



European Construction Sector Observatory

Strengthening the Internal Market for Construction

Analytical Report

November 2018

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1. Introduction

“Further strengthening and deepening the EU Single Market is the most important part of the Investment Plan for Europe. We need to remove investment restrictions and create new opportunities for consumers, professionals and businesses. And the Single Market must keep up with the times: innovative business models must be encouraged and welcomed into the Single Market.”

Commission Vice-President Jyrki Katainen, responsible for Jobs, Growth, Investment and Competitiveness, October 2015

The internal market of the European Union (EU) is a Single Market in which the free movement of goods, services, capital and persons is assured, and in which citizens are free to live, work, study and do business. As one of the main pillars of the EU, a substantial body of rules and policies is dedicated to ensuring that obstacles to the freedom of movement are removed and prevented.

In order to facilitate the strengthening the EU internal market, the European Commission has adopted the Single Market Strategy on 28 October 2015. This Strategy aims to unlock the potential of a common European market for goods and services through streamlining the regulation, removing administrative burden and by supporting the growth of SMEs and start-ups across Member States (MS). The Single Market Strategy focuses on creating opportunities for consumers and businesses, encouraging modernisation and innovation and ensuring practical delivery of Single Market through its nine objectives. Single Market Strategy covers wide range of sectors, including construction. Apart of Single Market Strategy, Construction 2020 Action Plan supports practical actions to implement the Europe 2020 Strategy and elements of a Single Market Strategy.



Construction 2020, the EU strategy for the sustainable competitiveness of the construction sector and its enterprises, focuses on the internal market for construction products and services under its Thematic Objective 4 “Strengthening the Internal Market for Construction”¹. The Strategy stresses the importance of ensuring that the legal framework for the movement of goods and services at EU and national level is as clear and predictable and that administrative costs are proportionate to the objectives pursued.

The policy measures, foreseen in the Construction 2020 Action Plan, include the undertaking of ‘fitness checks’ of EU legislation to identify excessive administrative burdens, overlaps, gaps, inconsistencies and obsolete measures affecting construction enterprises. The Commission is paying particular attention to the implementation of the Services Directive in the construction sector and considers further steps to promote the use of Eurocodes.

At national level, MS have introduced policy responses addressing the need to promote the development and harmonisation of standards, to reduce the administrative burden for the producers of construction products and the providers of construction services, to remove obstacles to cross-border public procurement and to facilitate the access of firms and professionals to the internal market overall.

Within this context, the purpose of the present Analytical Report is to draw a snapshot of the current state of the internal market in the construction sector in the EU-28. Namely, **Chapter 2 provides a high level analysis of the main characteristics in the sector**, focusing on the patterns of exports and imports of goods and services. **Chapter 3 provides an analysis of the main drivers of activity across the internal market**, looking separately at the regulatory and non-

¹ Communication from the Commission to the European Parliament and the Council, Strategy for the sustainable competitiveness of the construction sector and its enterprises, Brussels, 31.7.2012, COM(2012) 433 final

regulatory drivers for the market for goods and services. **Chapter 4 provides an overview of the obstacles to the functioning of the internal market**, zooming in on the main barriers to trade and cross-border public procurement of goods and services. Finally, **Chapter 5 focuses on the main policy responses at national level**, highlighting best practices and lessons learned from different measures.

2.

Characteristics of the internal market

This chapter focuses on the characteristics of the internal market for goods and services in the construction sector through an analysis of key performance indicators related to the intra-EU trade of construction products, the import and export of construction services and labour mobility addressing skills shortages.

Single Market Scoreboard

The Single Market Scoreboard aims to give an overview of the practical management of the Single Market. Openness to imports and trade integration are two key indicators to measure the Single Market performance of the EU MS.

Figure 1 compares the percentage of a country's GDP that is accounted for by trade with EU countries (imports and exports), in either goods or services. As can be seen from the figure, Estonia, Poland and Croatia observe the highest degree of openness and integration with the rest of the EU, in relation to the size of their economy. In comparison, Greece is the only MS with low score on this overall indicator.

Figure 1 Single Market Scoreboard performance as regards trade integration and market openness to imports, EU-28, 2016²



Source: Eurostat

Note: (Red = Bad. Yellow = Medium. Green = Good)

² The European Commission, the EU Single Market Scoreboard, EU Trade integration in goods and services, and openness to imports of goods and services, both relative to the overall GDP and to the change between 2014 and 2015, http://ec.europa.eu/internal_market/scoreboard/integration_market_openness/trade_goods_services/index_en.htm. Overall, this scoreboard gives an overview of the practical management of the Single Market and the overall country's performance based on 8 indicators, in which we focus on EU trade integration in goods and in services, and openness to imports of goods and services, between 2014 and 2015.

The following figure shows how MS have performed with regards to trade integration and market openness, and Single Market policy areas that are of particular relevance for the **construction sector**. The results are mainly based on qualitative policy judgement and recent data for individual countries.

In terms of **public procurement performance** (here defined as whether public sector purchasers get good value for money), it can be noted that South and Eastern European MS are performing below the average level, which is linked to a slower decision speed, or lack of transparency about the procurement procedures³.

There is no geographical trend to highlight as regards performance on the indicators for **professional qualifications**, which measures the degree to which there are barriers to the free movement of people due to obstacles to the recognition of professional qualifications issued by another MS. There are major variations in the outcomes and speeds of procedures for the recognition of professional qualifications, due to differences in e.g. the resources available for and the dedication to managing the applications, the number of applicants and the complexity of the regulation. It can be noted that in 2014-2016, the highest rate of reported positive recognition was recorded in Estonia and Austria.

Figure 2 Single Market performance overview by country, EU-28, 2018⁴

Country	Public Procurement	Professional qualifications	Trade in goods & services
Austria	↓	→	→
Belgium	→	↓	→
Bulgaria	↓	→	→
Croatia	→	↓	→
Cyprus	↓	→	→
Czech Republic	↓	→	→
Denmark	→	→	→
Estonia	↑	→	→
Finland	→	→	→
France	→	→	→
Germany	→	→	→
Greece	↓	→	→
Hungary	→	→	→
Ireland	↓	→	→
Italy	↓	↓	→
Latvia	↓	→	→
Lithuania	↓	→	→
Luxembourg	→	↓	→
Malta	→	→	→
Netherlands	↓	→	→
Poland	→	→	→
Portugal	↓	→	→
Romania	↓	→	→
Slovakia	→	↓	→
Slovenia	↓	→	→
Spain	↓	→	→
Sweden	→	→	→
United Kingdom	→	↓	→

█ Above average
█ Average
█ Below average

↓ Decrease
⇔ No change
↑ Improvement

Source: Single Market Scoreboard, http://ec.europa.eu/internal_market/scoreboard/index_en.htm

³ Single Market Scoreboard, 2016.

⁴ For public procurement, scoreboard is based on 2017 reporting period. EC, Single Market Scoreboard, Public Procurement, 2017. http://ec.europa.eu/internal_market/scoreboard/docs/2018/public-procurement/2018-scoreboard-public-procurement_en.pdf; for professional qualifications, the reporting period is 2014-2016. EC, Single Market Scoreboard, Professional Qualifications, 2014-2016, http://ec.europa.eu/internal_market/scoreboard/docs/2018/professional-qualifications/2018-scoreboard-professional-qualifications_en.pdf. For trade in goods & services, the scoreboard is based on 2015-2016 reporting period. EC, Single Market Scoreboard, Trade in Goods and Services, 2015-2016, http://ec.europa.eu/internal_market/scoreboard/docs/2018/trade/2018-scoreboard-trade-goods-services_en.pdf.

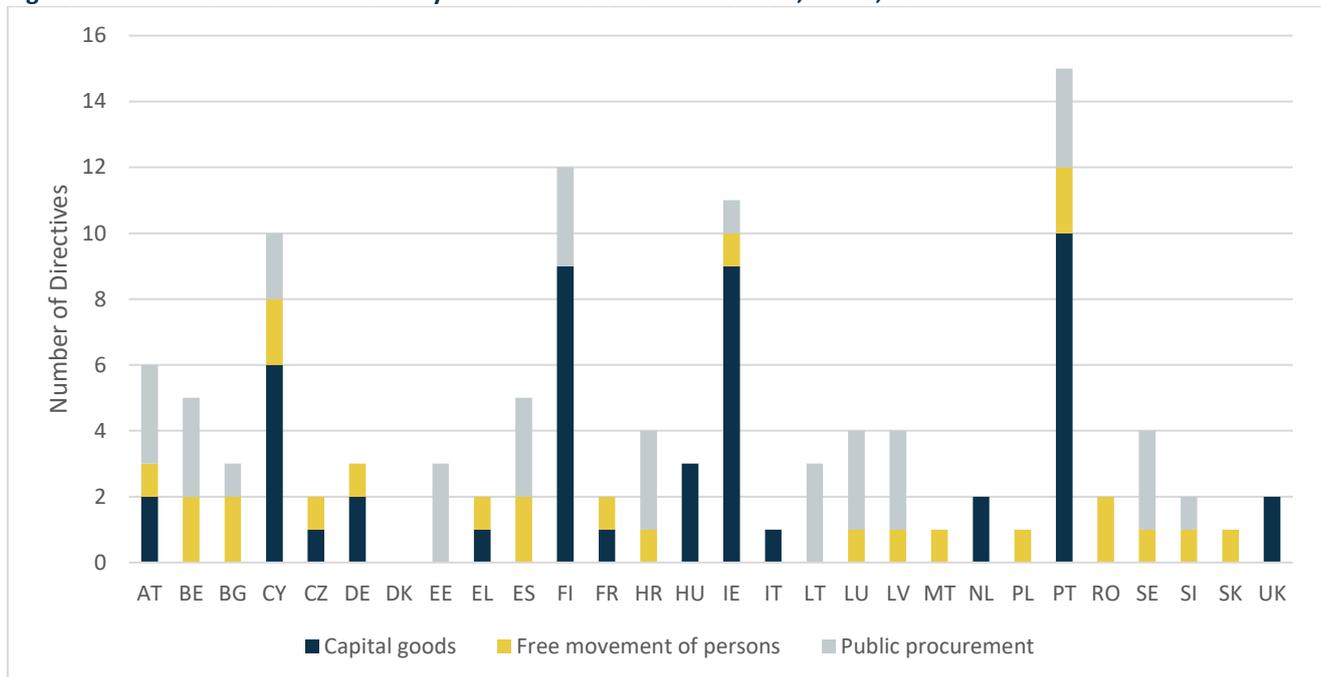


The Single Market Scoreboard also measures MS' performance in terms of the transposition of Single Market legislation and the extent to which the national legislation and its implementation are in line with Single Market rules.

The **incompleteness rate of the transposition** of Single Market rules, i.e. the number of outstanding Directives which one or more MS have failed to transpose, as a percentage of the total number of Single Market Directives, stood at 4% in 2016. In absolute terms, 67 Directives were not transposed on time in at least one MS (up from 43 Directives last time). This means that for the sectors affected, the Single Market is not a reality⁵.

Figure 3 shows specifically the transposition gaps per MS in Single Market legislation that is of particular relevance for the construction sector (among the sectors analysed by the Single Market Scoreboard). All but one MS have incomplete transposition of one or more Directives in the selected sub-sectors, with Portugal, Finland and Cyprus, Ireland having had the biggest numbers of incompleteness notifications at the end of 2016.

Figure 3 Number of Directives not fully notified in selected sub-sectors, EU-28, 2016

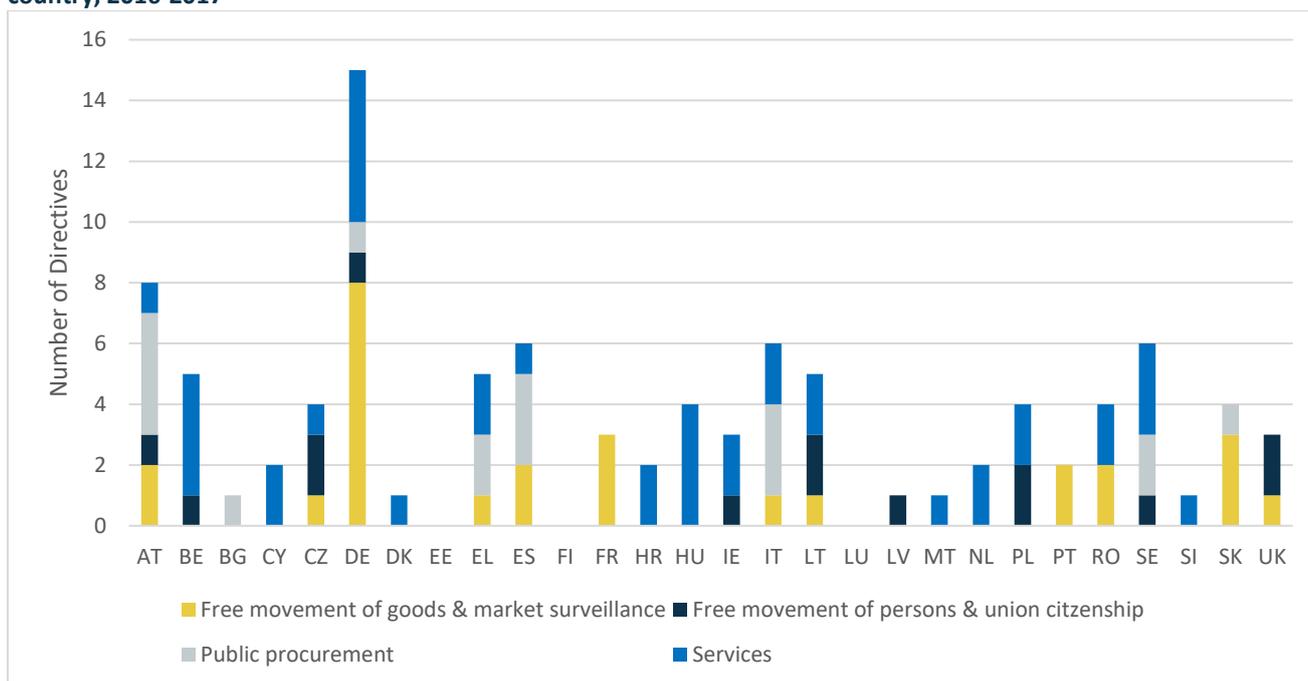


Source: Single Market Scoreboard 2016

Another indicator of performance is the number of open infringements proceedings, i.e. the proceedings launched by the European Commission if it considers that e.g. a MS has not transposed an EU Directive correctly or on time, or is applying Single Market rules incorrectly. Figure 4 shows specifically the transposition gaps per MS in Single Market legislation that is of particular relevance for the construction sector (based on the sectors analysed by the Single Market Scoreboard). As can be seen from the figure, in 2016 Germany had the highest number of ongoing infringement proceedings in the selected sub-sectors, while Luxembourg and Finland had no ongoing proceedings.

⁵ European Commission, the EU Single Market, Performance per Governance Tool, 2015-2016, http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/transposition/index_en.htm

Figure 4 Total number of infringement cases, which may be relevant to construction broken down by sub-sectors, by country, 2016-2017



Source: Single Market Scoreboard 2016

Internal market for construction sector products

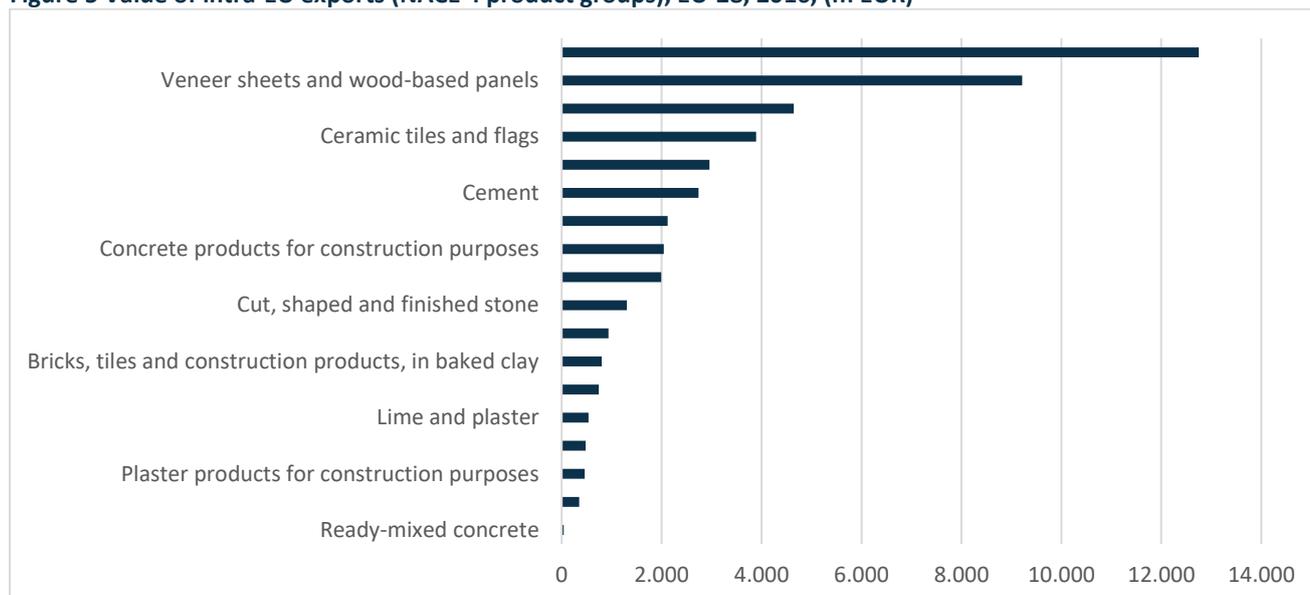
The analysis of the current state of the internal market is prepared on the basis of a number of indicators that describe the extent to which goods are traded across the EU. While comprehensive data on the volumes and values of intra-EU trade for construction products is difficult to obtain⁶, the following figure provides an indication of the overall characteristics of the sector.

Figure 5 provides an estimate of the value of intra-EU exports for different construction product groups and shows that a big share of the intra-EU export activity in terms of the value of sold products takes place in the trade of metal structures, veneer sheets and wood-based panels⁷. In comparison, the least exported products are ready-mixed concrete and mortar. As described in Section 4, the economic rationale for trade in construction products is low in case of easily substitutable products or bulky and/or heavy products which would have high transportation costs. Comparing the 2016 estimates to data for 2010 shows that the total annual exports have grown by 26.8%, from an overall value of EUR 37.9 billion to EUR 48.0 billion. The highest growth was observed in the product groups “Other articles of concrete, plaster and cement” and “Concrete products for construction purposes” (+50.7% and 49.4% respectively), while a decline in exports can be found in “Ready-mixed concrete” and “Cut, shaped and finished stone” (-22.1% and -8.1% respectively).

⁶ For an overview of issues see CSIL (2017) Cross Border Trade of Construction Products, <https://publications.europa.eu/en/publication-detail/-/publication/76aa3d90-2359-11e8-ac73-01aa75ed71a1/language-en>

⁷ It should be noted that a certain underestimation of these values is to be expected, as the aggregation is based on data for EU-partners among the top 30 export partners for the given product groups for each Member State. Thus exports flows outside of the top 30 are excluded from the analysis.

Figure 5 Value of intra-EU exports (NACE 4 product groups), EU-28, 2016, (m EUR)



Source: Eurostat/Prodcom, 2017

Note: Based on data on the value of exports to EU countries among the top 30 export partners for each EU MS

Table 1 ranks the top 3 exporters for each NACE-4 group of construction products in 2016. The analysis of the data shows that Germany is among the top-3 exporters within the internal market for all but one of the products groups reviewed, and the number 1 exporter for 9 out of the 19 groups. This performance reflects the size of the German construction products industry and the country's geographically central location within the EU. Other top exporters are Poland (assembled parquet floors, other builders' carpentry and joinery, wooden containers) and Belgium (lime and plaster, ready-mixed concrete, fibre cement).

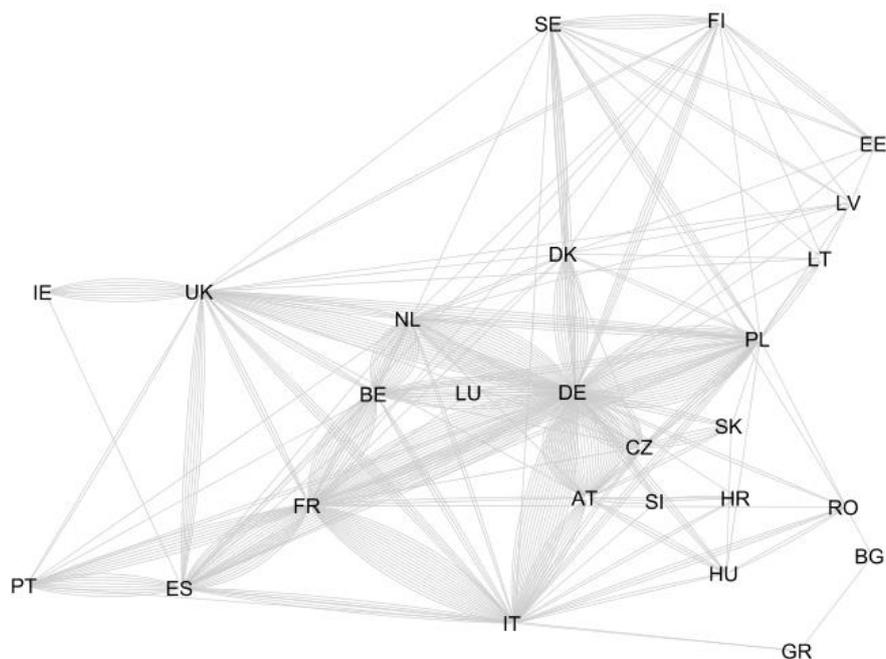
Table 1 Top intra-EU exporters of construction products, EU, 2016

Product sector (Product sector (CPA 2008 / NACE 4-dig)	1	2	3
Veneer sheets and wood-based panels	DE	AT	FI
Assembled parquet floors	PL	AT	DE
Other builders' carpentry and joinery	PL	AT	DE
Wooden containers	PL	DE	FR
Other products of wood; articles of cork, straw and plaiting materials	PT	PL	DE
Ceramic tiles and flags	IT	ES	DE
Bricks, tiles and construction products, in baked clay	DE	BE	NL
Cement	DE	ES	BE
Lime and plaster	BE	DE	FR
Concrete products for construction purposes	DE	BE	NL
Plaster products for construction purposes	DE	ES	IT
Ready-mixed concrete	BE	DE	IT
Mortars	DE	IT	DK
Fibre cement	BE	CZ	DE
Other articles of concrete, plaster and cement	DE	ES	PL
Cut, shaped and finished stone	IT	ES	PT
Metal structures and parts of structures	DE	PL	CZ
Doors and windows of metal	DE	NL	PL

Source: Eurostat/Prodcom, 2017

The data on intra-EU exports of construction products was also used to draw a map of the main export patterns among the EU countries (Figure 6). The map illustrates the importance of some of the main determinants of cross-border trade in construction products – distance, the strength of trade among neighbours and the presence of a common language, which are described in more detail in Sections 3 and 4 on the drivers and obstacles to the internal market for goods. The figure also shows the dominant position of Germany in the market as well as the relatively low integration of Greece, which has the lowest Single Market Scoreboard performance on overall trade integration and market openness to imports (see Figure 1).

Figure 6 Intra-EU cross-border sales of construction products, EU, 2016⁸



Source: PwC based on Eurostat/Prodcom, 2017

Note: Each line in the figure stands for cross-border sales with a value of EUR 100 million. For example, the line between Ireland and Spain stands for exports from Ireland to Spain with a total value of EUR 184.7 million in 2016, whereas the export from Spain to Ireland are not shown, as they came up to EUR 455 million in 2016.

Internal market for construction sector services

Generally, trade integration across the EU is considerably smaller for services than for goods (6% vs 22%) and it is particularly low for the construction sector services (only 1%)⁹. Figure 7 to 10 present data on the import and export of construction services in each EU MS in 2016. Denmark¹⁰, Belgium, and Germany were among both the biggest exporters and importers of construction services. Looking at the growth of exports in 2016 compared to 2010, some of the biggest growth rates can be found among the newest members of the EU (Bulgaria, Poland, Lithuania), which can be seen as a sign of the deepening of their integration in the internal market.



Data on the export and import of architectural services shows that the top exporters to the rest of the EU in 2015 were the Netherlands (EUR 51.9 million), Denmark (EUR 40.8 million) and the Czech Republic (EUR 35.3 million). The main importers were Sweden (EUR 38.9 million) and Poland (EUR 22.7 million).

⁸ Each line represents sales between countries which are above EUR 100 million.

⁹ Single Market integration and competitiveness report 2016.

<https://ec.europa.eu/docsroom/documents/20210/attachments/2/translations/en/renditions/native>

¹⁰ The amount of exports in Denmark are likely related to the large amount of activities carried out in connection to the Fehmarnbelt Tunnel project between Denmark and Germany.

As for engineering services, the top performers in terms of the value of intra-EU exports for 2015 were Germany (EUR 3.4 billion), France (EUR 2.6 billion) and Austria (EUR 1.7 billion). Germany and France also had approximately the same value of imports, with the third most importing country being Belgium (EUR 1.3 billion).

Figure 7 Construction services: Imports (in million EUR), EU-28, 2016 ³

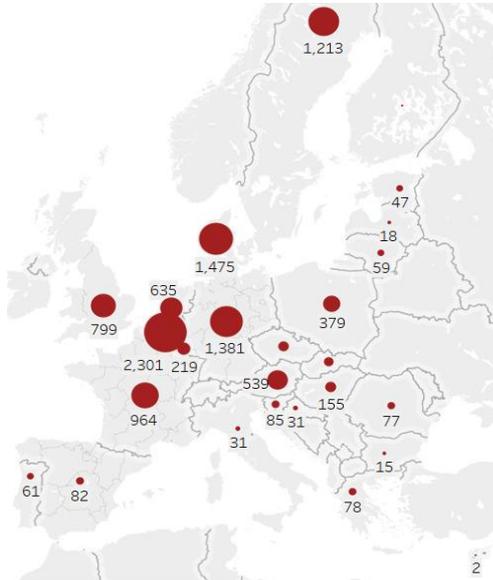


Figure 8 Construction services: Exports (in million EUR), EU-28, 2016 ³



Figure 9 Change in imports of construction services, EU-28, 2010-2016

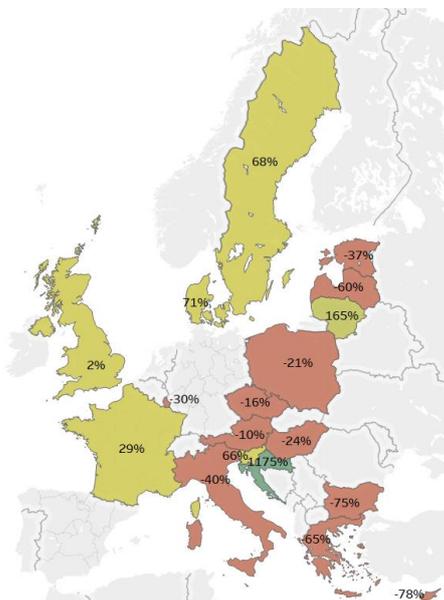
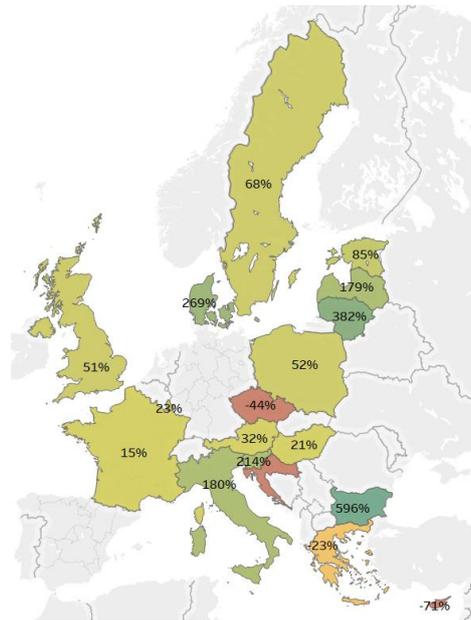


Figure 10 Change in exports of construction services, EU-28, 2010-2016



Source: Eurostat, PRODCOM, 2017

¹¹ Spain and Cyprus 2016's data not available, taken 2015's data instead.

3.

Drivers of the internal market

The alignment of rules necessary to facilitate and remove the barriers to the free movement of goods and services across the EU required the introduction of EU level rules and policies that ensure aligned standards and practices when it comes to the trade of goods and provision of cross-border services. The free flow of goods and services is expected to increase quality, consumer choice, to improve the efficiency of the sector and to raise overall welfare. This chapter therefore analyses the main trends and drivers for the internal market in the European construction sector for 2020 and beyond.

Drivers of the internal market for goods



Strengthening the internal market for construction products and services is related to administrative simplification and regulatory coherence. This can be achieved through facilitating cross-border provision of products and services and developing a common approach for its standards, which is key for the progress and continued innovation in the construction sector.

Functioning standards are fundamental tools to support European competitiveness and growth, and allow the EU to maintain its leadership position in technical development and trade worldwide. Beyond the Single Market Strategy, there have been several strategies, regulations and initiatives implemented to support standardisation of the Single Market and enhance the competitiveness in construction.

In line with the **Europe 2020 strategy** for smart, sustainable and inclusive growth¹², standardization plays a key role in supporting the improvement of the competition in the EU market, fostering economic growth and jobs. One of the means to strengthen the internal market for construction goods has been through the implementation of the **Eurocodes** and the **Construction Products Regulation**. Both are the drivers of the internal market for construction goods and lay down harmonised conditions for construction products as discussed below.

Regulatory drivers

Eurocodes

The Eurocodes (EN 1990 - EN 1999) are a series of ten European standards, also known as harmonised technical rules, indicating a common approach for the design of buildings, other civil engineering works and construction products on how structural design should be conducted within the European Union. The Eurocodes cover actions on structures and the design of various material structures, and include geotechnical, seismic and structural fire design.

The key objective of the Eurocodes is, inter alia, to provide means to prove compliance with the requirements established under EU law for mechanical strength, stability and safety in case of fire; a foundation for construction and engineering contract specifications; and a framework for setting up harmonised technical specifications for building products (i.e. CE mark)¹³. These were developed by the European Committee for standardisation purposes upon the request of the European Commission and are used as recommended additional means for design calculations to complement the **Construction Products Regulation**. The Eurocodes are non-binding tools for structural design and there is no regulatory framework to enforce their use¹⁴. However, the European Commission has published a

¹² COM (2010) 2020. EUROPE 2020. Strategy for smart, sustainable and inclusive growth.

¹³ EN 1990:2002 E, Eurocode - Basis of Structural Design, CEN, November 29, 2001

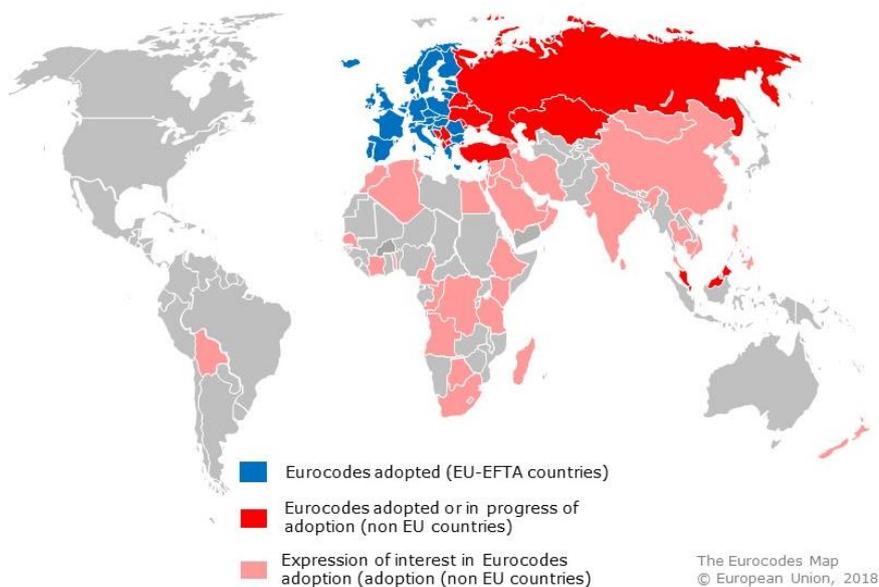
¹⁴ European Commission, JRC Science For Policy Report, State of implementation of the Eurocodes in the European Union, 2015.

Commission's recommendation (2003/887/EC)¹⁵ that MS should use them within their national framework. Furthermore, the Public Procurement Directive (2004/18/EC) has laid down that MS authorities cannot reject structural design calculations for public projects if they were done by using European standards (like the Eurocodes) that were transformed into national standards.



The Eurocodes aim to accelerate the procedure of convergence of different national and regional regulatory approaches and to stimulate the global competitiveness of the European construction enterprises outlined in the **“Strategy for the sustainable competitiveness of the construction sector and its enterprises”**¹⁶. With the use of the Eurocodes, more and more European engineers can provide their services in structural design beyond the borders of the EU.

Figure 11 Worldwide interest in Eurocodes, World, 2017



Source: European Commission, Joint Research Centre

The Action plan **“Strategy for the sustainable competitiveness of the construction sector and its enterprises”** for 2014-2020 sought to assess the need for action to enhance and enforce the use of Eurocodes in public procurement and other relevant instruments.

In line with the above-mentioned Action Plan, the report on **“State of implementation of the Eurocodes in the European Union”** published by the European Commission demonstrates the results of implementation of the Eurocodes in the EU MS and Norway for 2014-2015. The analysis of results shows that nearly all EU MS, except for Luxembourg and Germany, which published only one part, have fully accepted the Eurocodes as their National Standards. Countries such as Italy and Romania have been asked by European Commission to remove their national regulatory restrictions hindering the implementation of the Eurocodes, while Malta, Portugal and Spain are in the slow process of adopting the Eurocodes as National Annexes. Results also showed that in 80% of the countries the National Standards were replaced by the use of Eurocodes without applying any other national regulations in this respect, while some countries such as Bulgaria, Greece, Latvia, Lithuania and Luxembourg allow using the Eurocodes as a complimentary tool with the existing National Standards.

The use of the Eurocodes in Public Procurement is well perceived by 60% of MS. Relevant national authorities of public procurement often automatically include the Eurocodes as a reference point for their standards in contracts, for instance in Belgium¹⁷.

¹⁵ European Commission, Commission Recommendations of 11 December 2003, on the implementation and use of Eurocodes for construction works and structural construction products, 2003, <http://eurocodes.jrc.ec.europa.eu/doc/commissionrecommendation.pdf>

¹⁶ COM (2012) 433. Strategy for the sustainable competitiveness of the construction sector and its enterprises.

¹⁷ European Commission, JRC Science for Policy Report, State of implementation of the Eurocodes in the European Union, 2015.

Construction Products Regulation



Construction Products Regulation (EU No 305/2011, hereafter the CPR) came fully into effect in 2013 replacing the Construction Products Directive (89/106/EEC) with the key objective of facilitating the consolidation of the internal market for construction goods through simplification and clarification of the legislative framework for construction products

The implementation of the CPR meant removing technical barriers in construction in relation to declaring the performance of construction products and simplifying performance procedures of construction products to ensure transparency and reduction of costs to manufactures of these products. The CPR increases the credibility of the whole structure that enable further SMEs involvement in the construction sector¹⁸. Overall, elements such as notified bodies, technical assessment bodies and product contact points for construction required by the CPR have been implemented across the EU¹⁹, however the analysis of its implementation and results over recent years, as discussed below, identify that some aspects have not yet been implemented at full scale and require more effort.

The CPR aims to clarify concepts and definitions and to increase the credibility of products.

New mandatory requirements that came with the regulation were the **Declaration of Performance (DoP)** and **CE marking**, providing information on products' performance. The CPR has helped to increase legal certainty and transparency of the rules associated with DoP and CE marking, which led to increasing credibility of the CPR and compliance with it. The possibility to provide an electronic version of the DoP has also played a significant role in reducing the costs to comply with the new regulation. However, in some MS the use of national marks still takes place, which is against the principles of CPR²⁰.

According to the study "Analysis of implementation of the Construction Products Regulation", all MS have also established **Product Contact Points for Construction (PCPC)** with the aim to improve the consistency, coherence and knowledge of the regulation. PCPCs are functioning and responding to requests for information from industry, however, awareness of the PCPCs among MS is still relatively low. Some stakeholders stressed that PCPCs are slow to respond to their requests and explain necessary information in detail in order to fulfil their obligations under this regulation. Some questions have been raised about PCPC's response times and the quality of the information that it is provided²¹. While others mentioned that PCPCs are a helpful tool to get a better understanding how to apply the CPR²². Nevertheless, PCPC guidelines are prepared to improve the consistency and coherence of the regulation. The European Commission seeks to help their PCPCs to operate more efficiently and make them more known to the construction sector.

The European Commission also supports **Single Digital Gateway** initiative seeking to streamline existing EU and national platforms providing all relevant information and services on Single Market rights²³.

The overall benefits of the CPR, as some stakeholders indicated, were well recognised as effective regulation to improve legal certainty and enhance the credibility of the regulatory framework, including reduced costs for manufactures, simplification of procedures and increased free movement of construction products. In addition, the key objectives of the regulation are to reduce the burden of compliance for SMEs (especially manufacturers producing construction products) and boost their competitiveness by simplified procedures for assessment and declaring of performance²⁴. However, at the current implementation stage, experience is still constrained on the practical use of

¹⁸ The European Commission, Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, COM(2016) 445 final, July 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0445&from=EN>

¹⁹ Ibidem.

²⁰ Ibidem.

²¹ COM(2016) 445 final, July 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0445&from=EN>

²² Risk and Policy Analysts (RPA), Analysis of implementation of the Construction Products Regulation, July 2015.

<https://circabc.europa.eu/sd/a/2ee5621c-95e2-4daf-b325-e910b6bd1adb/TG%204.5%20CPR%20Final%20Report%2015%20Sept%202015.pdf>

²³ COM(2016) 445 final, July 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0445&from=EN>

²⁴ Ibidem.

most of these options, except for the rules on simplified procedures concerning classification without testing, sharing and cascading²⁵. There is no evidence yet whether alleviation of financial and administrative burden on SMEs has materialised²⁶.

Supporting the full implementation of the CPR and accelerating the withdrawal of all additional legislative and national certification requirements for construction products covered by hENs would permit manufacturers to offer widely their products across Europe with no additional testing and certification costs. Both the hENs and the CPR have improved legal certainty and transparency regarding rules and therefore European standards seem to stimulate product innovation for SMEs and positively influence on the increase of cross-border trade²⁷. A possibility to submit DoPs electronically has also been successfully implemented in line with European Commission's policy on innovation, competition and growth. The Basic Works Requirement (BWR) 7 of the CPR that links to sustainability shows that progress can be made in this regard as well.

The full implementation of CPR by MS can support the expansion of cross-border trade of construction products, facilitating the movement of goods and overall encouragement of product innovation within the EU.

However, all objectives of CPR have not been achieved yet. The main reasons were linked to implementation difficulties and delayed adaptation by stakeholders. With the support of the European Commission, the continuation of dialogue with MS and relevant stakeholders, close monitoring of the situation and enforcement of existing rules are foreseen to fully implement the CPR in upcoming years so MS would fully benefit from such regulation²⁸.

Non-regulatory drivers

A recent analysis of the intra-EU trade in construction products identified a number of drivers for the export and import patterns within the EU²⁹.



The **enlargement of the EU** with a number of new MS in Central and Eastern Europe opened up more national economies to the internal market, especially among neighbouring new and old members of the Union. Specifically, the enlargement and subsequent integration processes triggered price competition among companies and partly shifted trade towards cheaper product manufacturing to newly joined MS that offered lower prices. In this context, the adoption of the Euro is also found to have positively influenced cross-border trade³⁰.

More recently, the **economic crisis** of 2008-2009 had a negative impact on the production, consumption and trade of cross-border products in terms of value and volume. Consequently, the intra-EU trade of many products is still struggling to recover to its pre-crisis levels. However, for some countries the reaction of shrinking markets gave stimulus to increase exports and search for new market opportunities, especially after the EU enlargement of 2004. The value of the intra-EU exports of construction products and materials was found to have considerably increased by 48% in 2015 compared to the 2003 level³¹.

Another determinant of intra-EU trade pattern for construction products is the **size of the economy**. As illustrated by Figure 6, most of the cross-border trade in products takes place among the major producing countries, such as Germany, France, Italy, Spain, Belgium, the Netherlands, and the UK, with a growing export role for Poland.

²⁵ EU No 305/2011, CPR, Article 36.

²⁶ Ibidem.

²⁷ Centre for Industrial Studies (Csil), Cross-border trade for construction products, 2017.

²⁸ The European Commission, Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC, COM(2016) 445 final, July 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0445&from=EN>

²⁹ Centre for Industrial Studies (Csil), Cross-border trade for construction products, 2017.

³⁰ Ibidem.

³¹ Ibidem.

Common language, traditional trade connections and established logistics networks among neighbouring countries also have a positive effect on cross-border trade (e.g. Belgium and the Netherlands, Belgium and France, Austria and Germany)³².

Last but not least, cross-border trade is driven by the demand for certain **products**, which particularly have a high quality and innovative value and cannot be easily substituted with the products available domestically³³.

Drivers of the internal market for services

Regulatory drivers

Services Directive

The Services Directive (2006/123/EC)³⁴, which was introduced in 2006, seeks to remove legal and administrative barriers to the cross-border provision of services in the internal market in a number of sectors, including the construction services and crafts sectors.

The Services Directive requires that national rules restricting the **right of establishment and the freedom to provide (temporary) services** falling under the Directive must be non-discriminatory, proportionate and justified by public interest objectives. It covers a wide range of rules on service provision and performance, with limited carve-outs mostly derived from more specific EU legislation in place³⁵.

In order to achieve its policy objectives, the Service Directive requires MS to:

- set up **points of single contact** (PSCs) where businesses can access information on regulations procedures and deadlines related to the provision of services online and complete all procedures relating to their establishment activities in one place and electronically;
- ensure that all administrative **procedures can be completed by mail, phone or electronically**;
- ensure that **authorisation schemes** concerning access to services are not unduly restrictive and that they are granted for an indefinite period and have validity throughout the entire country;
- abolish **discriminatory requirements** for access to the services market, such as nationality or residence requirements;
- abolish **particularly restrictive requirements** such as economic needs tests that require businesses to prove to the authorities that there is a demand for their services;
- **review other burdensome requirements** which may not always be justified, such as territorial restrictions or ensuring that a business has a minimum number of employees.

While the transposition and implementation deadline for the Directive passed already back in 2009, a number of gaps in its implementation remain to date, with the ones most relevant for the construction services sector summarised in the following paragraphs based i.a. on the 2012 report on the implementation of the Directive³⁶.

³² Ibidem.

³³ Ibidem.

³⁴ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006

³⁵ E.g. rules on posted workers (Directive 96/71/EC) and on recognition of professional qualifications (Directive 2005/36/EC)

³⁶ European Commission, Commission Staff Working Document - Detailed information on the implementation of Directive 2006/123/EC on services in the internal Market Accompanying the document Communication from the Commission to the European Parliament, the Council, the

Points of Single Contact

For example, as far as the set up and operation of PSCs are concerned, a 2015 analysis of the performance of PSCs across the EU and the EEA found that despite the adoption of the PSC Charter in 2013, on average, the performance of the PSCs is mediocre (54%), with considerable scope for improvement in particular in their accessibility for cross-border user³⁷. Non-domestic service providers face linguistic and technical problems in completing administrative requirements online, as often only rudimentary information is provided in English or other foreign languages and given that only one third of the PSCs made available the forms required to complete administrative procedures in another language.

Overall, there were significant variations in the performance of the 31 countries assessed with respect to the cross-border dimension. The best performers– i.e. Cyprus, Luxembourg and Denmark - score more than 65%, while the poorest performers – i.e. Latvia, Germany and Liechtenstein - fall under 30%.

Prohibition of discriminatory requirements based on nationality or residence

The Directive prompted a number of MS to remove requirements based on nationality or residence.

Ban of the obligation to obtain a financial guarantee or insurance from an operator established in the same Member State

This obligation requires service providers established in one MS to obtain a financial guarantee or insurance in the MS where they want to set up a secondary establishment. This may force them to duplicate financial guarantees or insurances and could be very costly. In order to comply with the Directive, Portugal introduced amendments to its construction and real estate sectoral legislation, specifying that the required insurance for established service providers can be obtained from any insurance provider in the EEA. However, Section 4 of the present report offers examples showing that there are still issues with the mutual recognition of insurances required for the provision of construction services in some MS.

Obligation to have an establishment in the territory of the Member State where the service is provided

Requiring service providers to be established in the country before they can provide a service in the national market runs contrary to the principle of freedom of movement of services. Therefore, a number of MS had to remove such obstacles. Specific establishment requirements in the craft/construction and certification sector were abolished in Austria, Germany, Lithuania and Spain.

Prior to the Services Directive service providers had to comply with administrative formalities, such as notification schemes, to be active within a given Member State.

Obligation to obtain an authorisation, including entry in a register or registration with a professional body or association

In order to comply with the Directive, MS removed a significant number of authorisation and notification schemes. For example, Germany repealed its cross-cutting notification obligation for all service providers while Luxembourg amended its legislation so that the previous broad control system applicable to all kinds of services, including construction, was henceforth limited to regulated professional services, in accordance with Directive 2005/36/EC on the recognition of professional qualifications. In Spain, more than 30 authorisation schemes at national level in the area of industrial services have been replaced by prior responsible declarations of the service provider, announcing its commencement of service provision and committing to comply with all applicable rules, e.g. as regards installing high-voltage lines, high-pressure equipment or lifting equipment.

European Economic and Social Committee and the Committee of the Regions on the implementation of the Services Directive. SWD(2012) 148 final

³⁷ Capgemini Consulting and Eurochambers, the Performance of the Points of Single Contact - An Assessment against the PSC Charter, 2015.

However, to date, there are remaining authorisation requirements in place, including in the construction sector, which represent obstacles to the freedom to provide services. A recent report on the schemes applicable to construction sector contractors and developers in the EU identified horizontal schemes concerning all, or certain, construction service providers which need authorised access to the construction services market, building permit procedures and the principle of mutual recognition³⁸. In terms of **horizontal authorisation**³⁹, the study found such schemes in 6 (Bulgaria, Portugal, Spain, Denmark, Greece and Italy) out of the 14 MS included in the study sample and concluded that none of them appear to be justified and proportionate under the Services Directive given that providers are already subject to controls such as, where relevant, initial building permit procedures and in particular, site inspections. **Mutual recognition** principles for establishing cross-border service providers were found to be in place for both insurance and other requirements in all countries in the sample, with the exception of Bulgaria; however those principles have proven to be largely inoperative thus far. Lighter procedures for temporary cross-border providers for these horizontal authorisation schemes were only found in Portugal and Bulgaria. Furthermore, several authorisation schemes for specialised construction services (mostly installation services) are also widespread across the EU, with little or no consideration for cross-border situations. The **building permit procedures** analysed were found to present a high level of regulatory restrictiveness - with the exception of the Netherlands, all analysed MS impose 3 or more separate control procedures that collectively constitute the building permit / control process. Section 4 of the present report provides more detailed examples of the rules and procedures that are found to present an obstacle to the cross-border provision of services.

In conclusion, the simplification measures introduced by the Directive have improved transparency and facilitated the provision and use of services for businesses and consumers in the Single Market. However, better alignment of the implementation of the Directive needs to be achieved to serve its purpose across all MS.

Professional Qualifications Directive



The Professional Qualifications Directive (2005/36/EC) addresses the recognition of qualifications for regulated professions within the EU in order to remove the obstacles to the free movement of professionals due to diverging qualification requirements from one country to another. Compared to the previous *acquis* on the recognition of qualifications, the Directive introduced a new objective: encouraging cross-border provision of services on a temporary and occasional basis in order to improve the competitiveness of the services market.

The evaluation of the Directive found that the professions that made most use of the new regime of temporary mobility were related to the construction sector – Master builder; Electrical Engineering / Electromechanical engineering; Fork lift truck operator; Joiner/Carpenter; Painter-decorator. This new regime is expected to attract an increasing interest from professionals, despite the fact that the number of declarations is still low compared to request of recognition under the establishment regime. While some competent authorities encounter some difficulties, temporary mobility will be crucial in a more integrated Single Market in order to improve the competitiveness of the service market and meet labour shortages of several industries and sectors, including construction, across MS⁴⁰.

Public Procurement Directives

The EU Public Procurement Directives also aim at promoting the free movement of goods and services in the internal market, through the harmonisation of rules on public contracts among the MS.

The 2004 “Sector Directive” and the “Classical Directive” on public procurement were replaced with three new Directives, which had to be transposed into national law of each EU MS by April 2016, except for e-procurement, for which the implementation is due in October 2018. Three Directives concerning public procurement are outlined below.

³⁸ Ecorys, Simplification and mutual recognition in the construction sector under the Services Directive, Final Report, 2015.

³⁹ Horizontal authorisation is a scheme of “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”. Such schemes operate in the context of a single administrative procedure managed by a single authority (Ecorys, simplification and mutual recognition in the construction sector under the Services Directive, Final Report, 2015).

⁴⁰ European Commission, Evaluation of the Professional Qualifications Directive, Ref. Ares(2016)738622, 2011

- Directive 2014/24/EU on public procurement,
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors,
- Directive 2014/23/EU on the award of concession contracts.

The Public Procurement Directives seek to promote the free movement of goods and services by opening up the EU's public procurement market.

These newly introduced Directives aim to simplify public procurement procedures and make them more flexible, in order to benefit a number of sectors and cross-border businesses, including SMEs. Introducing electronic self-declaration for bidders (ESPD) is expected to considerably increase the efficiency of the public procurement system⁴¹.

In October 2017 the European Commission adopted a **Public Procurement Package**. As part of the package, the Communication: “**Making public procurement work in and for Europe**” defines six strategic policy priorities that seek to improve EU public procurement practices in a collaborative manner by working with public authorities and relevant stakeholders⁴². The strategy aims to address, among many, award criteria⁴³, ensuring wider uptake of innovative, green

and social procurement; to upskill public buyers with essential business and technical skills for effective procurement; to increase access to procurement markets, especially focusing on SMEs; to improve transparency and accessibility of data on public procurement; to boost digital procurement⁴⁴ and **promote cross-border public procurement**⁴⁵.

Non-regulatory drivers

Skills needs



The non-regulatory drivers for the cross-border provisions of services in the internal market are likely to be similar to those for goods – e.g. the growth of economic activity in the construction sector. A specific driver, however, can be found in the mismatch between the supply and demand of workforce with construction sector skills, which drives labour mobility between the EU MS.

Labour mobility creates economic benefits for the EU at large and the mobile workforce, as well as contributes to strengthening the internal market for services. In particular, posted workers, who temporarily work in another country to deliver a service while remaining attached to their employer at their home country, facilitate cross-border integration in the market for services and bridge skill shortages.

Although in recent years the EU experienced an increase in the number of posted workers, which shows that this increase correlates to growth in cross-border market integration of services and general economic growth within the EU⁴⁶, the sector is troubled with an increasing skills shortage. The reason is partly because the sector has a negative image of career prospects and low wages, which causes difficulties in attracting young talents. As noted in the Analytical Report on “Improving the human capital basis” vacancy rates in the construction sector have seen an increasing trend since 2009, showing difficulty in meeting the supply and demand of labour in the sector, thus resulting in skills shortages⁴⁷. Table 2 below provides details on the vacancy rates in the construction and real estate sub-sectors for each MS in 2015 and the changes compared to 2009, as evidence of the evolution of vacancy rates. Average vacancy rates in narrow construction and real estate activities in the EU-28 stood at 1.1% and at 1.2%, respectively, 0.2 percent

⁴¹ European Commission, Legal rules and implementation, https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en

⁴² European Commission, Public procurement strategy. http://ec.europa.eu/growth/single-market/public-procurement/strategy_en

⁴³ “55% of procurement procedures use lowest price as the only award criterion for public contracts”, EC, Public procurement strategy. http://ec.europa.eu/growth/single-market/public-procurement/strategy_en

⁴⁴ currently only 4 MS use e-procurement tools such as eCertis, the European Single Procurement Document (ESPD) etc. EC, Public procurement strategy. http://ec.europa.eu/growth/single-market/public-procurement/strategy_en

⁴⁵ European Commission, Public procurement strategy. http://ec.europa.eu/growth/single-market/public-procurement/strategy_en

⁴⁶ CEPS, Labour Mobility in the EU: Addressing challenges and ensuring ‘fair mobility’, July 2016.

⁴⁷ ECSO, Analytical report, Improving the human capital basis, April 2017.

<https://ec.europa.eu/docsroom/documents/26206/attachments/1/translations/en/renditions/pdf>

points higher than 2009 in both cases. This shows that the mismatch between the supply and demand of labour is on the increasing trend. More specifically, regardless of a small difference of vacancy rates between narrow construction and real estate activities, a higher vacancy rates of real estate sub-sector surpassed the construction sub-sector on an annual basis in the EU-28 over the period 2009-2015 as presented below.

Table 2 Vacancy rates in the EU construction sector, EU-28, 2015

Country	Construction		Real Estate	
	2015	Change compared to 2009,%	2015	Change compared to 2009,%
Austria	1.8%	0.4%	1.2%	-0.4%
Belgium	3.2%	3.2%	3.5%	3.5%
Bulgaria	0.3%	0.1%	0.4%	0.0%
Cyprus	0.6%	-2.7%	0.2%	-0.2%
Czech Republic	3.2%	0.2%	9.4%	-0.8%
Germany	3.3%	3.3%	1.3%	1.3%
Denmark	0.0%	0.0%	0.0%	0.0%
Estonia	0.5%	0.1%	0.5%	0.0%
Greece	0.0%	-4.5%	0.0%	-3.9%
Spain	0.4%	-0.3%	0.6%	0.1%
Finland	1.4%	-0.1%	2.8%	1.0%
France	0.0%	0.0%	0.0%	0.0%
Croatia	1.4%	1.4%	0.3%	0.3%
Hungary	1.1%	0.4%	0.5%	0.2%
Ireland	0.8%	0.6%	0.9%	0.4%
Italy	0.0%	0.0%	0.0%	0.0%
Lithuania	0.8%	0.5%	0.5%	0.2%
Luxembourg	0.6%	0.4%	1.3%	0.5%
Latvia	0.0%	-0.1%	0.0%	-0.3%
Malta	0.0%	0.0%	0.0%	0.0%
Netherlands	1.7%	0.0%	1.7%	0.0%
Poland	1.0%	-0.4%	0.4%	-0.2%
Portugal	0.4%	0.0%	0.0%	-0.2%
Romania	0.4%	-0.2%	0.9%	0.7%
Sweden	1.4%	0.7%	2.1%	1.1%
Slovenia	3.5%	2.2%	3.0%	2.2%
Slovakia	0.4%	-0.3%	0.1%	-0.1%
United Kingdom	1.8%	1.0%	2.6%	1.3%
EU28	1.1%	0.2%	1.2%	0.2%

Source: Eurostat 2017

Note: Due to a lack of coverage of vacancy rate figures for 2008 and for sub-sectors related to manufacturing and architectural activities, only narrow construction and real estate activities are analysed over the period 2009-2015.

In terms of the construction sub-sector, Germany and Belgium are the MS with the highest vacancy rates, reaching 3.3% and 3.2% respectively in 2015. They were followed by Slovenia, Croatia and the United Kingdom, which increased by over 1.0%, demonstrating the mismatch between the supply and demand of labour in the sector. In Germany ageing population and the difficulty of finding adequately skilled employees are key concerns for construction sector employers to fill skill shortage. In 2012, only 6% of workers with a tertiary degree in the construction sector were under 30 years old, while more than one third of architects and civil engineers were over 50 years old⁴⁸. For Belgium,

⁴⁸ European Commission, European Construction Sector Observatory (ECSO), Policy Measure Fact Sheet, Germany, March 2016. https://ec.europa.eu/growth/sectors/construction/observatory_en

unattractive working conditions represents the main reason for recruitment difficulties in construction along with the other sectors such as nurses within health care, teachers in primary and secondary education and ICT professionals⁴⁹.

For real estate activities, Slovenia, Finland and the United Kingdom demonstrate the highest vacancy rates of 3.0%, 2.8% and 2.6% in 2015, respectively. The shortage of skills in Slovenia is partly driven by to the poor working conditions, such as heavy workload, exposure to bad weather, and unsocial working hours⁵⁰. Similarly, the number of students enrolling in civil engineering is too low, and young graduates often prefer other professional paths than the construction sector, which therefore has low absorption capacity. Likewise in Finland, according to the Confederation of Finnish Construction Industries, there is a mismatch between labour supply and demand in the Finnish construction sector. This is further exacerbated by the fact that the unemployed workforce, which could constitute a resource for the sector, is not located where the bulk of the construction activity is concentrated, i.e. in urban areas. Moreover, RT expects the demand for qualified labour in the construction sector to increase considerably as a result of the growing ageing workforce retiring, and the younger age groups shrinking⁵¹. It is significant to address this mismatch through removing obstacles to the mobility of works across the EU and greater cooperation between industry and education providers, which would result in decreasing vacancy rates and skills shortage.

Stimulating cross-border employment and social cohesion



In order to stimulate cross-border employment and to promote social inclusion, two flagship initiatives have been introduced for youth employment and mobility related to **“Youth on the Move”** and **“An Agenda for new skills and jobs”**, which are linked to construction. The former aims to improve employment opportunities for young people by helping students to gain experience in terms of skills, qualification and education in another MS. The latter initiative seeks to ensure appropriate skills upgrading to tackle the shrinking working population and to upgrade the EU employment legislation⁵².

⁴⁹ Ramboll, Bottleneck Vacancies in Belgium, <http://ec.europa.eu/social/BlobServlet?docId=12644&langId=en>, 2015.

⁵⁰ Ramboll, Bottleneck Vacancies in Slovenia, 2014. <http://ec.europa.eu/social/BlobServlet?docId=12670&langId=en>

⁵¹ Build UP Skills, Finland - Analysis of the national status quo. August 2012.

http://www.buildupskills.eu/sites/default/files/Documents_CT_Activity/BUILD_UP_Skills_Finland_Analysis_of_the_National_Status_Quo_0.pdf.

⁵² EUKN, Youth unemployment and geographic mobility in the EU, April 2013.

http://www.eukn.eu/fileadmin/Files/EUKN_Publications/EUKN_Background_Paper_Youth_unemployment_and_mobility.pdf

4.

Obstacles to the internal market

While a number of regulatory initiatives and economic factors are driving the strengthening of the construction sector internal market for products and services, some obstacles to its optimal functioning can be found in the incomplete regulatory alignment between MS as well in some of the sector's inherent characteristics, such as the importance of language barriers (as posted workers might have less advanced level of the official language in the country that they work), transportation distances and costs for cross-border transactions.

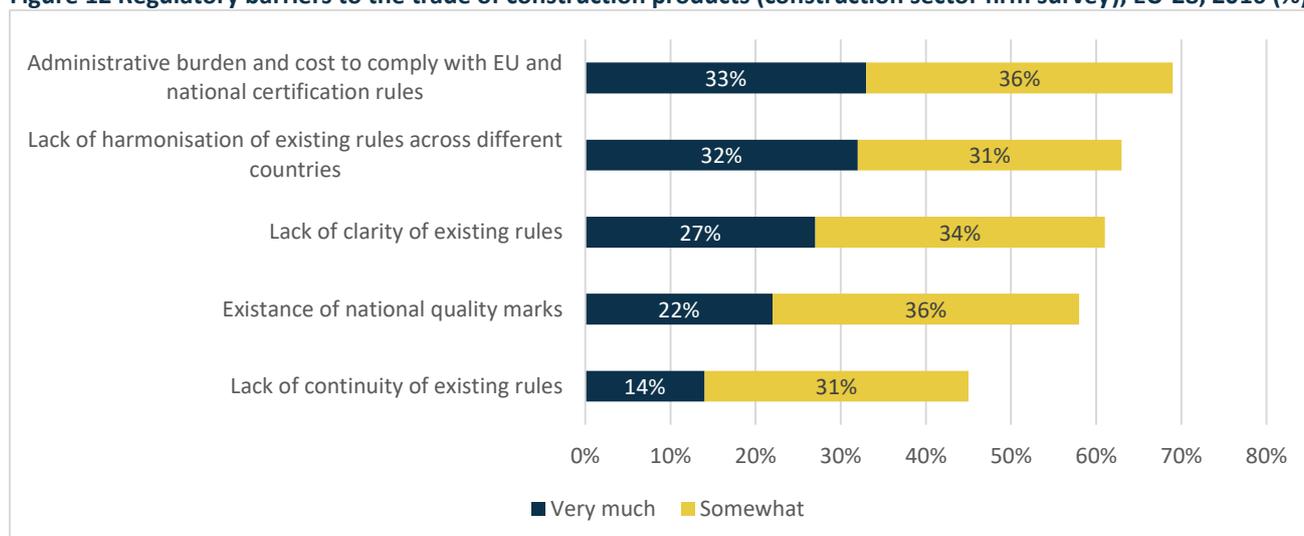
Obstacles to the internal market for products

Within the internal market for products, the barriers to trade can most broadly be categorised as regulatory and non-regulatory. The following sections offer further details of both types.

Regulatory barriers related to the implementation of the CPR

A recent study on cross-border construction products carried out for the European Commission identifies a number of regulatory barriers to trade that are currently experienced by firms operating in the construction sector⁵³. An overview is presented in Figure 12.

Figure 12 Regulatory barriers to the trade of construction products (construction sector firm survey), EU-28, 2016 (%)



Source: CSIL (2017)

Note: Survey results based on 131 responses

With the introduction of the CPD in 1989, the Single European Market in 1993 and harmonised European standards, over the years, major restrictions on the free movement of construction products have been removed, although a number of issue with the implementation of the current Construction Products Regulation remain.

The use of national marks (or, more generally, procedures creating ex ante requirements for manufacturers at national level) continues in several MS against the principles of the CPR⁵⁴.

⁵³ CSIL, Cross-border trade in construction products, 2017

⁵⁴ 2016 CPR Implementation report

In 2014, the Court of Justice of the EU ruled that the national technical approval system in Germany (Construction Products Lists - Bauregellisten), requiring construction products to be tested further, even if they are already CE-marked, in order to obtain a national conformity mark (Ü-Zeichen), was in breach of the principle of free movement of goods within the EU Single Market⁵⁵. To comply with the judgement, the Model Building Code (*Musterbauordnung*) was amended in 2016, lifting the requirement for CE-marked construction products to obtain national proof of fitness for use and conformity proofs and eliminating the *Ü-Zeichen* as of October 2016⁵⁶. As a result, the *Länder* are in the process of updating their own Building Codes accordingly. This is a step forward towards the harmonisation of construction legislations and consolidation of the Single Market, according to EU associations such as the European Producers of Laminate Flooring (EPLF). While the German system as well as a similar system in place at the time in Spain were partially replaced⁵⁷, other national marking and requirements are still used. Similarly, there is an issue with the use of **voluntary marks** without any national connotation, as they unduly prevent the free movement of CE-marked construction products, for example when linked to a more demanding system of assessment and verification of constancy of performance (AVCP) imposed by building inspections or insurance companies or when linked to financial incentives⁵⁸.

Furthermore, different interpretation of some requirements of the CPR, not fully uniform testing criteria used by certification bodies across different countries, and the lack of effective market surveillance impede the circulation of harmonised construction products⁵⁹.



Regulation and administrative costs stemming from the EU regulations have also been found to be a barrier, especially for smaller enterprises, which can struggle to understand the terms and requirements imposed by legislation⁶⁰. According to recent studies, product manufacturers across the EU-28 incur regulatory costs estimated at between **EUR 2.62 and EUR 3.4 billion per year** to comply with CPR obligations.

This accounts for approximately 0.6% to 1.1% of the total turnover of the construction products sector, with micro companies facing the highest costs as a share of their turnover (1.3%)⁶¹. The costs stem for example from the substantial overlaps between the information required in the DoP and in the CE marking, which generates additional administrative and financial burden.

In addition, an obstacle to the effective functioning of the regulatory framework for the internal market in the construction sector can be found in **the implementation of the procedure for adopting revised or new harmonised standards** under the CPR, where there is a substantial backlog of submitted standard applications that have not yet been approved and cited in the OJEU⁶².

Another barrier to trade can be found in the **lack of effective market surveillance**. In practice, it is possible for construction products not fulfilling the legal requirements set by the EU legislation and lacking all the required documentation to circulate within national markets.

In general, avoidance of rules is easier for products for which an auto-certification is required (those falling under the verification systems 3 and 4), and in markets which are not particularly concentrated but are characterised by a large

⁵⁵ CJEU Case C-100/13 European Commission v Federal Republic of Germany

⁵⁶ Ax Rechtsanwälte.de, ECJ ruling on "double marking with CE and Ü mark, August 2017, <http://ax-rechtsanwaelte.de/eugh-urteil-zur-doppelkennzeichnung-mit-ce-und-ue-kennzeichen>

⁵⁷ CPR, Study to evaluate the Internal Market and competitiveness effects of Council Directive 89/106/EEC (Construction Products Directive, CPD), Final Report, 2007. <http://ec.europa.eu/smart-regulation/evaluation/search/download.do;jsessionid=vyJTTNq22tBfQ6B8vR9y5pnZkSwVzVrJS3y5YYQqnmvK2bsgHRW!1601440011?documentId=896>

⁵⁸ 2016 CPR Implementation report

⁵⁹ CSIL, Cross-border trade in construction products, 2017

⁶⁰ Ibid.

⁶¹ Economic Impacts of the Construction Products Regulation by VVA Europe, the Danish Technological Institute (DTI) and the Netherlands Organisation for applied scientific research (TNO), October 2016, https://ec.europa.eu/growth/sectors/construction/support-tools-studies_en

⁶² 2016 CPR Implementation report

number of exporting firms. As a result, the confidence of consumers in the quality of imported products can decrease, thus lowering the demand for imports⁶³.

Regulatory barriers related to the implementation of public procurement and competition rules

As noted in Section 3, the harmonisation of **public procurement** rules across the EU aims to i.a. remove barriers to the export and import of services in the area of public contracts. A number of different factors affect trade in goods and services, chief among them the so-called "border effects", which refer to the trade patterns in which the volume of domestic trade exceeds the volume of cross-border trade due to cross border obstacles of administrative and legal nature (including geographic and cultural distance, currency and language) across the EU.



Given that public procurement accounts for a substantial share of GDP in the EU, the border effect associated with cross-border procurement could have a substantial detrimental welfare effects, especially if it is due to a "home bias," i.e., a tendency of contracting authorities to award procurement contracts to domestic firms rather than to foreign competitors.

A recent analysis of EU public procurement procedures found evidence that the border effects in public contracts for the supply of goods are higher for highly substitutable products – the less substitutable (or specialised) a product is, the more incentive there is for cross-border trade⁶⁴. This finding is likely to be particularly relevant for the market for construction products both for public and private sector trade transactions, given the effect of transportation costs discussed in the next section.

The research conducted on national level for the European Construction Sector Observatory identified cases of national regulations that have a negative impact on competition in the market for construction sectors, in particular with respect to the ability of non-domestic firms to operate in the market.

Despite all efforts to develop a Single Market for construction products, a number of non-regulatory barriers affect the supply and demand for cross-border trade.

For example, in Greece there was an obligation for traders and distributors of cement to set up a dispatching centre in the country, which was found to constitute a hindrance to competition in the supply and trade, and may influence the price of cement. Moreover, the additional 2% fee imposed by the ministerial decision on cement retail prices creates extra costs at the production and import level, restricting the entry of new suppliers on the market⁶⁵. Similarly, the minimum capital of EUR 500,000 and minimum storage capacity requirements for a company to obtain an asphalt trading licence also limit market entry and competition.

Non-regulatory barriers

One of the most important barriers is **transport cost**, in particular for heavy and voluminous products (e.g. cement, concrete), low unit-price products (e.g. wood panels) and low margin products, as the gains from the lower costs of these products can be offset by the costs of transporting them to the destination market. In the survey of construction sector firms referred to above, 60% of the surveyed firms perceived transport costs as a barrier to trade, and almost half of them consider it as a very important barrier⁶⁶. This tendency can also be observed in Figure 6, which shows the stronger trade interactions between neighbouring countries compared to more distant ones.

⁶³ Interview with an industry association

⁶⁴ Herz, Benedict and Xosé-Luís Varela-Irimia, *Border Effects in European Public Procurement*. 2017

⁶⁵ OECD competition assessment reviews OECD Competition Assessment Reviews: Greece, November 2013.

⁶⁶ CSIL, *Cross-border trade in construction products*, 2017

The survey of firms also identified **language barriers** as an obstacle to trade, in terms of their role in conducting trading transactions, but also, where relevant, product installation and post-sale services. The study on cross-border trade of construction products within the EU found evidence that if two countries share the same primary language, the value of trade between them is likely to be higher, *ceteris paribus*⁶⁷. It can also be seen in Figure 6, which shows the intense trade interactions between French speaking countries and German speaking countries.

The movement of goods also depends on **national or local preferences** about the types of products used in the construction sector. In the abovementioned survey of firms, 18% of the respondents reported that cultural differences and national preferences are a very strong barriers to trade, while 30% of the surveyed firms perceived national differences in traditions and tastes as quite relevant barriers, although less significant than other factors⁶⁸.

Obstacles to the increase of intra-EU trade of construction products can also be found in certain **product specific features**, such as the need for services of providing installation locally and post-sale services (e.g. for windows)⁶⁹.



Last but not least, **the prevalence of SME producers** in the national construction products sector and their capacity constraints can also affect the sector's overall export capacity. Nevertheless, SMEs located nearby the borders are more likely to cross-border trade and ensure local installation and post-sale services, thanks to lower transport cost⁷⁰.

In addition, there are also cases of **anti-competitive practices** in the market for construction products which can limit the access of importers. In March 2015, the Italian Competition Authority (AGCM) issued a fine of EUR 12.8 million on Italian manufacturers who operated a cartel in the market for ready-mix concrete in the Friuli Venezia Giulia region since 2010⁷¹. After a significant drop in demand for concrete due to the economic crisis, the manufacturers engaged in a price war. In 2010, following the advice of the consultancy firm Intermodale, they decided to share customers and set prices to keep each participant's market share at the pre-crisis level. To this end, the cartellists provided Intermodale with their turnover in the period 2007-2009 for it to assess the parties' pre-crisis market shares. Moreover, they provided it with weekly information reports on construction sites already started or about to start in each relevant market. Most of the times a focal price was also indicated in order to monitor the agreed allocation. In addition to the fine on the manufactures, the consultancy firm was also sanctioned for actively and intentionally contributing to a cartel between producers active on a market other than that on which the consultancy firm operates.

Obstacles to the internal market for services

Within the internal market for products, the barriers to trade can most broadly be categorised as regulatory and non-regulatory. The following sections offer further details of both types.

Regulatory barriers related to compliance with the Services Directive and the Professional Qualifications Directive

As noted in the analysis of the regulatory drivers for the internal market in services in Section 0, there are a number of remaining issues with the implementation of the EU rules meant to ensure that there are no administrative barriers to the free movement of services in the internal market. Some of the examples highlighted in the national level research on the state of the construction sector are presented in the following paragraphs.

Authorisation schemes running contrary to the requirements of the Services Directive can currently be found across the EU.

⁶⁷ CSIL, Cross-border trade in construction products, 2017

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Case N. I772 – Concrete Market in Friuli Venezia Giulia, as described in OECD Annual Report on Competition Policy Development in Italy, 2015, DAF/COMP/AR(2016)31.

For example, in Denmark, the scheme controls access to the electrical, heating, plumbing and sanitation activities, requiring the relevant service providers to obtain two authorisations (one for individuals and one for companies) from the Danish Safety Technology Agency to be able to provide the service⁷². In Bulgaria, the authorisations and licences of Foreign Service providers are not recognised, requiring them to undergo additional administrative procedures to be able to operate within the country. Furthermore, all over the EU the authorisation procedures for temporary cross-border service providers tend to impose nearly the same number of requirements, procedural steps and documents as for establishing service providers, since legislation seldom distinguishes establishment situations from temporary services. Although **mutual recognition for insurance requirements** is foreseen in Portugal, it is not operational. Similarly, France is particularly restrictive in terms of the mutual recognition of insurance and liability requirements and many cross-border service providers face difficulties in obtaining the national insurance products required by law to enter the French construction market.

Remaining obstacles can also be found in relation to the issuance of **building permits**. For example, in Poland, the administrative burden for obtaining construction permits is still high. Investors are required to carry out extensive legal and administrative paperwork, often without the possibility to file requests electronically. In particular, infrastructure projects take very long requiring additional procedural steps. Even more cumbersome, spatial planning at local level is often not covered by local spatial plans ('zoning') and thus subject to overregulation and contradictory provisions⁷³.



Barriers to the cross-border provision of services are also linked to **restrictive rules** imposed by the relevant national authorities regarding the regulation of professional qualifications. Indeed, while the EU Directive on the recognition of professional qualifications regulates directly construction professions such as architects and applies in general to regulated professions such as real estate agents or carpenters, others such as civil engineers remain subject to national regulations of professional recognition.

At the same time, even when the EU Directive on the recognition of professional qualifications applies, EU MS may impose other/additional requirements, applying to foreigners as well as the locals. The additional requirements for professional services in Belgium are particularly complex due to the restrictive authorisation, legal and insurance requirements. Several occupations are affected by these barriers, including architects, real estate agents and accountants resulting in low competition, low market entry rates and low churn rates (i.e. the sum of birth and death rates of enterprises). Specifically, in the case of architects, the Law on the protection of the profession of architects dating from 1939 regulates the profession by way of a protected title and a reserve of activities of which some are shared with civil engineers such as the drawing-up of plans and monitoring of the execution of building works. There is a mandatory registration requirement with the professional and the joint exercise of different professional activities is limited to services that are linked to architect services⁷⁴. Therefore, professionals need to comply with a number of rules characteristic to the profession, such as the Reglement van de Beroepsplichten van de Architect (Rules of the Professional Duties of Architects)⁷⁵. Conversely, the civil engineering professionals need to follow the same procedures as architects in case they work as or under the professional title of architects, however other obligations related to the access or exercise of the profession are not regulated in Belgium⁷⁶. Latvia also regulates the professions of architects and civil engineers. In the case of civil engineers, the activities of engineering research, design, construction works management, construction supervision and construction expert examination are regulated separately, so civil engineers do not have access to all these activities⁷⁷. The existence of this fragmented system creates obstacles to cross-border mobility of civil engineers moving from a country with a unitary system (i.e. where the civil engineer can perform all types of activities) to Latvia⁷⁸.

⁷² This legislation is currently under revision which seeks to comply with EU law

⁷³ European Commission, Country Report Poland, February 2016. http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_poland_en.pdf

⁷⁴ European Commission, Commission Staff Working Document on reform recommendations for regulation in professional services, January 2017, <http://ec.europa.eu/DocsRoom/documents/20505/attachments/3/translations/en/renditions/native>

⁷⁵ DLA Piper, General construction law. <http://www.dlapipeerrealworld.com/law/index.html?t=construction&s=legal-framework&q=general-construction-law&c=BE>

⁷⁶ European Commission, Mutual evaluation of regulated professions - Overview of the regulatory framework in the construction sector by using the example of civil engineers. September 2015. <http://ec.europa.eu/DocsRoom/documents/12762/attachments/1/translations>

⁷⁷ European Commission, Commission Staff Working Document on reform recommendations for regulation in professional services, January 2017, <http://ec.europa.eu/DocsRoom/documents/20505/attachments/3/translations/en/renditions/native>

⁷⁸ European Commission, Mutual evaluation of regulated professions - Overview of the regulatory framework in the construction sector by using the example of civil engineers. September 2015. <http://ec.europa.eu/DocsRoom/documents/12762/attachments/1/translations>

Regulatory barriers related to the implementation of public procurement and competition rules



A recent analysis of the **cross-border effects in EU cross-border procurement** based on available data on contract awards subject to the EU procurement rules finds evidence of the border effect for cross-national borders in the case of construction services: when the distance between the contracting authority's NUTS3 region and a given firm's NUTS3 regions doubles, the probability of that firm winning a tender from the contracting authority decreases by about 32% on average and by more than 65% in the case of the procurement of construction works⁷⁹.

As a result, a construction firm located in a different NUTS1 than the contracting authority is 9.5 times less likely to win a construction works contract compared to local firms. The analysis further found evidence of the effect of language differences - for construction works and services, having the same language increases the likelihood of an award by about 600% and 200%, respectively, while this figure is only 60% for goods.

While there is evidence of a tendency towards decreased border effects over time, the substantial magnitude of this occurrence also indicates that border effects already exist in the participation decision of firms, meaning that firms expect to have a lower chance of succeeding in cross-border procurement and undertake the costs of bidding only for contracts of a sufficiently high value⁸⁰. This hypothesis is corroborated by the recent analysis of the impact penetration of cross-border trade, which while not specific to the construction sector, provides a strong indication of the perceived obstacles for cross-border procurement across the board⁸¹. According to the results of a survey of over 1000 companies, the following issues related to the implementation of procurement procedures were found to be particularly relevant for the procurement of works contracts:

- Access to information regarding procurement opportunities, especially in small and micro firms;
- Perceived preference among contracting authorities for local bidders;
- Unfamiliar legal context or formal requirements leading to market entry barriers in the contract award.

The research conducted on national level for the **European Construction Sector Observatory** identified a number of obstacles related to the **proper enforcement of the rules and implementation of public procurement procedures** which are of particular relevance for the construction sector and hinder the access of non-domestic operators to public contracts. In the Czech Republic, it was estimated that around 20% of public contracts in 2014 were designed so as to avoid the need for tenders altogether⁸².

Other obstacles relate to the imposition of requirements that limit the number of competitors and that can be particularly hard to meet for non-domestic bidders. For example, in Greece, a recent review by the OECD found a number of artificial barriers to participation in public procurement procedures for works and designs. For such tenders, individuals and companies are required to belong to registries and register in categories depending on the nature of their activities e.g. road works and hydraulic projects. In addition, they are classified according to their experience, staffing and financial standing. As such, their eligibility for bidding depends on their classification within the registries, rather than on their ability to fulfil all participation criteria of the actual tender, which reduced their flexibility and competition opportunities. Furthermore, in public designs, individuals are currently only allowed to register in a maximum of 2 categories out of 28 in total, which prevents some individuals from being able to register in a greater number of categories consistent with their university degrees, i.e. specific disciplines of engineering, such as civil or mechanical engineering and thus compete on more tenders⁸³.

⁷⁹ Herz, Benedict and Xosé-Luís Varela-Irimia, *Border Effects in European Public Procurement*. 2017

⁸⁰ Ibid.

⁸¹ VVA, *Measurement of impact of cross-border penetration in public procurement*.

⁸² Radio Praha, *Czech construction sector seeks solid foundations for growth*. March 2016. <http://www.radio.cz/en/section/marketplace/czech-construction-sector-seeks-solid-foundations-for-growth>

⁸³ OECD, *Competition Assessment Review, Greece Preliminary Version 2016, 2017*. <http://www.oecd.org/daf/competition/OECD-Competition-Assessment-Review-Greece-Preliminary-version-2016.pdf>

In Italy, for public contracts with a value of EUR 500,000 or more, cross-border contractors are legally required to hold the EN:ISO 9001:2008 quality management system certification. Furthermore, the Certificate of Undeclared Work (*Documento Unico di Regolarità Contributiva* - DURC), which demonstrates that construction companies have complied with their tax and social security obligations, must be submitted as part of the application for a building permit. These authorisation schemes are deemed to be stricter for temporary foreign service providers than for contractors seeking to permanently establish their operations in Italy. Since the DURC authorisation and the ISO certification schemes are valid for 90 days and 3 years, respectively, their limited duration means that temporary cross-border providers have to repeatedly start the application procedure with all associated fees.

Non-regulatory barriers



Risk of corruption in the award of public contracts for construction works remain high for some EU countries. A recent analysis⁸⁴ conducted by CEEC Research showed that large amount of Czech construction companies are perceived by the local business to be involved in the corruption-related practices. Perception of unfair competition increases for the contractors, with 80% of the contractors perceived to be involved in unfair competition practices.

In Lithuania, the most widespread issues in the award of public contracts in the construction sector include favouritism, lack of transparency when dealing with EU funds and single bidders. In 2014, about 47% of the total value of construction procurement contracts (EUR 1.3 billion) was won by the same 20 favoured companies⁸⁵. According to a recent study, overall, corruption damage can reach 11.4% of GDP or 4.44 billion in Lithuania in 2017, with the construction sector having the highest share of shadow activity and leading to resource misallocation⁸⁶.

In Romania, public contracts in the construction sector are often awarded to companies based on unfair competition or political connections, leading to low quality construction works that do not compare with the amounts of investments flowing in. According to a study carried out under the EU-funded project ANTICORRP, procurement of non-EU funded contracts is more prone to corruption, particularly at the county and local level, due to weak administrative capacity, and especially when state-owned companies are involved⁸⁷.

In Hungary, politically connected companies are more likely to secure public procurement bids. In the 2005-2012 period, between 5% and 31% of the companies awarded a public contract for construction works were openly connected to a political stakeholder⁸⁸. Poor competition is linked to the widespread practice of single-bidding, which affects 25% of all contracts in the sector. Moreover, cases of cartels involving political stakeholders and foreign companies frequently occur, especially in some major infrastructural activities, such as highway construction⁸⁹. It is estimated that corruption in Hungary increases the prices of procurement by 20-25%, amounting to about HUF 40,000 (EUR 130) per person⁹⁰.



The conducted research also identified cases of **anti-competitive practices in public procurement procedures** in the construction services sector. In Greece, the Hellenic Competition Commission (HCC) recently provided evidence of the existence of a cartel in the construction sector, involving sixty construction companies, including both major national and international firms.

⁸⁴ The result of analysis are drawn from interviews and surveys of 265 construction companies in the Czech Republic in 2017. Zdroj: https://byznys.lidovky.cz/korupce-stavebnich-firem-osm-z-deseti-velkych-spolecnosti-se-setkalo-s-uplatky-gof-/firmy-trhy.aspx?c=A170917_204950_In_domov_ELE

⁸⁵ Lietuvos Respublikos Seimas, Seimo narės A. Bilotaitės pranešimas: „Diskusijoje Seime nagrinėtas favoritizmas statybų viešuosiuose pirkimuose“. December 2015. http://www3.lrs.lt/pls/inter/w5_show?p_r=618&p_d=202554&p_k=1

⁸⁶ Delfi.lt, STT: korupcija suryja daugiau nei dešimtadalį BVP, May 2017. <https://www.delfi.lt/news/daily/lithuania/stt-korupcija-suryja-daugiau-nei-desimtadali-bvp.d?id=74727280>

⁸⁷ ANTICORRP, Romanian public procurement in the construction sector. Corruption risks and particularistic links. March 2015. <http://anticorrrp.eu/wp-content/uploads/2015/06/D8.1.5-Romania.pdf>

⁸⁸ Government Transparency Institute, The Political Economy of Grand Corruption in Public Procurement in the Construction Sector of Hungary. November 2015. http://www.govtransparency.eu/wp-content/uploads/2015/11/ACRVOLUME3_Ch4_Hungary.pdf

⁸⁹ Ibid.

⁹⁰ Transparency International, Driving out corruption in Hungary through clean contracts. November 2016. <https://transparency.eu/driving-out-corruption-in-hungary-through-clean-contracts/>

The cartel is suspected to have manipulated tendering procedures for major infrastructural projects (road construction, rail transport and concessions) involving EU funds, as well as price fixing and bid rigging, and has been operating between 1989 and 2016. Consequently, ERDF funding to Greece for 2014-2020 was temporarily suspended⁹¹. In August 2017, 10 construction companies were fined EUR 80.7 million, found guilty to have been rigging the tenders for a series of public works contracts. In this context, Law 4389/2016 introduced a cartel settlement process under the Greek Competition Act, aiming to reinforce anti-cartel handling procedures⁹².

The following box presents an interesting example of cross-border anti-competitive practices for public contracts in Lithuania and Latvia.

In 2017, an extensive network of corruption in the construction sector was brought to light by the Latvian Corruption Prevention and Combatting Bureau (KNAB) in cooperation with Lithuanian authorities. The authorities have found evidence of interconnected bribery cases in the procurement of the Port of Klaipeda in Lithuania and the Traffic Department of the Riga City Council. Two construction companies from Lithuania and Latvia have allegedly entered into an illegal agreement on the terms for participation in public tenders, having therefore won a contract the value of which was increased by over EUR 3 million.

⁹¹ Zepos & Yannopoulos, Recent Legislative Developments in Competition Law and Case-Law. June 2016. http://zeva.com/sites/default/files/docs/articles/Competition%20Newsletter,%2010%20June%202016_0.pdf

Protothema, EC freezes Regional Development funds to Greece due to cartels. June 2016. <http://en.protothema.gr/european-commission-freezes-regional-development-funds-greece-over-existence-of-cartels/>

⁹² Ekathimerini, Construction firms fined for cartel practices, August 2017. <http://www.ekathimerini.com/220650/article/ekathimerini/business/construction-firms-fined-for-cartel-practices>

5.

Policy initiatives

Trends in policy initiatives

Given the multiple drivers and obstacles to the EU Single Market for the construction sector, MS are taking action in addressing these through various policy instruments and initiatives. Indeed, a number of schemes were identified across most of EU MS in order to foster the EU Single Market, both for construction services and products. These range from national Action Plans improving the regulatory environment to initiatives on standardisation, the recognition of skills, or on the fight against corruption.

Looking across the EU-28, the following key trends can be observed:

- **Improving public procurement, reducing corruption and fostering the mutual recognition of skills** are three key policy areas where most MS have made efforts to develop new initiatives;
- Some MS are **amending regulations** in place in order to simplify red tape for construction companies and to ease access to building permits;
- Original **standardisation initiatives** across MS are relatively limited;
- Some MS have introduced National Strategies and Action Plans for **regulatory simplification and lower administrative burden** with relevance for the construction sector.

The following table provides an overview of the extent of coverage of policy areas through dedicated initiatives in MS identified as having put in place policies fostering the EU Single Market. Each policy area will be discussed in greater detail in the following sections, outline some of the key initiatives that MS are taking to address the specific challenges affecting the EU Single Market.

Table 3 Overview of policy initiatives to strengthen the construction sector internal market, EU-28

Country	Standardisation	Construction regulation	Public procurement	Anti-corruption	Simplification	Professional qualifications
Austria						✓
Belgium			✓			✓
Bulgaria			✓			
Croatia			✓	✓	✓	
Cyprus						
Czech Republic				✓		
Denmark		✓				✓
Estonia		✓			✓	
Finland		✓				
France	✓			✓	✓	✓
Germany	✓					
Greece			✓			✓
Hungary			✓	✓		
Ireland				✓		✓
Italy						✓
Latvia	✓			✓	✓	
Lithuania						✓
Luxembourg						
Malta			✓			

Country	Standardisation	Construction regulation	Public procurement	Anti-corruption	Simplification	Professional qualifications
Netherlands		✓				✓
Poland			✓			
Portugal			✓		✓	
Romania	✓		✓	✓		
Slovenia						✓
Slovakia						
Spain						
Sweden					✓	
United Kingdom						

Source: ECSO

In parallel, MS have put in place measures to strengthen the internationalisation of their construction sector and companies, which have a positive impact on the EU Single Market by increasing trade between MS and reducing barriers. These policy measures are described in depth in the ECSO analytical report on TO5⁹³.

Policy initiatives

Standardisation

Standardisation plays a key role in fostering cross-border business. The introduction of **Eurocodes**, as mentioned previously, has played an important role in harmonising technical rules, and creating a common approach to construction within the EU and beyond..

To foster the standardisation efforts within the country the Latvian government has established a Eurocode standards Improvement Action Plan 2016-2018 (Eirokodeksa standartu uzlabošanas pasākumu plāns 2016-2018 gadam). It aims to ensure that the existing Eurocode standards are maintained and new ones introduced in the national standardisation system, and to ensure the participation of the national Latvian standardisation bodies in the standardisation process of the second generation of Eurocodes.

The Romanian government promotes within its Institute for Research of Equipment and Technologies in Construction (Institutul de Cercetări pentru Echipamente și Tehnologii în Construcții - ICECON) the evaluation and performance verification in the field of construction products as well as the development of new standards in line with EU harmonisation efforts.

In Germany, each state issues a list of acknowledged technical rules for works (Liste der Technische Baubestimmungen), with reference to standards of the German Institute for Standardisation (Deutsches Institut für Normung, DIN) for the planning, design and building of construction works and their parts. DIBt (Deutsches Institut für Bautechnik) is responsible for the development of the list on behalf of the Länder⁹⁴. Therewith, the German DIN standards have official status and are mandatory for building projects and for the production of building products, building elements and construction systems⁹⁵.

With respect to the use of Eurocodes, Germany published all Eurocodes Parts as National Standards with the exception of EN 1990-A1 (Annex 2). The Regulation MLTB 03/2014 mandates 39 Eurocodes Parts for structural design. Other National Standards are used in parallel with EN 1991-4 (DIN FB 140), EN 1995-1- 1 (DIN 1052-10), and with EN 1997-1

⁹³ PwC, European Construction Sector Observatory – Analytical report on TO5 – Fostering the international competitiveness of EU construction sector, April 2017

⁹⁴ Deutsches Institut für Bautechnik (DIBt), <https://www.dibt.de/>, ECSO Country profile Germany, June 2018. <https://ec.europa.eu/docsroom/documents/30344/attachments/1/translations/>

⁹⁵ ECSO Country profile Germany, June 2018. <https://ec.europa.eu/docsroom/documents/30344/attachments/1/translations/>

(DIN 1054). The National Standards complement the Eurocodes Parts. Some Eurocodes Parts are restricted according to the Regulation MLTB 03/2014. There is no particular obligation to make use of Eurocodes in public procurement⁹⁶.

Construction regulation and building permits



More efficient and simpler **permit** granting leads to time savings and more importantly lowers barriers to market entry, especially for smaller players, thus supporting competition and the provision of cross-border services. Thus, several countries have reviewed their regulatory framework in this area and put in place new tools to address noted issues with the implementation of the Services Directive.

For instance, the Danish government evaluated the potential simplification to the Act of Public Construction in 2017 and simplified the total set of regulations related to the building permit procedure. Moreover, in Estonia, the introduction of the new Building Code contributed to reducing the administrative burden related to building permits and planning.

Finland has already taken various measures to open the service sector by reforming key legislation and removing sectoral regulation that prevents competition and simplifies planning and zoning rules. Indeed, in 2015, an amendment to the Land Use and Building Act came into force, including the promotion of the effectiveness of business competition in land use planning provisions. The change aimed to increase the effectiveness of competition through land use policy means, with respect to the construction of wholesale and retail space as well as housing. Moreover, in 2016, another amendment to the Land Use and Building Act came into force, abolishing some burdensome procedures and accelerating regional land use planning. An additional amendment of the Land Use and Building Act is underway and will be ready by the end of 2017. It will improve the streamlining of permits for land use planning and construction.

The following box presents the goals, results and assessment of a new regulatory framework introduced by Latvia:

2013 Construction Law

New and stricter construction legislation was needed in Latvia to modernise and provide a boost to the construction industry, and to improve practices, procedures and quality. The new Construction Law was adopted in 2013 and implemented in 2014. It aimed to significantly stimulate new construction and reduce the administrative burden on construction companies to make it easier for them to do business. The new law provides provisions, for example, to regulate construction design and engineering, the roles and responsibilities of architects and developers, building control and monitoring, certification and building permits. There was a five-year delay in passing the new law and its introduction has not been as successful as was expected. The fragmented approach to construction procedures at local levels in Latvia and the fact that many developers lack awareness and understanding of the legal procedures are key challenges that still need to be addressed.

Furthermore, the country only requires three categories of documents to be submitted as part of the building permit application process, and is the best performer in this respect.

⁹⁶ European Commission, Joint Research Center, State of implementation of the Eurocodes in the European Union, 2015. http://eurocodes.jrc.ec.europa.eu/show_Entity.php?file_id=EC_00000114

With regards to tools, the Netherlands is one of the few MS, together with Finland and the UK, which offers an **online centralised national system for the submission of building permit applications**, allowing their complete electronic handling and therefore minimising the administrative burden linked to the process.

Simplification and reduction of administrative burden

Overall, a number of countries, including Portugal, Estonia, Croatia, Latvia and France, were identified as improving their regulatory environment and the above-mentioned issues by implementing national Action Plans and strategies. For example, to address the issue of regulatory burden, the Portuguese government launched the new SIMPLEX+2016 programme in May 2016. It includes 255 measures for legislative and administrative simplification, 6 of which directly concern the construction and real estate markets and will therefore be implemented by the Institute of Public Markets, Real Estate and Construction (Instituto dos Mercados Públicos, do Imobiliário e da Construção – IMPIC) . These will aim to accelerate and simplify the lengthy and complex licencing process, enhance SME participation in public tenders, reduce the complexity and costs associated with public contracts, and foster the use of online portals for issuing licences and permits.

Moreover, to improve the regulatory and business environment across several areas, including construction and real estate registration, the Latvian government implements the annual Action Plan for Improvement of Business Environment within the framework of the National Development Plan 2014-2020. In 2015, its main achievement in the real estate sector was the introduction of electronic registration of real estate property. In the construction sector, the simplification of the procedure to obtain a construction permit and the transition to the Eurocode standards for the design of building structures were achieved.

In Estonia, the Zero Bureaucracy project sees the cooperation between the Ministry of Public Administration and the Ministry of Finance in the effort to reduce red tape in various areas, including the construction sector. To facilitate access to the market and make the business operating environment easier and less costly for businesses, all activities resulting from the specific requirements in the sector are being mapped and a methodology to assess their financial implications is being developed. For instance, the project seeks to accelerate the building permit authorisation procedure by introducing e-solutions allowing the concerned parties to follow the course of the application in real time. In addition, active operators in construction-related activities must submit a notice of starting economic activities to the Estonian Technical Surveillance Authority in order to obtain an activity license.

Finally, the Action Plan on Reducing the Administrative Burden in the Croatian economy, launched in 2015, enabled the country to make progress in removing many barriers in the service market across several sectors and professions, including property sales, construction, architects, engineers and land surveyors. Thus, 20% of the identified administrative burden in these areas has been reduced and regulations in the field of architectural services are now largely in conformity with the EU Services Directive. In 2017, fixed tariffs and regulated prices were abolished for architects, engineers, agents and real estate brokers. Moreover, the need for licenses in order to provide construction services was revoked, together with the existing limitation with regards to the number of construction workers needed.

Public procurement



Public Procurement Directives in 2014⁹⁷ led MS to revise their legislative frameworks to ensure their alignment with the EU rules and that public procurement is fair, competitive and conducive to the Single Market, impacting companies in the construction sector.

For example, a new Law on Public Procurement came into force in April 2016 in Bulgaria, in line with the general transposition deadline applicable to all MS. This transposed the Public Procurement Directives and introduced further measures aiming to increase the transparency and predictability of the contract award process, simplify administrative procedures and reduce the regulatory burden on SMEs, including those in the construction sector.

⁹⁷ Several Public Procurement related Directives entered into force in 2014, including: Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU on the award of concession contracts.

Moreover, beyond reforming their legislation to conform to EU Directives, some countries have gone on to adopt additional measures and new tools to improve their public procurement processes.

The use of **e-procurement** offers a range of important benefits, including reducing obstacles related to the lack of access to information, simplified and shortened processes, the reduction in red tape and increased transparency benefitting companies in the construction sector. Moreover, it allows rethinking various pre-award and post-award phases, which overall improve market conditions.

For example, while Bulgaria is introducing a national centralised single platform model for e-procurement, which should be fully implemented by 2018 as required by the European Commission, the Bulgarian government is also implementing the strategy for development of e-governance by 2020. The aim of eGovernment is to ensure quality and full accessibility of public administrative services as well as enhance participation of its citizens in the knowledge-based economy⁹⁸. Moreover, in 2018 the Romanian government put in place the new Collaborative Information System for Public Procurement (SICAP), which will replace the old Electronic Public Procurement System (SEAP), aiming to provide more efficient and up-to-date electronic services to public administration institutions⁹⁹. Similarly, in Malta, the use of e-procurement has played an important role in improving both transparency and communication between bidders.

Anti-corruption measures



In order to ensure fair planning procedures, but also to limit the risk of corrupted **public procurement procedures** or **conflict of interests** limiting national and cross-border competition alike, EU MS have introduced initiatives such as national strategies, new regulatory bodies or adequate tools.

The Commission's funded 4-year project "Integrity Pacts - Civil Control Mechanisms for Safeguarding EU Funds" is piloting of so-called¹⁰⁰ integrity pact" approach in procurements involving EU co-financing. Among 17 EU co-funded projects spread across different sectors in 11 MS¹⁰¹, 12 of the projects for which civil society organisations are performing Integrity Pacts monitoring are in construction sector, such as, "Works on the railway line No. 1 on the section Częstochowa – Zawiercie" in Poland, "Construction of M6 motorway between Bóly-Ivándárda and the country border" in Hungary, "Energy renovation of hospitals" in Slovenia. The expectation is that Integrity Pact approach, based on civil society control, will promote the culture of integrity in procurement, increase transparency and trust in public authorities, reduce the opportunities for mismanagement and fraud, contribute to better reputation of contracting authorities and will bring costs savings due to improved competition.

In the same vein, Romania adopted a National Anti-corruption Strategy for the 2016-2020 period. Adopted in August 2016, it aims to further combat corruption and ensure integrity in the public sector. Similarly, as previously mentioned, the use of e-procurement improved both transparency and communication between bidders in Malta. The government also set up a blacklist for companies in breach of public procurement regulations, as well as a commercial sanction tribunal responsible for restricting them from participating in public procurement bids.

The development of **Construction Information System (BIS)** in Latvia was completed, with a cost of EUR 3.8 million. This is an online platform providing access to all construction documentation and relevant information, enabling effective communication between construction parties and keeping the public informed as to the latest construction decisions, thus improving **transparency**.

Moreover, in order to simplify the regulatory environment, to streamline planning procedures and to limit any risks of corruption linked to the planning process, the Irish government published the Planning and Development (Amendment)

⁹⁸ European Commission, eGovernment in Bulgaria, 2015, https://joinup.ec.europa.eu/sites/default/files/inline-files/eGovernment%20in%20Bulgaria%20-%20February%202016%20-%202013_0%20-%20v3_00.pdf

⁹⁹ Romania-Insider.com, Romania launches new electronic public procurement system, April 2018, <https://www.romania-insider.com/romania-new-electronic-public-procurement-system/>.

¹⁰⁰ http://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/

¹⁰¹ <https://www.transparency.org/programmes/overview/integritypacts>

(No.2) Bill 2015, which provides for the establishment of an independent Office of the Planning Regulator. The establishment of an independent authority to oversee the planning process is a key action to prevent corrupt payments to politicians. The new regulator will inform the Minister for the Environment in case a planning strategy is not consistent with planning rules.

Professional qualifications and mobility of workers

Recognizing skills and professional qualifications are important ways to enhance the mobility of construction workers and to ensure a strong Single Market.

Recognising skills and professional qualifications are important ways to enhance the mobility of construction workers and to ensure a strong Single Market. A number of MS have thus implemented policies in this area, which can also be a way to remedy skills shortages, as further described in the ECSO analytical report on TO2¹⁰².

One of the key initiatives developed at national level is related to the so-called **skills card**¹⁰³. The skills card consists in a registry of the professional qualification of each construction worker in the form of a personal identification card. Various forms of the skills card exist, yet it generally requires the registration of the employee's qualification in a centralised database.

The construction worker has an electronic card with his personal data stored, which gives him access to the construction site. Depending on the specific measure, the skills card may have a focus on safety at work (i.e. only workers with predetermined qualifications are allowed on certain work sites), combating undeclared employment and keeping track of professional qualifications and training. It should however be guaranteed that such a skills card cannot negatively affect the workers' rights of recognition of their professional qualifications under the system created by the Professional Qualifications Directive (PQD). For example, under the PQD construction professionals can benefit from automatic recognition based on their professional experience. So even if a worker has lower or no qualifications because his/her home MS does not require it for a particular professional activity, the host MS will still have to fully recognize his professional qualifications if he/she has the years of experience (possibly combined with training) required under Article 16 of the Directive.

The implementation of skills cards comes from the own initiative of MS and has been implemented in various different ways. In fact, it can be either mandatory or voluntary, government-sponsored or led by industry or social partners, applicable to posted workers and including a data chip or not. To date, Denmark, Finland, France, Germany, Italy, Lithuania, Luxembourg, Belgium, Malta, the Netherlands, Romania, Sweden, Spain as well as the UK have implemented such programmes.

In Greece, the government is currently introducing such skills card, with the objective to issue a personal ID to architects and engineers which will be a necessary requirement for building permit applications. This will also support the transparency and comparability of qualifications, thereby increasing the effectiveness of mobility and the quality of labour across Europe.

Another important policy initiative in this respect, is fostering mutual recognition of accredited educational qualifications. For example, in addition to the recognition system under the Professional Qualifications Directive, several international mutual recognition agreements on educational qualifications are applied in some European countries. For example, the Washington Accord, the Sydney Accord and the Dublin Accord are used for the recognition of the qualification in engineering between the Ireland, the UK and overseas territories¹⁰⁴. Those Mutual Recognition Agreements foresee that all accredited engineering degree programmes (the Washington Accord), Engineering Technology Programmes (the Sydney Accord) and Engineering Technician Programmes (the Dublin Accord) are

¹⁰² PwC, European Construction Sector Observatory – Analytical report on TO2 - Improving the human capital basis, April 2017

¹⁰³ FIEC, EFBWW, Social Identity Cards in the European Construction Industry, January 2015. <http://www.efbww.org/pdfs/EFBWW-FIEC%20report%20on%20social%20ID%20cards%20in%20the%20construction%20industry.pdf>

¹⁰⁴ International Engineering Alliance, <http://www.ieagreements.org/>

recognised by professional bodies or accepted for membership purposes in other signatory countries as equivalent to their own engineering degree programmes¹⁰⁵.

Therefore, the mutual recognition agreements aim at ensuring that the licencing and certifications bodies accept the substantial equivalence of the academic programmes agreed in these agreement, while the Professional Qualifications Directive does not always require equal set of the education and certification for the mutual recognition of qualifications, as described above.

Moreover, in terms of international equivalence of voluntary certification schemes, the Netherlands signed a co-operation agreement with Germany, establishing the mutual recognition of the Dutch VCA and the German SCC (Safety Certificate Contractors) certificates. This provided clarity and legal certainty for cross-border service providers. Thus, under the agreement, the Dutch diplomas and certificates can be obtained via a German certification body, and vice versa. The German-Dutch SCC-VCA scheme is also recognised in Belgium and Austria, and is in line with the requirements for simplification and mutual recognition in the Services Directive.



Some MS have implemented specific policies dedicated to the mobility of workers. This allows both decreasing skills shortages but also fostering the Single Market. With respect to attracting workers back into the economy, Ireland is making use of its cifjobs.ie website, through which potential candidates are able to see vacancies of the Construction Industry Federation (CIF) member companies and to engage directly with Irish construction companies¹⁰⁶.

On the other hand, a number of MS see the influx of workers from other EU countries as a measure to overcome labour shortages and have therefore developed specific instruments to attract foreign labour. In Slovenia, the Strategy of Economic Migration for the period 2010-2020 outlines the influx of foreign workforce as a potential instrument to tackle labour shortages and provides guidelines for the management of such mobility. Furthermore, Germany developed a specialised approach to address skills shortages with immigration policy. In fact, the Federal Employment Agency holds a so-called White List of all professions for which the country lacks skills and aims to recruit foreign workers¹⁰⁷.

¹⁰⁵ Engineers Ireland, <http://www.engineersireland.ie/membership/international-agreements.aspx>

¹⁰⁶ CIF Jobs, <http://cifjobs.ie/>

¹⁰⁷ Federal Employment Agency (Bundesagentur für Arbeit, BA), Whitelist. <https://www3.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mta4/~edisp/L6019022DSTBAI777367.pdf>

6.

Conclusion

The ever-increasing deepening of the internal market for goods and services is also evident within the construction sector. While progress is underway, driven strongly by regulatory efforts to harmonise standards and procedures and to remove administrative barriers, a number of obstacles to the further strengthening of the internal market in both construction products and construction services remain. Incomplete transposition and/or low implementation and compliance with the EU regulatory framework on services and professional qualifications mean that diverging national rules remain a barrier for market entry in a number of countries. In parallel, non-regulatory obstacles can be found in the persistent issues with corruption in the public sector and anti-competitive practices among market players.

In order to take full advantage of the opportunities opened up by the discussed drivers, the following remarks should be considered looking ahead.

- ✓ Increased focus on **electronic tools and platforms for the completion of administrative procedures in the construction sector**. A number of MS have already introduced centralised online tools improving the access to information, simplifying the requirements and enabling the electronic submission of building permit applications, allowing their complete electronic handling and therefore minimising the administrative burden linked to the process. The existing experience from such measures can serve to inform their broader uptake in Europe.
- ✓ Increased focus on **e-procurement solutions**, improving the access of information for non-domestic bidders, improving the transparency of the procurement process and reducing the costs associated with participating in procurement procedures. The existing experience with the introduction of such measures in individual MS can serve to inform their broader uptake in Europe.
- ✓ Further efforts in introducing and implementing **anti-corruption measures** will be necessary to deal with the persisting presence of corruption particularly in the award of public contracts for construction works. Measures increasing the transparency of planning and procurement processes can be expected to foster confidence and competition in the sector and strengthen the functioning of the internal market.
- ✓ Further support for reinforcing qualification recognition measures will be an important tool for facilitating the mobility of professionals in the construction sector and related sectors and addressing the skills needs experiences in a number of countries.

Ultimately, these efforts will enable MS to take full advantage of the benefits of a well-functioning internal market in the construction sector.

