



Appendix 3.6

Recommendations for policy formulation

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1.1 Recommendations for policy formulation

This section provides the presentation of different possible actions that could improve mutual recognition and stimulate insurance solutions, based on previous section findings. It will further outline the pros and cons of those actions, supporting final section conclusions and recommendations for the whole Elios2 study.

We hereby remind that, as already indicated in ELIOS, and developed in previous sections, national legal and insurance construction frameworks are the result of long historical developments of, among others: local culture regarding construction methods and techniques (adapted to local environment specificities, including climate, soil conditions or construction materials availability and cost), legal history, insurance role in the construction quality chain, or general economic wealth.

Therefore, and considering firstly states' legal sovereignty and secondly freedom of activity of private construction insurance players, legal and insurance frameworks throughout Europe can essentially evolve and change through internal national mechanisms, involving the stakeholders being part of the national markets themselves.

Consequently, improvements in both constructions market accessibility and protection of consumer through easier access to insurance and better coverage appear to be mainly achievable through "transnational communication" mechanisms. In other words, our main lever to promote insurance is information. Whether it be through incentives in order to stimulate the market or through sharing out the knowledge to the different actors involved.

Based on previous sections results, this section will nonetheless present all possible actions to improve the accessibility to construction insurance, grouped in two main categories:

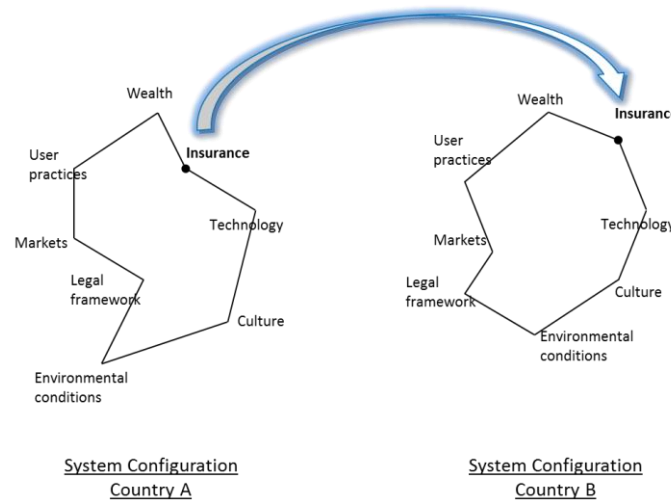
- Improving the access process to the existing "construction systems" through transnational communication
- Modifying the "construction systems" themselves through harmonization

A third independent sub-section will also stress out specific recommendations regarding Energy Performance Guarantees.

1.1.1 Improving the access process through transnational communication

Considering two different construction system configurations, corresponding to two countries, the transnational communication set of recommendations focuses on improving the accessibility process between two systems (see Figure 1). It doesn't affect the systems themselves.

Figure 1: Improving the accessibility process through transnational



Following paragraphs will present the different recommendations comprised in “transnational communication”.

1.1.1.1 Increasing Insurance offer

This sub-set of recommendations is aimed at increasing the insurance offer, i.e. the capacity of construction insurers whether to accompany a contractor abroad or to meet a foreign request.

1.1.1.1.1 Improve failure forecast

One efficient incentive to improve insurance availability would be to give some help to the insurers in their risk assessment of unknown or innovative technologies or carried out in an unknown environment. Being able to make a reliable forecast of failure is the key element in order to do the pricing of a cover and propose guarantees. And as previously indicated, without claim history and statistical data this forecast can only be done through a specific qualitative analysis of the risk.

Results of our discussions with insurers indicate that:

- The technical classification of claims is a problem: it has to be done by experienced staff that can classify the claims from a technical point of view, and it is unlikely that most insurers have the computational systems to differentiate “eco-technological” claims.
- Insurers are not interested in participating to a pure open statistical database, which would mean sharing information on the spread of claims, since it touches their internal pricing know-how, which is confidential. They seem to be more interested by an exchange on technical information on systems’ failures, without any claim numbering or cost consideration.
- Nonetheless insurers are interested in obtaining information, and sometimes opened in exchanging technical information on specific technical systems, that are innovative on their market

Consequently, our main recommendation to improve failure forecast consists in sharing information through the EQEO as discussed and detailed in WP2 “Pathology work-package”.

Another form of exchange of information about pathology could be the creation of a “hazard notification procedure” for eco-technologies.

1.1.1.1.2 Quality signs information sharing

As detailed hereafter, sharing information carried by QS should improve accessibility at different levels. Specific details regarding the implementation of the means to provide this information is presented in WP1 “Directory of quality signs”.

QS as an insurance underwriting tool

One way of helping insurers who want to cover a foreign company is to give them the means to appraise the competence of this company and improve its risk assessment, through a better knowledge and understanding of its local QS. Note that the given information must be sufficiently relevant and discriminatory in terms of risk assessment to have an added value for the insurer.

Reminder: the technical information that will be provided by the insurer’s IT system has to be sufficiently valuable for the insurer in order to help them assess the risks and consequently set up new insurance products to seize new market opportunities.

Improve relevancy of QS

As mentioned in previous paragraphs, in order to be useful assessment criteria, QS have to be relevant in terms of risk characterization. In conjunction with Work Package 1, we tried to identify those signs in regard of their use by insurers in their risk assessment process.

One of the conclusions of this work is that few QS are recognized as valuable by insurers. In order to improve this situation, we feel that some interesting developments could be pursued specifically on the ETA (European Technical Approval).

Suggested improvements for ETA:

- Take into account local climatic conditions in the ETA in accordance with national annexes of Eurocode 1. This is especially necessary for all envelope elements (roofs, joinery, insulation) regarding weather conditions or temperature actions (e.g. possible material fatigue under thaw-freeze cycles in some locations), but also for “sustainable” materials with regard to humidity, insects attacks, mildew or fungi.
- Take into account in the ETA site implementation and installation issues.

QS as a promotion tool

On the other hand the directory of QS should allow enterprises to know what signs are used locally by the insurers on their homeland to appraise their risks, notably if they want to set up business or engage in a long term activity.

1.1.1.1.3 Technical Inspection Service (TIS) recognition

As expressed in a previous section, TIS is a core contributor to construction insurance. Therefore, improving TIS recognition should help insurance activity.

Share information on existing TIS

As already made for a set of countries through the mapping update, information sharing on existing national TIS should help insurers identify possible TIS partners in order to control their risks.

In order to provide valuable information, it is important to underline the difference between existing independent “risk analysis” TIS and “conformity” TIS.

TIS European Accreditation / Certification

One way of increasing TIS recognition throughout Europe would be to create a European harmonized TIS accreditation or certification. As expressed before this accreditation should be based on “risk analysis” competences and independence, as valued by insurers. Nonetheless, the implementation of such accreditation through national existing TIS federations face a problem of trust by the insurers.

Even though it seem more complex, a Certification process by the service providers themselves, through their representatives (such as CEBC) may seem a more promising avenue.

1.1.1.1.4 Promote a European IDI cover

Considering the lack of knowledge of companies regarding insurance, especially in countries with lesser insurance offer, another way of increasing insurance accessibility would be by clarifying the subscribing process and improve the transparency of the existing insurance products and existing financial offer, and notably promote the standard international IDI covers toward enterprises.

Considering the difficulty of sharing insurance companies’ contracts, the information could be given through examples of usual covers included in those contracts.

1.1.1.2 Facilitating subscribing procedures

This sub-set of recommendations is aimed at facilitating the insurer’s subscribing procedures, and consequently coverage providing.

1.1.1.2.1 Communication through the Points of Single Contact (PSC)

As indicated previously, “single points of contact” should be provided by governments as requested by the Service directive. As they are largely implemented and their access centralized (European Commission 2015), Points of Single Contact (PSC) were identified as the best existing and functioning information sharing tool to meet our needs of transnational communication at a European Level.

Add an Insurance Access Procedure Guide

Beyond sometimes existing information on legal obligations, the PSCs should answer very pragmatic questions asked by insurance non-professionals. Therefore, an “administrative procedure guide” should be easily accessible by the general public. This guide should be an idiot proof comprehensive construction insurance access guide, giving a detailed answer to the general question: how do I get insured?

Could be notably indicated:

1) Who are the insurance providers that I can contact, including:

- Complete and detailed contact information
- Home Office and Regional branches information (a lot of contractors work just the other side of the border)
- What are the available foreign languages of communication?

Note: This information should obviously be provided by the insurers. Considering the increasing cross border construction activity, and the already existing foreign enterprises insurance activity, it seems that regional insurers could see this communication tool as an expansion opportunity.

2) What information is required by the insurer? Including:

- Is there an insurance “construction activity” classification to which I can rely on to identify my activity?
- Complete and detailed list of information needed (e.g.: turn over, list of works done in the past, claim history if existing, workers qualifications ...)

3) What is the local technical and normative framework that I should comply with (Including the on-site health and security regulation)? Therefore companies should get a better knowledge of:

- Local design codes and general normative framework, including local climatic or live loads (according to national appendix of Eurocode).
- Local construction techniques for different type of construction elements. For example existing types of roofs and terrace sealants techniques for a company installing photovoltaic panels.

This information should help the companies demonstrate that they comply with local design requirements, and are taking into consideration the local environmental construction context and therefore should help them find insurance.

Specifications of the information to provide could take for example the guide written by the French insurance federation (FFSA) in an attempt to help foreign companies understand the French legal framework and how to comply with it. This guide notably gives:

- Description of how insurance works locally (Fédération Française des Sociétés d’Assurances 2015)
- Description of the administrative documents needed to be insured (Fédération Française des Sociétés d’Assurances 2015)

Standardize the information presentation

Considering the present difficulties to find insurance information on the PSC sites, their presentations should be standardized in order to effectively make it accessible. Actions that could be conducted are:

- Add an English version. Language being the most common hurdle to accessibility problems, and even though a language cannot be imposed under current European law, it should be recommended to offer an English version of the site.
- Within the PSC internet sites, harmonize the form factor, i.e. its format: impose specifications regarding the location of the information on the site (site architecture), and the way it is displayed (position of the fields, font, boxes, colors ...). Not only format harmonization should help navigation, but it would greatly improve the accessibility in case the site is only available in national language: it then becomes quite easy to compare the foreign site with its national version to locate the information and translate its content with tools such as Google Translate.
- Add ELIOS mappings to the PSCs. Work done in the ELIOS and Elios2 studies should logically be shared on the PSC sites. One of the important set of information that could

be shared should be the Mapping of Insurance Regimes for each country. Therefore, it would be possible to assess the insurance requirements and/or legal risks for each country.

Beyond the pure description on the Legal framework / requirements or insurance possibilities / obligations, as expressed in the mapping, the site could also point out the associated risks for the “builder”. In addition, considering the presumed incompetence of the users in legal terminology (SME), the text should also be edited in order to be accessible by non-legal speaking audiences.

As a result, the reader should be able to know easily what are the risks incurred in a selected country, notably financial, and consequently what insurance protection is needed.

- Require a regular update of the Mapping by the Member States. It seems irrelevant to launch new European studies to update the construction insurance regimes description while sharing this information falls under the PSCs objectives. The mapping update should be included in the PSC specifications.

1.1.1.2.2 Enterprises prequalification

Enterprises prequalification at a European level could be a way to standardize procedures and give a common European framework to access insurance.

Even though this mechanism is successful in Germany (Bauindustrie Bayern 2015) it was abandoned at community level (FIEC - European Construction Industry Federation 2011), apparently because it was to the advantage of bigger companies (compared to SMEs), that have the means to satisfy this additional administrative burden.

Nonetheless, it would be interesting to further investigate how Germany managed to trim its disadvantages for SMEs, and reinstate the CEN TC-330 dealing with “qualification of construction enterprises”, maybe with narrower objectives.

Some concurrent solutions were also found on parallel topics, for example for sub-contractors in the UK (Turner 2015).

1.1.1.2.3 “Insurance accessibility” complaint procedures

Add to PSCs a national complaint submission procedure

Even though the Elios2 project notably tries to improve accessibility to insurance, the real extent of the accessibility problem is unclear. In order to objectify this problem, and at least standardize the means to retrieve factual and quantitative information (number of cases), a simple complaint submission mailbox could be added to the different PSC Sites, with copy to European bodies, so that national authorities would get a clear view on the extent of the difficulties faced by foreign companies willing to fulfill local insurance practices.

Create an EU level complaint submission procedure

In the same way Solvit internet site centralizes complaints about obstacles regarding EU law application by authorities, a comparable internet site could be dedicated to retrieving the complaints

regarding insurance at the EU level. Taking advantage of the Solvit site, a link could be made between them.

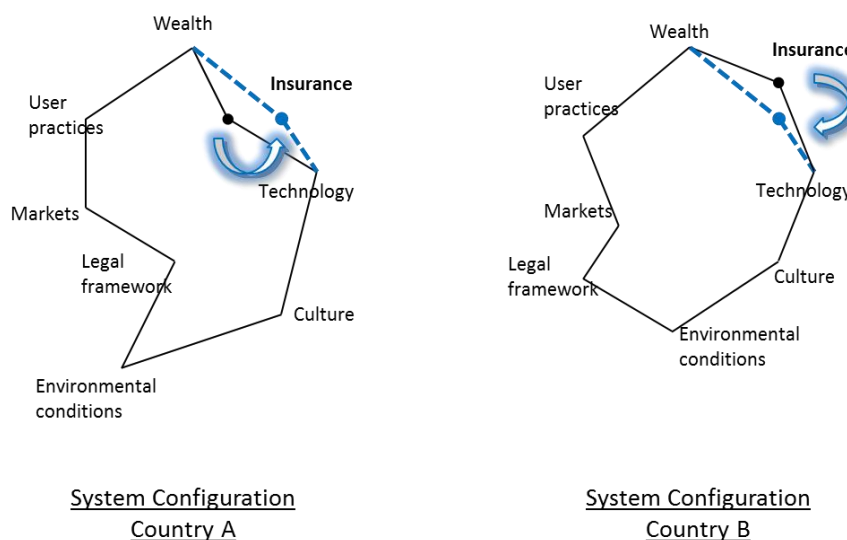
Implement an European construction insurance obstacle mediator

The most effective mean of retrieving information about complaints, analyze those complaints, find solutions, and report about the problematic would be to dedicate a body to this task. This Mediator solution can be carried out jointly with previous proposals.

1.1.2 Modifying the “systems”

In comparison to the “international communication” set of recommendations, this one doesn’t aim the accessibility process per se but the system configurations themselves, in order to diminish the differences between systems and consecutively ease the accessibility (Figure 2).

Figure 2 : Construction insurance regimes harmonization



This harmonization solution can only be carried out by setting new EU regulation or modifying the existing ones. Two main domains could be concerned.

1.1.2.1 Setting a minimum level of guarantee

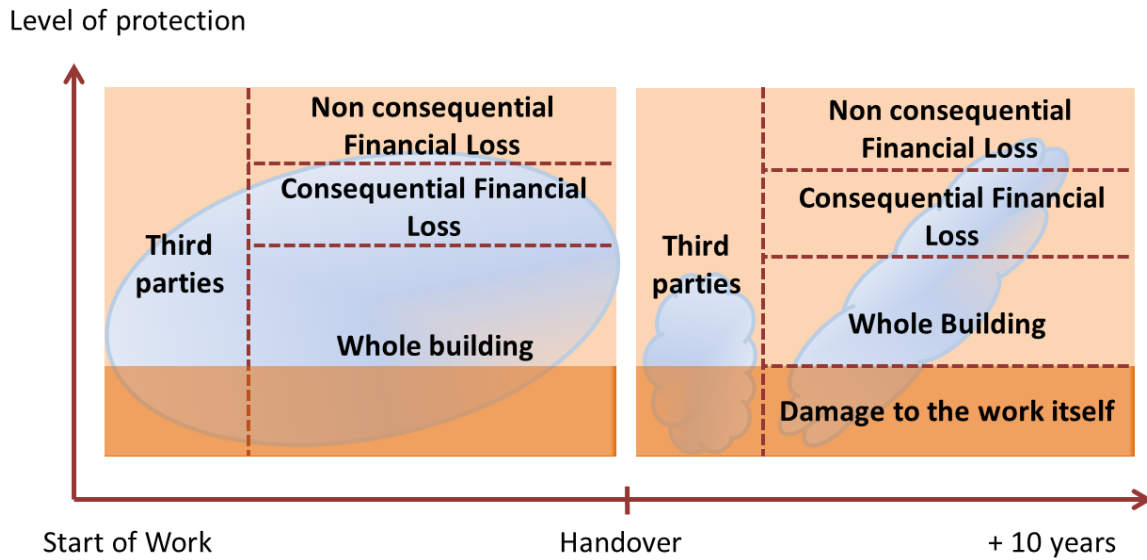
Under this new law, it would be required from all EU Members a common minimum level of guarantee of the contractors, architects, engineers and inspectors’ liability on solidity / stability of the built work. The guarantee could be legal or contractual, on a liability or property basis.

This level of guarantee could be the construction work value for contractors, and a percentage of the Total Construction Value (TCV) for “designers” (architects, engineers, inspectors) (Figure 3).

As previously analysed, the principle of levelling up the requirements, departing from lowest common denominator is the only possible convergence path to harmonization. Nonetheless, once again this solution faces the general problem of the “systems” complexity.

If we look in detail in the insurance functioning, we see that under for example Third Party Liability, insurers combine different underlying types of insurance coverage, without detailed distinction, in order to spread out the risks. This aggregation principle is the main reason why construction TPL premium values are never available; they cannot be distinguished from other types of TPL.

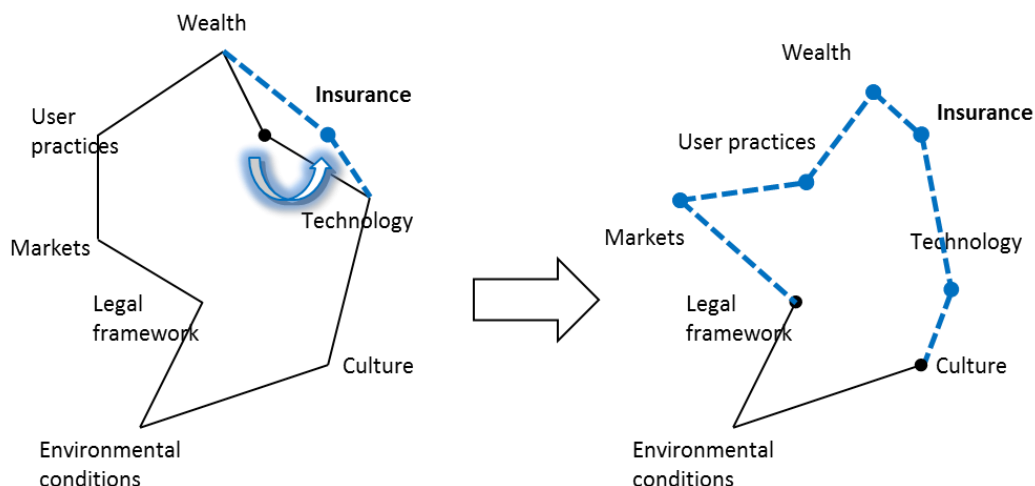
Figure 3: Setting a common minimum level of guarantee



Consequently, modifying regulations on construction TPL cannot be done alone, independently from other domains covered, that would be impacted by any modification.

From a systemic approach point of view it seems that pure harmonization induce a system reconfiguration process; that not only affects insurance but all components of the systems. Pursuing this solution would mean disrupting the systems globally, forcing them to globally reconfigure (Figure 4).

Figure 4 : System reconfiguration as a consequence of harmonization



1.1.2.2 Adapt the Freedom to Provide Service law

Based on differences between national financial regulation laws (Solvency II) and on the application of Home Member State's provisions, current Freedom to Provide Service law (for insurance) seems to lead to distorted competition between insurers since they don't have to comply to the same prudential rules. Consequently protection of the consumer is also at stake. The current FPS application raises doubts and even suspicion from some actors, especially in the French Market.

The FPS law could in theory be modified in two ways:

- Change the obligation to satisfy the "host Member" State's regulation instead of the "home Member" state's regulations
- Require the communication of existing local financial regulations (and notably provision rules) associated to specific guarantees (and notably IDI), from "host Member" state's regulatory authority toward the "home member" state's regulatory authority, through the EIOPA (European Insurance and Occupational Pensions Authority). Doing so, the authorities of the "home member" state of the insurer would be fully aware of the financial requirements the companies operating from its territory should comply with and of the associated risks. Therefore, being informed of the risks, the local authorities couldn't deny their responsibility in protecting the consumer from a possible failure of a domestic insurer.

However, a suitable answer to this situation could be to find ways in order to improve the exchange of information between the competent supervising Authorities.

1.1.3 Energy Performance Guarantees

As previously mentioned, coverage of performance guarantees faces many challenges. Pure "energy consumption performance" coverage, i.e. coverage of the level of energy consumed by the house or dwelling, or produced in order to suit the consumer demand, faces huge hurdles:

- Its dependency on the consumers' behaviour makes it hard to assess, particularly if the users are individuals (compared to enterprises). It is particularly true regarding the perceived individual "comfort temperature level" and ventilation habits (opened windows)
- In order to determine the inherent performance of the building, the consumption of appliances need to be separated from the building one. If it can be easily done by installing smart meters, even though it should increase in the coming years, few of them are currently installed (Financial Times 2014) in order to let the occupant evaluate its consumption
- Modern high performance buildings rely on equipment that needs maintenance, especially ventilation (recovery dual flow ventilation). In case of "home" occupants, this maintenance will likely be ignored. Real performance will therefore highly depend on the behaviour of the occupant.

In order to improve the insurability of true energy performance, following actions could be carried out:

- Include in European standards a common conventional performance definition and calculation in order to facilitate cross border emergence of ESCo type energy covers as they exist in USA. These "guarantees" consist of recovering the investment made in the energy consumption improvement through future energy bill savings. They are usually directly

delivered by ESCo in case of rehabilitation or by developers for new constructions, without implication of insurers. The risk is directly borne by the builder or investor.

- Restrict the energy performance guarantees to inherent energy performance guarantees, as it is attempted by French authorities (Le Moniteur 2013). Inherent Performance is the theoretical performance of the construction work in place, hence consisting of material / design / workmanship.
- Promote smart meters which permits “inherent performance” measurement
- Even if it is not pure performance coverage, where they exist, existing IDI covers can be extended to malfunctioning, within the existing inherent defect covers. This trend is for example followed by Spain.
- Aim development of office building energy saving guarantees, for which on the one hand consuming framework is better foreseen (not individual dependent), and therefore construction more adapted at the design level, and on the other hand maintenance is carried out flawlessly.
- Take advantage of the feed-back given by current experiences held by the various national publicly financed projects. In those cases while the governments substitute for the insurers, the covers are widen to a broader range of buildings and situations.

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