Title
Opening Statement to the Joint Oireachtas Committee on Housing, Planning & Local Government: General Scheme of Construction Industry Register Ireland (CIRI) Bill 2017

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Publication date
2017-10-23

Publisher
Houses of the Oireachtas

Link to online version

Item record/more information
http://hdl.handle.net/10197/11224

Downloaded 2020-03-25T07:42:12Z

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OPENING STATEMENT

Chairman, Committee Members,

Thank you for the opportunity to attend this session today. I am an architect and assistant professor at UCD School of Architecture, Planning and Environmental Policy. My area of expertise is construction regulation, procurement, and the operation of the construction industry in Ireland. I also have direct involvement and experience in national and EU systems for regulating qualifications and assessing competence.

The purpose of today’s session is pre-legislative scrutiny, that is, an opportunity for public analysis and feedback on draft legislation.

In preparation for this session, I have reviewed the draft Bill and consulted widely on the technical workings and implications of this policy initiative.

1. SUMMARY CONCLUSIONS

- A sustainable and robust construction industry needs an effective building control system, an efficient construction sector, a flexible labour market, and a ‘fighting fund’ for remedying defects. Any one part cannot be looked at in isolation.

- Regulation of certain professions, trades, builders and developers is necessary, in the interests of public safety, environmental protection and consumers. Restrictions on activities must be justifiable and proportionate.

- Targeted robust regulation is required in specific areas of high risk, the legacy of defective and dangerous buildings cannot be repeated.

- In order to rebuild trust in the construction industry, systems must be fully independent, transparent and subject to oversight.
There are shortcomings in the policy objectives and legislative proposals for the General Scheme of CIRI (Construction Industry Register Ireland):

- Inadequate consumer protections (particularly for home-buyers) and no mechanism for consumer redress.
- Inherent conflicts of interest, CIRI is not independent.
- Absence of independent regulatory oversight of CIRI, not in accordance with best practice.
- Restrictions on the activities of builders/trades, not in compliance with EU law.
- Duplication/incompatibilities with the activities of other State agencies and organisations.
- Inadequate Regulatory Impact Analysis, stakeholder consultation, and evaluation of alternatives.
- Absence of a cost/benefit analysis and an evaluation of administrative and technical capacity.
- No assessment of impact on competitiveness in the construction industry, particularly restrictions on labour supply.

2. POLICY OBJECTIVES

What is the State’s role, where is regulation necessary?

In construction, the role of the State is primarily protection of life- to ensure that buildings are safety and sustainable. The issues are beyond public safety (fire escapes, ventilation, radon barriers, structural design, sound proofing etc.), there is also an environmental dimension (waste water, energy efficiency, etc.).

There is a secondary requirement, protection of property- to regulate to protect consumers who effectively ‘buy a product’. Not all consumers need the same level of protection and house buyers are particularly vulnerable.

For the public, buildings must be safe to use and not damaging to their health.

For the State, buildings must be energy efficient and not cause damage to the environment.

However, for the home-buyer, the priority is a system that fixes the problem first and sorts out the claims later. CIRI does not provide any mechanism of redress to fund the repair of defects.
Who should be regulated?

Recent policy is for statutory registration of some construction professionals who are relied on to ‘regulate the building’. Ireland has a privatised system of building control where owners (and developers) are required by law to appoint competent builders and construction professionals. Under the BCAR$^1$ regulations the builders and professionals act for the owner, not for the State.

CIRI envisages the regulation of all builders, sub-contractors and trades. This would make it illegal to undertake most building work unless registered, including minor works that are exempt from Planning Permission and Building Control.

Approximately 100,000 construction companies, self-employed subcontractors and tradespersons are in this sector. According to DKM/Solas: “70% of construction firms are self-employed with no employees”; “direct employment in construction is expected to increase from 142,000 in 2017 to around 213,000 by 2020.”$^2$

On this basis, almost 150,000 companies and individuals would be assessed for competence in order to register with CIRI. Cost and delay and the impact on competitiveness have not been calculated.

An effective system should regulate developers, builders, trades and professionals in certain areas (for public safety and/or consumer protection) and also independently verify design and construction of buildings. This is the best practice international standard for building control.

How does this impact on freedom of movement and freedom of establishment in the EU?

Whereas regulating buildings is a national matter, regulating builders is a EU matter, subject to both national and European requirements and limitations:

- ‘Free movement of workers’ is one of the founding principles of the European Union$^3$.
- ‘Easier establishment, easier provision of cross-border services, simplified procedures and formalities’ for businesses are regulated under the Services Directive.
- ‘Regulated professions’ (including many building skills and trades) are regulated under the Mutual Recognition of Professional Qualifications Directive$^4$.
- Education and training qualifications are regulated by Dept. of Education and Skills, the Higher Education Authority (HEA) and Quality Qualifications Ireland (QQI).

EU regulation only allows States to set barriers where it is ‘justifiable’ and ‘proportionate’$^5$. Low entry standards are of little benefit, add to the administrative burden and can be damaging to established qualifications.
What impact will this have on the operation of the construction industry?

An appropriate level of control and consumer protection must be balanced with flexibility in the market, availability of labour, opportunities for career progression, innovation and competitiveness. Traditionally, the construction industry has been open to new entrants and, outside of a number of traditional trades, career progression has happened on the job. There are advantages to avoiding over-specialisation; individuals with multiple skills have more job security and can be more usefully employed in managing and supervising construction sites.

Any new legislative framework must be flexible and scalable so that it can adapt to new demands, new skills and the cycles of the labour market.

Registration of builders was flagged as a ‘Future Focus’ of policy in 2012. It was emphasised that the registration scheme for builders should be:

- in keeping with competition law,
- include strong quality assurance checks,
- provide strong consumer protection,
- have the cover of professional indemnity insurance
- not add excessively to the economic cost of house purchase/rental

These objectives have not been addressed in the proposed legislation.

What is needed?

- Independent regulatory oversight and enforcement of construction standards, to ensure public safety and environmental protection;
- Consumer-focused systems of protection and redress, with a single point of contact for complaints and remediation.
- An independent flexible and scalable licencing system appropriate to risk, that is compliant with EU legislation, similar to CORU for regulation of health professionals.
- An administrative system that does not create barriers to trade, impact on competitiveness or on the costs of SMEs, and that can rolled out strategically without causing delay and blockages in the construction industry;
- A system that is future proofed for technological developments and aligned with other policy objectives (including innovation in construction techniques, developments in procurement, insurances, the Building Control Management System, etc.)


3 Article 45, Treaty of the European Union.


5 ‘Regulated professions’ refer to activities where a specific professional qualification is required and such professions are present throughout all sectors of the economy. Over time different regulations have been introduced by each Member State reflecting long established traditions, either in the form of State regulation or as self-regulation by professional associations. Generally, there have been good reasons for regulation, based on the need to protect essential public interest objectives and this brings value to society by, for example, clarifying the technical knowledge, training and competences which professionals should have to ensure citizens are protected. However, inappropriate regulation can place a burden on the professional, business and consumer; these burdens can include disproportionate qualification requirements, extensive reserved activities, compulsory membership in professional associations or other measures. In this regard, the Court of Justice has consistently held that, even if applied without any discrimination, national regulation of professions and any requirements concerning qualifications are liable to hinder or make less attractive the exercise of fundamental freedoms by EU citizens and companies, guaranteed to them by the Treaty’ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0822

6 Strengthening the Building Control System. Future Focus: Registration of Builders/Contractors. “The CIF has been invited [by the Department of the Environment, Community and Local Government] to prepare a paper setting out proposals.... the scheme should be in keeping with competition law, include strong quality assurance checks, provide strong consumer protection, have the cover of professional indemnity insurance and not add excessively to the economic cost of house purchase/rental” http://www.housing.gov.ie/sites/default/files/migrated-files/en/Legislation/DevelopmentandHousing/BuildingStandards/FileDownLoad%2C29908%2Cen.pdf

7 Strengthening the Building Control System, DECLG 2012.

8 CORU, Fitness to Practice http://www.coru.ie/en/public/fitness_to_practise_complaints

Organisations and individuals consulted:
Competition and Consumer Protection Commission (CCPC); Construction Industry Federation (CIF)/ Construction Industry Register Ireland (CIRI); Department of Housing, Planning and Local Government (DHPLG); Engineers Ireland (EI); Guild of Master Craftsmen; OPATSI (Plasters Union); Royal Institute of the Architects of Ireland (RIAI); Society of Chartered Surveyors Ireland (SCSI); SOLAS Further Education & Training Authority.