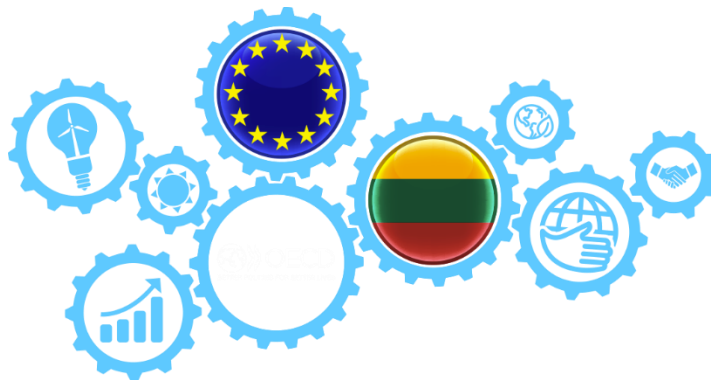


INCREASING THE EFFICIENCY OF THE LITHUANIAN CONSTRUCTION SUPERVISION SYSTEM

Output 3: Recommendation reports/notes on legal, institutional, and practical aspects (including planning tools, KPIs etc.) for the transformation of the system into a more risk-based, responsive, data-driven, compliance-promoting one.



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This report was carried out with funding by the European Union via the Technical Support Instrument and in cooperation with the European Commission's DG Structural Reform Support.

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Introduction

This report has been prepared as part of the EU-funded TSI project “Improving the efficiency and effectiveness of the Lithuanian construction supervision system (LCSS)”. As part of the project, the OECD is providing Lithuanian authorities (specifically the Ministry of Environment of the Republic of Lithuania, the State Territorial Planning and Construction Inspectorate *Valstybinė Teritorijų Planavimo ir Statybos Inspekcija - VTPSI*, and the Construction Sector Development Agency (SSVA)) with technical assistance to support the construction supervision system. The project occurs at a pivotal moment in the area of construction supervision, as the Ministry of Environment is preparing an important reform of the Building Code.

This report summarises the results of technical assistance activities providing concrete recommendations (in the form of an action plan) for improving Lithuania’s the construction supervision system in light of the planned reform law. The analysis is based on several fact-finding missions with the project counterparts and stakeholders conducted over the project period 2021-2023. A dedicated workshop with stakeholders of the building sector (representatives of architects and engineers, industry representatives, etc) also provided input to this note. The preliminary findings and recommendations included in this report were presented to project counterparts and stakeholders in a project mission conducted from 27th February to 3rd March 2023.

The analysis focuses on three priorities defined by Lithuanian authorities in cooperation with the OECD, namely:

- Priority 1 – The role of the state in construction permitting and completion
- Priority 2 – Certification of construction professionals and compliance promotion
- Priority 3 – Making enforcement measures more coherent and effective

Findings and recommendations for each priorities are presented in this report.

Summary of recommendations

Priority 1 – The role of the state in construction permitting and completion

Risk-based approach for permitting

1. Define principles for risk-based considerations

- *Risk* should be the fundamental guiding principle for determining the state's involvement in the construction permitting. These need to be connected to clear public interests and should be clearly spelled out for ensuring clarity among stakeholders.

2. Use a risk lens throughout the construction regulatory cycle – from permitting to inspections and enforcement

- Risk can be identified and should be used to inform the classification of buildings, permitting, inspections and enforcement. A sharper risk focus helps to prioritise the state's efforts throughout the regulatory cycle.

Classification of buildings

1. Upgrade the building classification system by clearly stating multi-dimensional risk criteria

- Authorities need to distinguish between intrinsic risks, i.e. are inherent to the building project and apply mostly to classify buildings, and dynamic risk, which are related to the operator and its overall capacity (e.g. performance, compliance track record etc.);
- Lithuania could define detailed risk criteria for determining the building classification covering four main dimensions: location, intended use, size and architectural complexity of the building project;
- The risk model used for the classification of buildings and for determining the operator risk needs to be continuously updated based on new information.

2. Increase the number of categories of buildings for a more nuanced risk analysis

- Lithuania could introduce additional building classes to allow for more granular consideration of risk. Building classes should be clearly linked to the type of permit: the riskier the building class, the more permitting requirements (e.g. additional documentation, expertise to be involved).

3. Develop an approach to add different types of risks into a single index

- To ensure a granular consideration of risks, it is important to define an approach that allows combining multi-dimensional risk criteria into a single index.

4. Use information systems for a harmonised risk classification and flagging of operator risks

- The risk classification of buildings could be supported through an automatised process via an information system. At the same time, such a system could also flag operator risks to the authorities to allow for additional scrutiny at permitting stage.

Permitting framework

1. Shift the focus of building regulation from specification of rules to performance targets

- The new building code could evolve from prescribed rules to performance objectives that directly reflect risks and public interest. Authorities can allow market participants more flexibility to comply with performance requirements. This would bring greater innovation and could reduce the cost of compliance.

2. Improve efficiency of the permitting process

- Introduce a re-engineering of the process to reduce redundancies and unnecessary interactions with the authorities. The reform proposed by the MoE is in the right direction of streamlining the early stage of the permitting process which currently requires an additional detailed project description.
- Enhance IT applications to introduce machine reading to review documents. Following the practice of other countries, Lithuania could introduce IT applications to review documents in the permitting process to reduce the cost and time spent in reviewing. This can also reduce mistakes and provide more coherence.

3. Embed the risk categories in an interface that is user-friendly for market participants

- Introduce an interface that allows market participants to understand the permitting process and requirements given the characteristics of the project. After submitting the main characteristics of the project, participants could receive a centralised resource with all the requirements and the process to follow.
- Authorities should ensure market participants are applying to the correct types of permits according to the building classification.

Post-permitting

1. Streamline the completion procedure by introducing earlier checks and enhancing risk-based proportionality

- Revise the completion requirements to reduce the documentation that should be checked earlier or does not provide significant information on potential risks at that stage. Refine the risk-based approach to prioritise the review of completion documents for riskier building projects.

2. Leverage data from the construction and use of buildings stages to improve the risk model

- Expand the data strategy to collect and analyse data from construction journals, operators' performance, and quality of materials. This could eventually improve the risk model.

Cultural heritage protection

1. Define cultural heritage protection categories and regulate accordingly

- Define three tiers of cultural heritage protection according to the level of priorities. Design a process for priority landmarks that would require substantial review from the Ministry of Culture and other stakeholders. For middle-level priority protected /objects introduce an additional check of the Ministry of Culture, on top of the 'regular' permitting process. For minor work and low-priority objects provide standard prescriptions.

Priority 2 – Certification of construction professionals and compliance promotion

Improving the overall effectiveness and efficiency of the certification system

1. Simplify the existing certification scheme for construction professionals
 - This includes merging/aggregating certain roles in construction to reduce the number of categories of architects and engineers subject to different requirements.
 - The guiding principles for such simplification could be stricter requirements for roles which imply supervision, verification or (technical) control tasks, and lighter requirements for activities not implying such tasks.
2. Review and transform the examination requirements
 - Transform the contents of examination to make it more practice-oriented and updated in light of new emerging risks.
 - Consider the option to gradually phase out or abolish the additional (legal) examination requirements.
3. Shift from 'paper-checks' towards an 'auditing approach' of certified legal entities
 - Envisaging a shift towards an 'auditing' approach of the attested legal entities by the SSVA

Compliance promotion

1. Improving the interinstitutional cooperation and joint planning of relevant institutions and reaching out to business associations
 - The cooperation between relevant actors (VTPSI, SSVA, Chamber of Architects) could be aimed at promoting compliance culture, reviewing the effectiveness of applicable policies, and/or launching a far-reaching awareness campaign.

Priority 3 – Making enforcement measures more coherent and effective

'Two-stage' enforcement: the complex between the VTPSI and the certifying authorities

1. Improve the communication process between the VTPSI and the certifying authorities and consider granting the VTPSI direct powers to suspend certificates
 - In the short-term, focus on the strengthening the communication process concerning certificate suspension and revocation

- Over the long-term, granting VTPSI direct powers to suspend persons' (legal and natural) certificates to avoid inefficiencies of the two-stage process

Certificate suspension and revocation

1. Making certificate suspension and revocation a credible enforcement option and providing guidance to authorities on discretionary decision-making
 - This would include the development of a methodology concerning the concept of 'risk of harm' within the context of certificate suspension/revocation; and
 - increasing the professionalism of the supervising personnel to ensure consistency of suspension/revocation decisions

Public procurement

1. Exploring the potential of public procurement law in achieving high quality construction services
 - This includes making use of exclusion grounds, increased professionalisation in public procurement, as well as according a greater weight to the quality of tenderers and the appropriate price/quality ratio
 - improving the utilisation and the interconnectedness between the existing 'black lists' and relevant registers operated by the Lithuanian Public Procurement Office, the SSSA and the Chamber of Architects;

Exploring the potential of additional tools and sanctions

1. Considering introducing new 'incapacitative' sanctions to deal with 'bad actors'
 - Exploring whether the introduction of such sanctions aimed at banning or 'disqualifying' persons (including company directors) from engaging in certain economic activities, to be imposed by the VTPSI, is feasible and desirable
2. Improving interconnectedness with regard to beneficial ownership ('connecting the dots')
 - It may be considered whether introducing a new offence (of administrative or criminal nature) of re-entering the market after exclusion through the 'backdoor' of beneficial ownership is feasible and desirable

Priority 1 – The role of the state in construction permitting and completion

The Ministry of Environment in Lithuania is planning to substantially reform the Building Code, including the construction permitting process. Against the background of the planned reform, the Ministry of Environment is particularly interested in re-evaluating the scope and the extent of state involvement in building permitting and completion procedures. According to the Ministry, currently the scope of the state's involvement is very heavy, consisting of broad checks and extensive lists of documents to be submitted. In short, 'the state checks essentially everything'.

Beyond a 'heavy hand' from the state, stakeholders note that the construction law is very complex, and requires significant time and resources to get acquainted with how to comply with requirements, even for professionals, such as architects. Furthermore, requirements change frequently making it harder for stakeholders to be up-to-date. Not least, stakeholders lament that regulatory requirements cannot be found in a single place. Considering the above, this section analyses how *risk* represents an effective lens of analysis for determining the role of the state in construction permitting and streamlining the regulatory process. It focuses first on the overall risk-based approach including building classification, and second on introducing risk in the permitting process.

I. Risk-based approach for permitting

1. Define principles for risk-based considerations

The fundamental guiding principle to determine the state's involvement in the construction permitting process should be *risk*, which is a tool to allow for a better focus on protecting fundamental public welfare goals and for a more efficient use of public resources. Risk can be defined as the combination of the probability of occurrence of an adverse effect on public interests, and the potential severity and magnitude of this effect. To implement a risk framework, authorities should start by defining specific types of public interest, i.e. there is a need to specify *which types* of public interests are to be taken in consideration. Regulation should be designed to address specific risks, which in turn are linked to certain public interest. In this respect, lack of compliance with the rules, does not, *per se*, constitute a risk. Following these principles, formalistic regulatory systems should be avoided. As highlighted in the OECD *Best Practice Principles on Regulatory Enforcement and Inspections* the notion of risk should inform all steps of the regulatory process, from the design of regulation, to enforcement and evaluation (OECD, 2014_[1]).

Considering the nature of the construction process, there are several risks to human life, human health, environment (urban and natural) and cultural heritage. If rules and mechanisms do not effectively target these risks, Lithuania could face severe impacts. For instance, buildings may collapse and pose risks to human life and health. The natural environment may be disrupted by the built environment. Finally, cultural heritage, if not adequately protected, may be destroyed to make space for new development. Potentially the main risks can be subsumed to two categories “human life and health” and “environment” (inasmuch as environmental effects are not already subsumed under the “human life and health” category, since many of the former will affect the latter).

Beyond protecting from risks, regulation may also seek to enhance certain public interests that are connected to construction permitting, such as economic growth and economic spill overs resulting from the built environment (e.g. office and commercial spaces). In this sense, regulatory measures should seek the best combination of reduction of public risks, whilst supporting economic growth. Authorities also need to consider the wider impacts of regulation, for instance on the cost of housing for all parts of the population. Broad risk dimensions of construction regulation could be considered at this stage, too, such as zoning plan regulation. For instance, lack of flexibility in zoning is frequently cited as a source of heavy administrative burden. In other words, authorities should seek to protect several public interests that emerge from the construction activity itself, and subsequently from the built environment, including natural landscape, economic development, environment, and cultural heritage.

Currently, the Lithuanian state is heavily involved in the construction permitting and supervision process even in cases where risks are very low, and thus significant public interests do not face potential severe impacts. For instance, the State Territorial Planning and Construction Inspectorate (*Valstybinė Teritorijų Planavimo ir Statybos Inspekcija*, VTPSI) has a legal mandate to investigate third-party complaints¹, regardless of risks. In the vast majority of instances these claims pose little or no risk to the public interest, while they consume significant public resources (29% of the inspectorate’s time resources according to its own analysis conducted in 2020). Considering the finite amount of public resources, it is important to target regulatory efforts (e.g. review of permits, inspections) where they are most needed, i.e. for risky buildings that are directly related to certain public interests.

As such, Lithuanian authorities could consider enhancing the principles outlined above in the upcoming reform law to ensure clarity about the guiding principles of the state’s intervention with respect to construction permitting and supervision. This entails clearly stating the risks and corresponding public interests that the state is actively trying to protect. By introducing a stronger and explicit risk focus, Lithuanian authorities can ensure a targeted and proportionate state intervention, the use of resources where they are most needed, as well as the prioritisation of vital public interests.

2. Use a risk lens throughout the construction regulatory cycle – from permitting to inspections and enforcement

As discussed above, regulatory activity in construction permitting and supervision should be guided by the protection of clearly stated public interests. To operationalise this guiding principle, Lithuanian authorities should introduce a risk lens throughout the construction regulatory cycle, starting with permitting, but also covering inspections and enforcement.

Though risks may be essentially assessed in a similar way, risks considerations have different implications depending on the phase of the regulatory cycle (Figure **Error! No text of specified style in document..1**). For instance, at the level of classification of buildings, a risk lens may be used for a granular classification of buildings, which distinguishes between the riskiness of several categories of buildings (discussed in

¹ See Article 8(5), 9(4), 10(6) of the law on supervision. Also Law on public administration, Article 10. For more detail see Output 3.1.

detail in the section II. Classification of buildings). At permitting stage, lower risk implies a less burdensome permit and vice versa. If a building is deemed high risks, more state resources can and should be dedicated to carefully granting a permit (e.g. checking layout plans, reviewing documentation in-depth etc). Furthermore, permitting of very high-risk buildings may require additional steps such as the involvement of specialised engineering expertise. In contrast, for low-risk building, permits may be granted in a much more simplified manner.

During construction and inspection, similar risk consideration may guide the work of inspectors in terms of breadth (how details should inspector's checks be for a given building) but also in terms of prioritisation (which buildings pose most risks and need to be checked in priority).

Similarly, the completion stage can be informed by risk considerations. Little to no completion formalities may be needed for low-risk buildings, while completion procedures for high-risk buildings should focus on risky elements that are actually verifiable with an inspection. Finally, in-use phase inspections (though rare) should similarly focus on risky areas in priority.

Figure Error! No text of specified style in document..1. Sharper risk focus throughout the regulatory cycle



Source: Author's elaboration

The following sections will provide further details about how risk considerations can be included and operationalised in the main phases of the construction permitting regulatory cycle, particularly regarding the classification of building and permitting stages.

II. Classification of buildings

The classification of buildings is an essential first step to introduce a risk-based approach in construction permitting. Clearly, building projects are subject to a series of different social, cultural, environmental, economic risks, with vast differences between types of buildings. In this context, it is important to implement a differentiated construction permitting process based on rigorous risk assessment (World Bank, n.d.[2]).

Namely, a granular and well-defined classification allows to inform the subsequent steps in the permitting process in a proportionate and risk-based manner. This ensures that the overall process—and related state involvement—is streamlined and targeted. Accordingly, a building deemed high-risk will undergo a strict permitting process, with stringent requirements regarding e.g. types of documents to be submitted,

or experts/institutions to be involved. Inspections during construction or in completion phase will also be targeted to risk. In contrast, a low-risk building will only need to undergo a simple permitting procedure (or require no permit at all) and require less (or no) inspections.

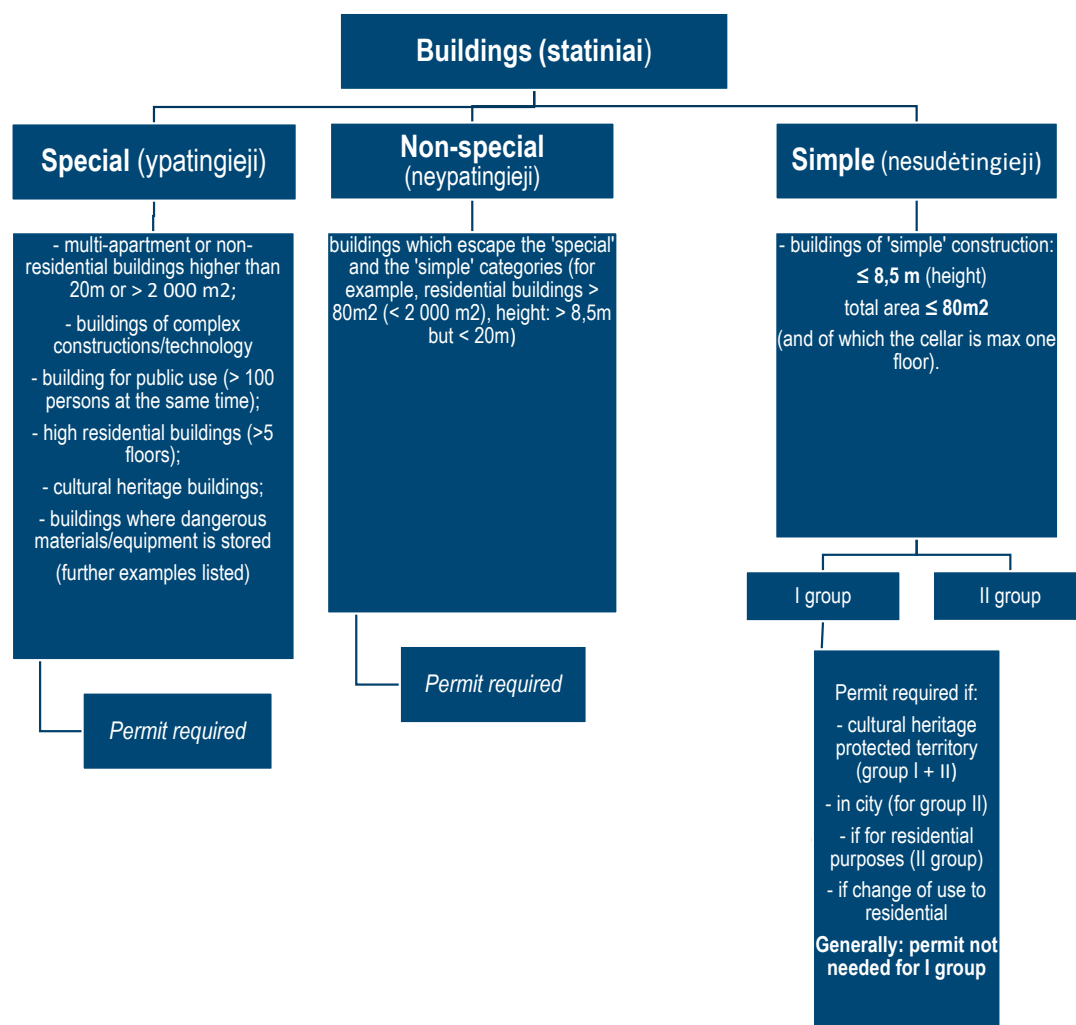
In Lithuania, the current Building Code includes three categories of buildings:

- Special (*ypatingieji*)
- Non-special (*neypatingieji*)
- Simple (*nesudėtingieji*)

As reported by Lithuanian authorities, this classification system is the result of a legacy, and has never been conceived as part of a comprehensive risk-based system. Nevertheless, the current classification covers several dimensions of risk relevant for buildings, as detailed in Figure **Error! No text of specified style in document.**2 below. This includes the consideration about the size of buildings, its intended use, the complexity of the building technology, among others. Despite covering important aspects related to the inherent risk of a building, there are several ways in which this classification could be improved, thereby leading to greater risk-focus and efficiency throughout the construction permitting process.

In fact, the current classification system lacks granularity when defining risks of buildings. Some characteristics automatically place the building in the 'special' class of building, despite potentially being low risk. This applies for instance for cultural heritage buildings, which are by definition considered "risky" (see recommendations on how to treat cultural heritage buildings in section 'V. Cultural heritage protection'). Similarly, large buildings are also automatically considered "riskier" with little consideration of other factors (e.g. complexity of construction). Furthermore, in the current system there is little differentiation of permits and related requirements according to risk. Finally, the class of 'simple' buildings is further sub-divided in a sub-classes, and thus does not always follow a simple administrative process (i.e. without a permit requirement). Taken together, the system is not clearly articulated around risks, without a clear through line between building classes and corresponding permitting requirements.

Figure Error! No text of specified style in document..2. Overview of current classification of buildings in the Lithuanian Building Code



Source: [Lithuanian Law on Construction](#) (Arts. 2(20), 2(28), 2(30) and Construction regulation on classification ([Statybos reglamentas dėl statinių klasifikavimo](#)))

1. Upgrade the building classification system by clearly stating multi-dimensional criteria

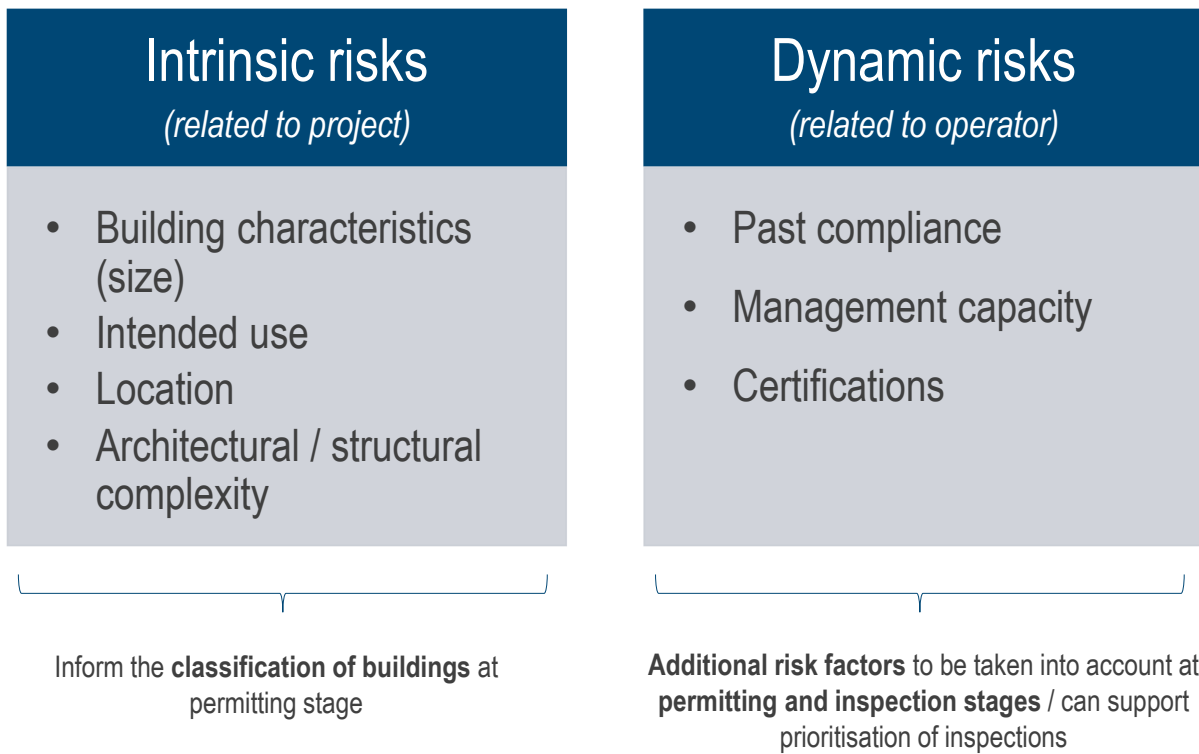
As a starting point, Lithuanian authorities could define explicitly multi-dimensional criteria that are relevant for determining risks related to buildings. As discussed in the section above, applicable risk criteria need to reflect some important public interest, such as environmental protection, ensuring economic development as well as protecting human health, safety and cultural heritage protection.

While risk elements are to some extent already covered in the current Building Code, Lithuanian authorities could consider upgrading such risk considerations by making them more prominent in the law. This is of relevance for communication purposes, but also to better 'prepare' stakeholders to the re-thinking around the notion of risk, and how risks considerations, starting from the building classification are embedded throughout the construction regulatory cycle, from permitting to completion. Not least, explicit reference to the public interest that the regulator is trying to protect establishes clarity for all stakeholders, and is likely to increase acceptance.

1.1 Distinguish between intrinsic vs. dynamic risks in construction permitting

An important distinction can be made when considering risks in construction permitting, namely “intrinsic” or “dynamic” risks. Intrinsic risks are related to the building project itself and comprise aspects such as location, size, intended use, complexity of the construction. These risks are for the most part invariable, meaning that they cannot be significantly modified in a given conception of a project. If the inherent/intrinsic risks modify at some point the permit should be reviewed or have an entire new application. In contrast, some risk elements, i.e. those related to the building operators, are dynamic, as they are subject to changes based on the track record of operators, their improvement of practices, management systems, quality of professionals (Figure Error! No text of specified style in document..3). This distinction has important implications for the permitting and inspection stages, as intrinsic or dynamic risks are by nature different types of risks and should therefore be treated differently. Namely, intrinsic risks are mostly relevant at permitting stage for determining the classification of buildings. In contrast, dynamic risks have a more prominent role later in the construction cycle at inspections stage, where it is more critical to consider risk elements related to the operators. Nevertheless, at permitting stage, dynamic risks could complement the overall risk assessment by flagging risk information to the authorities.

Figure Error! No text of specified style in document..3. Intrinsic vs. dynamic risks in construction permitting



Source: Author’s elaboration

1.2 Define detailed risks criteria for determining the building classification

The risks applicable to building classification are inherently intrinsic. Depending on the type of construction, its location, its intended use, and architectural complexity, among other factors, a certain risk profile emerges, independently of variable factors related to the construction operators (architects, developers, builders, etc.). The risk criteria applied across economies worldwide include the building’s use, location

and size (World Bank, n.d.^[2]). A detailed list of risk criteria for buildings is included in Table **Error! No text of specified style in document..1**.

The risk criteria could be spelled out in detail in the law to facilitate understanding by stakeholders. These criteria reflect the public interests of human health and safety, particularly in cases of emergency (need for exit in case of fire) or the environment. It should be noted that these dimensions of risk could be enhanced by taking into account local specificities and knowledge. This could include questions such as: which types of buildings or locations have posed particular risks in the past? What lessons (if any) have been learned from any particular failures or (human or natural) disasters?

Table Error! No text of specified style in document..1. Principal (intrinsic) dimensions of risks for buildings

Type of risk	Sub-risk	Description or examples
Location	Crowd issues	<ul style="list-style-type: none"> Is the building located in a densely populated area? Does the area of the building pose the risk of mass panic?
	Special risks related to location	<ul style="list-style-type: none"> Is the building close to sensitive object from an environmental perspective, such as a water source? Does the area of the building present seismic risks? Is the building located in a coastal area with particular risks (e.g. coastal erosion)? Is the area prone to flooding? Any other risks of natural disaster related to the location?
	Special / protected territories	<ul style="list-style-type: none"> Is the building located in or near a natural protected area?
	Historic areas	<ul style="list-style-type: none"> Is the building located in a historic area or cultural heritage area?
Intended use	Residential use	<ul style="list-style-type: none"> Is the building intended for residential use?
	Non-residential use	<ul style="list-style-type: none"> Is the building intended for commercial use? Is the building intended for office use? Is the building intended for other special use (industrial production, storage, etc.)?
	Presence of vulnerable groups	<ul style="list-style-type: none"> Is the building hosting elderly, disabled people or children? Is the building hosting public has restricted mobility and ability to protect itself (e.g. hospitals, prisons)?
	Specific risk factors linked to use	<ul style="list-style-type: none"> Does the building use materials that are particularly hazardous (explosive, inflammable, poisonous etc.)?

		<ul style="list-style-type: none"> Does the building contain industrial processes that carry specific hazards (high temperatures, pressures, discharge of pollutants etc.)?
Size	Construction volume	<ul style="list-style-type: none"> How large is the building in terms of construction volume?
	Height	<ul style="list-style-type: none"> How tall is the building?
	Occupancy	<ul style="list-style-type: none"> What is the number of people potentially present in the building at a given time (residents, visitors, workers etc.)?
Complexity	Unground / cellar	<ul style="list-style-type: none"> Does the building present risks related to underground parts (difficulties for evacuation)?
	Complex architectural elements	<ul style="list-style-type: none"> Are there architectural elements that present increased structural risks? (e.g. cantilevered structures, vaults/ceilings of high unsupported length/radius)

Source: Author's elaboration, (World Bank Group, 2013^[3])

1.3 Continuously update risk model based on data collection

While the main dimensions of intrinsic risk related to buildings are relatively well-established, the classification model could be conceived in a dynamic way, i.e. allowing for updates, refinements and additions of risk categories based on new data. For instance, available data from Infostatyba² and inspections may be able to inform the 'complexity' risk category with further elements, such as riskier construction materials or construction techniques, if particular trends emerge from the data analysis. Data from Building Information Modelling (BIM) is likely to play a transformative role in this respect, allowing to have very detailed data on risk elements.

Similarly, dynamic risks would need to be updated regularly based on the past performance / compliance of operators. For instance, information from inspections would continuously update the dynamic risk score of a given operator (architect, engineer, developer, contractor, etc.) to ensure that authorities have accurate risk information.

A periodical (even yearly) assessment of risks could ensure that the risk model is kept up-to-date and reflects the latest knowledge available to the authorities.

2. Increase the number of categories of buildings for a more nuanced risk analysis

A detailed risk classification of buildings would allow Lithuania to introduce a more nuanced risk analysis compared to the current classification system with three categories. In the current system, the 'special' building category captures the main dimensions of risk without further distinction. With a more granular risk classification, it is possible to tailor the subsequent permitting stages according to the actual risk profile of a certain building. As the system is currently operating, a multi-story high-riser with complex architectural elements is treated equally—from a permitting perspective—as a 'normal' building located in cultural heritage area. The treatment of these two types of buildings could be substantially different, if a more granular risk lens is adopted.

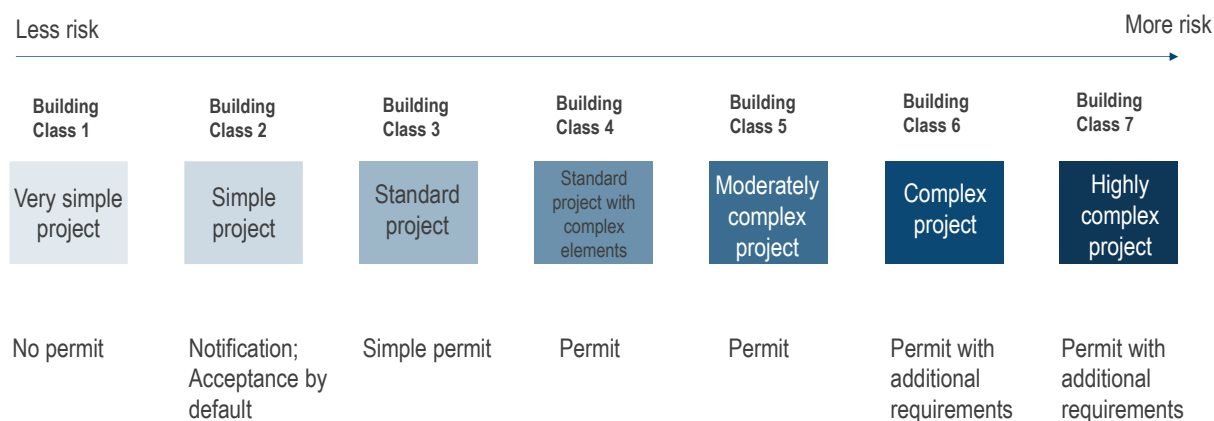
² Information Portal of Construction, <http://infostatyba.lt/>

Similarly, risk treatment within the ‘special’ and ‘non-special’ permitting categories is not further adapted according to risk. Simple buildings may also fall into categories which require a permit, without a systematic correlation with pre-defined risks. In turn, permitting processes are similarly ‘heavy’ regardless of whether the building project in question is relatively simple, moderately complex or highly complex. With a more granular risk classification of buildings, it is possible to tailor the substantiveness of subsequent permitting and inspection procedures, thereby ensuring that they are proportionate.

Hence, revising the number of categories of buildings based on a granular risk analysis is the first step towards a more streamlined permitting and inspection system. Indeed, the current classification could be expanded with several additional categories beyond ‘special’, ‘non-special’ and ‘simple’. The building categories could cover a broad spectrum ranging from a very simple project to highly complex project.

As an illustration, building categories and related permits could be conceived as depicted in Figure **Error! No text of specified style in document..4**. A building category could be composed of a so-called simple project. Given the low risk profile of this type of building, a simplified approach to permitting would consist in providing acceptance by default, if the public administration does not react within a certain deadline. The permit applicant would be required to notify the administration of his plans and submit basic documentation. Along such a spectrum, several additional categories could be conceived: standard project, standard project with complex elements, moderately complex project, complex project and highly complex project. The last categories would represent highly risky project that would require additional scrutiny from the authorities. Such scrutiny could entail requirements related to documentation to be provided (e.g. detailed engineering plans) but also expertise to be involved (e.g. sign-off plans by certified engineers or similar). Moreover, the more complex a building project is, the more authorities may need to be involved, depending on their relevance and competence (e.g. geological experts, environmental authorities, etc.).

Figure Error! No text of specified style in document..4. Indicative typology of building classification and related permits



Source: Author’s elaboration

3. Develop an approach to add different types of risks into a single index

In addition to defining risks for classifying buildings, it is important to define an approach that allows combining multi-dimensional risk criteria into a single index, thereby providing a ‘risk score’, which in turn is linked to a type of permit. In fact, the proposed risk criteria are for the most part not intended to automatically determine a high-risk scenario simply based on “checking” one box, as it is currently the case with the ‘special’ category of buildings. Instead, it is possible to create an index, which takes into account several criteria and creates a balanced composite score. As a result, an elevated risk in one or more risk

criteria would not pre-determine a certain risk score (threshold approach). For example, by this logic, a particular size of building would not automatically place it into the higher risk categories. Such an index would need to be carefully constructed with the support of expert input to ensure that the combination of risk criteria is carefully balanced and reflects the building's likelihood to cause harm. It could be conceived as a scoring system, in which risk criteria receive a certain score based on their severeness. Overall risk scores would then correspond to certain risk profiles. This calculation could be automated as much as possible to ensure a uniform risk assessment and building classification.

4. Use information systems for a harmonised risk classification and flagging of operator risks

In Lithuania, different actors are involved in the construction permitting and supervision process, such as the Ministry of Environment, VTPSI, SSVA as well as municipalities. Municipalities are critical in the permitting process, as they are the authorities granting permits and provide the contact point for permit applicants. Hence, it is very important that municipalities have a solid understanding of the procedure and apply rules consistently. This is particularly relevant in the context of a planned reform that may include new elements such as the risk classification of buildings.

As such, municipalities need to be supported to achieve a uniform implementation of rules, taking into account varying levels of administrative capacity. In a building permitting system that is more strongly risk-based, municipalities need to have a grasp of risk criteria, their relevance and their use. Some of the process of risk classification could be automated with a dedicated tool and interface within Infostatyba. This applies particularly for *intrinsic risks* related to the building project. An automated process would ensure a harmonised risk classification, and would not increase administrative burden on municipalities.

While the classification of buildings is based primarily on intrinsic risks related to the building, dynamic risks could provide information to municipalities for additional (discretionary) scrutiny. Namely, if a building project is assessed as low-risk based on its intrinsic categories, it may have a high-risk score regarding one (or more) of the operators involved in its construction. A high dynamic risk score does not impact the overall risk classification of the building, nor the corresponding type of permit. However, it may constitute a 'red flag' in the Information System available to the authorities. Thanks to this 'red flag', authorities may decide to exercise extra scrutiny during the permitting procedure, such as verifying documentation in greater detail. Results from risk analysis should be available to all authorities throughout the permitting and completion processes, including the municipalities.

Information regarding dynamic (operator) risks would also be asked by the system to the extent they are already available to the user (at a minimum the surveyor/architect for the project).

III. Permitting framework

1. Shift the focus of building regulation from specification of prescriptive rules to performance targets

As discussed in the previous section, construction regulation is designed to prevent risks that may bring potential harms for human life and the environment. The new building code could be based on performance standards rather than prescriptive rules, which would allow Lithuanian authorities to effectively reduce these risks during the building life cycle. The shift of focus reduces the possibility of having too many rules that hardly address public interests.

It also can reduce both the burden on some participants of the construction sector (resources needed to understand, keep up-to-date, and comply with rules) and the oversight burden for authorities (resources needed to make sure market participants abide with all rules, including supervision and sanctioning).

Shifting the focus to a performance-based system promotes market innovation and efficiency, as it allows companies to come up with their own solutions to achieve a satisfactory level of performance. With a focus on performance, construction companies would be able to tailor their approaches to meet performance requirements.

A performance-based system would also provide greater clarity to the construction industry, by providing a clear understanding of the performance requirements and objectives that must be met. This would allow construction companies to develop their strategies and plans with greater certainty, ultimately leading to improved quality and better outcomes. From the previous section, it is important to clearly define the risks and public interests. The new system should be able to transpose these risk principles into tangible performance outcomes.

A well-established example of this kind of system is the National Construction Code of Australia (NCCA). The NCCA which focuses on performance requirements and allows market participants to select on one or a combination of two methods of compliance methods: by abiding to prescribed solutions or by coming up with performance solutions that meet the satisfaction of the authorities (see **Box Error! No text of specified style in document..1** for more detail).

Allowing a greater flexibility to market participants must come together with improvements to certification and professionalisation of participants, which is already being considered by the Ministry of Environment as part of the proposed reform (see section on Improving the overall effectiveness and efficiency of the certification system).

Box Error! No text of specified style in document..1. National Construction Code of Australia

The focus of the National Construction Code of Australia (NCCA) is on **Performance Requirements**. Market participants can comply with the NCCA by implementing **Performance Solutions and/or Deemed-to-Satisfy Solutions**. This approach differs from other countries, which focus on compliance of rules/processes, and allows market participants more flexibility to achieve stated performance goals.

Participants can still take a prescriptive route by abiding to Deemed-to-Satisfy Solutions, which define specifications for each section of the building code. If construction participants comply with Deemed-to-Satisfy Solutions, it is implied that they are complying with performance requirements. However, if participants choose to implement Performance Solutions, they must demonstrate that their solutions in fact comply with Performance Requirements or that the solution is at least equivalent³ to the prescribed Deemed-to-Satisfy Provisions.

The NCAA defines methods to assess performance requirements.

Performance Solutions:

- Evidence of suitability,
- Verification methods,
- Expert judgement,
- Comparison with the Deemed-to-Satisfy Solutions

Deemed-to-Satisfy Solutions:

- Evidence of suitability,

³ As defined by the NCCA, *Equivalent* means equivalent to the level of health, safety and amenity provided by the Deemed-to-Satisfy Provisions.

- Expert judgement

Source: <https://ncc.abcb.gov.au/editions/2019-a1/ncc-2019-volume-one-amendment-1/section-governing-requirements/part-a2-compliance>

2. Improve efficiency of the permitting process

2.1 Implement a re-engineering of the permitting process to reduce unnecessary burden

The current permitting process has redundancies that bring unnecessary burden for market participants and authorities. The approach taken by the Ministry of Environment is to implement gradual improvements, rather than a complete overhaul. This is a positive direction as it will avoid potential confusions for all stakeholders involved, and space for the MoE to adapt as changes are implemented.

One of the main problems of the permitting process relates to the technical project proposal.⁴ In the current process design, market participants must submit a technical project proposal in the early stages of the permitting process. The issue is that in most cases participants end up changing the technical details of the project and have to prepare multiple versions. The MoE is proposing to eliminate this requirement in the early stages and have only two versions of the proposal: an early version that only includes essential details of the project, and a detailed project proposal later. This proposal is a good solution as having two projects rather than three would significantly reduce the administrative burden for both the MoE and market participants without raising relevant risks.

In the early stages, authorities can focus on those intrinsic risks that would allow for a granular classification of the project risk (as discussed in the previous section). This could range from complexity of exits in case of emergency (e.g. hospitals, shopping malls), or design complexity (e.g. cantilevered structures). The MoE can use the early stages to assign a risk level to the project and define a permitting process and supervision considerations accordingly.

2.2 Enhance IT applications dedicated to review documentation to improve efficiency of the permitting process

Currently all documentation is reviewed by humans which requires plenty of resources, is time consuming and can bring a lack of consistency. By introducing existing machine reading technologies, authorities could significantly reduce the burden and optimize the use of resources. IT tools can process and analyse large amounts of documentation much faster than humans, which can significantly reduce the time and resources required to review construction permit applications.

Machine reading applications can also interpret complex technical documentation with a high degree of accuracy, minimizing the risk of errors or oversights that could potentially lead to safety hazards or regulatory violations.

Finally, this can improve the collection and analysis data from permit applications, identifying patterns or trends that may be useful in improving the permitting process or identifying areas where additional guidance or support is needed.

(see Output 2 for more details on the use of IT and BIM).

⁴ At least for the special category structure

3. Embed the risk categories in an interface that is user-friendly for market participants

The construction law defines a list of documentation requirements that apply depending on the categorization of buildings (simple, special, non-special). The law already has a differentiation based on additional variables, e.g., whether the building is within an urban area or not. However, there is a lack of guidance of all compliance requirements given a specific type of permit and the building classification.

As the MoE implements a reform for the building code and updates the risk categorization, it is essential to provide clear guidance on what are the requirements according to the activity performed and the characteristics of the project. Requirements (whether prescribed rules, or eventually performance requirements), should be clearly stated according to each building class. Stakeholders consistently highlighted that understanding all compliance requirements is very resource intensive. Often, market participants do not comply with regulations simply due to a lack of knowledge.

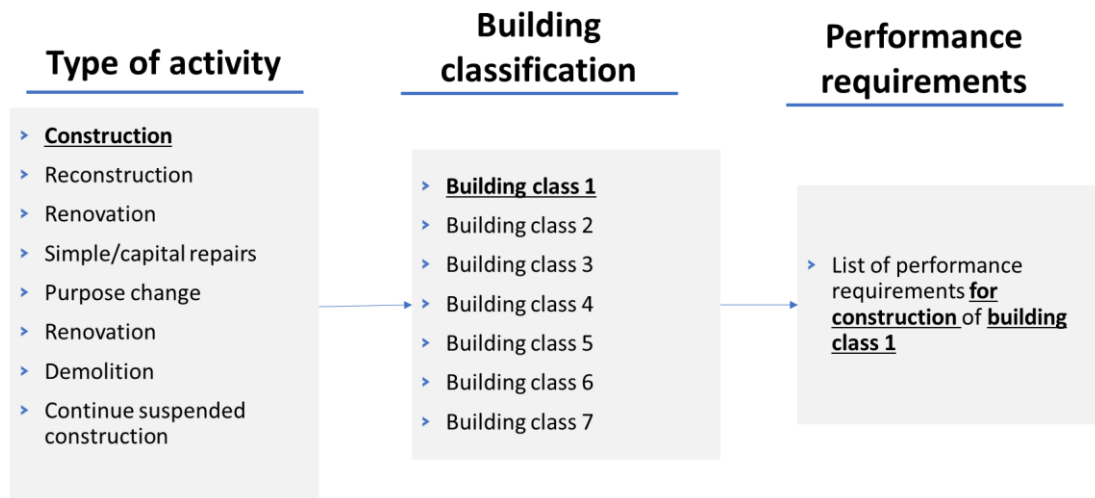
One of the key aspects to improve the efficiency of the permitting process is to improve it from the perspective of the 'end-user', i.e. the person or entity applying for the permit. As with municipalities there may be large heterogeneity in the types of users applying for building permits, from private citizens that have very little familiarity with such processes and rules, to highly professionalised corporate entities specialised in construction.

3.1. Introduce an interface that allows market participants to understand the permitting process and requirements given the characteristics of the project

Considering all the nuances in types of applicants, it is important to create a very simple process and a well-thought out 'user-journey' that makes the permitting process easy to understand and comply with. For instance, the applicant could be requested to fill out key information about the building project necessary (at the earliest stage) to determine the risk classification of the building in a dedicated interface within Infostatyba. Currently, market participants provide a first project description at the start of the permitting process. By introducing a standard, on-line version, participants could submit all necessary details and receive guidance on the type of permit, building class and the requirements accordingly.

Infostatyba would be able to automatically generate a risk classification and determine the type of permit. This information would be shared with the user, who would then be guided through the next steps of the permitting process through dedicated interfaces. Figure **Error! No text of specified style in document.**5 provides a snapshot of how a simple, but centralized information registry can look like. Instead of having to find regulations throughout different legal documents, users should be able to find everything in a single platform.

Figure Error! No text of specified style in document..5. Categorization of requirements



Source: Author's elaboration

The information requested in this stage should be directly linked to the risk criteria for building categorisation (location, size, intended use, complexity). Authorities should still supervise this process to make sure market participants are not applying for a wrong kind of permit given the characteristics.

3.2 Make sure the process is followed uniformly across municipalities and affected parties are notified

Stakeholders reported significant discrepancies of processes and decision making across municipalities. This platform and guidance could improve greater consistency across municipalities and provide better regulatory predictability. In turn this would reduce resources that market participants dedicate to navigate ad-hoc regulatory environments.

This stage could be linked to the system of notifications for affected parties (e.g. neighbors) and related stakeholders. After confirming the application of a given permit, stakeholders could receive a notification to have the opportunity to engage early in the process.

IV. Post permitting

1. Streamline the completion procedure by introducing earlier checks and enhancing risk-based proportionality

The completion procedure is a heavy burden for supervising authorities, as it requires many resources to supervise all necessary documentation that could be spent in more productive tasks. There are two key aspects that could improve the completion procedure.

First, to review those requirements that should (or can) be reviewed in an earlier stage. An example is the insurance documentation, which currently authorities supervise at completion (and during an inspection, if there is one during the construction phase). Some market participants are not aware of insurance requirements for specific activities. A process designed to ensure the presence of insurance would reduce these types of cases. Additionally, the purpose of insurance is to have it during construction, demolition, etc. An additional improvement would be to have an automatic notification for insurance companies to

verify if the market participant in fact has contracted an insurance policy (see Box 3 for a larger discussion on insurance).

Second, to review the risk proportionality of completion documentation. Lithuania already has a degree of proportionality embedded in the completion procedure. However, in light of reviewing the risk categorization of buildings, the MoE can also update the documentation requested during completion to tailor according to the risk of the project and the type of activity performed.

2. Leverage data from the construction and use of buildings stages to improve the risk model

As discussed in the first section, the risk analysis should cover all stages of the building life as well as risks related to the project and to the participants. In the post-permitting phase, there is potential to include additional data in the strategy of collection and analysis. Below there are three key areas to consider:

- **Data on operators' performance (dynamic risks):** authorities can design a set up data points that could be useful to build a profile of market participants. This can help authorities understand whether operators tend to generally comply or flagrantly violate the law. In the future this can improve the decisions on the types of sanctions, assistance and/or permitting decisions.
- **Construction journals:** detailed information during the construction can be helpful to prevent risks during the use phase of the building, and to trace back possible causes of eventual damages. However, analyzing construction journals is heavily resource consuming if done by humans. Introducing machine-reading technologies would be an efficient way to add this layer of analysis. Furthermore, Lithuanian authorities could introduce legal provisions that would allow them to easily or automatically receive data from private construction journals providers, as this is currently not possible or cumbersome.
- **Quality of materials:** understanding the relationship between quality of materials and risks could improve the risk model. Upon implementation of BIM, authorities should include this variable in the model.

(for a larger discussion on use of data and IT tools see Output 2)

V. Cultural heritage protection

1. Define cultural heritage protection categories and regulate accordingly

Protecting landmarks and cultural heritage spaces is a priority of Lithuania, and countries around the world. In practice there is a tension between the efficiency of the construction sector (economic growth) and the efforts to reduce risks of damage to cultural heritage.

Under the Law on the Protection of Immovable Cultural Heritage, there are three objects of protection, defined as "Immovable cultural heritage":⁵

- **Individual objects:** a location, a structure or another immovable item possessing valuable properties.
- **Complex objects:** a group of objects of cultural heritage which is significant in its totality.
- **Sites**

⁵ Art 2. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/30b3a4e0e38011ea869e86e74cfea363?jfwid=bkaxlfhf>

According to the construction law, the municipalities must send the application to the Department of Cultural Heritage to “prepare special requirements for heritage protection applied to the object of cultural heritage or its territory, to the structure located in the territory of the object of cultural heritage”.⁶

However, this often raises uncertainty for market participants and prolongs permitting/completion processes. To provide clarity and reduce burden, authorities can refine the risk-based approach to cultural heritage protection. The purpose of such a strategy would be to focus the resources in those activities where cultural heritage is at most risk.

Table **Error! No text of specified style in document..2** outlines an illustrative example of how authorities can provide certainty to all stakeholders about the level of scrutiny for different activities and types of landmarks. In essence, Lithuania can be extremely cautious with those landmarks that are of the highest priority and keep an active supervision for non-priority buildings or buildings in protected areas. However, for those with less priority or for minor reparations/maintenance works, authorities can provide a standard set of prescriptions and avoid a regulatory bottleneck.

Additionally, authorities can define a set of works that respond to policy priorities and should be approved in most cases. These can respond to policy goals such as accessibility, which would imply allowing for ramps or elevators in cultural heritage. The process of responding to these requests should also vary according to the type of protected object.

Table Error! No text of specified style in document..2. Defining tiers of protection for cultural heritage

	Characteristics	Recommended action
High	<ul style="list-style-type: none"> • Construction/conservation of priority landmarks • Maintenance of priority landmarks 	Modified permits , with substantial review of the Cultural Heritage Protection Department.
Medium	<ul style="list-style-type: none"> • Construction/conservation of non-priority buildings protected by cultural heritage • Construction/conservation of buildings in cultural protected areas 	Regular permits + check from Cultural Heritage Protection Department (with a single window application)
Low	<ul style="list-style-type: none"> • Maintenance of non-priority buildings protected by cultural heritage • Maintenance of buildings in cultural protected areas 	Standard prescriptions (e.g., paint color, façade material)

⁶ [I-1240 Lietuvos Respublikos statybos įstatymas \(e-tar.lt\)](#)

Priority 2 – Certification of construction professionals and compliance promotion

In Lithuania, as in most other countries, control mechanisms aiming to ensure - directly or indirectly - quality of construction services operate at different points in time. They operate at the moment of the **entry into the profession** of construction professionals (attestation) but also *after* such entry. Such control mechanisms can be of public and private law nature and include, inter alia, permitting and construction completion (see priority 1), state supervision of the construction process (VTPSI), civil liability for damage, mandatory insurance, continuous professional development (CPD) obligations for architects and engineers, and others. Civil liability for damage, for example, operates for up to 20 years after completion (see separate output on liability and insurance). The following sections take a more careful look at the certification system itself, aiming to ensure that construction professionals possess sufficient qualifications deemed necessary for the job.

I. Improving the overall effectiveness and efficiency of the certification system

1. Simplify the existing certification system for construction professionals

Certification (attestation) of natural persons: status quo

The Lithuanian Construction Law (Art. 12(1))⁷ lists the following main areas of construction technical activity (*statybos techninės veiklos pagrindinės sritys*):

- Construction research (e.g. geological, geodetic and other research);
- construction design and supervision of implementation of construction design;
- construction project expertise, construction expertise;
- construction works;
- construction technical supervision.

Article 12(2) further establishes a list of persons authorised to manage the above areas: designer (construction project manager), designer/manager of part of construction project, supervisor of execution of project (or part of project), head of construction, head of special works of construction, construction technical supervisor, construction technical supervisor of special construction works, construction project

⁷ Lietuvos Respublikos Statybos įstatymas, <https://www.e-tar.lt/portal/lt/legalAct/TAR.F31E79DEC55D/asr>, last accessed on 22 March 2023.

expertise manager (or part of expertise) and construction (or part of it) expertise manager. This delivers a list of **12 specific roles/functions in construction, subject to different sets of qualification requirements**, as follows below.

To perform the above roles, a person needs to be an attested architect or attested engineer, which thus have a 'shared monopoly' to perform the above-mentioned functions. Some of the above roles are reserved to one of these professions *exclusively* (e.g. leading the architectural part of building project is reserved for attested architects only, while head of construction by engineers only). Such attestation/certification is carried out, for architects, by the Chamber of Architects and, for engineers, by the Construction Sector Development Agency (SSVA).

The relevant **qualification requirements** to obtain a certificate (atestatas) for the mentioned roles/functions include:

1. Completed education of architecture or civil engineering;
2. Professional experience of specified length, depending on the role to be performed (from no experience required in case of simple buildings, 2 years for non-special buildings, to 3 or 5 years in special buildings).
3. Examination of professional knowledge and;
4. Examination of legal knowledge.

In case of simple buildings, no professional experience or examination is required, except the requirement of having completed relevant education (architect or engineer, Article 12(9)).

After obtaining a certificate (*atestatas*) – once the above conditions are fulfilled - the certified persons are bound by continuous professional development (CPD) obligations every 5 years, which require the attendance of courses of 20 hours (Article 12(12)). Non-fulfilment of CPD obligations may result in a warning issued by the certifying authority and – in case of continued noncompliance – in certificate suspension (see Priority 3). Table 1 below summarises the above requirements concerning education, professional experience and examination for architects and engineers.

Table 3. Summary of qualification requirements for architects and engineers (Art. 12 Construction law)

	Function (‘special’ and ‘non-special’ buildings)	Education	Professional experience	Examination		Issuance of certificate
				Professional knowledge	Legal knowledge	
1	Designer/project manager (special buildings)	Architect or civil engineer* * (some of the functions reserved either <i>exclusively</i> for architects (e.g. head of architectural part of project) or exclusively	5 years	Programmes defined and testing carried out by: Chamber of Architects* => for architects Universities, associations etc => for engineers * Chamber membership is mandatory for attested	Attesting institutions (Chamber of Architects and SSVA)	
2	Supervisor of execution of project (special buildings)					
3	Construction technical supervisor (special buildings)					
4	Project (or part of it) expertise manager					
5	Construction (or part of it) expertise manager					
6	Designer/manager of <i>part of</i> project (special buildings)	3 years				

7	Supervisor of execution of <i>part of</i> project (special buildings)	for engineers (e.g. head of construction)		architects since 2017		
8	Head of construction (special buildings)					
9	Head of specific/special construction works (special buildings)					
10	Technical supervisor of special construction works (special buildings)					
11	One of the above for non-special buildings		2 years			
12	1, 2 or 3 and 8 for simple (non-complex) buildings		not required			

Assessment in light of international practice

Multiple functions in managing key areas of construction activity: fragmentation

It is striking that the Lithuanian Construction Law sets out 12 specific roles/functions in construction, subject to four different sets of qualification requirements. Herewith, the Lithuanian law essentially establishes **four categories** of architects/engineers, able to perform specified tasks:

- 'Unattested' architects/engineers after completion of relevant studies, not subject to certification requirements and able to perform a broad range of functions in *simple* buildings; and
- 'attested' architects and engineers:
 - o 5 education + 2 years professional experience (+examination): managing key areas of construction activities in *non-special* buildings;
 - o 5 + 3 years (+examination): performing specified roles (e.g. head of construction) in *special* buildings;
 - o 5 + 5 years (+examination): performing the remaining roles (e.g. technical supervisor) in special buildings.

In addition, further specific certification requirements apply in specific areas such as cultural heritage, territorial planning and energy efficiency, resulting in **multiple, overlapping layers of specific certification requirements**.

It is clear that the above categories aim to at least roughly correspond to the complexity of buildings. Accordingly, while activities in special buildings will require minimum 3 or 5 years' professional experience, the same activities in non-special buildings will require 2 years of experience, and activities in simple buildings will not be subject to any professional experience or examination requirements (besides the requirement of a completed university education). Nonetheless, and especially given the fact that the category of special buildings is rather broad in Lithuania (see priority 1), it is questionable whether these requirements are commensurate to relevant risks. For example, given that the mere fact of exceeding the threshold of 2 000m² or having cultural heritage elements - however simple the building - will put it into the category of 'special buildings', the requirement of 5 years of experience seems disproportionate in terms of risk. Rather, such complex categorisation seems to lead to unnecessary formalism, barriers of entry and fragmentation of the relevant profession.

In the past, Lithuania had dropped the certification requirements for the category of non-special buildings, with the result that also unattested professionals were authorised to manage main areas of construction activities. However, these requirements were reintroduced in 2017, adding to the complexity of the certification system.⁸ This, as well as other factors, have led the European Commission to conclude in 2021 that the Lithuanian system for regulating architects and engineers is more restrictive compared to EU-average.⁹

In the EU, the profession of architect and engineer generally belong to the realm of regulated professions (with some exceptions), the entry into which is made subject to conditions set out in law. Given the implications for free movement in the EU, the European Commission has engaged in several relevant mapping exercises, aiming to assess the relevant requirements yet emphasising that they vary greatly across countries.¹⁰ It established that some countries reserve a broad range of architectural/engineering activities to qualified architects/engineers (Austria, Germany, which generally require and 2 years of relevant professional experience respectively before becoming a fully-qualified architect/engineer), whereas others chose what the Commission considered **'fragmented systems'** with multiple different categories within the same profession and/or multiple certification requirements. For example, in 2021, Latvia was reported to have established 76 specialties for construction specialists, while Poland was reported to have four categories of architects, able to perform specified roles. The latter approach, including the one taken by Lithuania, was criticised as creating unnecessary confusion and fragmentation.¹¹

Another approach is taken in, for example, **France**, which does not have any of the categories for architects and engineers which exist in Lithuania, leaving it to the private actors/clients themselves to establish how much experience they want to demand when hiring professionals (further, professional training of specified duration is incorporated in the relevant education programmes). Generally, a person becomes an architect after 6 years of education (which includes 1 year of professional training), qualifying him/her to practice project management and sign construction projects. Equally, completion of studies in engineering will also qualify a person to working as an engineer, except where specific requirements in certain areas apply (e.g. fire safety etc). However, the picture is different when it comes to activities implying **technical control and supervision**, as is the case with the private technical controllers (*contrôleurs techniques*) shows.

The French system is characterised by a stringent system of accreditation of **technical control companies** (legal entities), including strict requirements concerning **independence** of technical controllers from other parties involved in construction to prevent conflicts of interest. At the same time, the system is characterised by a high degree of **stratification/differentiation** of activities and thus a high level of complexity, which could operate as a cautionary tale for those seeking inspiration from the French system. The system may nonetheless serve as a meaningful example for those willing to engage in (further) delegation of tasks to the private sector. The relevant legal regime is briefly depicted in the box below.

Box 2. France: contrôleurs techniques

The French system of construction supervision is not based on inspections by public/state inspectorates at the central, regional or municipal level. Instead, it largely relies on private actors – **bureaus of**

⁸ Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on taking stock of and updating the reform recommendations for regulation in professional services of 2017, [SWD/2021/185 final](#), p. 135.

⁹ [COM\(2021\)385 final](#), p. 8, 11.

¹⁰ Ibid.

¹¹ Ibid., p. 8.

technical controllers (*contrôleurs techniques*), subject to stringent accreditation/approval system established by the French Construction and Housing Code ([Code de la construction et de l'habitation](#)).

Ministerial approval (legal person)

First of all, the activity of technical controllers is subject to **approval** (*agrément*) **by the minister responsible for construction**, valid for the maximum duration of 5 years. It is important to note that the approval operates at the level of **legal, not natural person**: it is the bureau of technical controllers which is subject to the approval procedure. However, the conditions for approval are also applicable to managers, directors, and to individual controllers (see below).

Conditions for approval: impartiality, competence, integrity

The relevant provisions of the French Construction and Housing Code also outline the conditions to be fulfilled to obtain ministerial approval. In particular, the approved (legal) persons and bodies, their administrators, managers as well as the personnel actually performing control tasks has to act with **impartiality** and may not have any link with construction actors (legal and natural persons) involved in design, implementation and expertise, which could compromise such impartiality. Accordingly, technical controllers may not have any link to the activities of construction design, implementation/execution and expertise. Further, they have to demonstrate '**multidisciplinary competence**', allowing to **grasp technical risks** likely to be encountered in the design and construction of works. Finally, they need to demonstrate **professional integrity**, guaranteeing that they will operate with reliability/conscientiousness and impartiality.

Procedure of ministerial approval

The decision of approval of technical controllers is taken by the minister responsible for construction on the basis of the reasoned opinion of the 'approval commission'. The latter is to be composed of representatives of different ministries, insurers, relevant professions and other bodies. Before adopting the reasoned decision, the commission investigates the dossier submitted by the relevant bureau, including the respect of the above criteria. The commission is bound to hear the party seeking approval (**hearing**).

Second approval

After the first approval by the minister responsible for construction (the first, 'technical' approval), the approved party normally seeks second approval by the minister of interior. The latter generally intervenes after the accreditation by the French National Accreditation Body (COFRAC), which certifies that the relevant bureau fulfils the conditions of the standard ISO/IEC 17020 (sets out requirements for the competence of bodies performing inspection tasks).

Multiple categories of approvals

The relevant approval will specify the areas in which the controller is authorised to intervene. In practice this entails **multiple specific categories** of control, including, inter alia, relating to electric installations, ventilation, fire safety, thermic isolation and many others. This carries the potential of complexity and confusion.

Some numbers

In practice, there are over **40 approved technical control bureaus** of different size in France (including multi-nationals to small bureaus), with approvals of different scope from narrow to the broadest (covering essentially all types of relevant activities in all types of buildings). About 15 of them are bureaus with the most far-reaching approval which covers the complete spectrum of relevant activities, including 5 international groupings (DEKRA, BUREAU VERITAS, QUALICONSULT etc).

Civil liability regime and insurance

After completion of construction, technical controllers – in the same vein as architect, contractor, technician - is liable for damage which compromises the **stability of the construction** or makes it **unfit for purpose** (10 years liability). This is so-called strict liability, i.e. liability for damage which applies even in the absence of fault (fault is 'presumed'), and has to be covered by relevant insurance.

During construction works, technical controller will also be contractually liable in cases of fault, i.e. non-performance (or deficient performance) of contractual obligations arising out of contract concluded with the client (*maître d'ouvrage*) due to negligence. This liability is also to be covered by insurance.

Criminal liability

In case of 'manifestly deliberate' breaches of duty of care, which create a direct risk of death or injury likely to result in mutilation or disability, a technical controller may also be held **criminally liable**, leading to a criminal fine or imprisonment (Art. 223-1 Criminal Code). These situations are extremely rare in practice.

Concerning independence of private actors exercising activities of control and supervision, it should be noted that many 'good practice' countries which have (partially or completely) delegated such tasks to private parties impose not only conditions regarding education and experience of such parties yet also **strict independence requirements**: those controlling construction activities should not have close ties to parties involved in design or construction that they are expected to control. Reportedly, besides France, England, Ireland, Norway and Sweden impose such independence requirements on private quality controllers.¹² Such independence requirements (of technical supervisors, for example) seem absent in the Lithuanian context.

Recommended actions

Concerning certification and fragmentation of construction professions, it is therefore recommended to:

- *Simplify the existing certification system for construction professionals. Such simplification may include:*
 - o *Merging/aggregating certain roles in construction, allowing a certified professionals to perform a broader set of professional activities, and hereby reducing the number of categories of architects and engineers subject to different sets of qualification requirements;*
 - o *One of the guiding principles for such simplification could be generally stricter requirements (including professional experience of certain length) for certain roles which imply supervision, verification or (technical) control tasks, and lighter requirements for activities not implying such tasks.*

¹² For example, Meijer and Visscher, [Quality control of constructions: European trends and developments](#), figure 4.

2. Review and transform the examination requirements

Examination of professional and legal knowledge: status quo

In addition to completed education and professional experience to become an attested architect or engineer (2-3-5 years), a person has to pass mandatory examination of professional and legal knowledge. For architects, both legal and professional knowledge is being tested by the Chamber of Architects, while for engineers, testing of professional knowledge is carried out by authorised institutions including higher education bodies, associations etc. Examination of legal knowledge is being organised and carried out by the Chamber of Architects and the SSVA respectively. The examination of *legal* knowledge is applicable also in case of architects and engineers qualified in another EU/EEA country. An overview of this system, including the responsible institutions, is depicted in Table 2 below.

Table 4. Examination requirements (Article 12(11) Construction Law)

	Examination	
	Legal knowledge	Professional knowledge
Architects	Chamber of Architects	Chamber of Architects
Engineers	SSVA	Authorised institutions such as universities, associations (e.g. engineers association)

Assessment: unproportionate barrier to entry

Concerning examination, for architects, the relevant programmes are developed by the Chamber of Architects and confirmed by the minister of environment, in agreement with the minister of culture.¹³ For engineers, the relevant programmes for professional knowledge are developed by the authorised institutions (universities, associations etc) and confirmed by minister. Several comments can be made concerning such examination.

First of all, some of the mentioned examination programmes do not seem to be updated regularly to, for example, take into account the latest developments and/or to learn from past mistakes (e.g. large scale accidents). Further, it seems to be overly oriented towards knowledge/theory and less on skills/practice. This calls into question the value added of such examination compared to higher education (which also tends to be theory-oriented). The contents of examination do not seem to be tuned to the above-listed functions to be performed (only programme for engineers seem to distinguish on the basis of the relevant functions in table above), and calls into question whether such heavy requirements are justified in terms of risk.

Further, the examination of legal knowledge is being carried out in the Lithuanian language, which thus constitutes a **significant barrier of entry** for foreign qualified professionals, who are equally subject to this requirement. It may pose particular problems for a relatively small construction market like the one in Lithuania, in need of qualified personnel, which is likely to be personnel qualified abroad. Additional examination signals low levels of trust in the education system for engineers and architects and poses the question of the value added of such examination compared to such education.

¹³ [Dėl Architektu atestavimo ir teisės pripažinimo tvarkos aprašo patvirtinimo,](#)

Concerning international practice, most (if not all) EU countries impose requirements related to education and professional experience of construction specialists, which generally vary from 4 to 6 years of education and 1-3 years of practice. A handful of member states require additional post-graduate examination (e.g. Austria, Bulgaria, Croatia, Greece, Hungary, Poland), but the importance of such examination seems to have declined over time (and it is not necessarily considered 'good international practice'). Some member states apply different forms of state examination at the education level, before graduation.¹⁴

All in all, the relevant examination requirements, while in theory aiming to guarantee high quality professional services, in practice pose high entry barriers into the profession which are not justified in terms of risk.

Finally, an important remark should be made concerning the above suggestions concerning the simplification of the certification system (including easing examination requirements). First of all, they **should not be read as suggesting an overall decrease of applicable standards**. To the contrary, the absence of qualification/conditions *in law* does not automatically mean that no such conditions concerning qualifications of construction professionals are set by, for example, the employing firm/client. It is in the best interest of the **employer** to recruit fully qualified persons to perform the tasks assigned to them, especially given the potential liability risks. Therefore, easing entry into construction professions could go hand in hand with increasing awareness of construction actors employing personnel, as well as with strengthening civil liability and insurance requirements (see Box 3 below).

Box 3. Insurance

Civil liability and mandatory insurance requirements were subject to a separate report in the framework of this project (output 1) and will not be revisited here elaborately. In any case, it seems that after introducing and broadening of mandatory insurance requirements in Lithuania in 2017, many construction actors still do not get mandatory insurance in time. While knowledge on insurance requirements has improved over time, non-professional construction actors often still lack information on such requirements and/or view them as purely formalistic obligation, to be fulfilled 'just in time' before needing to submit the necessary proof. Generally, the proof of mandatory insurance is being demanded during, *inter alia*, the construction process by the VTPSI and at the stage of construction completion formalities (insurance of designers (architects) comes in at the earlier stage of permitting). However, to make sure that those who need to have insurance cover do actually have it, it could be envisaged requiring the proof of necessary insurance earlier in the process (e.g. at the moment of start of construction works). Therefore, concerning insurance, following suggestions/recommendations could further be made:

- Developing a mechanism allowing to check the proof of mandatory insurance cover at the start of construction works (possibly together with the notice of commencement of construction works);
- Continue improving knowledge on mandatory insurance, including encouraging (or perhaps a duty) professionals to advice non-professional actors (small builders/clients) concerning their insurance obligations;

Further, as already raised in output 1, the applicable rules concerning the minimum insurance cover in all cases provide for a minimum insurance sum of 43 000 EUR (if insurance is taken out for each construction project separately) and of 289 6000 EUR (if insurance is taken out taking into account the value of works per year). These amounts are the same concerning civil liability insurance of designers (projektotojas), technical supervisors, expertise contractors or concerning construction works (Articles

¹⁴ [SWD/2021/185 final](#).

43-46 Construction Law). These minimum sums are not differentiated depending on the category of buildings and reportedly result in difficulties for construction actors to obtain sufficient insurance coverage. Accordingly, it may be considered to adapt and differentiate the minimum values of insurance cover.

A further recommendation to insurers would be to continue improving their risk assessment to ensure that insurance premiums paid reflect actual risks, in order to strengthen incentives for the insured to reduce those.

Finally, according to the Construction Law (Article 42(12)), the rules concerning mandatory liability in construction are to be adopted by the institution supervising insurance, i.e. the Bank of Lithuania. In adopting such rules, specific knowledge concerning the peculiarities of the construction sector is needed, necessitating a comprehensive and regular communication with the ministry responsible for construction in adopting the relevant rules.

Recommended actions

Concerning the examination of construction professionals, it is therefore recommended:

Review the examination requirements, aiming to:

- *transform the contents of examination to make it more practice-oriented and updated in light of new emerging risks;*
- *Consider the option to gradually phase out/abolish the additional (legal) examination requirements, which merely duplicate what has (or should have) been covered during education, in order to remove barriers of entry into the profession by qualified professionals (e.g. those qualified abroad and not fluent in the Lithuanian language).*

3. Shift from 'paper-checks' towards an 'auditing approach' of certified legal entities

In addition to natural persons willing to perform certain roles in construction (see above), certain activities, such as contractor of **special buildings**, are reserved for legal entities, which are also subject to specific requirements. Here, the SSVA will certify/attest the following legal persons:

- contractors of special buildings;
- contractors for construction project expertise (of part of project) and
- contractor for construction expertise.

For example, legal entities willing to be contractor in case of special buildings must:

- not be subject of insolvency proceedings;
- employ certified persons acting as heads of construction;
- employ workers for executing construction activities (their number is not specified);

- have implemented a quality assurance system;
- must have construction rules for conducting construction activities (Article 18(3)).

If a contractor aims to perform all general construction works, 2 years of relevant experience in construction will be required (Art. 18(6)).

Similar requirements apply in case of contractors for construction project (of part of project) expertise and construction expertise (*statinio projekto (jo dalies) ekspertizės rangovas, statinio (jo dalies) ekspertizės rangovas*). They must not be subject to insolvency proceedings, have experience of no less than one year in design or expertise of special buildings and employ specified numbers of certified personnel (Article 17(3)).

Generally, the SSVA will attest such persons merely **on the basis of documents** submitted to it, and will engage in a **yearly monitoring** after attestation (again, based on documentary checks).

Reportedly, such system results in a rather 'formalist' approach by the attested actors, who are likely to get all documents 'in order' just before attestation, yet may not actually have *functioning* systems of quality assurance and/of sufficient workforce to perform the tasks entrusted to them (e.g. dismissal after receiving certificate). The yearly checks of attested persons done by the SSVA are based on submission of required documents and checks of such documents by the SSVA. However, whether a quality management system is genuine or a mere 'paper tiger' often cannot be ascertained by documentary checks but requires a more in-depth review and assessment – something more akin to an audit at the premises of the certificate holder. Therefore, a **shift towards an auditing approach** by the SSVA could be envisaged, which may imply less frequent yet more in-depth checks.

At the same time, as already noted in the August 2022 recommendations report, it is a long-standing OECD principle that inspection tasks should, as a general rule, be **coordinated and consolidated** in the hands of one lead inspectorate (VTPSI) in order to avoid duplication and overlaps and to ensure a better use of public resources (see box below) (OECD, 2018_[4]). This is why the work of SSVA in this regard should be organised in a way which allows the VTPSI and the SSVA to complement each other and exploit synergies in pursuing a common objective while at the same time avoiding unnecessary overlaps. For example, as VTPSI – following their own risk assessment (see Output 2) - will regularly engage in inspections of construction of special buildings, a model of a coordinated inspection/audit by the VTPSI and the SSVA respectively could be envisaged: for example, an inspection visit on the construction site by the VTPSI, complemented by an audit at the premises of the legal person by the SSVA. Such an approach would require a closer and more structured interinstitutional cooperation between the two authorities as was the case so far, including joint planning and improved interconnectedness in terms of data and risk assessment.

Box 4. OECD Regulatory Enforcement and Inspections Toolkit

Criterion 6: Co-ordination and consolidation

Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.

Key questions:

- Is the issue of institutional mandates, co-ordination and consolidation taken into account at the regulatory drafting stage and in the Impact Assessment process?
- Is duplication of functions avoided and are mandates and responsibilities clear (between different institutions, between national and local levels)?
- Do different inspection and enforcement structures share information and records, participate in joint alert systems, coordinate “on the ground” – particularly in related regulatory areas?
- Are mechanisms in place or being introduced to increase efficiency through better information sharing, agencies acting as “eyes and ears” for others? Are re-inspections of the same issue avoided, as well as duplicated reporting?
- Are allocation of resources and strategic planning done taking into account all structures working in a given regulatory area?

Source : (OECD, 2018^[4])

Recommended actions

Concerning supervision of attested legal persons, it is therefore recommended:

- *Envisaging a shift towards an ‘auditing’ approach of the attested legal entities by the SSVA, while at the same time respecting the OECD principle of co-ordination and consolidation of inspection tasks in the hands of one lead inspectorate (i.e. co-ordinating between inspection and auditing activities under the lead of VTPSI);*
- *Such cooperation should envisage strengthened interinstitutional cooperation between the two authorities (SSVA and VTPSI).*

II. Compliance promotion

Improving the interinstitutional cooperation and joint planning of relevant institutions; reaching out to business associations

OECD best practice principles

In the past, supervision systems in Europe and elsewhere were primarily focused on seeking out violations and punishing the non-compliant. However, it was increasingly realised that non-compliance often stems from sheer lack of knowledge of regulatory provisions, and that many actors rather need a ‘gentle push’ to comply instead of indiscriminately applying a formal sanction (fine, notice, prosecution). Over time, supervising authorities across Europe and beyond have increasingly shifted to so-called ‘**cooperative**’ **approaches** to compliance as part of an effective enforcement strategy, including communication, guidance, advice, persuasion, and actively engaging with economic operators.

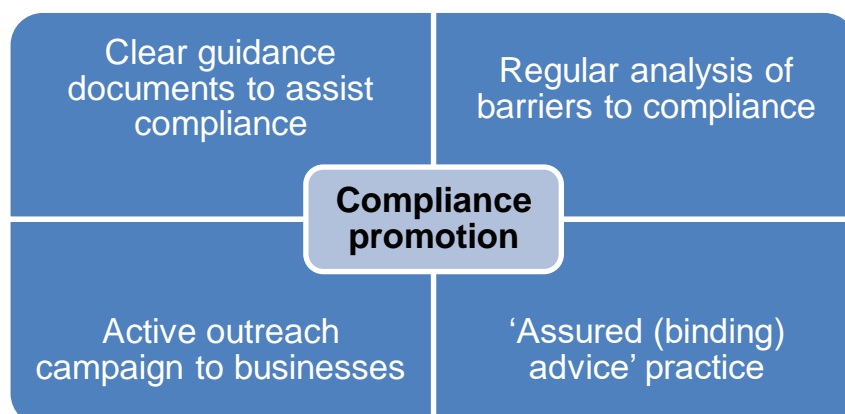
According to the **2014 OECD Best Practice Principles for Regulatory Policy**, compliance promotion constitutes a good practice and an important element of regulatory enforcement and inspection.’ (OECD, 2014₍₁₎)¹⁵ The principle implies that:

- Regulators, inspection and enforcement bodies view promoting and supporting compliance as part of their work and of their mandate. They actively analyse barriers to compliance, in particular if they relate to information;
- guidance is delivered through a variety of complementary tools, including guidance documents which are clear, practical and easy to find, including active outreach to businesses, business associations and ‘problematic’ sectors;
- inspections are not viewed as exclusively seeking to verify compliance but also as opportunity to ‘inform, explain and advise’;
- the foundations for the ‘assured/binding advice practice’ are created, which entails businesses/duty holders being able to rely on information provided by public authorities and not being punished in case such an advice/information turned out to be wrong;
- the performance of the overall inspection and enforcement system is not assessed in terms of detected violations but in terms of actual compliance levels.¹⁶ (OECD, 2018₍₄₎)

¹⁵ [OECD Regulatory Enforcement and Inspections Toolkit](#). Criterion 10. Compliance promotion. OECD Best Practice Principles for Regulatory Policy, Regulatory Enforcement and Inspections. Principle 10. Compliance promotion.

¹⁶ Ibid.

Figure 6. OECD Regulatory Enforcement and Inspections Toolkit (2018) – Compliance Promotion



Source: [OECD Regulatory Enforcement and Inspections Toolkit](#). Criterion 10. Compliance promotion. OECD Best Practice Principles for Regulatory Policy, Regulatory Enforcement and Inspections. Principle 10. Compliance promotion.

Lithuanian supervision policy and practice: important progress and areas for improvement

The Lithuanian public administration and business supervision (*verslo priežiūra*) has undergone significant reforms throughout the recent decade, including a shift towards more cooperation, advice and guidance. The 2015 reform of the Law on Public Administration made the provision of assistance and consultation a 'principle' of business supervision.¹⁷ It introduced the concept of 'minor violations' (violations which cause no or minor harm), most likely to result in oral warning instead of a formal, 'one-size-fits-all' sanctions for every violation.¹⁸ Regulators in different areas increasingly reoriented towards providing advice and guidance, leading to change of paradigm expressed in the new slogan - 'inspector is a consultant, not a punisher'. The 2015 OECD review of regulatory policy in Lithuania concluded, inter alia, that compliance promotion is one of the strongest points of Lithuanian regulatory reform, to be extended to all agencies (OECD, 2015^[5]).

In the same vein, the VTPSI has developed an impressive range of information activities, which it is working to improve and systematize. This includes providing information on its website (in the form of FAQ, infographics and other information material such as '*Statykite kartu!*' leaflet), on the phone, on social media, during information campaigns and using other channels. The 2022 recommendations report highlighted the need to further **expand and consolidate** these numerous initiatives and to **systematize** them so they are accessible, consistent, proactive, easy to use and easy to understand, in particular for non-professional actors (e.g. family constructing a single-family dwelling). It is important that such information and advice is user-friendly and points citizens to potential difficulties, risks or issues which may come up during the entire construction cycle (planning – permitting – construction – completion – use).

For example, while the VTPSI does publish a detailed list of laws, technical regulations and other legal acts on its website, it could step up efforts to communicate the relevant legal obligations in a plain language which is accessible for non-expert audience. Further, on the inspectorate's website, it would be helpful for those looking for information to have one 'entry point' to find guidance. In this respect, the dedicated [guidance portal](#) of the British Health and Safety Executive (HSE) could be of inspiration.

¹⁷ Art. 30(1)(5) [Law on Public Administration](#): 'the entities supervising the activities of economic operators cooperate with them, provide uniform and consistent advice to economic operators on issues within the competence of the supervising entity, and implement other measures of a preventive nature to help economic operators comply with the requirements of legislation.'

¹⁸ Art. 38, *ibid.*

As already stated in the 2022 recommendations report, refocusing of the VTPSI's activities towards (even more) advice and guidance also calls for a recalibration of its competences, including unburdening the inspectorate from, inter alia, resource-intensive and time-consuming investigation of low-risk complaints (**see also Priority 4/Risk assessment**).

Further, it should be added that providing advice and guidance is not and *should not* be the sole responsibility of the VTPSI. Other actors play an important role too, including the SSVA, Chamber of architects and others. Their **interinstitutional cooperation and joint planning** in pursuing common objectives is still to be improved.

Finally, the regulated community in the construction sector consists of a number different actors including professionals and non-professionals, legal and natural persons, the well-resourced and the those lacking resources, small and medium-sized enterprises (SMEs) and big contractors, insurers, the relevant associations etc. An **integrated approach** to construction safety/quality should envisage all these actors, including reaching out to the relevant business associations. For example, companies or associations who implement effective self-policing measures, including the capacity to sanction non-compliant actors (at industry or individual company level) may send market signals of high-quality services and thus create further market incentives for high-quality services. In this context, it is worth exploring the potential of the existing associations in the construction sector to **foster a 'compliance culture'**. In the past, regulators and industry actors have employed a number of tools at different levels to promote compliance and even to go beyond the minimum standards prescribed by law:

- Developing quality logos, certifying compliance with specific standards¹⁹;
- Encouragement and incentives to implement functioning quality management systems (here the above-discussed 'auditing' is of relevance);
- Providing more information on industry participants, fostering transparency on quality and thereby increasing consumer pressure to increase standards;
- Communication and awareness raising campaigns.

The following document ([Shaping the Future of Construction](#)) lists a number of initiatives and examples implemented on a variety of issues in the construction industry across the world, including at the company level, industry (p. 42) or at the government level and may serve as a source of inspiration.

Recommended actions

Concerning compliance promotion, it is therefore recommended:

- *improving the interinstitutional cooperation and joint planning of relevant institutions (VTPSI, SSVA, Chamber of Architects), with the view of promoting compliance culture, reviewing the effectiveness of applicable policies, and/or launching a far-reaching awareness campaign;*
- *Reach out to business associations in the construction sector with the view of analysing the relevant barriers to compliance and leveraging on their 'self-policing' capacity.*

¹⁹ To mention an example in the area of occupational health and safety: the USA [OSHA Voluntary Protection Programs](#) (VPP), which rewards voluntary efforts of employers to implement OHS management systems.

Priority 3 – Making enforcement measures more coherent and effective

As noted at various places of this report, cooperative approaches and **fostering compliance commitment** of the relevant actors is a central and indispensable element of effective construction supervision. At the same time, it is also clear that some actors will not be ‘talked into compliance’ by advice and guidance strategies but will necessitate a **‘stronger’ enforcement response**. That is why any credible supervision system should have at its disposal a broad array of enforcement measures including, inter alia, issuing formal warnings, stopping construction activities, imposition of (administrative) penalties, suspending economic operators’ certificates or even criminal prosecution where circumstances so require. To repeat a well-known slogan of regulatory policy, regulators ‘will be able to speak more softly when they are perceived as carrying big sticks’.²⁰ Such measures are to be used in a proportionate, responsive and fair manner to respond to risks and achieve compliance. The availability and application of such measures is the focus of this chapter.

I. ‘Two-stage enforcement’: the complex interrelationship between the VTPSI and the certifying authorities

Improve the communication process between the VTPSI and the certifying authorities; consider granting the VTPSI direct powers to suspend certificates

Some of the challenges to a credible and coherent construction supervision system in Lithuania stems from its institutional set-up. To respond to violations of construction law, the State Territorial Planning and Construction Inspectorate (VTPSI) can take a range of enforcement measures (*poveikio priemonės*) set out in the Law on Supervision. These include warnings, mandatory instructions (including stopping construction activities in cases of immediate risk/illegal construction), administrative penalties, referral of a case to public prosecutor and others.²¹ At the same time, the suspension or revocation of certificates of construction professionals and legal entities remains **firmly in the hands of the certifying authorities** – the Construction sector development agency (SSVA) and the Chamber of Architects (CoA). The former (SSVA) is also responsible for certificate suspension/revocation in case of legal entities acting as

²⁰ Ayres, I. & Braithwaite, J., *Responsive Regulation. Transcending the Deregulation Debate*, Oxford: Oxford University Press 1992, p. 6 and 19.

²¹ Full list to be found in Art. 23 [Law on territorial planning and construction supervision](#).

contractors of special buildings, of project expertise or of building expertise. In addition to certificate suspension/revocation, the certifying authorities can also issue warnings.

As the VTPSI lacks the power to suspend/revoke certificates, it normally ‘passes on’ the information on relevant violations detected during inspections to these authorities by means of a writing (*raštas*). It is then up to the SSVA and the Chamber of Architects to investigate the matter and to decide on suspension or revocation, as depicted in Figure 7 below.

Figure 7. ‘Two-stage enforcement’



Source: Author’s elaboration

There are several problems related to this approach. First of all, the decision on suspension/revocation is taken by the SSVA/Chamber of Architects (the ‘certifying authorities’) *on the basis of information* which is provided by the VTPSI. This implies that wherever the SSVA or CoA consider such information insufficient for them to take a well-informed decision, they need to continue correspondence and communication with the VTPSI until they have obtained all the necessary information. Reportedly, this can be a long process, which also implies some duplication of work as the certifying authorities, after ‘taking over’ a case, will essentially need to investigate the matter from scratch (they have not ‘seen’ the violation themselves). This results in inefficiencies and can weigh heavily on the relevant institutions’ resources. Further, academic research shows that the imposition of enforcement measures becomes much less likely with the involvement of additional actors. Finally, in case the VTPSI already took an enforcement measure concerning the same situation (e.g. stopping construction activities or fine), which is being challenged in court, the SSVA/CoA – in application of Article 11(3)(4) of Law on Public Administration will wait until the court has decided on the matter. In practice, this makes certificate suspension/revocation an extremely remote possibility, even in cases where it would be an appropriate and proportionate response.

This is by no means to suggest that there should be an (over)reliance on certificate suspension/revocation as the principal or main enforcement option. To the contrary, the number of sanctions imposed by supervising authorities generally say little (if anything) about the effectiveness of such sanctions in achieving compliance. However, where proportionate and appropriate, suspension/revocation of certificates should at least represent a credible enforcement option in the array of measures available to the supervising authorities.

Recommended actions

Considering the above, it is recommended:

- In the short term, **improving the communication process** concerning certificate suspension/revocation between the VTPSI on the one hand and the certifying authorities (SSVA/CoA) on the other:
 - This may include looking into the possibilities of making such communication more effective and speedier in order to facilitate the decision-making concerning certificate suspension and revocation. Such process should also be digitalised with the help of Infostatyba (e.g. automatic notification of violations to SSVA/CoA). In this context, it is also important to continue improving the automatic link between Infostatyba and the registers operated by the certifying authorities, so that the VTPSI at any time has access to registers which are up to date (including recent suspensions/revocations);
- In the longer term, granting the **VTPSI direct powers** to suspend persons' (legal and natural) certificates (until, for example, the certifying authority has acted), in order to avoid the inefficiencies of the 'two stage' enforcement process (should there be legal complexities concerning the special legal status enjoyed by professional self-governance of architects, such direct powers may first be envisaged for engineers).

II. Certificate suspension and revocation

Making certificate suspension and revocation a credible enforcement option; providing guidance to authorities on discretionary decision-making

Certificate suspension/revocation deprives a person (legal or natural) of the right to engage in work/gainful activity and should in principle be reserved for the more serious breaches of construction law. At the same time, certificate suspension/revocation may be seen not only as a 'punitive', but also as a preventative measure as they prevent unreliable repeat offenders from committing further violations. It should further not be overlooked that, where certificate registers are public and include information on suspension/revocation (as is the case in Lithuania), this measure may have important negative publicity effects ('naming and shaming'). Finally, given that certificate suspension/revocation prevents a person from engaging in a professional activity, it is to be used with caution where circumstances so require (e.g. to 'repeat offenders' for whom other compliance efforts fail) and should also accompanied with adequate procedural protections ('fair hearing', possibility of a remedy before court).

Suspension and revocation: gradation of violations

In Lithuania, certificate suspension/revocation is governed by Articles 12 and 22 of the Construction Law. They make a distinction between **immaterial/minor** violations (*neesminiai pažeidimai*), **severe** violations (*šurkštūs pažeidimai*) and (just) **violations** (*pažeidimai*). While the former (immaterial/minor) may result in a warning, the later may result in certificate suspension (violations) or revocation (severe). A suspension will normally be limited in time to 6 months, while, in case of revocation, a person may reapply for a new certificate after 1 year. Repeated warnings may also result in suspension, while repeated suspensions in revocation.

For example, concerning natural certified persons, a violation of construction technical regulations and other legal requirements *not* related to essential project requirements will be considered minor/immaterial

and will generally merit a warning (unless they are committed when managing key areas of construction activity). Violations which are *related* to essential project requirements/essential building requirements may result in a suspension or revocation. Where such violation does not pose harm or risk of harm, this will merit suspension, but where there is harm or risk of harm – revocation. Provision of falsified documents/false information when acquiring a certificate, continued business activity after suspension or engaging in activities in special buildings not provided for in the certificate will generally merit revocation. Non-fulfilment of continuous professional development obligations may result in a warning and – in cases of repeated warning – certificate suspension (for an overview see Table 5 below).

With regard to legal entities, this logic of the **'gradation' of violations** (minor violation – violations – severe violations) and their respective consequences (warning – suspension – revocation) is similar.

Table 5. Enforcement measures (natural persons) available to Chamber of Architects and the SSVa (non-exhaustive list)

	Conduct (Article 12 Construction law)/violation	Categorisation of violation	Measure/sanction	Remarks
1.	Violation (action or inaction) of construction technical regulations and/or other legal requirements <i>not</i> related to the essential project requirements (Art. 12(18)) OR Violation of construction technical regulations and/or other legal requirements related to the essential project requirements but NO HARM	'Immaterial/minor' violation (<i>neesminis pažeidimas</i>)	Warning (in case of 3 warnings within 3 years - suspension)	
2.	Violation of construction technical regulations and/or other legal requirements <i>not</i> related to the essential project requirements (Art. 12(14)(1)) if relevant violation committed <u>when managing key areas of construction technical activity</u> (e.g. <i>building design, project expertise, technical supervision etc</i>)	'Violation' (<i>pažeidimas</i>)	Certificate suspension (6 months) and deadline to rectify violations	
3.	Violation of construction technical regulations and/or other legal requirements <i>related</i> to the essential project requirements (Art. 12(14)(1)) but no harm or risk of harm			Must be preceded by a warning
4.	Non-fulfilment of continuous professional development (CPD) requirements (Art. 12(14)(2)) – if no compliance 2 months after warning			Relevant for professionals with foreign qualifications
5.	Certificate suspension in the country of origin (Art. 12(14)(3))			Applies to architects
6.	Violations of the European Code for providers of architectural services or other violations of the Law on Architecture (Art. 12(14)(4))			
7.	Non-fulfilment of mandatory instructions issued by the state supervision institutions (Art. 12(14)(5))			
8.	Violations of construction technical regulations and/or other legal requirements related to essential project requirements which cause harm or risk of harm (Art. 12(15)(1))	'Severe violation' (<i>šiurkštus pažeidimas</i>)	Certificate revocation (renewed application for a	Numbers 9-13 listed among those meriting certificate revocation but are not labelled as 'severe' violations
9.	Provision of falsified documents or false information when obtaining certificate (Art.12(15)(1))			
10.	Continued violations in case of certificate suspension; repeated certificate suspension (after 2 years of initial suspension)			
11.	Continued business activity after certificate suspension (Art. 12(15)(5));			

12.	Certificate revocation in country or origin (Art. 12(15)(6))		certificate possible 1 year after revocation)	
13.	Engaging in activities in special buildings not provided for in the certificate (Art. 12(15)(8))			
14.	Violations provided for in the Law on Architecture			Applies to architects

Importantly, when deciding on certificate suspension, the certifying authority is to decide ‘taking into account the **nature of the violation, its consequences and its circumstances**’ (Art. 12(14)). This seems to imply some degree of discretion of the certifying authority what course of action to take in a given case (no such formula is included concerning certificate revocation). While this indicates that a decision on suspension will be taken on a case-by-case basis, there seems to be no publicly available information or systematic guidance as to how such discretion will be exercised by the relevant authorities, and on the basis of which criteria. The risk of such an approach is that everyone ends up with having a system ‘on its own’ (inconsistency, lack of transparency). Further, as the table above illustrates (rows 3 and 8), in deciding between suspension and revocation, it will be of crucial importance whether or not there is ‘**harm or risk of harm**’. Reportedly, it is precisely this concept which creates difficulties for the certifying authorities, who will need to prove it in case of legal disputes.

A common answer of regulatory authorities in Europe and elsewhere to the above challenges was **providing guidance** on how to make discretionary choices based on risk while at the same time respecting principles of good administration (non-discrimination, consistency, transparency, fairness, integrity). Fostering professionalism of inspectors by means of education and training formed an important part of such an approach. The following sections take a look at how the British Health and Safety Executive (HSE) approached the issue of discretion when applying enforcement measures, including assessing the ‘risk of harm’. While the Lithuanian system is different concerning the scope for discretion it grants to the enforcing authorities (VTPSI, SSVA, Chamber of Architects), the British example may nonetheless serve as an interesting example, which has served as source of inspiration for many systems in Europe and beyond.

Health and Safety Executive (HSE): exercising discretion and assessing risks

Generally, discretion implies a degree of autonomy allowing inspecting authorities to adapt their enforcement responses to a particular case and – within the limits of their powers – decide to which enforcement option to report to. Many systems allow some degree of such discretion - England and Wales is no exception to this. The HSE Enforcement Policy Statement (EPS) explicitly provides that:

‘In determining what level of enforcement action is appropriate, our inspectors exercise discretion and professional judgement according to the circumstances found. [...]’²²

Generally, no discretion is unfettered but is subject to legal limits: it must be exercised having in mind the intention of the legislature and for the purpose for which it was granted. At the HSE, the exercise of discretion is further being guided by the Enforcement Management Model (EMM) - a written and publicly available document to guide the process of discretionary decision making. The EMM is decisive in determining which enforcement action (including informal enforcement) will be taken under which sets of circumstances.

The EMM decision-making process is structured as follows. First of all, the model requires inspectors to deal first with matters involving the risk of serious personal injury and, if needed, to stop work activity. In considering further risks involved, inspectors are expected to determine the so-called ‘**risk gap**’ – the difference between the actual risk arising from the work activity and the level of risk accepted by the law (the general assumption being that the law will often tolerate *some* level of risk and will not necessarily aim

²² HSE [Enforcement Policy Statement](#), para 10.3.

at 'zero-risk'). Assessing the actual risk will involve taking into account the **possible consequence** (significant or serious personal injury) as well as its **likelihood** (remote, possible, probable). On the basis of such a risk gap, inspectors should form the so-called initial enforcement expectation (IEE). Moreover, it is to be taken into account whether the relevant breach involves defined or well-established standards or provisions on which there is only little guidance. A defined standard, for example, includes minimum standards identified in parliamentary legislation (in particular the Health and Safety at Work Act), regulations and the Approved Codes or practice (ACoPs). The dutyholder will normally face tougher enforcement action if his/her noncompliance involves a breach of well-known standards than in cases of general requirements on which only little is known. After forming the IEE and before reaching the final enforcement decision, the inspector is expected to take into account factors which are specific for the dutyholder ('dutyholder factors') and then 'strategic factors'. With regard to the dutyholder factors, the inspector should consider whether, for example, there is a relevant enforcement or incident history to be taken into account, how is the dutyholder's noncompliance motivated (e.g. deliberately seeking economic advantage) and what is his/her attitude (hostile to positive). With regard to 'strategic' factors, inspectors are required to take into account, *inter alia*, the public interest considerations, for example the issue whether enforcement action protects vulnerable groups (e.g. children, patients etc.). This should lead to an 'enforcement conclusion' as to the measures to be taken. The EMM decision-making process is depicted in Figure 8 below. An overview of enforcement measures (formal and informal) in principle available for the HSE is depicted in figure 3 (enforcement pyramid).

Figure 8. The EMM decision-making process



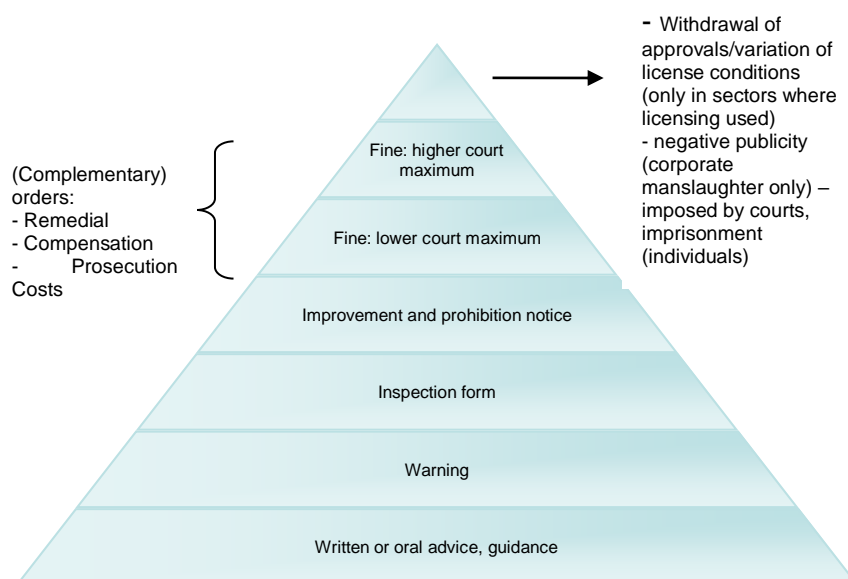
Source: Tilindyte, L., *Enforcing Health and Safety Regulation. A Comparative Economic Approach* (Intersentia, 2012) p. 130.

Overall, the EMM constitutes an essential tool in structuring discretion and centers the enforcement decision making around the concept of risk which is decisive in forming the (proportionate) enforcement response. At the same time, the EMM acknowledges that certain administrative requirements imposed by law are **not in themselves risk-based**. Hence, noncompliance with them does not give rise to serious health and safety risks but may undermine an efficient health and safety management system. Such requirements relate to, for example, risk assessment, the provision of certain welfare facilities or reporting of accidents. Depending on the authority of such standards, the IEE in cases of noncompliance with such administrative requirements will normally be either a letter or an improvement notice.²³

²³ Tilindyte, L. *Enforcing Health and Safety Regulation*, Intersentia, 2012.

The HSE provides further guidance concerning the step of **assessing the 'risk gap'**. In the HSE context, the relevant risks include occurrence of 'serious health effect' or 'serious personal injury'. In relation to the 'likelihood', the EMM clearly states that inspectors should use their professional judgement and any supporting guidance to determine what is the likelihood of the priority for action, in this case the occurrence of ill health (it may be negligible/nil, remote, possible, probable). The HSE '**consequences table**', aimed to serve as guidance to inspectors, groups the likely effects into the categories of 'serious', 'significant' and 'minor' health effects (the table is available [here](#)).²⁴

Figure 9. HSE enforcement pyramid (business organisations)



Source: Tilindyte, L., Enforcing Health and Safety Regulation. A Comparative Economic Approach (Intersentia, 2012) p. 136.

As noted, the British HSE operates in a different legal environment characterised, inter alia, by a relatively broad scope of discretion granted to the HSE. This seems different in the Lithuanian context, where parliamentary legislation is relatively detailed and leaves less scope for executive choices. The British example can nonetheless serve as a valuable example, from which two main conclusions can be drawn.

First of all, whenever inspectors/authorities exercise discretion, they may need guidance as to the criteria and administrative principles which guide their behaviour, including non-discrimination, consistency and fairness (not only construction actors but also inspectors also subject to complex bodies of rules and should be able to act in full confidence when navigating such rules). For this, in line with the OECD best practice principles, providing guidance and improving professionalism is of great importance (OECD, 2014_{1}).

Secondly, for any assessment of 'risk of harm', the supervisory authorities need to be clear and transparent about **relevant consequences** of a violation (harm to *what?*) and the **likelihood** of such consequences occurring. In the Lithuanian context, it seems clear that the system of construction law and regulation aims to primarily protect human life, public safety, health and the environment (and not primarily financial interests of clients, for example). Accordingly, in assessing 'risk of harm', these protected interests should be taken into account, as well as **how direct or imminent** the relevant consequences are. For example,

²⁴ For further guidance applied by the HSE to determine risk in case of hazardous substances (including most credible outcomes and the relevant likelihood (probable, possible, remote, negligible), see [this document](#).

in cases of outright neglect of certain requirements concerning the very stability of a building, potentially leading to a collapse, the link between a violation and harm will be more direct than, for example, in cases of failure to put an information stand in front of a construction site or failure to comply with continuous professional development requirements. Noncompliance with the latter requirements - however important – does carry a risk, but the likelihood of such risk materialising is more remote than in the former example. These differences should be taken into account when making assessments of ‘harm or risk of harm’ within the meaning of Art. 12 of the Construction law.

Recommended actions

It is therefore recommended:

Making a certificate suspension and revocation a credible enforcement option, including for legal persons. Besides improving the communication channels between the VTPSI and the certifying authorities, discussed above, this may include:

- *Providing guidance on discretionary decision-making, including development and publication of a methodology concerning the concept of ‘harm risk of harm’ within the context of certificate suspension/revocation;*
- *increasing professionalism of the supervising personnel to ensure consistency of suspension/revocation decisions.*

III. Public procurement

Exploring the potential of public procurement law in achieving high quality construction services

Besides certificate suspension/revocation, the objective of limiting actors’ capacity to engage in certain economic activities may also be pursued by means of public procurement. In this context, the public sector plays a role not (only) as regulator, supervisor and enforcer, but particularly as the construction industry’s most important client. As such, it is able to channel procurement processes towards certain regulatory objectives, better quality and increased compliance commitment.

As already discussed in the 2022 recommendations report, the EU public procurement directive²⁵ in certain circumstances allows **excluding** from public procurement procedures actors whose trustworthiness is in doubt. Accordingly, the Lithuanian legislation transposing the said directive foresees the possibility to exclude from public procurement procedures, inter alia, economic operators which are guilty of professional misconduct, rendering their integrity questionable, or tenderers which have shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract.

Besides the ‘exclusionary’ capacity of public procurement procedures, procuring authorities may also aim to drive change by defining specific quality requirements/conditions for potential tenderers at an earlier stage, as has been done by Lithuania with regard to, for example, BIM in tendering for construction projects. To mention another example, the UK also since 2016 requires the use of 3D BIM on government

²⁵ [Directive 2014/24/EU](#) of the European Parliament and of the Council of 26 February 2014 on public procurement, Article 57.

projects.²⁶ For further examples of such uses of public procurement see how public procurement has been channelled more broadly in construction sector, see [Shaping the Future of Construction](#), Chapter 4.2).²⁷

Clearly, the conditions for exclusions of tenders are restrictive and to be applied having in mind the principle of equal treatment/non-discrimination. Further, public procurement law is a complex body of rules which is not easy to understand and apply for public authorities - in Lithuania and elsewhere – which generally lack resources and qualified/specialised personnel to engage in complex and lengthy assessments. This makes such authorities likely to choose the ‘path of least resistance’, i.e. course of action not necessarily leading to highest quality standards but less likely to trigger lengthy and costly court disputes. As a result of these and other factors, exclusion of ‘unreliable bidders’ is generally difficult in practice.

The application of the relevant exclusion grounds mentioned above presupposes that the buying authorities are aware of or have **access to the track records** of relevant bidders. For example, the Lithuanian Public Procurement Office operates a ‘list of unreliable suppliers’ ([nepatikimų tiekėjų sąrašas](#)), i.e. suppliers having improperly performed (or not performed at all) previous contracts, when such non-performance is a substantive violation of a contract (*esminis sutarties pažeidimas*). It remains questionable how broadly this list (which for years 2020-2023 includes 138 suppliers) is being used by the relevant authorities. Further, it may be considered whether/how to improve interconnectedness of such ‘black lists’ and other relevant public registers of natural and legal persons, such as those operated by the SSVA and Chamber of Architects. Such registers, which are publicly available, generally include information on certificate suspension/revocation (while the Chamber also takes decisions on professional misconduct, which is also a relevant exclusion ground).

Recommended actions

With regard to public procurement, it is therefore recommended:

Exploring the potential of public procurement law in achieving high quality construction services and compliance by:

- *Making use of the exclusion grounds provided for in the Lithuanian procurement law;*
- *Continue increasing professionalisation in public procurement and equip public procurement authorities with necessary skills to foster quality and compliance, including by means of providing standardised guidance to personnel;*
- *improving the utilisation and the interconnectedness between the existing ‘black lists’ and relevant registers operated by the Lithuanian Public Procurement Office, the SSVA and the Chamber of Architects (‘connecting the dots’);*
- *according a greater weight to the quality of tenderers and the appropriate price/quality ratio.*

²⁶ [Shaping the Future of Construction](#), p. 48.

²⁷ [Lietuvos Respublikos viešųjų pirkimų įstatymo Nr. I-1491 pakeitimo įstatymas](#), 46 straipsnis.

IV. Exploring the potential of additional tools and sanctions

One of the problems related to certificate suspensions/revocations and the respective registers operated by the certifying authorities is that they capture **only a fraction** of relevant construction actors. This is because, for example, construction companies *not* involved in construction of special buildings will not be subject to certification (see Priority 2). In general, Lithuanian law makes relatively few regulatory demands concerning construction companies (contractors/*rangovas*) themselves. Another challenge faced in construction supervision is that construction actors subject to certificate suspension/revocation regularly aim to re-enter the market ‘through the backdoor’ via, for example, ‘beneficial ownership’ schemes. Other construction actors (such as managers of directors of legal entities) are not subject to any certification requirements, but may continuously expose others to risks without facing appropriate sanctions.

Considering introducing new ‘incapacitative’ sanctions to deal with ‘bad actors’

Different countries have adopted their own approaches, aimed at banning or ‘disqualifying’ persons (including company directors) from engaging in certain economic activities. In the UK, for example, courts may apply an additional sanction of disqualifying persons guilty of criminal offences from acting as company directors. In Germany, administrative authorities may impose an operating ban on individuals deemed ‘unreliable’ (see Box 5 below).

It may be further explored whether the introduction of such additional sanctions, to be imposed by the VTPSI, is feasible and desirable within the Lithuanian context. This may have the benefit of capturing also those actors who are not subject to certification requirements.

In the longer term, conducting an inventory of administrative penalties for natural and legal persons (as well as of the relevant criminal law provisions) could be envisaged, with the aim of ensuring that the relevant penalties are proportionate to wrongdoing and remove the benefit of noncompliance (i.e. make sure that ‘compliance pays’).

Box 5. ‘Incapacitative’ sanctions

United Kingdom

In the UK, the [Company Directors Disqualification Act 1986](#) provides for disqualifying persons guilty of certain criminal offences from acting as company directors for a maximum of 5 or 15 years (depending on the degree of jurisdiction). This may include committal of offences relating to management of a company, fraud, or for directors which the courts deem ‘unfit’ to manage a company. In practice, such disqualifications are relatively rare.

Germany

German law provides for the possibility of disqualification of individuals deemed ‘unreliable’ in the form of an **operating ban** (*Gewerbeuntersagung*), provided for in the Industrial Code (*Gewerbeordnung*, [Section 35](#)). A natural person may be prohibited from operating a business if he/she proves to be unreliable (*unzuverlässig*) and if the prohibition is necessary for the protection of the public. A person is deemed ‘unreliable’ if he/she cannot guarantee a proper operation of a business in future; committal of administrative or criminal offences is one of the factors taken into account in this regard. An operating ban is an administrative act that may be challenged before the responsible authority or a court.

Improving interconnectedness with regard to beneficial ownership ('connecting the dots')

With regard to the issue of beneficial ownership, it should be noted that, following EU legislation in the area of money laundering, information on beneficial ownership is generally recorded in a register of legal entities incorporated in Lithuania ([Registry Centras](#)). Currently, this register does not seem to be used for the purposes of construction supervision. However, the VTPSI does face situations where the ownership of a company changes during the course of the construction cycle. In this context, it could be envisaged whether and how 'connecting the dots' concerning beneficial ownership may prove useful for the VTPSI's risk assessment and inspection purposes (by improving the **interconnectedness** of the available registers allowing, for example, for the possibility to 'flag' a person in case of change of ownership).

It may also be considered whether introducing a new offence (of administrative or criminal nature) of re-entering the market after exclusion through the 'backdoor' of beneficial ownership is feasible and desirable.

Exploring the potential of negative publicity

Concerning the above-discussed example of the British Health and Safety Executive (HSE), it should be added that the HSE publishes the enforcement notices it issues in a public register ('enforcement notices' can be notices mandating certain steps to be taken or 'prohibition notices' which stop activities).²⁸ The register is publicly accessible and searchable (it can be searched by, inter alia, name of the company, industry where violation occurred, authority/department which issued the notice and others).

Albeit different in nature and scope, the Lithuanian registers of certified construction actors (natural and legal persons in case of special buildings, as discussed above) are also public and searchable, including some information on certificate suspensions/revocations (the reasons for suspension/revocation are not visible, thus one may wonder whether an actor was suspended because he/she put others to risk or whether because he/she failed to comply with certain formal requirements). This also carries the potential of negative publicity, which may be an effective additional sanction. The latter is not only valuable as an additional sanction, yet also as a tool to foster transparency on compliance of construction actors and thus an additional tool to increase public pressure/**consumer awareness** for quality of construction services. It is therefore important to maintain such registers up to date and searchable. A limitation of these registers is the fact that it only concerns certified actors (see above) and will not include most construction companies (only those constructing special buildings). This is an additional argument in favour of looking for additional tools to induce compliance of such companies (and their managers), discussed above.

Box 6. Dealing with 'creative compliers'

Economic actors, in Lithuania and elsewhere, often engage in what has been termed 'creative compliance': side-stepping the rules without breaching their formal terms. This may entail 'tailoring' behaviour so that it escapes the scope of a rule yet breaches the very spirit of it (a practice widespread in, for example, taxation).

One of the manifestations of such behaviour in Lithuania has been, for example, construction actors 'tailoring' their construction activities so that they escape certain permit requirements, while in fact aiming at outcomes which in retrospect should have been subject to specific permit requirements (the

²⁸ <https://resources.hse.gov.uk/notices/>

'barns' example or de facto multi-apartment buildings). Reportedly, Lithuanian authorities have been losing court cases when aiming to tackle such 'creative compliance'.

The law may aim to counter this type of behaviour by 'closing the loopholes' in the law, but no system of rules is likely to be waterproof. Therefore, one of the responses of regulatory systems worldwide to such 'creative' compliance has been complementing precise rules with an additional layer of **general principles** or **'outcomes-based' standards**. Unlike 'formalistic' rules, such a 'principles/outcomes'-oriented standards would be more difficult to 'creatively' circumvent than precise rules. This strategy has been most widely applied in the area of taxation. Yet also in the area of, for example, occupational health and safety (OHS), it has been argued that general duties of employers may rule out at least some forms of 'creative compliance', which precise rules cannot catch.

Other systems, such as **France**, have approached this problem by means of variations of the 'abuse of law' concept. Here, several areas of law contain provisions allowing to look behind the 'facade' of formal compliance to discern the genuine character of what is de facto 'avoidance tactics'. For example, [Art L64](#) of the *Book of Tax Procedures* explicitly authorises tax authorities to look at the genuine character of certain acts by providing that:

*'the administration is entitled to reject, as not opposable to it, the acts constituting an abuse of rights, either because these acts are fictitious, or because, **seeking the benefit of a literal application of the texts** or decisions against the objectives pursued by their authors, they **could not have been inspired by any other motive than that of evading or mitigating the tax charges** which the person concerned, if these acts had not been taken or carried out, would normally have borne in view of his real situation or activities.'*

The aim is to catch actions whose dominant purpose of seeking a certain regulatory advantage instead of a genuine business interest.

It is worth exploring whether the French approach could be a source of inspiration to tackle 'creative compliance' in the Lithuanian construction sector, by introducing respective legislative provisions tackling certain forms of 'abuse' along the lines of the above French provisions. In the case of the French concept, this would be something requiring legislative intervention.

Action plan

The recommendations presented in this report are meant to be actionable with a well-defined timeline for implementation. Table 6 defines an Action Plan for Lithuanian authorities, i.e. specifies the timeline for implementation of each of the recommended actions. Short-term actions should take place within 6 months, medium-term could last between 6-12 months, while long-term actions would take over 12 months.

The implementation timeline takes into account the timeline of the Ministry of Environment defined to reform the construction law, which consists of three main stages:

- I stage in spring 2023:
 - Changes in the schema of issuing of a building permit
 - Setting legal background for introduction of BIM and other digitisation measures
- II stage in autumn 2023
 - National Classification of Construction Information
 - Review of attestation schema
- III stage in spring 2024
 - Review of requirements related to construction works
 - Review of requirements related with supervision of construction works (process, not objects)
 - Use and maintenance of construction works (objects, - buildings and engineering works).

Table 6. Action plan

Thematic area	Recommendations	Timeline for implementation	Lead institution
Risk-based approach for permitting	Define principles for risk-based considerations	Short-term (stage I)	MoE
	Use a risk lens throughout the construction regulatory cycle – from permitting to inspections and enforcement	Long-term	MoE
Classification of buildings	Upgrade the building classification system by clearly stating multi-dimensional criteria	Medium-term	MoE
	Increase the number of categories of buildings for a more nuanced risk analysis	Medium-term	MoE
	Develop an approach to add different types of risks into a single index	Medium-term	MoE
	Use information systems for a harmonised risk classification and flagging of operator risks	Long-term	MoE in cooperation with broad stakeholder group
Permitting framework	Shift the focus of building regulation from specification of rules to performance targets	Long-term (stage III)	MoE
	Improve efficiency of the permitting process - Implement a re-engineering of the	Short-term (stage I)	MoE

	<p>permitting process to reduce unnecessary burden</p> <ul style="list-style-type: none"> - Enhance IT applications dedicated to review documentation to improve efficiency of the permitting process 	Medium-term	
	<p>Embed the risk categories in an interface that is user-friendly for market participants</p> <ul style="list-style-type: none"> - Introduce an interface that allows market participants to understand the permitting process and requirements given the characteristics of the project - Make sure the process is followed uniformly across municipalities and affected parties are notified 	Long-term	MoE in cooperation with construction supervision stakeholders
Post permitting	Streamline the completion procedure by introducing earlier checks and enhancing risk-based proportionality	Medium-term	MoE, VTPSI
	Leverage data from the construction and use of buildings stages to improve the risk model	Long-term	VTPSI, MoE
Cultural heritage protection	Define cultural heritage protection categories and regulate accordingly	Long-term	MoE in cooperation with Ministry of Culture
Improving the overall effectiveness and efficiency of the certification system	Simplify the existing certification system for construction professionals	Medium-term	MoE, SSVA, Chamber of Architects
	Review and transform the examination requirements	Medium-term	MoE, SSVA, Chamber of Architects
	Shift from 'paper-checks' towards an 'auditing approach' of certified legal entities	Long-term	MoE, SSVA, Chamber of Architects
Compliance promotion	Improving the interinstitutional cooperation and joint planning of relevant institutions; reaching out to business associations	Short-term	VTPSI, SSVA, Chamber of Architects, MoE
'Two-stage enforcement'	Improve the communication process between the VTPSI and the certifying authorities;	Short-term	VTPSI, SSVA, Chamber of Architects
	Consider granting the VTPSI direct powers to suspend certificates	Long-term	MoE, VTPSI
Certificate suspension and revocation	Making certificate suspension and revocation a credible enforcement option;		VTPSI
	<ul style="list-style-type: none"> - Providing guidance to authorities on discretionary decision-making - Increasing professionalism of the supervising personnel 	Mid-term Long-term	
Public procurement	Exploring the potential of public procurement law in achieving high-quality construction services	Medium-term	MoE in cooperation with Lithuanian Public Procurement Office, the SSVA and the Chamber of Architects
Additional tools and sanctions	Considering introducing new 'incapacitative' sanctions to deal with 'bad actors'	Long-term	MoE
	Improving interconnectedness with regard to beneficial ownership ('connecting the dots')	Long-term	MoE, VTPSI

Source: Author's elaboration

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