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Regulatory systems for building in Europe

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ABSTRACT

In this paper, we analyse privatisation and deregulation trends within the building regulatory systems of eight European countries, and we consider whether the systems appear to be converging or diverging. We focus on the scope of the technical requirements and the building permit procedures. The division of control and inspection responsibilities, will be touched upon lightly.

The analyses reveal no evidence that the scope of technical requirements in European countries is diminishing. Through its directives, the European Union exercises a convergent influence on the contents, scope and formulation of these technical requirements. In addition, all member countries are taking steps to streamline their administrative procedures. Although they differ in pace and emphasis, these deregulation and privatisation trends exhibit a number of parallel developments. In the near future we plan to pursue research in this building regulatory field and we hope to represent a valuable addition to the CIB W113 group on Law and Dispute Resolution.

Keywords
Building Regulations, Building Control, Deregulation, Privatisation Europe.
1. INTRODUCTION

The OTB Research Institute has explored and researched the field of building regulatory systems for many years (e.g., Meijer and Visscher, 1998). Our studies focus on the content and formulation of requirements, as well as on the methods and procedures that have been developed to ensure that demands are actually met in practice.

Our international comparative projects analyse the effectiveness, efficiency and transparency of various building regulatory systems. The results of our European comparative research project have been published in two volumes. The first volume compares the building control systems of eight European countries (Meijer, Visscher, Sheridan, 2002), and the second addresses technical requirements (Sheridan, Visscher, Meijer, 2003). For the next years we plan to update and extend our international comparative research Not only with more European countries but also with other countries in the Western world (e.g. Australia, Canada and New Zealand).

Although the building regulatory systems of the eight countries we studied thus far differ widely, their broad outlines share systematic similarities (figure 445.1). In most countries, technical requirements are often established in building acts, which provide detailed descriptions of the minimum demands for health, safety, energy efficiency and similar issues. Supplementary to the technical directives, most countries have official documents to regulate such aspects as standards, approved solutions and administrative procedures. Building permit application systems and responsibility for controlling and site-checking building works are statutory. The same applies to planning aspects, which are often regulated by national and local acts containing location-dependent requirements.
In recent decades, the building regulatory frameworks of many European countries have changed considerably. This paper considers the extent to which the regulatory systems of various countries are converging or diverging. We will focus on the aspects that fit within the framework outlined in figure 445.1.

Following this introductory section, we provide a short overview of current discussions and trends within the regulatory sciences (e.g., that part within the academic tradition of policy analysis that addresses issues of regulatory convergence/divergence and Europeanization). Section 3 analyses developments regarding the scope (and formulation) of technical requirements, and Section 4 examines changes in the various administrative procedures of eight countries. Section 4 also touches upon the division of responsibilities among public and private parties with regard to the control and inspection of (technical) building regulations. In a separate paper (no. 447 Tasks and responsibilities for building control) we will elaborate on this subject. Section 5 of this paper draws conclusions concerning the debate between deregulation and privatization and between divergence and convergence.

2. DEREGULATION AND EUROPEANIZATION

Despite the presence of numerous approaches to the notion of what constitutes regulation, the distinction between economic and social regulations is generally accepted (e.g., Ogus, 1994; Den Hertog, 1999).
Economic regulation consists of structural (or ‘access’) regulation and conduct (or ‘behavioural’) regulation. Structural regulation refers to the process of regulating the market structure, and conduct regulation refers to the regulation of behaviour within the market. Economic regulation is exercised primarily within markets that are characterised by monopoly conditions. Social regulation involves regulation in such areas as the environment (e.g., safety and health), labour conditions and consumer protection. Social regulation is generally justified by referring to externalities and information asymmetries.

Only a part of the building regulations can be described in terms of economic regulation. For instance, directives and codes that are established at the European level (e.g., the EC Building Products Directive and the Euro Codes) are primarily intended to facilitate the barrier-free trade of building products throughout the member states. Nonetheless, the ‘social aspects’ are the most important component of building regulations. Building and planning regulations have been developed to ensure that buildings meet basic quality standards. Safety and health have traditionally been the core elements of the regulations. In the course of time, most countries have added other considerations, including amenity/comfort, energy savings and sustainability.

With regard to economic and social regulations, many underlying theories and definitions have been developed to explain such aspects as the effectiveness of the regulations and their design and specifications. We do not address these subjects. As stated in the introduction, this paper focuses on developments within building regulatory systems and on the question of whether these systems are converging or diverging in Europe. This question is difficult, as regulatory systems are determined by institutional and national factors within individual countries.

Ogus (2002) makes a number of generalisations, based on information obtained from a survey of historical and inter-jurisdictional practice. Most importantly, he identifies a global tendency away from central governmental control, a crucial feature of what has been called the ‘deregulation movement’ (e.g., Francis, 1993). He notes, however, that the extent to which deregulation has occurred varies by country, due to differences in regulatory culture. Ogus also observes that government involvement is more prominent in the field of social regulation than it is in the field of economic regulation. At the same time, he acknowledges the existence of long traditions of tripartite governance structures and an increasing tendency to work out regulatory policies through consensus with the industries that are regulated. This paper does not directly address the influence of the building industry on the formulation of building regulations.

The European Union (EU) is able to influence the regulatory systems of the member states. The influence of the EU can be independent of all other international external developments (e.g., deregulation) that affect national policies. In recent years, the impact of the EU on its member states has become a topic in studies of the European Union. Researchers are
studying the effects of European integration on the politics, policies and administrative structures of the member states. The process through which European integration penetrates – and in certain circumstances, brings about adjustments to – domestic institutions, decision-making procedures and public policies is analysed under the heading of 'Europeanization'.

In a report on the state of affairs, Bulmer and Radaelli (2004) observe that Europeanization has had a profound impact on the public policy functions of the member states, but that its impact has not been uniform. In some policy areas (e.g., monetary policy and trade), member states have lost much of their scope for independent action. In other areas, however, the impact has been much more fragmented, as in health care or employment policy. Most policy areas lie between these two extremes. The intellectual history of Europeanization is still short, however, and it is unlikely that a single interpretation will predominate.

The building regulatory field has not yet been a point of scholarly attention. The related set of environmental regulations has been studied by Liefferink and Jordan (2002) They make distinctions between the influences of the EU on the content, structure and style of policy in the member states. Liefferink and Jordan conclude that, while it has influenced some aspects of the contents of national environmental policies (e.g., the standards, positions and strength of ministries, parliaments and NGOs), the EU has not managed to change either their fundamental composition or design. In other words, policy content is more susceptible to convergence under the influence of the EU than are either policy structure or policy style. In our concluding section, we offer explanations for developments in the building regulatory field.

3. THE SCOPE OF THE TECHNICAL REGULATIONS

This section focuses on actual developments with regard to the (scope and formulation of) technical requirements in Europe.

The effects of the European Union are quite noticeable in this regard. Changes and convergence at the European level have been achieved through the EC Construction Products Directive (CPD) and through the gradual acceptance of Euro Codes in the member states. Partially because of these developments, technical requirements in more and more European countries are being phrased in terms of performance requirements.

When they are finished, the Euro Codes will form a set of almost 60 European standards, and will provide calculation methods to determine the mechanical strength required of each element in a structure to withstand expected loads. The calculation methods will cover all construction methods and materials used. The Construction Products Directive (CPD –89/106/CEE) defines six essential requirements for construction works, which are detailed in interpretative documents. These essential requirements are mechanical resistance and stability, safety in
case of fire, hygiene, health and environment, safety in use, protection against noise and energy economy and heat retention.

The essential requirements for construction works serve as a foundation for the harmonised technical product specifications (i.e., harmonised European standards or European Technical Approvals) that have been and are being developed for assessing the performance of building products. The directives from the new approach of the EC in general, and those of the CPD in particular, introduce a mandatory system for attesting conformity throughout the construction products sector.

In addition, all EU member states are preparing for the implementation of the European Energy Performance Building Directive (EPBD), which is the EC draft directive on improving the energy performance of buildings.

Developments in the various countries show that the content and scope of technical regulations are converging. Country monographs do not paint a picture of deregulation (Sheridan, Visscher, Meijer, 2003), however, as they suggest the emergence of more rather than fewer technical requirements.

In summary, the scope of technical requirements for regulating the minimal quality of buildings in European countries is not diminishing. There is no question of deregulation in this regard; the policy of the European Union has had a converging effect, particularly with regard to the content (scope and formulation) of the technical demands. More and more countries include performance standards in their technical requirements, which has a converging effect on the building regulations.

The following sections address developments concerning the procedures and responsibilities for the inspection and control of technical requirements.

4. ADMINISTRATIVE PROCEDURES

All countries require building permits before construction work can begin. Applicants for permits must follow procedures that are intended to guarantee that the (technical and other) demands for construction activities are actually realised in practice. Although the organisation of building permit procedures varies widely among European countries, some parallel developments are evident. All countries are attempting to streamline and accelerate their procedures. This ambition is particularly evident in the categorisation of construction works and in the phasing of procedures.

4.1 CATEGORIES OF CONSTRUCTION WORKS

As shown in table 445.1, the various countries have developed different procedures for different categories of construction work. In general, minor alterations and renovation projects, extensions, annexes, garden sheds, temporary structures and similar activities are generally exempted.
Table 454.1 Categories of construction works for different procedures.

<table>
<thead>
<tr>
<th></th>
<th>Exemptions</th>
<th>Light procedure</th>
<th>Full procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>yes, listed</td>
<td>urban planning permit: simple file</td>
<td>urban planning permit: extensive file</td>
</tr>
<tr>
<td>Denmark</td>
<td>yes, listed</td>
<td>notification system</td>
<td>two types of building permit: small dwellings and other buildings</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>yes, listed</td>
<td>building notice (newly built houses and alterations)</td>
<td>full plans</td>
</tr>
<tr>
<td>France</td>
<td>yes, listed</td>
<td>building notice</td>
<td>building permit</td>
</tr>
<tr>
<td>Germany</td>
<td>yes, listed</td>
<td>simple permit</td>
<td>building permit</td>
</tr>
<tr>
<td>Netherlands</td>
<td>yes, listed</td>
<td>light permit</td>
<td>regular permit</td>
</tr>
<tr>
<td>Norway</td>
<td>yes, listed</td>
<td>building notice</td>
<td>general and start permit</td>
</tr>
<tr>
<td>Sweden</td>
<td>Yes, listed</td>
<td>building notice</td>
<td>building permit</td>
</tr>
</tbody>
</table>

During the last decade, European countries have shown a tendency to extend the category of permit-free construction works. For example, half of the German states have enlarged the category of exemptions substantially in the last ten years. For many routine applications in Belgium, it has not been necessary to obtain advice from authorised inspectors since 2000. In the Netherlands, an updated and elaborated list of structures for which no building permission is required was introduced in 2003.

In addition to exemptions from the full procedure, most countries have a category of construction works for which the local building-control authority must be notified. An applicant must provide notice of intended construction work, but there is no (comprehensive) preventive inspection of the work, and no permit is issued. In almost all cases, building notice requirements apply to minor construction projects in which location-dependent requirements play no role.

In the past, England and Wales, France, Denmark, Norway and Sweden have all introduced building notice procedures for these types of projects. Belgium and the Netherlands have made a distinction between simple (or ‘light’) and regular permit procedures in 2000 and 2003. In Belgium, the procedures for certain types of dwellings were simplified. In Germany, a distinction has been introduced between elementary and regular permit procedures. The elementary procedure (e.g., for dwellings of limited and moderate height) consists of checking the stability, durability and fire safety of the constructions.

4.2 PHASING OF FULL PERMIT PROCEDURE

Table 445.2 provides an overview of the wide variation in the organisation of full building-permit procedures in Europe. Despite the variation, however, the table also reveals a number of striking (parallel) developments, which are aimed at deregulating administrative procedures.
Table 445.2 Main features of the building permit procedure.

<table>
<thead>
<tr>
<th>Country</th>
<th>Pre-consultation</th>
<th>Inspection of design</th>
<th>Start building</th>
<th>Inspection during Construction</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>voluntary</td>
<td>Yes</td>
<td>after permit is granted</td>
<td>by private inspection bodies</td>
<td>no</td>
</tr>
<tr>
<td>Denmark</td>
<td>voluntary</td>
<td>structural work</td>
<td>after permit is granted</td>
<td>sample checks</td>
<td>approval for use</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>voluntary</td>
<td>structural work/type approval</td>
<td>after permit is granted</td>
<td>regular inspection points, obligatory notice</td>
<td>Completion Certificate</td>
</tr>
<tr>
<td>France</td>
<td>voluntary</td>
<td>No</td>
<td>after permit is granted</td>
<td>No</td>
<td>Completion Certificate</td>
</tr>
<tr>
<td>Germany</td>
<td>voluntary</td>
<td>structural work/type approval</td>
<td>after permit is granted</td>
<td>inspection of structural work</td>
<td>approval for use</td>
</tr>
<tr>
<td>Netherlands</td>
<td>voluntary</td>
<td>structural work</td>
<td>after permit is granted</td>
<td>regular inspection points</td>
<td>No</td>
</tr>
<tr>
<td>Norway</td>
<td>obligatory</td>
<td>inspection plans</td>
<td>within 4 weeks of detailed plans</td>
<td>supervision of inspection plan</td>
<td>completion certificate</td>
</tr>
<tr>
<td>Sweden</td>
<td>obligatory</td>
<td>inspection plans</td>
<td>3 weeks after notice</td>
<td>supervision of inspection plan</td>
<td>completion certificate</td>
</tr>
</tbody>
</table>

Most countries provide surgeries where potential applicants can come and discuss their building plans and where building authorities can inform them of requirements and options. Only Norway and Sweden have introduced statutory consultation meetings as a regular part of their permit procedures. All parties involved (e.g., applicant, architect, contractor) must be represented at the meeting, in which the building control authority is required to clarify which particular regulations apply to the location of the planned works. During the meeting, a decision is made on the method of inspection.

All European countries attempted to use IT applications to enhance the effectiveness and efficiency of their regular permit procedures. Most countries provide information, regulations, application forms and similar items that can be downloaded from the Internet. In such an online inquiry, an applicant can quickly determine whether a building permit is necessary and which further steps must be taken. Although there is still considerable variation among Internet developments in European countries, developments in the building regulatory field are expected to converge quickly. The overall objective of the EU (eEurope) is to bring Europe online as soon as possible. Key documents here are the eEurope 2002 and 2005 Action Plans, which contain several (interlinked) tools for attaining the targets. A list of twenty basic public services has been compiled, and building permit procedures are included in that list. It is the aim that full online services for these products will be achieved in the short term.
Digitalisation will undoubtedly have positive effects on the speed and costs of the permit procedure (Meijer, 2005).

Sharpening the phasing of the permit procedure is another common policy goal in Europe. For a number of years, the English system has made a clear distinction between building and planning permission. The advantage of this system is that it can reduce the length of the procedure for a specific building permit (building regulation check). Since the mid-1990s, Norway and Sweden have divided their full permit procedures into specific phases. The Norwegian building permit procedure is clearly phased, according to the allocation of responsibilities for inspection. In the first phase, a permit is issued for the location-dependent aspects and the broad outline of the building plans. Applicants can subsequently apply for permits at particular points as the construction work progresses.

Another solution for streamlining and deregulating regulation procedures is to give certain standard (or frequently built) construction works a separate status in regular permit procedures. For example, Type Approvals, building permits for the technical aspects of a design, have been developed in Germany and in England and Wales. Type Approvals are issued by government agencies and are valid nationally. In the case of construction works that already have Type Approvals, developers have only to apply for planning permits. England is formulating ideas for introducing 'simplified regulations for small (domestic) buildings'. The basic idea is to introduce Approved Documents for small domestic buildings.

Table 445.2 shows that European countries have opted for a variety of procedures for checking the completion of construction work. Applicants in England and Wales must apply for inspection by their local building-control authorities. In Germany, a building may be brought into use only after the local building-control authority has certified it as safe. French local authorities have the right to inspect structures within two years of completion; if everything is in order, they issue a certificate. In Denmark and Norway, a completion certificate is issued once an applicant has signed a declaration that the structure has been built in accordance with the regulations. In Sweden, local building-control authorities contract the final inspection out to independent inspection organisations. In most countries, a building cannot be brought into use until the final certificate has been issued or the final inspection has taken place.

The overall picture of 'the' European permit procedure is one of variety. The design and execution of administrative procedures in the various countries has a strong national base. In contrast to technical requirements, a survey of permit procedures reveals little evidence of any 'Europeanisation effect', with the possible exception of the online availability of public services. Nonetheless, some convergence is evident in developments involving the direction of 'procedural deregulation'. In most countries, various procedural components have been reduced and streamlined in order to enhance the efficiency and the speed of the procedures.
4.3 RESPONSIBILITIES FOR CONTROL AND INSPECTION

In most European countries (local or regional), authorities have traditionally been responsible for controlling and checking building plans and for granting permits. Table 445.3 classifies the systems of eight countries according to the allocation of responsibility for exercising building control.

Table 445.3 Responsibility for control.

<table>
<thead>
<tr>
<th>Public responsibility for control</th>
<th>Private responsibility for control</th>
<th>Private responsibility for granting permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Local authority carries out control (Netherlands, Denmark, England &amp; Wales)</td>
<td>C. Local authority contracts out, private organisation is responsible (Germany)</td>
<td>G. Private organisations are qualified to issue building permits (England &amp; Wales)</td>
</tr>
<tr>
<td>B. Local authority contracts out but remains responsible (Netherlands, Denmark)</td>
<td>D. Legal liability for private control based on building regulations (France)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>E. Private inspection because of liability and insurance requirements (Belgium, France)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>F. Full private responsibility (Norway, Sweden, Germany)</td>
<td></td>
</tr>
</tbody>
</table>

Three categories are distinguished:

- Public responsibility for building control.
- Private responsibility for building control.
- Private responsibility for granting permits.

The fourth possible category – public responsibility for granting permits – has been omitted, as this remains the archetype in all European countries. Paper 447 (Tasks and responsibilities for building control) treats this subject in far more detail. What we can conclude here is that (with the exception of Denmark), all countries have adopted changes in recent years in the way they check and control construction works. Responsibility for control tasks is shifting increasingly towards private parties.

5. CONCLUSION AND DISCUSSION

The central questions asked in this paper are as follows: can a trend towards deregulation (privatisation) in the building regulatory field be observed in Europe, and are the regulatory systems converging or not? With respect to content and analysis, the paper is consistent with scientific
discussions about regulatory developments in general (deregulation and self-regulation), and with Europeanization studies in particular.

5.1 SCOPE OF THE TECHNICAL REQUIREMENTS: CONVERGENCE

All European countries have elaborate sets of technical requirements for regulating the minimal acceptable quality of construction works. The number of aspects that are subject to regulation is not diminishing. Nearly every country has adopted new regulations for energy performance and environmental issues.

Although there is no deregulation trend, developments have suggested convergence in the area of technical demands. This convergence applies to the subjects of regulation as well as to the ways in which the requirements are formulated. All EU member states are currently working to implement the European Energy Performance Building Directive (EPBD). Further changes and convergence have been achieved through the Construction Products Directive and through the gradual acceptance of Euro Codes within the member states. In general, technical requirements are increasingly coming to be phrased in terms of performance. A trend towards the harmonisation of determination methods (computation rules) in the form of Euro Codes follows in the wake of this development. The CPD technical specifications are expected to be a driving tool in the shift towards performance-based works specifications and regulations throughout much of Europe. This will undoubtedly lead to the eventual further convergence of the technical requirements and standards within the EU. The technical requirements of course only form a part of a building regulatory system. Other developments in the building regulatory field of the various European countries show an overall picture of considerable variety.

5.2 BUILDING PERMIT PROCEDURES: DEREGULATION AND CONVERGENCE

Administrative procedures in Europe vary widely. Although building permit procedures are determined at the national level, developments indicate a trend towards convergence across the Europe member states. This trend is best described as ‘procedural (or administrative) deregulation’. Within these countries, the category of construction works that require building permits is diminishing. Authorities are trying to improve both the effectiveness and the efficiency of their procedures through such initiatives as making a procedural distinction between simple and regular procedures. Actions being taken to streamline regular procedures even further include introducing online facilities for acquiring information and applying for permits, allowing exceptions for certain frequent construction works (i.e., Type Approval) and dividing the regular procedure into phases. With the possible exception of the digitalisation of the procedure, the influence of the European Union on these developments is negligible.
Almost all European countries once had ‘traditional’ control systems, in which local authority building control played a key role. Such systems have undergone major changes, and the role of private organisations in the permit procedure has expanded in the last decades.

We expect that the introduction and implementation of the Energy Performance Building Directive (EPBD) throughout Europe will further enhance the importance of the role of private parties. On a reasonably large scale, buildings must be inspected to determine their energy performance. The (building control) authorities in many European countries are insufficiently equipped to offer the necessary inspection capacity. We foresee that private inspectors will supply the ‘inspection need’.

5.3 AND IN THE NEAR FUTURE?

In recent decades, the historical differences between the building control systems in the various European countries have gradually been fading away, not only because of developments in regulations at the level of the European Union, but also because of such international trends as deregulation and the privatisation of technical building control.

We expect that technical requirements and the way they are formulated are particularly likely to converge further in the years to come. The European Building Products Directive provides a solid foundation on which to base further developments in building requirements. Issuing the Euro Codes and implementing them in the member states will be yet another step forward. Developing and implementing the performance approach, also within sets of building regulations, will create the right conditions for a more uniform formulation of technical requirements for buildings. Although the realisation of a set of technical requirements and standards that are essentially uniform across European will take some time, there is clear evidence of harmonisation. Such a transparent system will yield advantages in many areas. For builders, manufactures, architects and other parties involved in the building industry, a system of uniform requirements will facilitate the barrier-free trade of products and services. The owners, users and visitors of newly constructed buildings will be certain that the basic demands for (constructional and fire) safety, health, energy efficiency and other concerns are being met.

Whether the current differences among the European countries in the field of administrative and building permit procedures will disappear completely is questionable. The international trend towards reducing government responsibility for building quality will probably decrease the number of areas that are covered by building regulations and will encourage governments to shift the responsibility for building control (scrutiny of permit applications and site inspection) to the private sector. This trend is also supported by the development of methods for quality assurance (certification and accreditation) and their increasing implementation in design, engineering and construction companies. We expect that these trends and conditions will certainly influence the national
systems of building control, but will not lead to a removal of the historical background differences that created the current diversity.

6. REFERENCES

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