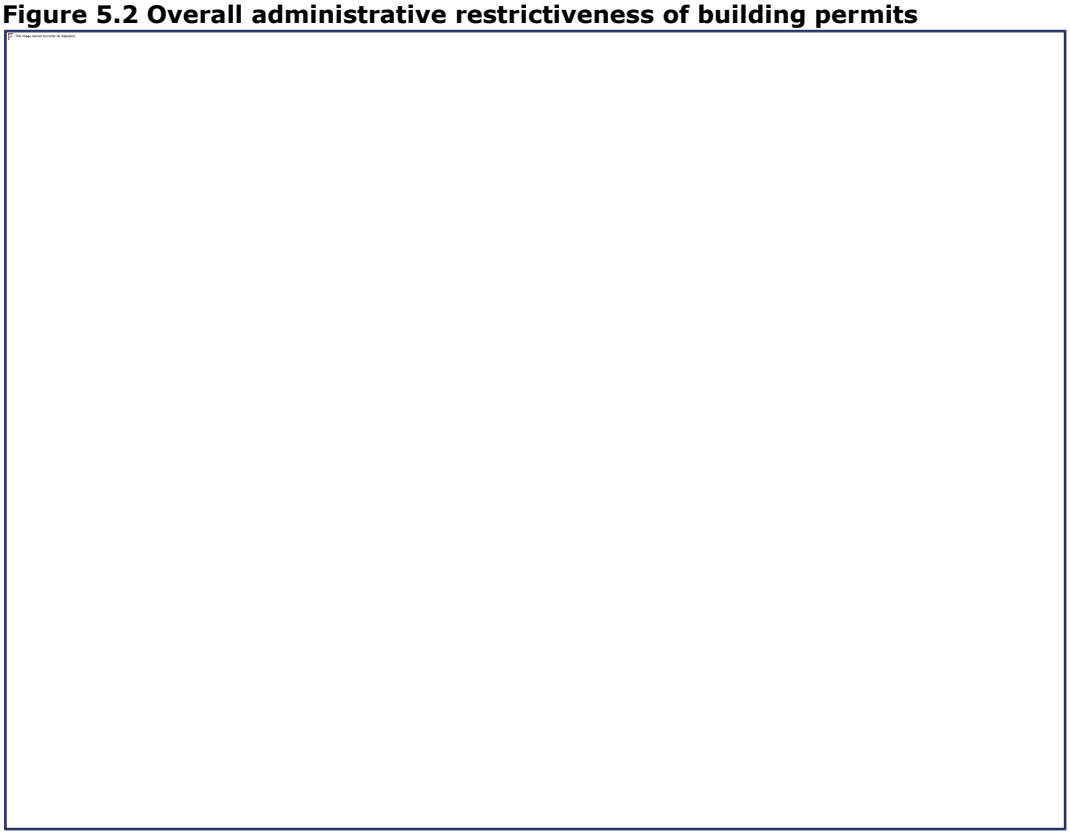
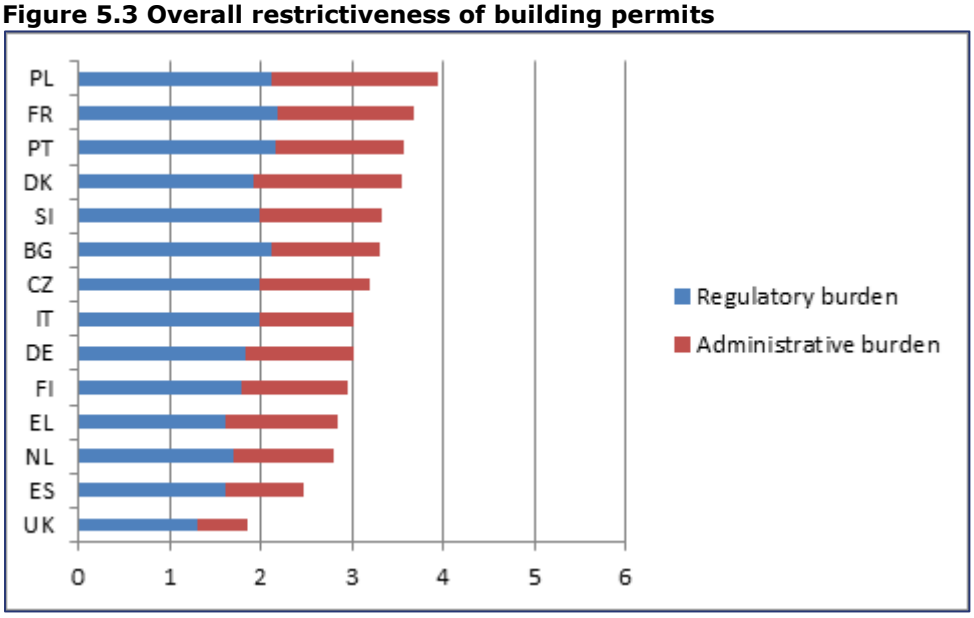


Figure 5.3 provides the combined results of the indicator assessment of the overall restrictiveness of building permit legislation (this assessment combines the Figure 5.1 and 5.2 results around the assessment of administrative and regulatory burdens). The least restrictive countries are associated with low scores (the reverse is true for countries with high scores). A colour-coded break down is provided of the individual indicator results in relation to the individual scores for administrative and regulatory burdens.

Figure 5.3 Overall restrictiveness of building permits



Taking on board the results of both the indicator assessment of the horizontal authorisation schemes (see Chapter 4) and building permit legislation, an overall analysis of the study countries is presented in Table 5.17.

Table 5.17 Overall indicator results for the assessment of the building permit legislation and horizontal authorisation scheme

	BG	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
HAS (30%)	3,41	N/A	N/A	3,69	1,86	2,88	N/A	N/A	2,90	N/A	N/A	2,56	N/A	N/A
Building permit (70%)	3,31	3,20	3,01	3,54	2,85	2,48	2,94	3,68	3,03	2,80	3,94	3,57	3,32	1,86
Total score	**3, 34**	**2, 24**	**2, 11**	**3, 58**	**2, 55**	**2, 60**	**2, 06**	**2, 57**	**2, 99**	**1, 96**	**2, 75**	**3, 27**	**2, 33**	**1, 30**

- **UK** (England) (1,30), has the least restrictive regime considering the absence of horizontal authorisation schemes and, comparatively speaking, a non-restrictive building control regime;
- **CZ** (2,24), **DE** (NRW) (2,11), **FI** (2,06), **NL** (1,96) and **SI** (2,33) have performed quite well considering the absence of horizontal authorisation schemes but they have significantly more restrictive building control regimes;
- **ES** (Madrid) (2,60), **EL** (2,55), **IT** (Milan) (2,99) have established horizontal authorisation schemes but their building control regimes are similar in terms of the level restrictiveness as the countries indicated above;
- **FR** (2,57) and **PL** (2,75) do not have horizontal authorisation schemes but relatively more restrictive building control regimes;
- **BG** (3,34), **DK**(3,58), and **PT** (3,27) have horizontal authorisation schemes and significantly more restrictive building control regimes.

An overview is presented in Table 5.18 of the good practice identified against each of the Articles of the Services Directive along with areas of less effective compliance in relation to the fourteen study countries.

Table 5.18 Identification of good practice, areas for suggested improvement and non-compliance

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
Article 5	**Optional procedures are available for significant categories of works (e.g. dwellings or / and office blocks)**	A number of countries have made available optional procedures relating to either one or both of the reference works. This includes BG, DE, ES and SI regarding the light procedure where plans are verified by third parties. The building notice applies to CZ, (in some case DE) ES, IT and PT. CZ, EL, ES, IT PT and SI have adopted the approach of self-certification of plans. The Spanish Declaration of Responsibility is a good example of enabling service providers to self-certify their own plans and limiting the extent of the site inspection regime.	The following countries rely heavily on the regular procedure for dwellings and office blocks (DK, FI, FR, NL and PL).
	Minor work is exempt form building control procedures	Minor work, defined in various ways, is exempt from building control procedures (BG, CZ, DE, DK , ES, FI, FR, IT, NL, PL, PT, SI, UK)	A notification procedure applies to broad categories of minor work in Greece.
	Key information is made available in English including building regulations, lists of relevant standards, building permit webpages and submission procedures.	Some Member States have provided certain items in EN. This includes relevant legislation and lists of standards (CZ) or parts of the legislation (DK, FI and NL).	No Member State where EN is not the native language has provided all of the key information in EN including building regulations, listing of relevant standards, building permit webpages and submission procedures. (BG, CZ, DE, DK, ES, FI, FR, IT, NL, PL, PT, SI).
	Simple copies should be accepted limiting the costs involved in producing certified copies or time wasted in managing the exchange of original copies.	Simple copies of documents are accepted in the study countries generally speaking (CZ, DK, FI, FR, NL, SI UK) even if the production of the documents is in certified or authenticated form (such as technical designs, by registered professionals) FI, UK and NL do not even require initial production in certified or authenticated form	In Germany, Greece, Italy, Poland and Spain (in some regions outside of Madrid) original versions of key documents are required. In BG translations need to be submitted in certified form (by translators registered in BG – ES, however, accepts simple copies of translations certified by sworn translators) The authorities in PT may also request original documents if there are doubts.
	The submission demands required are limited to a small	The Netherlands is a good practice example given that the submission demands are limited to 3	A large number of categories of submission demands and are requested in the other countries

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
	number of categories of documents and are few in number reducing the overall administrative burden.	categories of documents.	with some countries requesting 6 or more categories (BE, EL, ES, FI, FR, IT).
	Procedural options are available (related to the either one or both of the reference works) that reduce the complex ty of the submission demands.	Some countries have introduced measures to reduce the complexity of submissions for one or both of the reference works e.g. enabling local authorities to have discretion over the submission demands required (DK), or to permit the self certification of plans (CZ, EL, SI) or making available building notice procedures that require less documents than the regular procedure (ES, UK).	In many cases, the categories of submission demands for both reference works are very similar (BG, DE, FI, FR, IT, PL, PT).
	Documents should be accepted in EN or supported by EN translations (by non-certified translators).	N/A	No Member State where EN is not the native language permits the submission of documents needed for a building permit in EN. (BG, CZ, DE, DK , EL, ES, FI, FR, IT, NL, PL, PT, SI)
	Certified or authenticated documents issued in other MS should be accepted (without requiring further formalities) ensuring the efficiency of the submission procedure.	Finland, the Netherlands and the UK do not require the submission of certified plans.	Certified plans signed by an architect / engineer registered with a national body are required for submission (BG, CZ, DE, DK, ES, EL FR, IT, PL, PT, SI).
	Where a certificate, attestation or other document proving that a requirement has been satisfied is demanded, equivalent documents should be deemed acceptable in another Member State (without requiring further formalities) ensuring the efficiency of the submission procedure.	It seems that equivalent documents are often not demanded as part of building permit procedures because certificates demonstrating technical/professional capacity are not often requested as part of building permit applications (requirements are normally linked to the specific site). However, in some cases, certificates or other documents proving that a requirement has been satisfied are demanded (such as health and safety certificates in ES and insurance documents in DK and PT). Given that these are not site specific, equivalent documents are accepted.	As part of submission demands in DE, a map is required from the Land Registry. While it is not certain that an equivalent document could be provided by a body outside of DE, it is not good practice to restrict the requirements for submission bodies to documents issued by national bodies.
	Electronic procedures permit full case handling and uploading of electronic copies	Finland and the Netherlands provide an online centralised national system for the submission of building permit applications that offers full electronic	Apart from the UK that provides full electronic case handling at local authority level, and ES which offers full electronic case handling in some

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
Article 8	**of documents to ensure efficient submission of all documents required.**	case handling.	regions only, the remaining countries only partially accept electronic submission of documents or make forms available online. (BG, CZ, DE, DK, EL, FR, IT, PL, PT, SI). A centralised point of submission is preferable.
Article 9(1)	**Certified or qualified service providers are offered exemption from building control procedures.**	CZ, EL, ES, IT PT and SI have adopted the approach of self-certification of plans. The UK permits installation service providers to self-certify their own work.	Self-certification is not practised in the remaining study countries. (BG, DE, DK, FI, FR, NL, PL).
Article 10 (3)	**Country of origin or Mutual recognition principles and procedures should be established enabling construction services providers to provide services cross-border on the basis of home country requirements including technical requirements, health and safety requirements and use of equipment**	There are some study countries that have established technical requirements that strongly lean towards performance based standards (EL, FR, UK). (All other MS except PT have a combination of performance-based and prescriptive standard)	No study countries complies in full with this requirement. (BG, CZ, DE, DK, EL, ES, FI, FR, IT, NL, PL, PT, SI, UK). No country of origin principle was found and the general principle of mutual recognition (not present in FR or DE) is inoperative
Article 10 (3)	**Mutual recognition principles and procedures should be established enabling cross-border construction services providers to use home country insurance products cross-border**	Most study countries have established specific principles recognising insurance products held by cross-border service providers in national law that transposes the Services Directive (BG, CZ, DE, DK , EL, ES, FI, IT, NL, PL, PT, SI, UK).	All study countries have not established specific procedures. (BG, CZ, DE, DK, EL, ES, FI, FR, IT, NL, PL, PT, SI, UK). In France, the Spinetta Law dictates that a specific liability insurance product offered mainly by national insurance providers should be held by contractors. This is in contradiction with the Service Directive.
Article 10 (4)	**In so far as building permits control compliance with requirements which are not site-specific, schemes could be made available to ensure nationwide approval of building designs.**	UK (England) has introduced a national type approval system that offers procedural efficiency gains to service providers wishing to build the same structure in more than one location. Plans are approved on one occasion and can be re-used as part of subsequent building permit applications.	DE has established a type approval scheme but it does not appear to be widely promoted for use in the context of the reference works. The remaining study countries do not comply with this requirement (BG, CZ, DK , EL, ES, FI, FR, IT, NL, PL, PT, SI).Some countries duplicate non-site-specific controls in each building permit scheme (ES, DK, PT) and sometimes even

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
			between HAS and building permits (ES, PT).
Article 13 (2) (3) (4)	**The fees are proportionate to costs and authorities are restricted from profit making activities. Cross subsidisation of building control services is not applied.**	The method of fee calculation in most countries is regarded as proportionate. (BG, CZ, DE, DK, EL, ES, FI, FR, IT, NL, PL, PT, SI, UK).	In the Netherlands, the methodology for building control fee calculation negatively impacts on larger building works as the system supports cross subsidisation. In some countries, such as Portugal, the inspection process is not considered as value for money by some companies, as inspection of all parts of the building may not take place even if it is charged for.
	Fixed periods for authorisation of building permit applications should ideally relate to a duration of 15 to 30 days.	With regard to the reference works, the building notice procedure enables services providers to commence work immediately in IT and UK (a similar approach is available in DE and ES but these are limited to specific circumstance). The building notice procedure in PT has a fixed period of 8 days. Bulgaria and Czech Republic offer fixed periods of up to 30 days for both reference works.	Under the regular procedure, there is an approval process of 8 to 12 weeks in Spain. In the Netherlands, a period of 8 weeks has been established for one storey houses and up to 6 months for complex projects such as office blocks. In Denmark, there are no fixed periods and the average application processing period for a house is 9 weeks and an office building is 11 weeks. In Finland, there are no fixed periods and in the Helsinki area the approval process is 4 to12 weeks for a house and 12 to 20 weeks for an office building. In Portugal, under the regular procedure, the period for approval is around 15 weeks.
	Ideally, extensions should only be available on one occasion and relate specifically to where an applicant has made a mistake in the application.	In a number of countries, there are no possible extensions available as part of the authorisation process for a building permit (BG, DE, EL, SI). In some cases they can only be used instances where the applicant submitted an incorrect or incomplete application (CZ, ES, IT).	The legislation is less clear on the specific reasons for their use in other countries (NL, UK). They can be used in PT if other authorities participating in the approval process are late in submission of their inputs. In Poland, the procedure permits the authorities to request further documents and/or clarifications from the applicant on as many occasions as deemed appropriate. In France,

Article	Good practice (GP)	Good practice examples	Examples of less effective compliance
			there is a two month extension for consultations with the Regional Commission.
	Applicants should be notified of extensions in the fixed period.	On the whole, many countries have adopted the policy of notifying applicants of extensions in the fixed period. (BG, CZ, DE, ES, FR, IT, NL, PL, PT, SI, UK).	However, interviewees commented that this often not the case in EL. In Denmark and Finland, there are no legally designated fixed periods, extensions or uniform rules on notifications. There is therefore lack of clarity currently.
	Ideally, tacit approval is given if a response has not been issued before the end of the fixed period. Service providers should also consider themselves in a legally secure position to go ahead with the works.	Although deadlines are mostly kept, tacit approval is available to service providers in Germany. Other countries (ES, FR, IT, NL) offer tacit approval subject to certain zoning criteria.	A number of countries have not adopted the principle of tacit approval in their legislation (BG, CZ, DK, FI, PL, PT, SI and UK).
Article 16(2) (f)	**National requirements on the use of equipment do not restrict service providers from using their equipment cross-border.**	No specific barriers were identified in the study countries. (BG, CZ, DE, DK, EL, ES, FI, FR, IT, NL, PL, PT, SI, UK).	

6 Assessment of voluntary certification schemes in the construction sector and evaluation

6.1 Overview of Task 2

Voluntary certification schemes relating to construction services are available in a number of different forms to service providers. Normally, their main objective is to ensure that service providers can voluntarily demonstrate that they conform to recognised industry standards, including legal requirements. This may be to validate that certain standards can be realised on-site, and in a small number of cases, enable the efficient functioning of building control procedures for certified service providers. Voluntary certification schemes may also be designed to facilitate recognition of requirements that have been previously met cross-border.

With these functions in mind, this chapter examines the extent to which voluntary certification can play a role in supporting simplification and mutual recognition in the construction services sector:

- Firstly, voluntary certification schemes are examined in relation to whether they support mutual recognition of service providers operating cross-border. This assessment has a particular focus on whether voluntary certification awarded in the home Member States can be used to demonstrate that equivalent requirements have already been met in the context of service provision to clients in the host Member State. The role of Regulation 765/2008 which supports mutual recognition of certification issued by accredited bodies is examined;
- Secondly, voluntary certification schemes are then examined considering the extent to which they are accepted as an alternative proof of compliance with regulatory requirements. In particular, voluntary certification schemes may play a role in the simplification of building permit procedures, for example by proving compliance on one occasion under a given voluntary certification scheme rather than needing to provide all supporting evidence for each building project. In addition, the potential for simplification of the procedures underlying the voluntary certification schemes themselves is briefly discussed.

The structure of this chapter is as follows:

- Section 6.2 indicates how EU legislation on accreditation (Regulation 765/2008) provides a number of articles relating to requirements for mutual recognition of accredited schemes;
- Section 6.3 introduces fourteen voluntary certification schemes that have been selected for assessment;
- Section 6.4 provides the results of the evaluation against the principle of mutual recognition;
- Section 6.5 provides an assessment of the procedures and demands of the voluntary schemes;
- Section 6.6 examines the potential of the voluntary certification schemes to support simplification of building permit procedures.

The results of the evaluation in this chapter are based on a combination of desk research and interviews with certification and accreditation bodies.

6.2 EU legislation supporting mutual recognition of voluntary certification

Regulation 765/2008 establishes the legal framework for accreditation in Europe (Chapter II of the Regulation).[160] In addition, it sets-out specific requirements for market surveillance relating to the marketing of products (Chapter III of the Regulation) but this goes beyond the scope of this study.

Article 8 in Chapter II of this Regulation lays down the requirements for national accreditation bodies. Article 9 provides the necessary measures to ensure compliance. Article 10 provides the requirement of peer evaluation among the national accreditation bodies of the EU countries. On the mutual recognition of voluntary certification, Article 11.2 provides the following[161]:

> *"National authorities shall recognise the equivalence of the services delivered by those accreditation bodies which have successfully undergone peer evaluation under Article 10, and thereby accept […] the accreditation certificates of those bodies and the attestations issued by the conformity assessment bodies accredited by them."*

This implies that certification issued by accredited certification bodies in the EU should be recognised unconditionally in all other Member States, as long as they relate to the same norms or regulations.

However, ensuring compliance with this requirement depends on the extent to which the norms or regulation are international or country-specific. If an EU Member State accepts an ISO certificate as an alternative for demonstrating compliance with certain norms, it shall also accept that certificate issued by an accredited certification body from another EU Member State. On the other hand, if a national certificate attests to compliance with regulations of that specific country, then it arguably does not attest to compliance with different regulations of other countries and does not necessarily need to be recognised cross-border. However, if the voluntary certification scheme attests regulatory compliance under the law of a Member State, and similar laws exist in other Member States, then the national certification scheme should be mutually recognised.

Thus the potential for cross-border recognition of certificates within the EU depends on three factors:

- Accreditation as defined by Regulation 765/2008;
- The cross-border equivalence of the underlying norms or regulations;
- The acceptance of the certificate as proof of compliance with construction services requirements.

6.3 Voluntary Certification Schemes Examined by the Study

During the course of the study, desk research and interviews with public authorities and national associations was undertaken to identify the type of voluntary certification schemes available in the 14 study countries for construction services providers. On the basis of a review of those identified, a number of types of voluntary certification schemes appear to be available (in some cases more than one characteristic relates to an individual scheme reviewed):

[160] http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/accreditation/index_en.htm.

[161] Underlining by the authors of this report.

1. International certificates including ISO 9001, 14001 and 18001;
2. Management system certificates tailor-made to national construction regulations (which are sometimes informed by ISO approaches);
3. Training certificates;
4. Certification attesting to compliance with pieces of construction site legislation supported by private inspections;
5. Self-certification;
6. Type approval.

Certificates attesting to standards that go beyond legal requirements, such as e.g. the Passivhaus certificate, are considered out of scope for the reason that promoting such a system would imply promoting very high industry standards, whereas the focus of this study is on compliance with legal requirements.

In order to ensure coverage of the fields above, a number of voluntary certification schemes were selected for evaluation against key principles of the Services Directive (Table 6.1).

Table 6.1 Voluntary certification schemes examined

MS	Type of scheme	Title of the scheme
BG	ISO Certification	ISO 9001:2008
CZ	None related to building permit regulation	---
DE	Construction Quality Certification	SCC (Safety Certificate Contractors)
DK	Certification demonstrating compliance with specific pieces of legislation	Certification Scheme for Transportable Structures
EL	None related to building permit regulation	---
ES	ISO Certification	OHSAS 18001
FI	Construction Quality Certification	Construction Quality Association Competence Certification (RALA)
FR	Construction Quality Certification	Quality of building works-related services for private clients
IT	ISO Certification	ISO 14001
NL	Construction Quality Certification	VCA-certification
PL	ISO Certification	PN-EN ISO 9001
PT	Construction Quality Certification	LNEC Quality Mark
SI	Certification demonstrating compliance with specific pieces of legislation	Licenses of the Slovenian organisation for fire safety
UK1	Qualification and Compliance ID Card for Construction Site Workers	Construction Skills Certification Scheme
UK2	Self-certification	Competent Person Scheme
UK3	Type Approval	UK National Type Approval Certification

ISO norms

ISO 9001:2008 certification specifies requirements for quality management systems. The certification enables organisations to demonstrate their ability to consistently provide products and services that meets customer and applicable statutory and regulatory requirements, and aims to enhance customer satisfaction through the effective application of the system, including processes for continual improvement of the system and the assurance of conformity to customer and applicable statutory and regulatory requirements.

The **ISO 14001** certificate attests to a management system for environmental care. In **Italy**, the ISO 14001 certificate in addition attests to compliance with Legislative Decree 115/08 on Energy Efficiency in end-use Energy Services. In Italy, the ISO 14001 certificate is not tailor-made to any sector, and the environmental system management requirements are the same for all sectors. Although no figures are available for the specific segment of residential and office buildings, take-up of this certificate in the construction sector is quite low at roughly 0.2 per cent (1,258 out of more than 600,000 Italian construction companies were ISO 14001 certified at the start of 2012).[162]

OHSAS 18001 is a voluntary standard that establishes the requirements to assess and certify the management system for Safety and Health at Work. It provides organisations a model system for identifying and assessing risks at work and the requirements that the law requires in each case. It also defines the political, organisational structure, responsibilities, functions, planning activities, processes, procedures, resources, etc., required to develop, implement, review, maintain and improve a SHW management system.

National management system certificates

The German Safety Certificate for Contractors (SCC) is a certificate that attests to standards with respect to management and continual improvement in the areas of safety and health at work and environmental care, both within the firm and for subcontractors hired by the firm. This certificate focuses heavily on assessing statistical reports regarding work related accidents with a view to examining the performance of the health and safety procedures established. It is developed in Germany and Austria and is mutually recognised by the Dutch-Belgian VCA certification scheme. The SCC certificate can be acquired together with the ISO 9001 and ISO 14001 certificates.

The Dutch **VCA certification** (this translates as the Safety, Health and Environment Checklist for Contractors) offers a programme whereby companies are tested in a structured and objective manner to demonstrate that a range of safety, health and environmental requirements are met relating to complex projects. The VCA-certificate implies compliance with ISO 9001 and 14001 standards, and a special VCA** variant implies compliance with OHSAS 18001 standards. A specific feature of the VCA certificate is that it extends to developing responsibilities towards services provided by subcontractors; in the VCA** variant in addition action plans after accidents are evaluated. It is mutually recognised by the SCC certification scheme developed in Germany and Austria described above.

RALA certification (Finland) is a voluntary procedure for the evaluation and approval of the management systems of companies engaged in engineering design, construction management, construction and installation. The scheme offers a tool for improving quality systems and developing business functions. At the same time, it offers developers the opportunity to evaluate and select contractors. RALA certification is based on the ISO 9001:2008 standard but the approach has been modified to taken into account the needs of the construction sector. In particular it attests that construction workers in the firm have the (technical) competences required by Finnish law.

The French voluntary scheme **Quality of construction related services provided to private clients** enables certified construction companies to demonstrate the quality, reliability and performance of their commercial services.[163] More specifically it

[162] www.oice.it/adon.pl?act=Attachment&id=6707c0b22db4bd89109c46be159824e6, Figure 4.
[163] *Qualité des services associés aux prestations de travaux de bâtiment dans les marchés privés.*

enhances the quality of the information provided to clients, the drafting of the contractual documents, the processing of customer requests, site preparation and the management of claims.

Certification supported by private construction site inspections

Private construction site inspections are the cornerstone of some certificates. The Portuguese **LNEC Quality Mark** supports the certification of construction work in line with technical, social and economic standards. The certification relates to three categories of projects: buildings and monuments, transportation networks and town planning works, and hydraulic works. LNEC QM certification relates to construction works totally or partially promoted by public authorities and public companies, as well as all construction works subject to licencing, which includes works initiated by private developers.

The UK's **Competent Person Schemes** (CPSs) were introduced by the UK Government in 2005 to allow individuals and enterprises, e.g. electrical installers, to self-certify their own construction services as compliant with the technical requirements established by the Building Regulations 2010. For this they need to be registered as a Competent Person with a Scheme Operator that has been approved by the Department for Communities and Local Government (DCLG), after successfully having passed construction site inspections. The Building Regulations 2010 oblige local authorities to accept a certificate issued by a Competent Person service provider as evidence that the Building Regulations have been satisfied.

Training certificates

Adequate training of staff in key functions is typically a requirement for ISO norms or national management system certificates, but stand-alone training certificates also exist. One example examined is a licence issued by the **Slovenian Association of Fire Safety** to construction workers that have successfully passed an exam on fire safety. The UK's **Construction Skills Certification Scheme (CSCS)** offers a Qualifications and Compliance ID Card to construction site workers in order to demonstrate their relevant training to meet regulatory standards (e.g. health and safety and environment) and also professional training / qualifications specific to their services.

Type approval

The Danish **Certification Scheme for Transportable Structures** (such as commercial tents, marquees, stages, stands, pedestrian bridges, etc.) enables service providers to establish such structures on repeated occasions without the need to apply for a building permit from the municipality.

The UK / England's **National Type Approval Certification** is a voluntary scheme enabling national type approval of technical plans for building designs by attesting compliance with the Building Regulations 2010. It is operated by the Local Authority National Type Approval Confederation (LANTAC), a Local Authority Building Control[164] organisation comprised of all Building Control Authorities in England and Wales. It aims to offer a fast-track through the building control procedures for standard buildings, modular buildings and building systems by providing a one-off approval for building designs. The approved designs can be used on subsequent occasions for identical / very similar building projects without the need for repeat approvals.

[164] http://www.labc.co.uk/.

6.4 Evaluation against the principles of mutual recognition

As discussed in Section 6.2, the potential for mutual recognition of certificates depends on three factors: **accreditation**, **international equivalence** of the underlying norms or regulations, and **acceptance as proof** of compliance. Before discussing the actual application of mutual recognition in this section, these three conditions are discussed, in the context of the country where the certificate is issued. Lastly, two aspects which are not requirements for mutual recognition but which, in specific circumstances, may strengthen the potential of voluntary certification schemes to support mutual recognition are discussed: the use of international experts and (international) safeguards of independence.

The international equivalence of certificates is assessed by checking their correspondence to international norms and EU legislation. The classic ISO norms are by definition international. However, in some cases, certification schemes may tailor ISO norms to the construction sector and national regulations. In some, but not all cases, the development of these tailor-made certificates is co-ordinated internationally which ensures international equivalence to a certain extent. Certificates may directly attest to compliance with EU legislation, or to compliance with national regulation transposing EU legislation. In these two cases, there is a greater likelihood of international equivalence. Other possibilities are that the certificate attests to norms that go beyond EU minimum requirements, or do not have any relation with EU legislation. In these two cases, the underlying norms or regulations are less likely to gain equivalence in a cross-border context. However, if the voluntary certification scheme attests regulatory compliance under the law of a Member State, and similar laws exist in other Member States, then the national certification scheme should be mutually recognised.

The acceptance of a certificate as proof of compliance in the home country is assessed by examining the national regulations corresponding to the certificate if there are any. In addition, certification or accreditation bodies were asked to indicate whether various forms of informal acceptance applied, perhaps in the form of a lighter inspection regime etc.

Lastly in terms of the accreditation of certification bodies, the regulation of the accreditation bodies and their successful peer evaluation have been examined by desk research.

Accreditation

Member States are required to recognise certificates issued by accredited certification bodies as meeting the required standards for certification, even if the certification or accreditation body is established in another EU Member State. However, it is not forbidden to recognise certification bodies that are not accredited. For example the Slovenian organisation for fire safety is not accredited but its licence has been required once in a Slovenian public procurement action.

In general, ISO certificates are issued by accredited certification bodies and the same is true for national management system certificates (Table 6.2). The exception is RALA but it should be noted that the RALA certificate not only attests to compliance with ISO 9001 standards, but also to employment of personnel with the competences required by Finnish law. In general, the accreditation scheme appears to work well for ISO norms and management system certificates. Interestingly, the requirements for accreditation under a scheme can go beyond the requirements of the EU Regulation 765/2008 as is the case for the SCC scheme in Germany and the VCA scheme in the Netherlands where the boards of development have arranged these extra requirements in a contract with the accreditation body.

Schemes that are based on on-site inspections can very well be accredited as well, as is the case for the French AFNOR construction quality certificate, the Portuguese LNEC Quality Mark and the UK Competent Person Scheme.

Organisations managing training certification schemes are sometimes accredited as in the UK skills card scheme but not always as in the Slovenian fire safety certification scheme. A fundamental question is whether a provider of training courses can be accredited at all, because they grant certificates for training they have themselves provided. In the UK the skills card scheme is accredited through the CITB (Construction Industry Training Board) but the CITB does not itself provide the training courses. From the interview with RALA, it is clear that the ISO 9001 certificate granted by the Finnish accreditation body FINAS is generally regarded as an accreditation for the RALA certificate with regard to ISO 9001 norms but not for the skills certificates. RALA has an independent Certification Board but perhaps a set-up as in the UK skills card scheme would be needed for accreditation. Another difficulty for accreditation of training certificates is that equivalent training certificates issued abroad would need to be recognised, which in turn would require the assessment of equivalence of voluntary training programmes in different countries. This recognition procedure is forms part of the UK skills card scheme but not the RALA scheme. In general the accreditation scheme requires a specific set-up for training certificates to safeguard the avoidance of conflicts of interest and in addition a means to assess the equivalence of voluntary training certificates operated in different countries.

Lastly, type approval schemes may be accredited as is the case in the Danish voluntary Certificate for Transportable Structures. The UK voluntary LANTAC Type Approval for building designs is run by the local authorities themselves and perhaps the need for accreditation is not apparent.

Table 6.2 Aspects of accreditation

MS	Certificate	Accredited by	Member	Regulation
BG	ISO 9001:2008 Issued by e.g. CBS Ltd; AQ Cert; Exact-Certification and by foreign certification bodies operating in Bulgaria such as Bureau Veritas Certification; Lloyd's Register Quality Assurance; RINA Services	BAS (Bulgarian Accreditation Service), or abroad	EA	Law on National Accreditation of Conformity Assessment Bodies. It regulates *inter alia* recognition of foreign accredited certification bodies such as e.g. Bureau Veritas Certification and Lloyd's Register Quality Assurance (UKAS) and RINA Services (ACCREDIA)
CZ	--- (none identified)	(N.A.)	(N.A.)	(N.A.)
DE	SCC (Safety Certificate Contractors)	DAkkS (Deutsche Akkreditierungsstelle GmbH)	EA, IAF	The SCC certificate can be obtained form various German certification bodies that have to be accredited according to SCC Rules and Regulations by DAkkS, a non-profit organisation owned by the Federal Republic of Germany, the Federal states and the industry represented by the Bundesverband der Deutschen Industrie e. V. DAkkS applies German

MS	Certificate	Accredited by	Member	Regulation
				administrative law as part of its public authority accreditation activities.
DK	Certificate for Transportable Structures	Danish Accreditation and Metrology Fund (DANAK)	EA, IAF	The inspection body must be accredited as a Type A body in accordance with ISO / IEC 17020 for inspection in accordance with the Certification Order for portable tents and structures.
EL	--- (none identified)	(N.A.)	(N.A.)	(N.A.)
ES	OHSAS 18001 issued e.g. by AENOR	ENAC (Entidad Nacional de Acreditación)	EA, IAF	AENOR is a private company and IQNet Member, who mutually recognize the ISO 9001, ISO 14001, OHSAS 18001 and various other certificates of all other IQNet Partners as being equivalent to their own
FI	Construction Quality Association Competence Certificate (RALA)	None, although RALA is ISO-9001 certified by FINAS	(N.A.)	(N.A.)
FR	Quality certificate of building works-related services for private clients, issued by AFNOR	COFRAC (Comite Francais d'Accreditation) DAkkS (DE), ACCREDIA (IT), UKAS (UK)	EA, IAF	AFNOR is a private company and IQNet Partner (see ES above)
IT	ISO 14001	ACCREDIA	EA, IAF	ACCREDIA was founded in 2009 as a non profit entity by ministries, national administrations and professional/enterprise organizations.
NL	VCA-certificate Developed by CCVD-VCA	RvA (Raad voor Accreditatie)	EA, IAF	The RvA has accepted the VCA certification system and can issue VCA accreditation to certification bodies on the basis of ISO 17021 and a contract with the CCVD-VCA
PL	PN-EN ISO 9001	Polskie Centrum Akredytacji (PCA)	EA, IAF	Accreditation ensures that certification bodies are impartial and independent. Certification bodies should have independent unit comprised of external experts who are not connected with the certification body that once a year check the functioning of the certification body.
PT	LNEC Quality Mark	IPAC (Instituto Português de Acreditação, I.P.)	EA,IAF	LNEC is a state owned research and development institution established by Decreto-Lei 310/90
SI	Slovenian organisation for fire safety licence	None	(N.A.)	(N.A.)
UK1	Construction Skills Certification Scheme (CSCS) Under contract by CITB (Construction Industry Training	UKAS (United Kingdom Accreditation Service)	EA, IAF	CSCS is a not-for-profit limited company. Its directors are from employer organisations and unions representing the breadth of the industry. The Scheme's application processing and contact centre is delivered under contract by CITB.

MS	Certificate	Accredited by	Member	Regulation
	Board)			CITB is accredited to ISO/IEC 17024:2012 to provide certifications to persons.
UK2	Competent Person Scheme	UKAS (United Kingdom Accreditation Service)	EA, IAF	The Department for Communities and Local Government (DCLG) is in charge of authorising Scheme Operators that manage Competent Person Schemes. Scheme Operators need to: • Be accredited by UKAS to standard BS EN 45011; • Be subject to monitoring by representatives of DCLG of quality management systems and of assessors. • Avoid conflicts of interest; • Ensure that its members (i.e. registered Competent Persons) are up to date with technical developments resulting from revisions to the Building Regulations; • Survey their members' work, including periodic random inspections of a representative sample of each member's work, during or after completion, to check compliance with the Building Regulations;
UK3	UK National Type Approval Certification (LANTAC)	None	(N.A.)	LANTAC is set up by the local authorities in England and Wales through the Local Authority Building Control (LABC).

(N.A.) means not applicable; note that the EA and IAF membership of FINAS is N.A. because RALA is not fully accredited.

In all cases, accreditation bodies are members of the European Accreditation organisation (EA). With the exception of Bulgaria, all accreditation bodies in the examined countries are members of the International Accreditation Forum as well. This means that wherever the certificates are issued by the accredited certification bodies an important requirement for recognition in other Member States is satisfied.

International equivalence

With regard to aspects of international equivalence (Table 6.3), ISO certificates are closely related to EU legislation, both directly (e.g. Bulgarian and Polish ISO 9001 certificates), and indirectly through attesting compliance with national law which is a transposition of EU law (Spanish OHSAS 18001 and Italian ISO 14001 certificates). In both cases, the classic ISO certificates attest to compliance with EU-wide norms.

Table 6.3 Aspects of international equivalence

MS	Certificate	Relation with EU legislation	Norm equivalence
BG	ISO 9001:2008	A large number of EU Directives, mostly related to the marketing of products, impose minimum conditions on quality management systems. ISO 9001 attests to compliance with full quality assurance (for design, production and products)	EU
CZ	--- (none identified)	---	---

MS	Certificate	Relation with EU legislation	Norm equivalence
DE	SCC (Safety Certificate Contractors)	In the field of occupational safety many EU Directives have been established under the so called Framework Directive 89/391/EEC [a)] It supports OHSAS 18001 and an aim for the near future is to also support ISO 9001 and 14001 (see BG above and ES and IT below). In addition, the certificate attests to compliance with norms that go beyond the minimum requirements of the relevant EU Directives.	AT, DE, BE, NL
DK	Certificate for Transportable Structures	None, it relates to the Danish Building Act and Building Regulations.	---
EL	--- (none identified)	---	---
ES	OHSAS 18001	OHSAS 18001 attests to compliance with the act on health and safety at work (Ley 31/1995, of 8 November on Prevention of Occupational Risks) and its implementing regulations. This act is the Spanish transposition of Directive 89/391/EEC, as well as Directives 92/85/EEC, 94/33/EEC and 91/383/EEC	EU
FI	Construction Quality Association Competence Certificate (RALA)	The RALA Certification scheme is based on the ISO 9001:2008 standard (see further BG) but in addition attests to competences of personnel required by Finnish law. International recognition and cooperation applies to the extent of ISO 9001:2008.	---
FR	Quality of building works-related services for private clients	None, it attests to compliance with the French norm NF P 03-700 which is not referred to in French regulations and therefore is not mandatory.	---
IT	ISO 14001	ISO 14001 (Italian UNI EN ISO 14001:2004) attests to compliance with Legislative Decree 115/08 on Energy Efficiency in end-use Energy Services, the Italian transposition of Directive 2006/32/EC.	EU
NL	VCA-certificate	See DE	AT, DE, BE, NL
PL	PN-EN ISO 9001	See BG	EU
PT	LNEC Quality Mark	None, it attests to meeting Portuguese legal construction requirements in general.	---
SI	Slovenian organisation for fire safety licence	The organisation refers to the technical guideline TSG-1-001:2010, Fire Safety in Buildings issued by the Ministry of Environment but other than a reference to Directive 98/34/EC there is no relation with EU legislation.	---
UK1	Construction Skills Certificate	The certificate attests competences of site workers in the fields of health, safety and environment as defined under the UK Construction Design and Management Regulations 2007 (this law transposes Directive 92/57/EEC).	---
UK2	Competent Person Scheme	None, it refers to requirements in the UK Building Regulations 2010	---
UK3	UK National Type Approval Certification	None, it refers to requirements in the UK Building Regulations 2010	---

a) This is the Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), see further: https://osha.europa.eu/en.

Various certificates support ISO norms but have certain additional requirements. The Finnish RALA certificate overlaps partly with the ISO 9001 certificate but also attests that the company employs personnel that have the (technical) competences required

by Finnish law. The Finnish RALA company accepts ISO 9001 certificates issued in other countries and the RALA certificate is accepted by foreign certification bodies as an ISO 9001 certificate. The German/Dutch SCC/VCA scheme which supports ISO 9001, ISO 14001 and OHSAS 18001 but has more substantial additional requirements, e.g. registration of inspections and management of compliance with health and safety requirements by sub-contractors. The requirements for this scheme are co-ordinated between four countries (Austria, Belgium, Germany and the Netherlands).

Lastly, certificates that are neither classic ISO certificates nor based on ISO quality management systems, attest to compliance with specific national norms, such as the Danish Certificate for Transportable Structures, the French certificate for the quality of building-related services for private clients, the Portuguese LNEC quality mark, the Slovenian fire safety licence and the UK competent person scheme and type approval scheme. These norms are not equivalent with norms in other countries or international regulations and thus have less potential for mutual recognition.

Lack of acceptance as proof of compliance – lack of potential for mutual recognition

Although all voluntary schemes discussed in this chapter have some relation with national or EU legislation, voluntary certificates are generally not accepted by building control authorities as an alternative proof of compliance limiting the need for authorisation procedures to take place. As discussed in greater detail in a later section of this chapter, one of the main benefits of voluntary certification schemes is to facilitate demonstration of compliance to inspectors, and to signal to clients the ability to do so. In addition, clients may view such certificates as marks of excellence and require them. Therefore, the role of voluntary certification schemes is often not to 'do away' with authorisation procedures but to ensure that firms perform well when they need to demonstrate compliance as part of authorisation processes.

Two hypothetical examples may illustrate the role of voluntary certificates even if they are not accepted by inspectors as proof of compliance. For example, suppose that an accident occurs at work and an inspector requests proof of identification of the risks associated with the relevant working environment and the appropriate safety measures taken. Certification increases the likelihood that these aspects are already covered by the management system. In addition, national law may require the employment of qualified staff. Formally the inspector requires the diplomas of all key staff but informally the diplomas will not be checked individually if a certificate attests the employment of qualified staff.

Having noted that voluntary schemes are valuable even without being accepted as an alternative route to proof of compliance, it needs to be noted that voluntary schemes analysed herein are accepted as such in only two countries: in Denmark, a certificate is available for the construction of transportable structures and in the United Kingdom, a Competent Person Scheme and the LANTAC national type approval scheme are in operation. In Denmark, no building permit is needed for portable commercial tents and structures with a certified design. In the United Kingdom, contractors with Competent Person status e.g. electrical installation service providers, do not need building permits if they self-certify their own work. And the UK LANTAC type approval exempts already approved designs from being submitted and checked on subsequent occasions which speeds up the building permit procedure.

Table 6.4 Aspects of acceptance of proof

MS	Certificate	Legal role in building control	Other legal acceptance / requirements
BG	ISO 9001:2008	None	The Bulgarian Public Procurement Act provides for the possibility of requesting a ISO 9001 certificate of quality management control, both for contractors and subcontractors (such a provision is e.g. not given for the ISO 14001 certificate).
CZ	--- (none identified)	---	---
DE	SCC (Safety Certificate Contractors)	None	None
DK	Certificate for Transportable Structures	The Building Act provides that building permits are not required for portable tents and structures with a voluntary valid design certificate, for which the rules are given in the Certification Order.	None
EL	--- (none identified)	---	---
ES	OHSAS 18001	None	Reduction of contributions for occupational contingencies according to Order TIN/ 1448/2010
FI	Construction Quality Association Competence Certificate (RALA)	None	None
FR	Quality of building works-related services for private clients	None	None
IT	ISO 14001	None	None
NL	VCA-certificate	None	None
PL	PN-EN ISO 9001	None	None
PT	LNEC Quality Mark	None	None
SI	Slovenian organisation for fire safety licence	None	None
UK1	Construction Skills Certificate	None	None
UK2	Competent Person Scheme	The Building Regulations 2010 provides that Competent Persons in various areas such as e.g. electrical installation do not need a building permit but must issue a completion certificate to the owner and the local authority within 30 days.	None
UK3	UK National Type Approval Certification (LANTAC)	LANTAC is an organisation comprised of all Building Control Authorities in England and Wales. LANTAC certified building designs are not	None

MS	Certificate	Legal role in building control	Other legal acceptance / requirements
		submitted and checked for a building permit which speeds up the procedure.	

Certification bodies and accreditation bodies were asked to indicate other benefits of the voluntary scheme in relation to legal requirements, including:

- Faster authorisation;
- Fewer documents need to be submitted;
- Clarification of how to comply with unspecific regulations;
- Fewer inspections;
- Reduced fees or contributions;
- Reduced fines or liability.

However, only in Spain one of these additional benefits of voluntary schemes was mentioned, namely reduced contributions for occupational contingencies. In Bulgaria the law provides that public authorities may require the ISO 9001 certificate in the context of public procurement activities and in Portugal the law indicates that the certificate is intended to support the quality assurance of developers. Hence, the conclusion is that if regulations do not explicitly indicate that a voluntary certificate is accepted as proof of compliance, this is not indirectly the case either.

Overall, the conclusion is that the main obstacle to mutual recognition of voluntary schemes is not so much lack of accreditation or international equivalence of norms but rather, the still insufficient availability of (international) standards in key areas of construction services delivery and the acceptance of certification, where available, as an alternative proof of compliance, even in the country where the certificate is issued. Voluntary schemes that are accepted as alternative proof of compliance (Danish Certificate for Transportable Structures, the UK Competent Person Scheme and the UK LANTAC Type Approval) have the following two elements in common:

- They attest to compliance with specific national regulations regarding construction activity;
- Certificates are based on inspections.

Although these three schemes are accepted as alternative proof of compliance in the home country, they attest to compliance with specific national regulations which have no equivalence in other countries and are not recognised as alternative proof in other countries.

There may be other situations where mutual recognition of voluntary certificates is required under EU legislation, for example if the certificate is required in the public procurement of works (both under Regulation 765/2008 on accreditation in general and the Public Procurement Directive 24/2014/EC to the extent the public procurement falls under scope of that directive). Such recognition is likely regulated in the national public procurement act but this is out of scope of this study on building permit procedures.

Mutual recognition outside of regulatory compliance

It should be noted that accreditation or certification bodies should recognise equivalent certificates that are issued by accredited certification bodies abroad if the standards are purely voluntary, i.e., not alternatives to regulatory compliance. A relevant question is whether this is sufficient for cross-border clients. For example, if a French certificate attests that all French local offices comply with the OHSAS 18001

standard, can a Spanish client assume the same will be true for the Spanish local offices of the same company? A Spanish private client might therefore insist on a certificate accredited by the Spanish accreditation body. In this situation Article 6(2) of the EU Regulation 765/2008 provides that national accreditation bodies shall not compete with other national accreditation bodies. Thus, the Spanish accreditation body may not accredit the French scheme as is typically regulated via the regulations establishing the national accreditation body or its statutes.

Instead, this situation is usually arranged via multilateral agreements, both between accreditation bodies and between certification bodies. The multilateral agreement between accreditation bodies in the EU is arranged via the EA and all its Members have signed this agreement.[165] The practical implication is that private clients can be persuaded to accept foreign certificates on the basis of this multilateral agreement.

Examples of multilateral agreements between certification bodies are the IQNet Passport to which e.g. the French and Spanish AFNOR and AENOR are parties, and the SCC scheme to which the German/Austrian SCC and the Dutch/Belgian VCA schemes are parties. In both multilateral agreements the certificates covered by the scheme are mutually recognised between the certification bodies granting these certificates. In the IQNet system, audits at local offices are done by the certification body established in that country, whereas in the SCC scheme certification bodies are allowed to operate cross-border.

In the above example of a French certified contractor operating cross-border in Spain, AENOR will issue an AENOR certificate based on a local audit (for which AENOR charges a fee) and the recognition of the AFNOR certificate. In the example of a Dutch certified contractor operating cross-border in Spain, the same certification body that has granted the Dutch VCA certificate can issue a German SCC certificate after local audits in Germany.

In practice, mutual recognition principles are in place for the **classic ISO certificates** throughout Europe, and for other **management system certificates** to the extent that the norms are internationally equivalent (Table 6.5).

The examined **training certificates** (Slovenian fire safety certificate, UK skills card scheme and the competence certificates issued by RALA) are not mutually recognized between countries. However, in the UK skills card scheme a system is in place to recognise equivalent qualifications (but all applicants must undertake a health and safety test).

The **certificates based on inspections** assessing compliance with specific national regulations are not mutually recognised, even if the certificate is accredited as is the case for the French construction quality certificate, the Portuguese LNEC Quality Mark and the UK Competent Person Scheme, for the reason that the underlying norms are not equivalent in other countries.

For **type approval**, a mutual recognition principle applies to the Danish certificate for transportable structures through the regulation of mutual recognition via accreditation. The UK LANTAC scheme is not accredited and no mutual recognition principles are in place.

[165] www.european-accreditation.org/mla-and-bla-signatories.

Table 6.5 Mutual recognition of voluntary schemes

MS	Certificate	Mutual recognition principles
BG	ISO 9001:2008	Article 5a of the Law on National Accreditation of Conformity Assessment Bodies explicitly stipulates that documents, issued by foreign conformity assessment bodies, are considered official documents provided that they are in compliance with the applicable requirements and are issued by conformity assessment bodies, accredited by national accreditation bodies, which have undergone peer evaluation in the respective field in accordance with Regulation (EC) No 765/2008. Thus, ISO 9001:2008 certificates are recognised in other countries as long as the conformity assessment body, which granted the certificate, is accredited in the respective country or is a member of the International Accreditation Forum.
CZ	--- (none identified)	---
DE	SCC (Safety Certificate Contractors)	In a co-operation agreement that was signed in March 2013 by the Netherlands and Germany the mutual recognition was established of the Dutch VCA and the German SCC certificates. The agreement provided clarity and legal certainty for the employees, employers and clients who perform cross-border work. The main points of the agreement are that the Dutch B-VCA and VOL-VCA diplomas and the German SCC certificates '*Operativ tätige Mitarbeiter*' (operating employees) and *'Operativ tätige Führungskraft*' (operating staff members)' are mutually recognized in both countries. The underlying ISO certificates IEC 17021 and 17024 are also recognized in the agreement. In practice a German certificate can be obtained via a Dutch certification body and vice versa.
DK	Certificate for Transportable Structures	International standards are overall used for the accreditation and the accreditation of the inspection bodies is open to all inspection providers who are qualified to carry out the inspections. The inspection body must be accredited by the Danish Accreditation and Metrology Fund (DANAK) or an equivalent accreditation body that is a signatory of the EA (European co-operation for Accreditation) or ILAC's (the International Laboratory Accreditation Cooperation) multilateral mutual recognition agreement.
EL	--- (none identified)	---
ES	OHSAS 18001	Certified companies obtain IQNet Passport, recognised by international certifying service providers.
FI	Construction Quality Association Competence Certificate (RALA)	The RALA certification scheme is based on the ISO 9001:2008 standard. RALA only certifies organisations in Finland. However, International recognition and cooperation to the extent of ISO 9001:2008 also applies to the certification scheme of RALA.
FR	Quality of building works-related services for private clients	The scheme is not cross-border, therefore the scheme does not seem à priori to enhance mutual recognition. This scheme is not recognized abroad. Foreign companies could apply to the scheme. No detailed information regarding the scheme is available in another language: the standard on which is based the certification is not available in English (only limited information available), the detailed description of the scheme neither, etc.
IT	ISO 14001	The Italian ISO 14001 certificate is not tailor-made to the construction sector or Italian regulations. It does attest to compliance with the Italian Legislative Decree 115/08 on Energy Efficiency in end-use Energy Services, the Italian transposition of Directive 2006/32/EC, and is mutually recognized between countries where the certification body is accredited by a member of EA or IAF.
NL	VCA-certificate	Belgium is the only country with a fully equivalent system and associated structure. Belgium, Germany and the Netherlands already officially recognize each others systems. Austria and Switzerland also have a system that is (to a slightly lesser extent)

MS	Certificate	Mutual recognition principles
		comparable to the VCA.
PL	PN-EN ISO 9001	There are 2 systems in the world regarding accreditation: European Accreditation (EA), its members are national accreditation bodies which apply a rule of mutual recognition. Second is International Accreditation Forum (IAF), its members are private accreditation bodies. IAF has a rule that a certificate issued by IAF member is recognized in all countries where IAF rules are applied. The Polish accreditation body is member of both EA and IAF.
PT	LNEC Quality Mark	There are no processes to ensure mutual recognition by the certifying bodies. Online information and certificates are in Portuguese. There are no specific provisions on cross-border recognition of general quality managers.
SI	Slovenian organisation for fire safety licence	None
UK1	Construction Skills Certificate	The CSCS scheme does not offer mutual recognition of ID cards issued by bodies located in other countries. A key issue is that professional qualification demands vary greatly in relation to similar service activities across Member States, and health and safety requirements are interpreted differently resulting in diverging practice despite harmonised legislation being in place. However, there is a system of mutual recognition in place between CSCS Northern Ireland and a similar scheme that operates in the Republic of Ireland given that the labour market to a certain extent operates cross-border. CSCS does offer mutual recognition of professional qualifications from applicants originating from all EU Member States.
UK2	Competent Person Scheme	Given that technical standards established by qualifications vary across Europe, holders of foreign qualifications may be required by the Scheme Operator to have their experience examined on the basis of a full on-site audit of competencies. This is determined during the course of the audit. However, foreign qualifications can be recognised by Scheme Operators through the UK National Recognition Information Centre.
UK3	UK National Type Approval Certification (LANTAC)	LANTAC is available in the UK only and does not operate a system of mutual recognition of technical plans approved in other Member States.

Two aspects of voluntary schemes which are not requirements but which may strengthen the potential for mutual recognition are the role of international experts and (international) safeguards of independence (Table 6.6 below).

For all examined ISO schemes, certification bodies hire foreign experts to cover a lack of expertise, in particular for cross-border certification. For training certificates (Slovenian fire safety licence, UK Construction Skills Certificate) and certificates based on on-site inspections with regard to national regulations (Portuguese LNEC Quality Mark, UK Competent Person Scheme), foreign experts do not play a role.

For other types schemes the role of international experts varies. Among the national management certifications schemes, the German/Dutch SCC/VCA norms are developed internationally and accredited certification bodies can certify companies across-borders. However, foreign experts play no role in the Finnish RALA and the French construction quality certificates. For type approval, the foreign certification bodies can certify portable structures if they are accredited by the Danish accreditation body DANAK, however, foreign experts or foreign certification bodies do not play a role in the UK LANTAC schemes where type approval of building designs is granted by local authorities.

Where schemes are accredited, accreditation is the safeguard of independence, both nationally and internationally. Where voluntary certification schemes are supported by legislation (Portuguese LNEC) or local building authorities (LANTAC), this provides a national safeguard of independence, but this does not necessarily extend cross-border. It appears that only for training certificates, independence is more difficult to safeguard; for the RALA scheme the safeguard consists of an internal board comprised of industry-wide members and for the Slovenian fire safety licence there is no safeguard of independence. To safeguard independence and qualify for accreditation, training certificates may require an arrangement as in the UK skills card scheme, where the scheme is managed by an accredited organisation which does not issue the qualification certificates.

Table 6.6 Role of international experts and safeguards of independence

MS	Certificate	Role of international experts	Safeguards of independence
BG	ISO 9001:2008	Many foreign certification bodies are operational in Bulgaria.	Accreditation, for which the Bulgarian accreditation body requires either a code of ethics or a declaration of impartiality and underlying documents describing the principles and the procedures applied to safeguard impartial and independent certification audits.
CZ	--- (none identified)	--	--
DE	SCC (Safety Certificate Contractors)	Foreign SCC- or VCA-accredited certification bodies can certify construction activities in Germany	Accreditation according to SCC Rules and Regulations.
DK	Certificate for Transportable Structures	Foreign certification bodies can certify transportable structures as long as they are accredited by DANAK.	The inspection body must be accredited as a Type A body in accordance with ISO / IEC 17020 for inspection in accordance with the Certification Order for portable tents and structures.
EL	--- (none identified)	--	--
ES	OHSAS 18001	AENOR hires international experts to examine firms that wish to be certified, when those firms are: ▪ Foreign companies willing to certify their activity in Spain, or ▪ Companies willing to obtain an international certificate.	▪ Accreditation by ENAC (National Entity of Accreditation) ▪ Abstinence from consultancy on implementation of the system ▪ Complaint procedure
FI	Construction Quality Association Competence Certificate (RALA)	None	A Certification Board which reviews applications for competence certification filed by companies based on the reports submitted by the reviewers and issues the certificates. Its members represent a balanced range of expertise in the construction business.
FR	Quality of building works-related services for private clients	None	AFNOR Certification is accredited by the State. This accreditation demonstrates the independence and the avoidance of conflict of interests. In this view, AFNOR

MS	Certificate	Role of international experts	Safeguards of independence
			Certification is audited and must comply with a standard (NF ISO 1705).
IT	ISO 14001	The certification bodies employ foreign experts in case they need to certify a foreign company. E.g. if they need to certify a German company, they have German experts in environmental legislation examine the firm.	Accreditation, in Italy based on conformity of products and processes to the reference standards.
NL	VCA-certificate	Foreign VCA- or SCC-accredited certification bodies can certify construction activities in Germany	Accreditation based on ISO 17021 and an agreement with SSVV which manages the VCA norms, and an agreement between the certification body and SSVV.
PL	PN-EN ISO 9001	In Poland, sometimes foreign experts are asked to take part in certification process if there was lack of specific competencies within certification body.	Accreditation ensures that certification bodies are impartial and independent. Certification bodies should have independent unit comprised of external experts who are not connected with the certification body that once a year check the functioning of the certification body.
PT	LNEC Quality Mark	So far no foreign experts have been involved in LNEC QM.	The commission for the qualification of general quality managers is composed by members from LNEC and representatives of several entities particularly interested in the promotion of the quality assurance. LNEC is a state owned research and development institution.
SI	Slovenian organisation for fire safety licence	None	None
UK1	Construction Skills Certificate	None	Accreditation. In addition, an independent body is used to perform the recognition of equivalent professional qualifications issued in other Member States.
UK2	Competent Person Scheme	None	Accreditation according to strict rules of the scheme.
UK3	UK National Type Approval Certification (LANTAC)	None	All local authorities adhere to strict rules regarding impartiality as required by Local Authority Building Control (LABC), through compliance with a Code of Conduct. Complaints procedures are available.

6.5 Procedural characteristics of the certification schemes

Before discussing the potential of certification schemes for simplification in the following section, the procedures for certification are described in table 6.7, with regard to application procedures, submission demands, deadlines, fees and duration of the certification offered by the voluntary schemes reviewed.

Table 6.7 Procedures and demands

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
BG	ISO 9001:2008	▪ Preliminary audit ▪ initial audit (adequacy audit); ▪ Certification audit (conformity audit); ▪ Issuing the certificate; ▪ Supervisory inspections for 3 years.	▪ Quality management system documents (documented procedures) ▪ Reports after completed internal audits ▪ Management review of the system	In addition to assessment, simple copies of documents need to be provided	Compliance is assessed at the applicant's premises; the certifying body checks documents in any form	Depends on nr of locations/offices, nr staff and nr certified activities) Most certification services only assess QM systems that function at least 3 months	Depends on nr of employees and locations	Three years
DE	SCC-certificate	▪ The applicant should identify the relevant level of certification and implement the necessary measures ▪ An application must be done for certification and audits will be conducted	▪ Company details ▪ Proper HSE management system ▪ Reports on accidents at work (see NL below for more details)	Simple copies	Generally documents can be emailed. Checklists can be downloaded.	No deadlines	The fees are in the same range for similar situations and depend on sector, nr staff, turnover, nr locations	Three years
DK	Certificate for Transportable Structures	▪ Owner of the structure requests the certification from the inspection body; ▪ The inspection body inspects	▪ Instructions for use / installation ▪ Maintenance instructions. ▪ Static stability calculations and documents.	Decided in advance by inspection body	Inspection body decides in advance whether electronic versions of documents can be used	No deadlines or complaints procedure	€160 per hour – the final figure depends on the size of the structure	Five years but less if technical aspects of the design clearly limit the duration of the transportable structure to less than five

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
		relevant documents. ▪ The inspection body performs an onsite inspection. ▪ Issuing of certification.						years
ES	OHSAS 18001	▪ Applicant should implement the system three months before the certification process commences ▪ Audit of documentation ▪ Audit of organisation ▪ Introduce corrective actions ▪ Granting certification ▪ Annual surveillance audits	▪ Management system documents ▪ For equipment: CE markings, declarations of conformity and maintenance certifications; ▪ Proof of professional capacity; ▪ Statistics on health and safety; ▪ Other licences; ▪ Emergency plan; ▪ Proof of social security contributions; ▪ Proof of worker representation.	Simple copies	Online application is possible but documents must be sent in printed form.	No deadlines but in general the auditing phase should not take more than 3 months	Not disclosed	One year for the first issue, three years for subsequent issues with annual surveillance audits
FI	RALA	▪ An initial evaluation of the company and documents are made ▪ An audit is performed and corrective measures are	▪ Application form and self assessment ▪ The company's own reports on quality, developing operations and procedures ▪ Agreement with RALA if applicant is an	Simple copies	An application can be downloaded and documents emailed.	There are no deadlines. The timetable depends on how efficiently the firm provides the documents and meets the requirements.	€290 to €1400 depending on the value of firm turnover	The firm has to pass an annual review and annual fee is imposed as indicated in the adjacent cell.

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
		requested. ▪ A follow evaluation takes to examine compliance ▪ An assessment board decision is made as to whether the certification should be issued.	authorised representative of applicant company					
FR	Quality of building works-related services provided to private clients	▪ Evaluation of firm documents ▪ Firm audit ▪ Corrective actions issued and implemented ▪ Issuing the certification	▪ Technical folder (admin documents) ▪ Service quality folder (describes firms quality services)	No specific requirements	Documents can be submitted in the form of (electronic) files	The files must demonstrate compliance with standards for at least 6 months. Audit within 2 months after all files are accepted, 1 month for applicant to implement changes if needed	€ 800 excl. VAT per audit (one per location). In addition registration costs, management costs and right to use the NF brand which were not disclosed	Three years unless an annual follow-up leads to a withdrawal
IT	ISO 14001	▪ Carrying out an initial environmental audit and review by describing and analyse the processes and corporate activities, in	Copies of manuals and procedures describing the environmental management system of the company.	No specific requirements	Not specified	No deadlines. In practice, the procedure may take 6-8 months for small firms with a QM system but not yet with environmental guidelines, up to	For small companies with less than 10 employees € 4,500 to 5,000 in three years, more for large	Three years

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
		order to identify and evaluate main environmental aspects to be considered; ▪ Implementation of the environmental management system; ▪ Starting the adoption of the management system ▪ Realization of an audit done in two phases by a third part entity				18-24 months for large companies	companies	
NL	VCA-certificate	▪ The applicant should identify the relevant level of certification and implement the necessary measures ▪ An application must be done for certification and audits will be conducted	▪ Structure of the company: main and sub-branches (if any). ▪ Organization chart. ▪ Nr employees or man-hours per annum. ▪ Nr of projects in progress. ▪ Average nr of locations at which the company works simultaneously ▪ Technical/engineering activities requiring a specific expertise.	Simple copies	Depends on the accredited institution, but generally documents can be emailed. Checklists can be downloaded.	No deadlines. The management system needs to be operational at least 3 months before the first audit.	The fees are in the same range for similar situations and depend on sector, nr staff, turnover, nr locations	Three years

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
			▪ The scope of the certification, including the NACE Code (rev. 2). ▪ A SHE management system according to the VCA checklist including 1.policy documents 2.risk management manuals 3.documentation of training 4.awareness plan 5.project plan 6.environment plan 7.emergency plan 8.registration of inspections 9.company health care 10.use of equipment 11.register of sub-contracting 12.accident registration					
PL	PN-EN ISO 9001	▪ Select potential certificate issuing body ▪ Submit enquiry, application, documents introducing the company and quality management system.	Documents to be submitted include: National Court Register; enquiry, application, company introduction, description of quality management system. Electronic version of documents is sufficient. The documents from foreign countries are	Simple copies	Documents can be emailed.	No deadlines.	The cost depends on the complexity, size of the company. Small firms: several thousand PLN; very big	Three years, but during those three years there are check-ups confirming the effective implementation of quality management system.

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
		▪ Then the certification process starts which depends on the size of the company	accepted if they are in common language such as English.				companies: several hundred thousand PLN.	
PT	LNEC Quality Mark	▪ Developer requests LNEC QM ▪ An audit group is created and a quality manager selected ▪ The quality manager works with the developer on several construction phases ▪ The audit group perform site inspections ▪ An declaration of conformity is issued.	Developers submit an application form	Simple copies	Documents can be emailed	Deadlines are not regulated – they are project specific.	The fee is 20% of the design fees for the construction wok.	No limited duration.
SI	Slovenian organisation for fire safety licences	▪ Mandatory course ▪ Mandatory workshop ▪ Mandatory exam	(not applicable)	(not applicable)	(not applicable)	(not applicable)	€150	Three years
UK1	Construction Skills Certificate	▪ Submit an application form ▪ Undertake a health, safety	▪ Application form ▪ Professional training certificates	Simple copies	Online application and test.	20 days	£17.50 (cost of the card only)	Five years

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
		and environment test ▪ Issue the card.						
UK2	Competent Person Schemes	▪ Submit an application form ▪ Optionally undertake test ▪ On site audits	▪ Application form ▪ Professional qualifications or passing a written and practical test provided by the Scheme Operator	Simple copies	(not applicable)	No deadlines	Depends on Scheme Operator (=certifying body), type of work, number of operatives. For electrical installation e.g. membership costs £576, the application fee is £156 plus £60 for every additional operative, and an annual audit of £408 for up to 10 operatives.	Annual renewal
UK3	National Type Approval Certification	Same as building permit	Same as building permit	Same as building permit	Same as building permit	Same as building permit	None	The LANTAC certificate offers ongoing regulatory compliance for approved plans regardless of

MS	Scheme	Procedure	Submissions demands	Form	Electronic procedures	Deadlines	Fees	Duration
								updates to the Building Regulations.

Classic ISO certificates and national management system certificates

Most schemes consist of a preparation phase and an audit phase (ISO schemes, OHSAS 18001, German SCC and Dutch VCA, Finnish RALA, French construction quality certificate, Dutch VCA). During the preparation phase the quality management system needs to be developed and manuals need to be submitted, where simple copies and/or electronic documents generally suffice. The German and Dutch SCC/VCA schemes make additional demands on the training of workers, use of equipment and accident registration. The management system generally needs to be operational 3 months before the first audit, but 6 months for the French certificate. Except for the French certificate there are no formal deadlines but informally a planning is typically agreed during the intake. The fees are determined on a case by case basis but vary from a few thousands to several tens of thousands of euros depending on company size and number of locations. The certificates typically have a validity of three years.

Training certificates

Two certificates attest that training has been successfully completed: the Slovenian fire safety certificate and the UK Construction Skills Certificate and have relatively low costs per participant (around 20 to 150 euros).

Certificates based on inspections

The Portuguese scheme operates on a project basis, the certificate only attests the quality of one construction project and is mainly based on inspections, at a cost of 20 per cent of the design fees.

The English Competent Person Scheme requires the applicant to have the necessary training and to be audited on-site, before s/he can self-certify the quality of his/her own construction work. The auditing services cost in the region of €700 EUR.

Type approval

The UK LANTAC certificate is a voluntary certificate that can be obtained after following the regular building permit procedure. The Danish certificate for transportable structures can also be regarded as a type approval. In both cases, the usual regulatory procedure is followed the first time. Efficiency gains are realised if the same technical plans and transportable structures are used in more than one construction project.

Involvement of public authorities

With the exception of type approval systems, public authorities are not involved in the auditing procedure for applicants to obtain the voluntary certificate. However, public authorities have contributed to the development and performance of various schemes. For ISO norms, officials may have a seat in the board that oversee the development of the international ISO norms. And, for example, when the Dutch VCA scheme was developed in the early nineties, officials from the Dutch Labour Inspectorate participated in the Central College of Experts which advised on key procedural aspects to be adopted (though not on norms and standards).[166]

[166] TienOrganisatieAdvies (2011), Onderzoek zelfregulering arbeidsomstandigheden (Study of self-regulation of health and safety at work).

6.6 Evaluation against the principles of simplification

The evaluation of the voluntary certification schemes against the principles of simplification mainly focused on the possibilities that the schemes offer to comply with the regulations and procedures on building permits. Building permit procedures are one of the main authorisation processes to the provision of construction services, and demand applicants to fulfil multiple requirements. As a result, by providing an alternative to regulatory compliance, voluntary certification schemes can reduce the burden of undergoing authorisation procedures.

A key issue to be clarified for the evaluation of voluntary certification schemes against the principles of simplification is the relationship between such schemes and national regulation. Table 6.8 below provides an overview of the relationship (largely overlapping the relationship with EU regulations in Table 6.3 above) and indicates in what ways voluntary certification provides simplification benefits to construction service providers.

Table 6.8 Relationship between voluntary certification schemes and national regulation

MS	Title of the scheme	Relationship to regulation	Simplification role and benefits
BG	ISO 9001:2008	Indirectly provides a means to comply with general quality construction requirements in the Spatial Planning Act. Indirectly provides a means of compliance with general quality standards in the Public Procurement Act. However, contracting authorities can specifically demand ISO certification if they require it.	▪ Improves and clarifies how general quality construction standards set in regulation have been met; ▪ Enables compliance with mandatory public procurement requirements when these are specified by contracting authorities.
DE	SCC	It attests to compliance with certain Articles of the DGUV (Deutsche Gesetzliche Unfallversichering – German Accident Insurance). In addition, EMAS III transposing EU Regulation Nr. 1221/2009 regulates voluntary participation in an environment management system.	▪ The scheme clarifies and improves compliance with specific regulatory requirements.
DK	Certification Scheme for Transportable Structures	Provides an official alternative means of compliance for the construction of transportable structures under the Building Act.	▪ Offers an alternative means of compliance as service providers do not need to apply for a building permit as the certificate demonstrates that technical building requirements are successfully met.
ES	OHSAS 18001	The scheme attests to compliance with the National Law related to safety and health at work (Ley 31/1995, of 8 November Prevention of Occupational Risks and its implementing regulations, which transposes EU health and safety directives)	▪ The scheme clarifies and improves compliance with specific regulatory requirements.
FI	Construction Quality Association	The scheme generally attests compliance with nine national building regulations in areas	▪ The scheme clarifies and improves compliance with specific regulatory

MS	Title of the scheme	Relationship to regulation	Simplification role and benefits
	Competence Certification (RALA)	where the scheme provides accreditation.	requirements.
FR	Quality of construction works-related services provided to private clients	The scheme in based on a non-mandatory standard NF P 03-700. The standard does not feature in legislation.	▪ The scheme does not offer strengthened compliance with legislation but rather non-mandatory standards; ▪ In a general sense, it could offer firms a method to deal with their obligations under consumer law given the focus on strengthening service provision.
IT	ISO 14001	This non-mandatory scheme is designed to comply with Legislative Decree 115/08 on Energy Efficiency in end-use Energy Services. The Legislative Decree is the transposition of the European Directive 2006/32/CE.	▪ The scheme clarifies and improves compliance with specific regulatory requirements; ▪ Given the knowledge attained, firms may choose to exceed standards set in national law.
NL	VCA-certification	The certification includes verification of compliance with certain aspects of the Working Conditions Act.	▪ The scheme clarifies and improves compliance with specific regulatory requirements.
PL	PN-EN ISO 9001	The Polish construction law has no direct reference to ISO 9001. However, Art. 25,26,27 of Construction Law deal with issues of quality in relation to the rights and obligations of the investor's inspector	▪ The scheme offers firms a method to deal with their obligations under consumer law. In this sense, regulatory compliance is enhanced.
PT	LNEC Quality Mark	The LNEC Quality Mark is supported by Decree Law no. 310/90. The scheme supports developers to meet and exceed minimum regulatory requirements for wide a range of legislation applying to construction works.	▪ The scheme clarifies and improves compliance with specific regulatory requirements; ▪ The scheme enables firms to surpass minimum quality assurance requirements.
SI	Slovenian organisation for fire safety licence	The certification supports compliances with Technical Directive on Fire Safety 2010.	▪ The scheme clarifies and improves compliance with specific regulatory requirements on fire safety.
UK1	Construction Skills Certification Scheme	The certification enables compliance with health and safety law relating to construction site workers (the Construction Design and Management Regulations which transposed Directive 92/57/EEC).	▪ The scheme clarifies and improves compliance with specific regulatory requirements relating to construction site workers.
UK2	Competent Person Schemes	Competent Person Schemes (CPS) allow individuals and enterprises to self-certify their own building work as compliant with the technical requirements established by the Building Regulations 2010.	▪ This route to regulatory compliance is a voluntary alternative to the procedure of submitting a building notice and complying with the requirements of site inspections performed by building control authorities; ▪ Service providers can perform their work without the need to submit a building notice on

MS	Title of the scheme	Relationship to regulation	Simplification role and benefits
			each occasion. Service providers also do not need to arrange site inspection meetings with building authorities.
UK3	National Type Approval Certification	LANTAC certification demonstrates compliance with the technical requirements for building work established by the Building Regulations 2010.	▪ This scheme offers a voluntary alternative to the building permission procedure (deposit of full plans) under the Building Regulations 2010; ▪ LANTAC certificates for standard details speeds-up the approval process given that compliance with the Building Regulations 2010 has been demonstrated through previous application procedures. This avoids the need to provide local authorities with the same information over and over again in response to their queries on Building Regulation submissions.

Issues around procedural simplification of applying for building permits

For all voluntary schemes that are accepted by building authorities, the simplification of procedures is clearly evident for the two type approval schemes where designs need to be submitted only once and not for every construction project, and for the UK Competent Person Scheme where Competent Persons do not need to apply for building permits as long as they successfully pass periodic random inspections and self-certify their completed works. The Danish certificate for portable structures and the UK Competent Person Scheme (e.g. for electrical installers) are both limited to areas where nation-wide norms can be developed. This begs the question as to whether these schemes cannot be replicated by other Member States or whether the norms in these areas cannot be established internationally as well.

However, most schemes currently do not play a role as an alternative to demonstrating compliance with regulations, neither in building permit procedures nor in on-site inspections. For the ISO certification schemes and other management system certificates, their potential for simplification is not in the fee imposed (several thousands of euros for small companies to several tens of thousands of euros for larger companies), nor in short deadlines which usually are absent, but rather the fact that a certificate is issued for multiple years. However, given that certificates by nature are subject to renewal processes, it should be kept in mind that certificates only partially meet the principle of simplification used in the Services Directive which seeks to promote one-off authorisation processes which is not practical for implementation of certification processes.

Furthermore, ISO and other management system certificates attest to compliance with part of the national (health, safety, environment) regulations but not all. In this regard, the schemes that demonstrate compliance completely with national regulations have a greater potential for simplification of building control process than international ISO certificates that are not tailor-made to national law. The potential for cross-border simplification in building control is even greater in schemes where national norms have been harmonised in co-operation with building control authorities as is the case in the German/Dutch SCC/VCA scheme.

On the other hand, in public procurement the requirement of ISO certificates rather than national certificates simplify cross-border bidding for construction works. In Bulgaria, ISO 9001 certificates (but not other ISO certificates) may be required by public procurement actions. In Italy, ISO 9001 certificates (but not other ISO certificates) are even required by law Italy for large construction projects of more than € 500,000). However, it needs to be mentioned that mandatory certification requirements do not correspond well with the requirements of the Services Directive and Member States should avoid using this practice (see Chapter 3).

Simplification benefits in terms demonstration of effective compliance and marketing

The majority of voluntary schemes are based on verification of management systems. In various cases, public authorities were involved in the development of the certification system, e.g. with regard to norms or procedures. The potential of these schemes is further enhanced by client demands and accreditation which gives credibility to the assumption that the certified company indeed complies with the national regulation. However, all of these safeguards are designed for the needs of **clients**, as an assurance that the certified companies are likely to comply with the national law and not for building control **authorities** which do not accept these certificates as alternative proof of compliance. Where certification is held by qualified workers, it is not always the case that the service providers are free from site inspections and it is open to debate as to whether they should be.

In the Portuguese voluntary scheme, LNEC certifies constructions works after successful completion of a construction project as verified by a number of on-site inspections examining all relevant construction regulations are complied with. LNEC has the contractual power to stop construction activities until errors are addressed. Although this is not accepted as an alternative route to complying with building regulations in Portugal, LNEC basically performs the same tasks as public control bodies but with additional levels of advisory support to meet compliance requirements for example during the project planning phase which clearly demonstrates the potential for simplification, even though it is currently not accepted as an alternative proof of compliance with Portuguese regulations.

Where legislation provides that construction workers must work according to certain (safe) procedures, recognised training certificates such as the Slovenian fire safety training and the UK Construction Skills Certificate directly demonstrate the qualification of workers to do so. However, again, the question remains open whether it can be assumed that qualified workers will comply with national regulations without inspections.

Simplification by providing alternatives to regulatory compliance in the host MS (even if not in the home MS)

As discussed earlier, none of the examined schemes are accepted as proof of compliance with building regulations in other Member States. The Danish voluntary scheme for portable structures such as commercial tents comes perhaps closest to offering simplified procedures for cross-border service providers. The cross-border service provider would have to provide the parameters required by Danish law to obtain the Danish certificate, but their portable structures might already meet the Danish requirements. It appears to be a scheme that can be developed in other countries as well with the same parameters required by Danish law. If such a scheme in those other Member States were to be accredited, it would have to be accepted by the Danish authorities. If all of this were to happen, the Danish acceptance of the voluntary certificate could be said to create a market for the same scheme in other countries.

Construction service providers in the fourteen countries of this study were asked about their experience with cross-border acceptance of voluntary schemes as an alternative to regulatory compliance. In line with the selected schemes discussed in this chapter, few construction service providers indicated that voluntary schemes are an alternative for demonstrating compliance cross-border. Only in Italy and Portugal it was mentioned that voluntary certification schemes obtained in another Member state are taken under consideration. In Italy the voluntary certifications were said in one interview to reduce the complexity of authorisation processes however other interviews offered no opinion or the opposite opinion. In Portugal all certification deriving from EU legislation were said in one interview to be taken under consideration and valid and the authorities will try to issue an equivalent Portuguese certificate if the company in addition is registered under a public institute in their home country. However, the interviewees indicated at the same time that companies still have to comply with the national construction regulations to obtain building permits and/or comply with on-site inspections.

6.7 Overall conclusions

When summarising the potential for mutual recognition and simplification through acceptance as proof of compliance in building permit procedures, the schemes with the greatest level of potential simplification are schemes for which mutual recognition appears the most difficult to implement and vice versa, because certification is only accepted as proof of compliance if it is based on national regulations (and these often vary greatly across MS) (Table 6.9).

Table 6.9 Mutual recognition and acceptance as proof of compliance

MS	Certificate	Accreditation	International equivalence	Mutual recognition	Accepted as proof of compliance
Classic ISO schemes					
BG	ISO 9001:2008	++	++	++	-[a)]
ES	OHSAS 18001	++	++	++	--
IT	ISO 14001	++	++	++	--
PL	PN-EN ISO 9001	++	++	++	--
National management system certificates					
DE	Safety Certificate Contractors	++	+[b)]	+[b)]	--
FI	RALA certificate	-[c)]	-[c)]	0	--
NL	VCA-certificate	++	+[b)]	+[b)]	--
FR	Quality of building works-related services for private clients	++	--	--	--
Training certificates					
SI	Slovenian organisation for fire safety licence	--	--	--	--
UK1	Construction Skills Certificate	++	-[d)]	-[d)]	--
Inspection based certificates					
PT	LNEC Quality Mark	++	--	--	--

MS	Certificate	Accreditation	International equivalence	Mutual recognition	Accepted as proof of compliance
UK2	Competent Person Scheme	++	--	--	++
Type approval					
DK	Certificate for Transportable Structures	++	-[e)]	-[e)]	++
UK3	UK National Type Approval Certification (LANTAC)	--	--	--	++

++ means yes, -- means no, + and - mean limited

a) Only accepted if required in public procurement
b) Limited to Austria, Belgium, Germany and the Netherlands
c) Only with regard to ISO 9001
d) Only with regard to mutual recognition of underlying qualifications
e) Only to the extent that Danish norms are met

All in all, it can be concluded that voluntary type approval for simple structures and voluntary skills certificates for self-certification in limited areas have the greatest potential for simplification in building permit schemes nationally and cross- border, provided that other Member States have similar regulatory requirements as the ones covered by these certification schemes. The Danish voluntary certificate for transportable structures and the UK Competent Person scheme both provide excellent blueprints for this because:

- They are accepted as alternative proof of compliance;
- They are accredited schemes;
- In the Danish scheme foreign certification bodies can be accredited and in the UK scheme foreign qualifications can be recognised as being equivalent.

Besides these two schemes, the UK LANTAC voluntary scheme for type approval of building designs is accepted as proof of compliance, however since the building design is checked against all British building regulations, the scheme is not accredited and foreign experts or cross-border recognition play no role. While, it may serve as a blueprint for simplification in other countries, it may not necessarily support cross-border mutual recognition of service providers.

The Portuguese LNEC Quality Mark may serve as a blueprint for alternative private on-site inspections since all elements of public building control inspections are covered in this scheme. In Portugal there is no plan to accept this Quality Mark as an alternative route to proving compliance, however, for example in the Netherlands law makers have discussed possibilities to develop such a system as an alternative for public building control inspections.[167] Hence, in the same way as the UK LANTAC scheme, this scheme has potential for simplification but is likely to be suitable for supporting mutual recognition.

All three schemes examined that are accepted in building permit procedures have in common that the certificates attest to compliance with national rules and are based on one-off inspections. Another route to simplification and mutual recognition may therefore be via:

[167] Report of the Commissie Fundamentele Verkenning Bouw (Commission Fundamental Exploration of Building Regulations), 2008.

- Harmonization of national norms into European Norms or International Standards;
- Strengthening the role of one-off on-site inspections before certificates are issued.

One scheme that appears to have potential for both simplification and mutual recognition, at least for on-site inspections though not for building permit procedures, is the German/Dutch SCC/VCA scheme, which attest to compliance with national norms that have been harmonized between Austria, Belgium, Germany and the Netherlands.[168] The general SCC/VCA scheme is essentially still a management system certification scheme, however a petrochemical variant of the SCC/VCA scheme comes close to meeting the requirements for simplification and mutual recognition. According to Dutch inspection bodies[169], certain obstacles need to be overcome before this scheme can play a greater role as an alternative for demonstrating compliance with regulations:

- Clients do not inspect actual compliance on-site, except in the German/Dutch petrochemical variant of the SCC/VCA certificate;
- The certificates do not define responsibility for accidents but only a requirement to reduce the risk, except in the German/Dutch petrochemical variant where the client accepts full responsibility;
- The certificates attest to compliance with part of the national (health, safety, environment) regulations but not all.

Therefore, the petrochemical variant of the SCC/VCA might serve as a blueprint if their scope is enlarged, although it will be a challenge to cover all national regulations in the area of health, safety and environment and to harmonize the norms between all participating countries.

For training certificates, the potential for mutual recognition is determined by mutual recognition of the underlying qualifications. Qualifications could possibly be developed internationally for certain areas as such as those covered by the various Competent Person Schemes in the areas of:

- Low-voltage electrical installations;
- Lighting or heating electrical installations;
- Cavity insulation (in walls);
- Plumbing and heating;
- Ventilations and air-conditioning;
- Replacement windows or doors;
- Roof coverings and thatching;
- Installation of certain appliances (e.g. solar panels, fire alarm, burglary alarm).

However, even if voluntary certificates are not accepted by building control authorities, neither in building permit procedures nor in on-site inspections, certificates can still be useful in demonstrating to clients the **ability** to comply with regulations. The classic ISO certificates are accredited and in addition it is standard practice of certification bodies to hire foreign experts to cover any lack in expertise in cross-border certification. Management system certificates that are tailor-made to national norms have even greater potential to signal the ability to comply with national regulations but require greater efforts around the harmonisation of norms between countries, as the (accredited) German/Dutch SCC scheme shows.

[168] The norms have only been harmonized between these four countries, and are therefore not EU or world-wide standards although the norms are ultimately based on various EU Directives.

[169] TienOrganisatieadvies (2011), ibid. page 47.

Accreditation may also persuade clients to accept other types of certificates cross-border. Both for training certificates (the UK skills card) and for type approval (the Danish certificate for transportable structures) an accredited scheme was identified which shows that accreditation for such schemes is possible if set up in a certain matter, in particular to safeguard independence.

Overall, the schemes with the greatest potential as alternatives for demonstrating compliance with (national) regulations seem to have the least potential for mutual recognition and vice versa, because national (technical) regulations are generally complex. This means that voluntary schemes can only be tools for simplification and mutual recognition if certain conditions are met, of which the most important are:

- One-off full control procedures (for type approval) to enhance the potential for simplification of building permit procedures for subsequent applications,~(at least that is how the current type approval schemes in the countries researched are arranged and more in general there are no examples where public building control is absent (at most it is delegated to recognised private bodies in specific cases as e.g. in Spain));
- Limitation to standard / recurrent activities or construction works where it is easier to develop internationally accepted norms to enhance the potential for mutual recognition in building permit procedures;
- Accreditation to signal to cross-border clients the ability to comply with national regulations (though not necessarily actual compliance), both for management systems and for skills qualifications. For management systems, the use of foreign experts or the harmonization of norms enhances this signalling function. For training certification, a specific set-up such as the use of an independent qualification body in the UK skills card scheme may be needed to safeguard independence.

7 Summary of stakeholder interviews and analysis of responses

The final study task was to conduct interviews and analyse responses from stakeholders located in the fourteen Member States. The aims of the interviews were to establish:

- Where the main costs for going cross-border reside;
- Whether electronic document submission, procedures and formalities are available as part of horizontal authorisation schemes and building permit processes;
- The practical implementation of the mutual recognition principle in the context of cross border authorisation and how it can be improved.

A total of thirty interviews have been conducted with industry stakeholders (consisting of European and national level associations, architects, building engineers and construction services companies).The interview questions were designed to complement the indicator framework and Articles of the Services Directive.

The study experienced difficulties in organising interviews with businesses and associations willing to answer the questions for the following reasons:

- In general, it was difficult to find EU based firms working in the construction sector for one-storey houses and ten-storey office buildings that provide services cross-border in another EU country;
- Many firms responded that the building industry in Europe is facing difficult times and that they cannot use their time to participate in a study;
- Especially in larger firms, a number different employees were needed to answer the questionnaire given the division of labour and the corresponding breadth of issues covered by the questionnaire. Therefore these firms often gave a negative response;
- Over three hundred emails and telephone calls were made. This generated a response rate of just less than 10%.

Main conclusions

The main problems that companies face while working cross border are:

- Local languages – in terms of day to day working, legislation and the building permit application process;
- Understanding the requirements of specific local regulations, for example those related to cultural heritage and environmental issues, since these differ per country, municipality and city;
- Understanding what documents need to be submitted and in what manner: what stamps are needed? Who needs to sign? Is an official translation needed or not?
- Unidentified risks that have to be taken into account.

In many cases, the main costs that companies experience are related to one or more of these problems, for example: translators that need to be hired and the extra time that is needed to manage processes such as this.

Not seen as problematic by some stakeholders are:

- Building control fees as these normally represent a small proportion of the overall costs and are borne by the client;
- Technical requirements and requirements with regard to health and safety where these are similar between countries or are manageable to deal with (by some but not all cases);
- Business development costs.

The four main strategies companies use when working cross-border are:

- The company hires a local architect / company:
  - Advantage: the local architect / company speaks the local language, understands the local working culture and regulations etc.;
  - Disadvantage: The costs of a local architect / company - especially in terms of Southern and Eastern European firms working in Northern Europe.
- The company teams up with a local company / architect
  - Advantage: There is a fixed company associate promoting the firm cross border;
  - Disadvantage: The company is dependent on the chosen partner.
- The company starts an office abroad
  - Advantage: The company is close to the client, the company can hire local staff, and the company gets to know the local working culture, language and regulations etc.;
  - Disadvantage: Setting up an office abroad generates more risks and this is the most costly option that companies can opt for when working cross border i.e. there is a fixed investment in an uncertain environment.
- The company is working from their home office while managing projects abroad:
  - Advantage: There is no fixed investment and total control of the budget;
  - Disadvantage: The company is not close to the client, doesn't quickly get to know the local working culture, language and regulations and most importantly the company faces the risk of making mistakes.

Regulatory costs

Not many interviewees see applying for a licence to provide services or building permit and engaging with the building control inspection process as a major problem. The fees are not seen as unreasonable. Major difficulties interviewees face are:

- The translations that are often needed take a lot of time and money;
- The process is not always clear i.e. what documentation is needed, the timing and frequency of site inspections take place, etc. It takes time to learn of the process often through experience gained rather than through detailed signposting to information on the requirements;
- Many interviewees stated that hiring local country specialists / architects / engineers is a must when working cross border. Such professionals are hired so that the company is able to manage the local language and regulations. The costs that are paid for local professionals differ per country. Generally speaking, Northern European professionals are seen as more expensive than the Southern and Eastern European professionals. Specifically German, Dutch and Danish professionals are mentioned as very expensive.

Many interviewees see the preparation of administrative documents to demonstrate compliance with national requirements as a major problem. The main reasons that are mentioned by interviewees are:

- The process is very time consuming;
- The documents have to be completed in (in the far majority of the countries) in the local language. Translation costs can be expensive;
- Verifying what documents need to be handed in is seen as a burden, because the regulations are often in the local language;
- Many companies hire a local consultant to help with preparing these documents. This relates to additional costs;
- In many countries the documents that have to be handed-in differ per project, so for each project companies need to understand new requirements;
- Countries that are mentioned by interviewees as especially difficult are: Germany (which is viewed as very strict), Spain viewed as bureaucratic), Poland (the rules are view as unclear and the authorities are not helpful) and Portugal (a large number of documents are needed).

Almost all interviewees consider complying with health and safety legislation cross-border as relatively easy to manage given their experience with home country rules. A small number answered that these requirements are difficult because they are different for each country.

Some interviewees answer that their clients require local insurance products when they provide cross-border services. Very large companies often have an international insurance policy that is recognised everywhere. However, this type of insurance cover is very costly.

Specific problems are seen in Germany, France and the UK. In Germany, although this issue is not specifically a mandatory insurance problem, an interviewee mentioned that a 10 percent deposit is always required in case of future damages. In France, interviewees mentioned it is very difficult for cross-border companies to purchase the relevant insurance product required by law. This was seen, for example, as a problem for German companies operating cross-border. The main difficulty mentioned related to the five year coverage of construction works. In the UK, it was mentioned that clients often require a local insurance product. Since the local insurance experts are very expensive, the total costs for insurance are very high. The issue of insurance for one interviewee was the main reason to cooperate with a local firm.

Other regulatory and non-regulatory costs

Most respondents state that there are greater risks to be taken into account when providing cross-border services. The interviewees see these risks in terms of the language barrier, the different environmental rules, the different political environment, and the lack of knowledge of the local regulations. Many interviewees mentioned that the risks can be reduced by increasing company knowledge of the local culture, language and regulations etc. One interviewee specifically mentioned that their company reserves 5 – 10% of the total budget for risks when providing cross-border services.

The interviewees stated that the main cost when setting-up an office abroad related to country specific cost conditions. Western European countries are seen as more expensive than Southern and Eastern European countries. The costs depending on whether the local office is rented for the period of one project only or on permanent basis. One UK respondent mentioned that it is probably easier to set up an office in Eastern Europe than London for this reason.

A little more than 50% of the interviewees think legal costs are significant because of the professional advice that is often needed. Lawyers are often very expensive to include in the project budget. The other interviewees do not consider the legal costs as a major problem.

Scores

Figure 7.1 contains boxplots based on the scores given by the interviewees of the questions related to regulatory and non-regulatory costs. The X axis indicates different types of costs that firms may experience (see the list of types of costs below) and the Y axis indicates the relative perception of the cost (from 1 not costly to 5 very costly). The boxes represent 50% of the answers and the start and end points of both lines above and below the boxes represent the maximum and minimum scores respectively. The higher the box, the higher the majority of the scores. A longer box means more diverse answers, a short box indicates that answers are more in line with each other. For example, answers to the question 1.B.h (very small box and lines range from 1 - 2) were more consistent than the answers to 1.B.g (large box and lines range from 1 – 5).

Figure 7.1

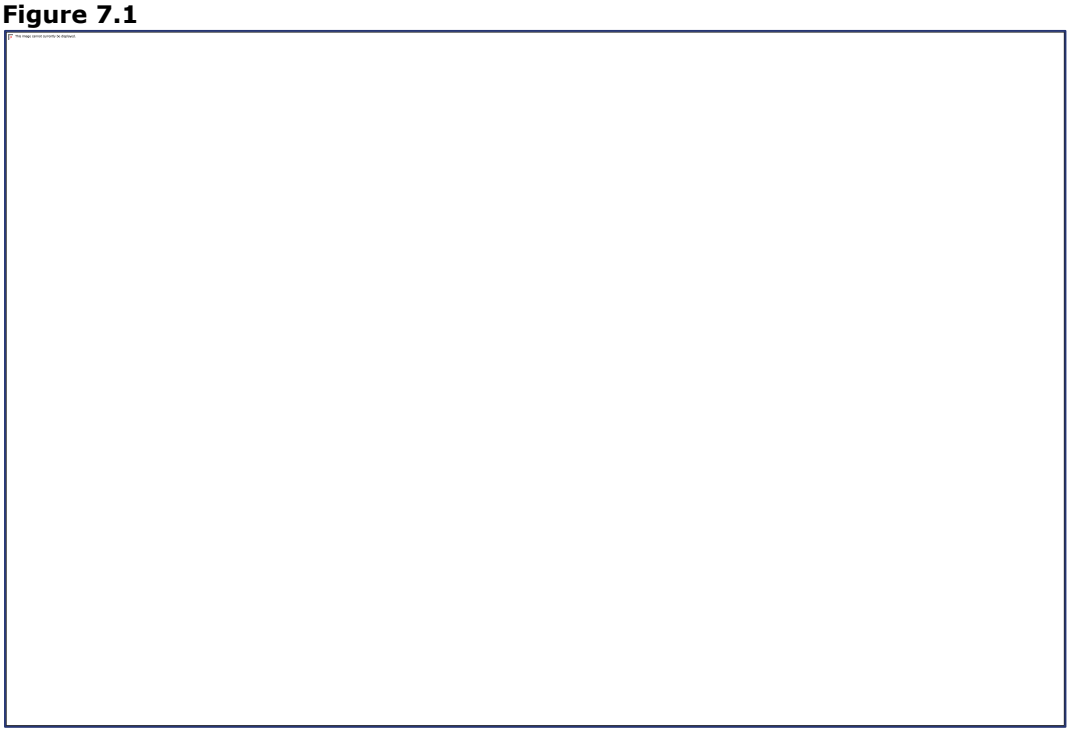


Figure 7.1 summarises all scores received per question from all stakeholders. The question numbers indicated by the X axis relate to the following:

Regulatory costs

- 1.B.a applying for a license to operate e.g. for a building permit or engaging with control processes;
- 1.B.b preparing administrative documents to comply with national requirements;
- 1.B.c delays caused by the uncertain legal viability of the building permit (e.g. as a result of lobby groups seeking re-examination of the building application through court procedures or other factors);
- 1.B.d familiarisation and complying with technical requirements;
- 1.B.e familiarisation and complying with health and safety requirements.

Non-regulatory costs

- 2.B.a business development costs;
- 2.B.b there are greater risks to be taken into account;
- 2.B.c setting up and staffing a local office;
- 2.B.d legal costs associated with establishing contracts with clients;
- and 2.B.e other non-regulatory costs.

Overall, the non-regulatory costs are particularly burdensome. Technical regulations are expected and can be followed regardless of the differences. Non-regulatory costs are harder to provide solutions for, as they relate to ways of doing business.

Lighter procedures

Interviewees mention that in some countries a lighter procedure for building permit applications is available (e.g. Belgium, France, Portugal, and Czech Republic). Where there is a lighter procedure, most interviewees stated that the process is indeed easier to deal with compared to the regular procedure for submitting a building permit. However, generally speaking, the documents needed for the construction of a one-storey house are less burdensome than for a ten-storey office building since the construction works is less complex.

Simple copies

In some countries, simple copies are accepted. Interviewees mention that in the Netherlands, France and Finland this is the case. However, in other countries, simple copies are not permitted (Germany, Bulgaria, Spain, Italy, Poland). In most of these countries some documents need to be certified. In Bulgaria, for example, simple copies are accepted however these copies need to be certified with the sentence "true to the original" and signed. In Greece the interviewees mention that simple copies are not accepted, but they expect this requirement to be introduced in the future. Interviewees gave conflicting information regarding Denmark. In some cases, Denmark was regarded as a country where full case handling is possible while some documents still need to be sent in hard copy. This may be because there are uneven practices across local authorities. Finally, there were two interviewees with cross border experience that stated that in practice there are no countries that accept simple copies from cross-border service providers.

Language

All interviewees stated that English is never permitted as a working language when applying for a building permit in a country where it is not the mother tongue language. Interviewees differ in their view of how significant this is as a problem.

Tacit approval and meeting internal authorisation deadlines

The situation regarding tacit approval and whether authorities are generally perceived as meeting their own internal deadlines for issuing authorisations differs greatly per country. According to the interviewees:

- Authorities in the UK, Netherlands, Bulgaria, Finland, Denmark, Italy and the Czech Republic issue a decision within the deadline and therefore it was generally considered that tacit approval is not normally demanded;
- Authorities in France, Poland, Spain and sometimes Portugal do not always respond within the deadline, however, in France it was mentioned that the authorities always issue notifications if this is the case;

- Tacit approval is not possible in Bulgaria, Poland, Denmark, Italy[170], UK;
- Tacit approval is practiced in the Netherlands, France and the Czech Republic and in these countries service providers feel legally secure to proceed with their building works. In France however, service providers only feel secure when they have followed a further procedure i.e. writing to the authorities stating that they understand they have tacit approval and then waiting a further2 weeks for the authorities to respond to the letter or not;
- There is tacit approval available in Finland, Greece, and Portugal, but in these countries service providers do not feel legally secure to proceed with the building work. Four interviewees stated in general that they would never start construction work without a building permit and would thus never rely on tacit approval;
- Respondents in the UK mentioned that they do not wish to see tacit approval introduced. However, sometimes contractors do commence work without approval if there is no response and demand a response from authorities regarding the approval of the plans submitted already.

Electronic procedures

The possibility of electronic procedures differs greatly among countries:

- In the Czech Republic there are no electronic procedures available;
- In Germany, Poland and Spain paper forms can be downloaded;
- In Italy electronic intake is possible in some regions or cities: Italy is seen by many interviewees as ''many countries'' in one country;
- In Greece, Portugal electronic intake of some documents is possible however many certified drawings still need to be sent in hard copy;
- In the UK and the Netherlands[171] full electronic case handling is possible for the entire building permit application.

Most interviewees think, when online case handling is made possible, the system is very efficient to use compared to the earlier situation when only paper forms can be submitted.

Site inspection regime

Most interviewees do not see the site inspection regime as representing a barrier to providing cross border services. In general, the biggest barrier to companies working cross border is lack of familiarity with the process. Companies do not know what to expect and what needs to be prepared for the site inspections. Furthermore, they mentioned that they can only ask these questions to expensive private consultants. There are some country specific answers given by the interviewees:

- In the UK, the electrical installation inspection process is very burdensome for non-certified contractors;
- In Denmark, the fire regulations are seen as very strict and burdensome;
- In Poland, the preparation of the documents is the most burdensome part of the whole process;
- In Finland, the energy inspection can be quite burdensome;
- In the Czech Republic, the fire inspection is the biggest burden.

[170] There is for very light procedures.

[171] Interviewees also mentioned DK as a country where full electronic case handling is possible – this does not, however, correspond to the findings of the study.

Voluntary Certification schemes

Only in Italy and Portugal, it was mentioned that voluntary certification schemes obtained in another Member state are taken under consideration and reduce the complexity of authorisation processes. In Italy, voluntary certification reduces the complexity of the submission demands for a building permit and in Portugal all international certification is taken under consideration and valid. However, companies still have to comply with the national requirements.

Harmonisation among EU countries

Almost all interviewees would like to see more harmonisation among the EU countries. There was general agreement that standardised documents or forms could help firms operate cross-border to meet a range of requirements already complied with and this could relate to legal demands and authorisation processes broadly speaking.

However, while there was general support for policy interventions in this regard, many of the interviewees questioned how this could be introduced. A very small minority of stakeholders (namely two UK respondents) did not see the validity of such forms e.g. building notice forms are very simple documents to complete and standardising these across Europe would create more problems than they would solve.

8 Conclusions and recommendations

This section provides an overview of the main study conclusions and recommendations. To begin with, overall conclusions for the horizontal authorisation schemes and building permit legislation are indicated separately. These are grouped according to a number of sub-categories namely key findings, regulatory burdens, mutual recognition and administrative burdens. A number of Article specific conclusions are then presented. This is followed by the main study recommendations that generally apply to both horizontal authorisation schemes and building permit processes.

Finally, the results of the assessment of the voluntary certification schemes are elaborated with suggestions on how these can be strengthened to support simplification of authorisation processes and mutual recognition of service providers.

8.1 Overall Conclusions of the Assessment of Horizontal Authorisation Schemes

A number of overall conclusions of the assessment of horizontal authorisation schemes are as follows (the Article specific conclusions are presented in section 8.3):

8.1.1 Key findings on horizontal authorisation schemes

- The results of the legal mapping exercise suggest that almost half of the study Member States have introduced horizontal authorisation schemes for the construction services sector (in total six of the fourteen Member States);
- The Services Directive does not restrict Member States from establishing horizontal authorisation schemes for service providers undergoing establishment particularly when their introduction can be justified by an overriding reason relating to the public interest and where there are positive spill-over simplification effects for subsequent building permits and controls;
- **However, where Member States have established horizontal authorisation schemes, these must comply with the requirements of mutual recognition and simplification of the Services Directive. The results of the legal evaluation suggest that all of the horizontal authorisation schemes examined must do better in terms of meeting these requirements (see section 8.3 which provides a series of article specific conclusions);**
- Considering horizontal authorisation schemes are similar (although in some case more burdensome such as in Denmark and Italy), their lack of regulatory, simplicity, mutual recognition and even simplification makes subsequent building permit procedures unduly complex and unsuited for temporary l cross-border service provision;.
- Even where a limited procedures such as prior notification of temporary cross-border providers is required focusing only on technical and professional capacity (such as Bulgaria), while the procedure is in itself less burdensome, a justification of this underlying condition under the Services Directive remains doubtful;
- Given that half of the study countries appear to have not established horizontal authorisation schemes, it could be suggested that more efficient methods of control could be established in some areas. For example, the horizontal authorisation schemes in Bulgaria and Portugal which provide access to service providers to specific segments of the market seem at odds broadly speaking

with the approach taken in other countries where market-entry controls are not in place and where more proportionate methods of service delivery control (such as the use of building permit and site inspection procedures only) are more commonly used;

- However, at the same time, it should be recognised that under the right of establishment, construction companies might benefit from simpler building permits if there are synergies with previous controls implemented by a horizontal authorisation scheme enabling firms to access the market. For instance, building permits could then focus on on-site aspects of service provision only so that the number of regulatory conditions can be reduced and duplication could be avoided. Ultimately, service providers would be faced with less burdensome regulatory and administrative requirements altogether;
- While all horizontal authorisation schemes require reform, the aggregate indicator analysis demonstrates there are examples of horizontal authorisation schemes which have a high level of restrictiveness for example where they combine authorisation and certification requirements (e.g. DK) and those that have not clearly established mutual recognition principles and procedures in the relevant legal texts (e.g. BG and ES).

8.1.2 Regulatory burden

- The six Member States that have adopted horizontal authorisation schemes require specific professional qualifications of key construction personnel such as architects and/or engineers involved in the construction works. Such professionals are subject to their own authorisations and, throughout their performance, to a number of exercise requirements pertaining to quality of services and ethics. But none of the six Member States does away with the horizontal authorisation schemes for contractors and developers making use of key construction professionals that are appropriately qualified and/or certified;
- Similarly, mandatory certification schemes do not fit well with the Services Directive. Certification schemes often focus on ensuring that service providers attain particularly high industry standards which are externally verified by accredited certification bodies, and therefore it seems disproportionate to require service providers to obtain certification on a mandatory basis. In addition, given the very nature of certification of service providers, it is virtually impossible to adopt authorisation processes that operate in line with the requirement of simplification (such as adopting fixed periods, standard notification and extension procedures, tacit approval etc.);
- In terms of proportionality, Portugal does differentiate between more complex and simpler works, the latter being subject to a simplified authorisation procedure. Other countries, however, do not use this distinction to determine the extent of requirements associated with the authorisation procedure;
- None of the horizontal authorisations issued in any of the six Member States are valid indefinitely: the Italian DURC authorisation is valid for 90 days; the Bulgarian authorisation is valid for one year, as is the standard Portuguese authorisation (while the simplified authorisation is valid for 5 years). Danish authorisations are valid for 2 years (due to the expiration of the underlying certification scheme); both the Italian mandatory ISO certification scheme and the Spanish authorisation regarding health and safety are valid for 3 years;

- In Portugal (regarding insurance) and Spain (regarding health and safety), some of the conditions imposed for granting these horizontal authorisations seem to be duplicated in the context of building permit procedures.[172]

8.1.3 Mutual recognition

- In terms of mutual recognition, principles for cross-border service providers are in place for both insurance and other requirements (with the exception of Bulgaria). However, procedures that ensure an equivalence assessment on the ground are not formally established. Portugal (with specific rules in place for technical/professional and financial capacity) and Italy (regarding the ISO scheme, based on European and international standards) are the exceptions;
- Regarding insurance requirements, Bulgaria, Denmark and Portugal have foreseen a mutual recognition principle which could apply in the context of horizontal authorisation schemes but it is not operational in practice;
- In contrast, there are no mutual recognition rules in place for other requirements (regarding technical/professional capacity in Bulgaria, registration and certification in Denmark and organisational health and safety requirements in Spain).

8.1.4 Administrative burden

- In terms of the overall level of administrative burden, the horizontal authorisation schemes proved excessively restrictive;
- While E-procedures and equivalent documents seem to be accepted everywhere, simple copies are only accepted in half of the countries (in Portugal originals or certified copies may be required where there are cases of doubt, and in Bulgaria and Spain certified translations by professionals registered in those countries are always required);
- In addition, the administrative burden in terms of the number of documents required, whether or not information is made available in English and whether English language documents are permitted for submission varies across Member States. In 4 out of 6 Member States (Bulgaria, Denmark, Italy and Portugal) fees are not proportionate to the cost of administering the approval process. Tacit approval is the rule only in Italy (with regard to its DURC scheme) Portugal and Spain.

8.2 Overall Conclusions of the Assessment of Building Permit Legislation

A number of overall conclusions of the assessment of building permit legislation are as follows (the Article specific conclusions are presented in section 8.3):

8.2.1 Key findings on building permit procedures

- Member State authorisation procedures cannot be easily linked to the relevant European model of public policy normally used to compare and assess policy traditions. Therefore, grouping and analysing the fourteen study Member

[172] The exact conditions imposed are slightly different; still, it could be simpler to impose conditions of a specific type (such as, in these cases, insurance or health and safety) in the context of a single procedure.

States in line with the typical models of public policy (e.g. Liberal, Corporatist, Nordic, Southern European etc.) was not appropriate in this case;

- The results illustrated that in relation to each core element of the building permit procedure, there are only a small number of approaches to establishing authorisation processes. Therefore, while each of the study countries has established a unique combination of procedures and requirements, there are only a small number of possible types of procedures and requirements across each of the core elements that make-up the building permit process;[173]
- As a result, it is unlikely if the remaining Member States that have not been examined by this study operate procedures and requirements that are significantly different to those identified. Moreover, the findings suggest the Services Directive provides a number of solutions supporting mutual recognition and simplification that are suitable for adoption by all national building permit / control systems. For these reasons, the study recommendations have broad implications for all Member States including those not analysed;
- Building controls are often fully-fledged authorisation schemes as defined by the Services Directive and should, therefore, be justified by an overriding reason to the public interest. To ensure that such controls are proportionate, it should be demonstrated that the same function cannot be realised through alternative less restrictive methods. With these rules and principles in mind, in line with relevant categories of works, alternative procedures such as building notices, self-certification of plans and targeted exemptions for particular types of works should be considered;
- Building permits control an activity which impact on a number of relevant public interests and therefore may be justified in the context of cross-border service provision. However, given the fact that they control on-site aspects of service performance, they apply equally to establishing and temporary cross-border providers. This means the building permits (as well as building controls in general) and their underlying requirements can only be justified by reasons of public policy, public safety, public health and the protection of the environment;
- The legal evaluation illustrates that with regard to most Articles examined, good examples of compliance have already been adopted by Member States. The key issue is to ensure that these are widely shared and adopted. Examples of good practice include:
    - The Spanish Declaration of Responsibility is a good example of enabling service providers to self-certify their own plans and limiting the extent of the site inspection regime;
    - The Netherlands requires submission demands limited to 3 categories of documents;
    - Finland and the Netherlands provide an online centralised national system for the submission of building permit applications that offers full electronic case handling.
- Systems that have not performed well have generally adopted a combination of a poor level of compliance with the mutual recognition requirements established by Article 10(3) and simplification requirements such as those established by Article 5 and Article 8.

[173] This echoes the findings of a study conducted by the European Consortium of Building Control.

8.2.2 Regulatory burden

- Building permit procedures across the 14 Member States analysed often present a high level of regulatory restrictiveness. Nation-wide validity for building permits is only an issue for non-site specific aspects of service performance. Although most Member States do not differentiate, Germany and the United Kingdom have put in place a nationwide approval of building designs that are non-site specific;
- No Member State controls building activities through a single one-off building permit control, eventually coupled with on-site inspections. Instead, they impose a number of administrative control procedures from the initial application, to the commencing of the works on the ground until final completion. With the exception of the Netherlands, all Member States impose 3 or more separate control procedures that collectively constitute the building permit / control process. However, most Member States have put in place alternative procedures for simpler building works (except for Denmark, Finland, France, the Netherlands and Poland) and all exempt minor works[174] from building permit procedures, except for Greece (which imposes a notification for such works);[175]
- In relation to simpler building works, no Member State has put in place the possibility of exemption from building control procedures for qualified or certified service providers. This is in spite of the vast majority of Member States (except for Finland, Poland and the United Kingdom) requiring regulated professionals to submit building permit applications. Due to professional qualification rules and controls in place, building permit applications submitted by qualified professionals should be presumed to comply with the law and merit a perfunctory check only.

8.2.3 Mutual recognition

- Given that building permits contain no specific provisions for temporary cross-border providers, effective mutual recognition under an equivalence assessment is all the more crucial;
- Technical standards play a key role in how to conduct building works. In view of their complex nature, mutual recognition of these technical rules across Member States is only feasible if performance-based standards are adopted by Member States. This is the case for Greece, Spain, France and the United Kingdom. Other Member States have adopted a combination of prescriptive and performance-based standards to varying extents, with the exception of Portugal;[176]
- The existence of rules permitting the use of equipment as part of a service activity in a host Member State according to regulations established in a home Member State do not seem to be common. However, given that many substantive rules on equipment use are based on European or International Standards, there seems to be no real problem on the ground when using equipment across borders;
- Insurance requirements are widespread and divergent across Member States.[177] However, mutual recognition of equivalent insurance coverage is absent even though a general principle is in place but in most cases it is not

[174] However, the concept of "minor work" varies greatly across Member States.
[175] The scores for these indicators are included in the graph for administrative barriers, given their relevance for Article 5 of the Services Directive.
[176] Although Portugal seems to be in the process of moving in the direction of introducing performance based standards.
[177] Some Member States require insurance coverage for one or more types of insurance coverage (work performance, latent defects and tort liability).

applied in practice due to the absence of a specific procedure for assessing equivalence of insurance coverage;

- Companies follow organisational rules for health and safety according to their home Member State requirements implementing Article 7 of Directive 89/391/EEC. These rules oblige companies to set up internal health and safety structures comprising certain professionals with the necessary capabilities, aptitudes and means, including equipment. Companies may avoid setting up such structures by hiring external health and safety service providers in a home country. It appears that companies are often not in a position to obtain mutual recognition by being allowed to keep their organisational arrangements (be it an internal or external service). Due to the absence of specific mutual recognition rules, companies going cross-border to provide construction services need either to restructure their health and safety internal organisation locally (which is often too expensive and impracticable) or hire a local external health and safety service provider (but not the service provider previously used in the home Member State).

8.2.4 Administrative burdens

- In terms of the extent of administrative burdens, building permit schemes proved particularly restrictive, even more so when compared to horizontal authorisation schemes;
- For example, E-procedures are not available everywhere: only Finland, the Netherlands and the United Kingdom provide for full-case handling online, while most Member States only allow for paper forms to be downloaded. The Czech Republic, Germany and Spain allow for some electronic intake. Information in English is only partially available in the Czech Republic, Denmark, Finland and the Netherlands. Simple copies are accepted in 7 Member States; in Bulgaria and Spain, certified translations by professionals registered in those countries are required. Moreover, all other Member States also require translations;
- The number of documentary submission demands required varies across Member States. Fees vary even more, ranging from €35 in the Czech Republic (for a one-storey 2 bedroom house) to €125.000 in the Netherlands (for a 10-storey office block), where they do not seem to be proportionate to the cost of administering the authorisation procedure. In the majority of Member States, only one authority is directly involved with the applicant (except for Bulgaria, the Czech Republic, Germany, France and Poland);
- Some Member States control planning issues in a separate procedure (the Czech Republic, Greece, Spain, the United Kingdom and, in the absence of spatial planning regulations for the area concerned, France and Poland). In these countries the duration of procedures should be shorter and tacit approval more widespread. Procedural duration in these countries range from 2 days in Greece to 12 weeks in Spain (for a 10-storey office block). Germany stands-out with short procedural durations (4 or 8 weeks) and tacit approval. However, 10-storey office blocks in the Netherlands take up to 26 weeks to receive approval. Twelve Member States (except for Finland and the United Kingdom) do not accept designs submitted by professionals operating from another Member State. These 12 Member States force professionals to go through procedures for the recognition of professional qualifications.

8.3 Article-Specific Conclusions

In order to provide the reader with a detailed Article-by-Article assessment of the national legislation examined, Table 7.1 provides a list of Article-specific conclusions emerging from the legal evaluation of horizontal authorisation schemes and building permit legislation.

Table 8.1 Article –specific conclusions

Article	Conclusions
Article 5 Horizontal Authorisation Schemes and Building Permit / Control Legislation	▪ The overall number of documents and the number of categories of submission demands requested vary greatly between Member State' legislation for horizontal authorisation schemes (e.g. in Bulgaria 6 categories of documents are requested) and building permit legislation (e.g. in Italy 9 categories of documents are requested). In some cases, the administrative burden created by the number of categories of submission demands requested is particularly high.
	▪ In terms of horizontal authorisation schemes ,there are mixed results regarding whether Member States have made available their legislation (BG) and websites in EN (DK, PT) and in some countries this is not the case at all (ES, IT); ▪ Regarding building permit legislation, no Member State where EN is not the native language has provided all of the key information in EN including building regulations, listing of relevant standards, building permit webpages and submission procedures (BG, CZ, DE, DK , ES, FI, FR, IT, NL, PL, PT, SI).
	▪ While certified documents are often requested, these can be submitted in simple copy format. The submission of simple copies are requested by a number of horizontal authorisation schemes but this is not always the case (e.g. BG in terms of translations).Some Member State building permit legislation do not permit the submission of simple copies (e.g. DE, El, ES, IT, PL).
	▪ Apart from one horizontal authorisation scheme (PT), submission demands cannot be provided in EN as well as EN translations of original documents. This is also the case with regard to building permit legislative requirements in countries where EN is not the mother-tongue language.
	▪ Although certified document requirements are imposed by horizontal authorisation schemes in many Member States (BG, DK, ES, IT, PT), those issued in the home Member States are generally accepted; ▪ With regard to building permit legislation, certified plans signed by an architect / engineer registered with a national body are required for submission in many cases (BG, CZ, DE, DK, ES, EL FR, IT, PL, PT, SI) apart from in FI, NL and the UK. This creates a barrier to submitting plans cross-border and creates an immediate need to hire a locally registered professional.
	▪ Where certified documents or similar are requested by horizontal authorisation schemes proving that a requirement has been satisfied, it is normally the case that equivalent documents are not deemed acceptable for submission; ▪ Certified documents or similar, proving that a requirement has been satisfied, are often not demanded by building permit legislation (these are required in a small number of cases but it is not clear that equivalent documents can be submitted).
Article 5 Building Permit / Control Legislation Only	▪ A number of countries have made available optional procedures relating to either one or both of the reference works. This includes BG, DE, ES and SI regarding the light procedure. The building notice applies to CZ, (in some case DE) ES, IT, PT and UK; ▪ In certain cases, alternative procedures reduce the number of categories of submission demands requested (ES, UK). Some alternative procedures enable service providers to commence work immediately or in a very short fixed period (ES, IT, PT UK). A procedure in Spain enables authorised and appropriately insured companies to self-certify their own plans and perform their own site inspections (although a final use permit inspection is required) on the basis of a Declaration of Responsibility. Many Member States exempt certain categories of minor works from building permit procedures; ▪ According to interviewees, optional procedures benefit some categories of service providers even if these are associated

Article	Conclusions
	with greater risks or less flexibility with regard to the design solutions that can be proposed.
Article 8 Building Permit / Control and Horizontal Authorisation Schemes	▪ A number of horizontal authorisation schemes have established online systems that permit full electronic case handling and uploading of documents or permit documents to be submitted via email (DK, ES, IT, PT) but this is not the case in BG; ▪ Only a small number of countries support full electronic case handling of submission demands for building permits (FI, NL UK).The remaining study countries only partially accept electronic submission of documents or make forms available online.
Article 9(1) Horizontal Authorisation Schemes Only	▪ It seems that a number of Member States have not established horizontal authorisation schemes as defined by this study. The assumption can made that these countries rely on other authorisation mechanisms (such as building control) to ensure that quality standards are met. This approach supports efficient access to the market for national or cross-border service providers (CZ, DE, FI, FR, NL, PL, SI, UK) if requirements are not repeated and refer to on-site specific issues; ▪ In some cases, it seems that requirements are duplicated under horizontal authorisation schemes and building permit legislation (e.g. insurance requirements in PT and health and safety requirements in ES); ▪ There are examples of schemes that demand mandatory quality management system certification (DK, IT) of service providers. It does not seem justified or proportionate to demand certification of this nature considering that these seek to establish very high industry standards and the certification process itself cannot be easily aligned to the requirements of simplification as defined by the Services Directive.
Article 9 (1) Building Permit / Control Legislation Only	▪ CZ, EL, ES, IT, PT and SI have adopted the procedure of self-certification of plans in certain areas or as a general practice. The UK provides a good example where certified installation service providers can self-certify their own work.
Article 10 (3) Building Permit / Control and Horizontal Authorisation Schemes	▪ Mutual recognition principles and procedures are only clearly defined in a small number of horizontal authorisation schemes (DK, PT). These seem to be lacking in other cases (BG, ES, IT); ▪ In the context of building permit legislation specifically, it is not made clear that cross-border service providers in the construction sector are supported regarding the mutual recognition of the same or essentially comparable requirements that have been already been complied with in their home Member State (although in many countries, the principle of mutual recognition relating to requirements generally speaking has been established in national legislation that transposes the Services Directive, and a small number of countries have moved towards systems largely based on performance based standards for construction works); ▪ With regard to insurance requirements specifically, while national legislation that transposes the Services Directive has in most cases established the principle of recognition, this is often not the case in legislation for horizontal authorisation schemes and building permit systems. Similarly, there is absence of clearly defined recognition procedures for insurance products.
Article 10 (4) Horizontal Authorisation Schemes	▪ The horizontal authorisation schemes examined (BG, ES, IT PT) offer service providers access to their national markets (thereby not restricting companies geographically).

Article	Conclusions
Article 10 (4) Building Permit / Control Legislation	▪ UK (England) has introduced a national type approval system that offers procedural efficiency gains to service providers whishing to build the same structure in more than one location. Plans are approved on one occasion and can be re-used as part of subsequent building permit applications.
Article 11 Horizontal Authorisation Schemes	▪ In some cases, authorisation procedures require service providers to pay renewal (BG) or revalidation (PT) fees. In other cases, subsequent authorisations are required that appear to be as equally burdensome as the initial procedure (ES, IT). In Denmark, services providers established nationally are required to renew their applications as authorisation is based on a certification with a 2 year validity limit. The same applies in Italy in relation to the 3 year ISO 9001 certification schemes.
Article 13(2) Building Permit / Control and Horizontal Authorisation Schemes	▪ In some cases, the horizontal authorisation approval process is very low cost or free of charge (ES, IT-DURC); ▪ The method of fee calculation in other countries (BG, PT) is divorced from the cost of resources required to authorise applications. In some cases (DK, IT- ISO:EN 9001:2008), fees are profit driven (for the underlying certification scheme imposed by law); ▪ It seems that fees that form part of building permit systems are relatively proportionate to the costs of authorisation and public authorities cannot make a profit from their building control activities. However, in NL, the costs of building control of fall unevenly on larger projects that cross-subsidise applications made for smaller works.
Article 13(3) Building Permit / Control and Horizontal Authorisation Schemes	▪ Some horizontal authorisation schemes (BG and ES) offer approval processes that are fixed to a period of 15 days. (This is not the case in countries such as PT with fixed periods of up to 30 days and countries that support mandatory certification schemes such as DK and IT that are likely to subject applicants to heavy delays); ▪ A number of horizontal authorisation schemes do not permit the use of extensions therefore supporting efficient access to the market for service providers (BG, ES, IT PT). But this is not the case in DK although applicants are notified when extensions are made; ▪ The building notice procedure enables services providers to commence work immediately in IT and UK (a similar approach is available in DE and ES but these are limited to specific circumstance). The building notice procedure in PT has a fixed period of 8 days; ▪ In some countries, the regular procedure is fixed for more than 6 weeks (e.g. NL, PT). In other countries, there are no fixed periods (FI, DK). In BG and CZ, the regular procedure has a duration of 4 weeks; ▪ In a number of countries, there are no possible extensions available as part of the authorisation process for a building permit (BG, DE, EL, SI). In some cases they can only be used instances where the applicant submitted an incorrect or incomplete application (CZ, ES, IT). However, elsewhere (NL, PL, FR, UK), extensions can be made for various reasons or the reasons are not clearly defined why they can be used; ▪ Notifications under building permit procedures are undertaken were extensions are made. However, this does not seem to be the case in EL, and the lack of fixed periods in FI and DK means that there is uncertainty for applicants with the duration of the process.

Article	Conclusions
Article 13(3) Building Permit / Control and Horizontal Authorisation Schemes	▪ A number of horizontal authorisation schemes (ES, IT, PT) offer tacit approval if no response is given at the end of the fixed period thereby ensuring quick access to the market for service providers; ▪ With regard to building permit legislation, although deadlines are mostly kept, tacit approval is available to service providers in Germany. Other countries (ES, FR, IT, NL) offer tacit approval subject to certain zoning criteria.
Article 16(2) (f)	▪ No specific barriers were identified in the study countries regarding the use of equipment; ▪ (BG, CZ, DE, DK, EL, ES, FI, FR, IT, NL, PL, PT, SI, UK).
Article 16(2b) Horizontal Authorisation Schemes	▪ A number of countries do not require authorisation of temporary cross-border service providers through horizontal procedures. This approach may offer a much less restrictive environment to the internal market for services (CZ, DE, FI, FR, NL, PL, SI, UK) provided requirements are not repeated in building permit controls (e.g.ES insurance requirements could perhaps be more efficiently controlled a priori, in an one-off control); ▪ While a number of countries subject temporary cross-border service providers to horizontal authorisation procedures, in some cases lighter procedures are used offering exemptions, although for very for limited periods (ES, IT -DURC) or notification procedures combined with a reduction in the complexity of the submission demands (BG); ▪ In Portugal, temporary cross-border service providers are subject to a specific authorisation procedure but this is not significantly lighter than the process which firms established nationally need to follow. In Denmark, the process offered to temporary cross-border service providers is more onerous given that evidence of insurance is demanded.

8.4 Recommendations jointly addressing horizontal authorisation schemes and building permit legislation

To address the issues raised in the context of the legal evaluation of horizontal authorisation schemes and building permit legislation, a series of recommendations are outlined in Table 8.2.

The purpose of the recommendations is to encourage better alignment with the Services Directive thereby fostering regulatory and administrative simplification of national authorisation schemes for construction service providers. Further details on suggested approaches to obtain conformity with these recommendations are available in the good practice tables indicated in sections 3.9 and 5.7.

Table 8.2 Recommendations for horizontal authorisation schemes and building permit legislation

	Recommendations
Regulatory simplification	1. ***Where requirements for building permits are not site-specific and can be met through a one-off control, construction companies should benefit from simpler building permits through synergies with previous controls of a horizontal authorisation scheme (alternatively this could be done on the basis of a type approval for relevant segments of the market). As a result, building permits could then focus on on-site aspects of service provision only;*** 2. ***Where horizontal authorisations schemes do not have the role of supporting regulatory simplification (as described in Recommendation 1), it should be examined if it is justified and proportionate to impose such controls on construction service providers (given that design and on-site service delivery is subject to building permit legislation);*** 3. ***Self-certification or responsible declarations (by which the service provider assumes liability for regulatory non-compliance) issued by previously certified or regulated professionals should replace or simplify control procedures that are applied in the context of horizontal authorisation schemes and the building permit process including site inspections;*** 4. ***Quality assurance certification should not be a mandatory requirement of authorisation schemes for construction service providers;*** 5. ***Mutual recognition principles should become fully operational through detailed national procedures and guidelines and apply where relevant to all requirements including health and safety and insurance requirements. Performance based standards should be broadly adopted.***
Administrative simplification	6. ***Authorisation schemes for construction service providers should be closely aligned to the principle of simplification, examples of this alignment should at the very least cover the:*** ○ ***Introduction of efficient alternative application procedures for simpler building works;*** ○ ***Extension of the scope of works exempt from controls;*** ○ ***Short fixed periods should be established;***

	Recommendations
	○ ***Extensions should only be used where an error is identified in the application;*** ○ ***Non-site specific authorisations should be granted on a permanent basis;*** ○ ***Fees should be aligned to the administrative cost of the authorisation procedure.*** ***7. Tacit approval should become the rule (with a view to encouraging public authorities to meet their own deadlines for approval of applications);*** ***8. Reduce document submission demands and, for the few documents required, accept simple copies, if possible in English, and as issued in the home Member State by either competent authorities or regulated professionals;*** ***9. Comprehensive online information on applicable requirements and formalities as well as e-procedures for submission and case handling centralised nationally should be made available (in the national language and if possible in English).***

8.5 Recommendations provided by interviewees relating to building / permit control procedures and the internal market for construction services

During the course of the interview programme with construction sector stakeholders, interviewees were invited to provide recommendations to support the reform of building permit / control procedures and to strengthen the internal market for construction services. The recommendations indicated below include those that were mentioned that fall outside of the Article specific recommendations.

It is recommended that the Commission and Member States review these suggestions to support the introduction of further legislative and policy developments. These have been generalised as follows:

1. There was strong support for the introduction of EU-level forms or similar to support the process of mutual recognition managed by all relevant authorities. One suggestion was for a 'construction industry passport' that could be introduced demonstrating the full range of requirements already complied with in the home Member State. The form could indicate the competency of the firm, director qualifications, membership of professional bodies, insurance products, financial standing, payment of taxes, good repute etc. It was mentioned that the up-take of the passport could be driven by public procurement activities;
2. To increase the level of understanding of the regulatory framework in Member States, further EU research was suggested on mapping national construction standards and assessing the scale and nature of the differences between the relevant countries;
3. Complementing the recommendation above, it was suggested that an EU-level construction regulation observatory could be established that had an ongoing role of monitoring national regulatory developments and providing advice to stakeholders on the regulatory context in other Member States;

4. With a view to overcoming differences with the health and safety regulation of construction sites, it was suggested that the EU should introduce regulations instead of directives in this regard. The legal texts should also provide clear details on how the requirements should be met;
5. It was mentioned that the Euro-codes provide a good example of harmonisation of building standards at European-level. It was suggested by a number of organisations that the Commission could review other possible types of building standards that could undergo similar harmonisation processes. One suggestion was fire regulations for buildings (although some Eurocodes already cover fire safety to some extent);
6. Member States should consider introducing private building control bodies to oversee the plan approval and site inspection process. In countries where such bodies and procedures are currently in place, compared to public bodies, these were noted as offering service providers a stronger level of support when seeking to obtain regulatory compliance and played a larger role in supporting the design process (e.g. by suggesting innovative solutions to meet compliance requirements). In addition, it was mentioned that such bodies are in a much better to position to provide advice to cross-border service providers in the context of building control procedures given that they can provide a wide range of ancillary services.

8.6 Conclusions and Recommendations on Voluntary Certification Schemes

A number of conclusions are provided below regarding the potential contribution of voluntary certification schemes to support simplification of building permit authorisation controls and mutual recognition of construction service providers. This is followed by a series of complementary recommendations to support the development of voluntary certification schemes aligned to these principles.

8.6.1 The potential contribution of voluntary certification schemes to support the simplification of procedures

- Many types of voluntary certification schemes do not immediately offer service providers with an alternative to regulatory compliance on the basis of initially complying with certification processes. However, a small proportion of bespoke schemes do demonstrate this quality and provide an alternative route for service providers to gain approval of technical plans and onsite construction activities;
- In many cases, voluntary certification schemes (such as ISO certification) help to demonstrate that firms have the ability to comply with industry standards and potentially a number of regulatory requirements (e.g. health and safety) and can also support the ongoing strengthening of organisational methods to meet these requirements. Normally, however, the aim is to indicate to clients that the required standards can be met rather than demonstrating to building control authorities or similar that the relevant regulations have been complied with (and therefore site inspections or other controls will still need to take place even if a firm is certified);
- Some quality management certification schemes, informed by ISO approaches, offer a greater level of simplification benefits given that there is a stronger level of tailoring to national legal requirements such as the SCC / VCA schemes. Therefore, firms are in a better position to demonstrate that they have the ability to meet the relevant legal requirements. However, still, this type of certification does not offer an alternative to regulatory compliance (as

site inspections still need to be performed). Moreover, while there is a greater level of correspondence with national legal texts, it is unlikely if a full body of legislation, such as health and safety legislation, is covered by the scope of the certification;

- The Portuguese LNEC Quality Mark provides an additional layer of site inspections provided by an auditor enabling demonstration to clients that particularly high standards have been met. Again, this approach does not offer an alternative to regulatory compliance although it does support service providers to meet all relevant requirements that may not be examined by a public authority building control;
- However, some schemes, that are directly linked to national regulations (and are currently based on national standards) offer the greatest level of simplification benefits in terms of providing alternatives to regulatory compliance;
- This includes type-approval certification schemes (such as the LANTAC type approval scheme in the UK and the voluntary certificate for transportable structures in Denmark) which enable service providers to submit plans for approval on one occasion and supports replication of the same structures on repeat occasions without further need of subsequent design approvals. The Competent Person scheme in the UK has a similar role as certified service providers can self-certify their own work without the need for site inspections by building control authorities. Such schemes (namely the UK Competent Persons scheme and the transportable structures certificate in Denmark) tend to have a focus on the service providers themselves performing their own site inspections with this skill being demonstrated as part of the certification process.

8.6.2 The potential contribution of voluntary certification schemes to support the mutual recognition of service providers

- A key observation is that the voluntary certification schemes that performed less well in the evaluation against the principle of simplification perform better when assessed against the principle of mutual recognition. This is because these schemes are bases on international standards, such as ISO certificates, and are offered by accredited certification bodies that operate under Regulation 765/2008 which mandates mutual recognition of certification. Therefore, by providing the necessary evidence, cross-border service providers can have their existing certification recognised by a certification body established in another Member State;
- In some cases, voluntary certification schemes, informed by ISO approaches, have gone beyond the requirements of Regulation 765/2008. For example, the Germany SCC and Dutch VCA schemes have established their own multilateral agreements supporting mutual recognition of their respective certificates and support cross-border operation of the certification bodies;
- However, as indicated, the schemes that currently perform well against the principle of mutual recognition do not offer an alternative to regulatory compliance. Service providers that hold ISO certification, or certification based on ISO approaches, are still subject to controls such as site inspections;
- Other schemes not based on ISO approaches support mutual recognition. For example, the UK skills card scheme offers mutual recognition of professional qualifications (but cross-border applicants are still requested to undertake a health and safety test). However, other schemes with a training element do not mutually recognise cross-border qualifications (e.g. Slovenian fire safety certificate). However, again these schemes do not offer an alternative to regulatory compliance;

- It appears that where the underlying norms are not equivalent in other countries, there is lack of mutual recognition (even in cases where the certification body has been accredited by a national accreditation body). This relates certificates based on assessing compliance with specific national regulations and often use external inspection methods or certify that service providers can perform their own inspections such as the French construction quality certificate, the Portuguese LNEC Quality Mark and the UK Competent Person Scheme. There is also relates to the type approval schemes namely the UK LANTAC scheme and the Danish scheme for transportable structures;
- Where mutual recognition is supported, the process seems to be enhanced where foreign experts are involved in the certification process and independent bodies examine requirements already complied with.

8.6.3 Recommendations for voluntary certification schemes

Table 8.3 indicates a number of key conclusions and recommendations that have emerged from the evaluation of voluntary certification schemes against the principles of certification and mutual recognition.

Table 8.3 Voluntary certification schemes - recommendations

	Recommendations
Regulatory simplification	***1. Member States should consider in what way voluntary certification schemes can be introduced to offer alternatives to regulatory compliance as part of building permit / control procedures. In particular, certification schemes should aim to demonstrate that service providers have the necessary skills to independently provide services without the need for further authorisations (for example , by enabling service providers to approve their own work and to use plans already approved for subsequent projects);*** ***2. To support service-providers to meet regulatory requirements, voluntary certification schemes could be introduced that correspond well with key national and EU legislation. While the ISO approach provides a very good starting point for the introduction of effective quality management systems, further adaptations could be made with a view to meeting regulatory requirements broadly speaking. Although certification schemes of this nature will not offer an alternative to regulatory compliance, service providers will be in a stronger position to develop their organisational approaches to demonstrate compliance with the relevant legal requirements broadly speaking.***
Mutual recognition	***3. To meet the objective of developing voluntary certification schemes that have the potential for simplification and mutual recognition, the Commission, Member States and certification bodies should identify national legislation and standards that are suitable for harmonisation on the basis of EN standards. Such schemes should offer an alternative to regulatory compliance (by reducing the need for site inspections or subsequent approval of plans already approved) with the certification issued being recognised cross-border by accredited certification bodies. One example for exploration is the UK's Competent Persons scheme;*** ***4. In terms of schemes that do not offer an alternative to regulatory compliance but do demonstrate that requirements can be successfully met by service providers (e.g. the SCC and VCA schemes), efforts could be made to identify how mutual recognition procedures can be strengthened that go beyond Regulation 765/2008;***

Recommendations	
	5. Mutual recognition of voluntary certifications which operate as alternatives to regulatory compliance should be, in any case, observed irrespective of the harmonisation of standards at European or international level.