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Final report
Executive summary

Liability and insurance regimes in the construction sector: national schemes and guidelines to stimulate innovation and sustainability

Consortium formed by

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and

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PREFACE

The present document is a summary of the study report on “Liability and insurance regimes in the construction sector: national schemes and guidelines to stimulate innovation and sustainability”.

The document provides a briefing of the research findings of and a presentation of concrete solutions which were analysed by the ELIOS team. Details and explanations of the findings as well as presentation of the context and of the methodology employed are provided in the full version of the Final Report. Analysis of 27 national systems regarding liability and insurance of parties involved in construction activity is presented in a form of national overviews annexed to the Final Report.

In order to clarify the presentation and to highlight the main issues related to this study we have chosen to follow a different plan comparing to the full version of the report. We invite all readers to consult the full Final Report in order to have a more complete understanding of this research project.

1. Introduction

1.1. Background of the study

The ELIOS project is a part of the implementation of the Lead Market Initiative and of a Pilot Project supported by the European Parliament to facilitate access to insurance by building contractors, especially the self-employed and small firms, in order to stimulate innovation and the promotion of eco-technologies in the European Union.

In order to address the difficulties above, following a proposal presented by the Member of the European Parliament, Mrs. Guy-Quint, a specific budget line was approved in March 2008 in the perspective to implement a pilot project entitled “To facilitate access to insurance by building contractors, especially the self-employed and small firms, in order to stimulate innovation and the promotion of eco-technologies in the European Union”.

In the above context the European Commission has decided to launch the present study in order to analyse the situation and to make concrete recommendations.

1.2. Presentation of the study consortium

The contract of performance of the present feasibility study called ELIOS from an abbreviation of words European Insurance Liability Organisation Schemes has been awarded to the consortium formed of Centre d’Etudes d’Assurances (CEA) and Centre Scientifique et Technique du Bâtiment (CSTB).

The grouping CEA-CSTB was supported by four associated partners, who were particularly involved in the research on national liability and insurance systems and in preparing the case studies: KING’S COLLEGE LONDON (United Kingdom), BEITEN BURKHARDT (Poland), IfER – European Institute for Energy Research (Germany), ASM Market Research and Analysis Centre (Poland).

1.3. Scope of the study

This research was based on the work programme specified by the European Commission in the call for tenders ENTR/08/007 of 28/05/2008 from 28 May 2008.

The main elements of the work programme are summarised below:

- a) To critically review the national liability and insurance systems in the EU-27 (...);
- b) To assess the impact of the insurance regimes on consumer protection, the competitiveness and the sustainability of the construction sector and the economics of the insurance market (...);
- c) To identify insurance schemes and good practices that could help especially craft and small construction firms to exploit innovative solutions for sustainable construction and to adopt responsible management (...);
- d) To make concrete recommendations about the extent to which the European Commission should support the formation and the promotion of such insurance schemes in the Member States (...);
- e) To contact a representative range of public and private stakeholders of the construction and of the insurance sectors at relevant levels, in order to know their views under a), b), c) and d) (...);

2. National regimes of liability and insurance

2.1. Diversity of national regimes

The first observation which imposes itself with respect to the general framework of construction regimes in Europe is the existence of an extreme diversity of construction liability and insurance regimes across the 27 EU Member States.

The early studies of C. Mathurin¹ and GAIPEC group² performed in the 1990's, have already highlighted a great diversity of existing regimes in twelve EU Member States at the time and gave root to the idea of impossible harmonisation of liability and insurance regimes at a European level. Since then the national systems have evolved independently and without much coherence between each other in the absence of a European model, which could serve as a reference in this matter. The above coupled with the progressive enlargement of the European Union has led to a real patchwork of 27 different national regimes.

¹ C. Mathurin, *Étude des responsabilités des garanties et des assurances en vue d'une harmonisation au niveau communautaire*, 1989.

² GAIPEC, *Liability and insurance regimes in the construction sector*, 1992.

http://ec.europa.eu/enterprise/construction/info/study_liability_insur_regimes_sect_construct.pdf

2.2. Similar concerns through this diversity and interest of a functional approach

Whatever the legal rules and market practices of liability and insurance in each of the Member States, some political and regulatory choices have necessarily been made in these matters. It seems that the needs and purposes addressed tend to remain similar in different markets³.

In order to highlight these similarities and unlike the majority of the previous analysis the approach adopted by ELIOS aims to be clearly functional.

Schematically doctrine of comparative law makes a distinction between a traditional approach, called structuralist, which is concerned primarily with concepts and legal rules from somehow “morphological” perspective and a more recent approach, called functional, which is focused on purposes followed and results achieved by legal systems in relation to a specific problem.

In this respect the study has revealed a surprising similarity between the models of property buyers’ protection developed in the anglo-saxon system and in the French law, in spite of completely different legal frameworks existing in these two countries.

In the United Kingdom, the NHBC (the National House-Building Council) is a private non-profit association which brings together qualified building contractors and property developers. The NHBC proposes to its members a warranty comprising three main parts. Firstly, cover before completion, starting from the signature of construction contract until completion of works, which warrants reimbursement of amounts paid to the builder and/or extra costs necessary to complete the construction works, if due to insolvency or fraud the builder or the developer fails to complete the works. Secondly, during first two years from completion of works, all defects (even minor ones) are due to be repaired by the builder or the developer and the NHBC cover is available to the buyer if the builder fails to meet this obligation. Lastly, during eight following years i.e. until expiry of the deadline of ten years from completion of works, the NHBC provides insurance covering defects in the shell and the structural parts of the building. Moreover, an extension of cover is available covering repairs needed in case of imminent danger to the health and physical safety of the occupants.

Although, naturally, the scope and the applicability conditions of the NHBC cover differ from the provisions of the French law, there is an obvious parallel between this triple layer protection and the covers available to the French property buyers, which consist of: firstly, completion or advance payments reimbursement warranty (which has been made compulsory for the contracts of construction of individual houses by the law of 19 December 1990), secondly, warranty of perfected completion (*garantie de parfait achèvement*) imposed by the art. 1792-6 of the Civil Code (the duration of which was proposed to be extended from one to two years in the IGF/CGPC report) and lastly, compulsory insurances of latent defects (*dommages ouvrage*) and of decennial liability.

It should also be underlined that in practice the home warranty cover such as provided by the NHBC has a quasi-compulsory character in the UK since it is required by mortgage lending institutions. It is estimated that around 95% of new dwellings in the UK are covered by the NHBC warranty which would

³ B.Kohl « Droit de la construction et de la promotion immobilière en Europe », LGDJ 2008 underlines interest in the functional method in this field p. 9, adde, H.A. Schwartz-Libermann « Droit comparé. Théories générales et principes », 1978. H.C. Gutteridge « Comparative Law. An introduction to the comparative method of legal study and research », oct. 1946

According to Mr. B. Kohl “each system involves certain measures of consumer protection, the disparities seem important in terms of methods of regulating this domain of activity: where some systems have chosen to define precise rules of this protection by law or by regulation, others have trusted the market in order to provide the same protection means to the consumers”.

mean that this security is more systematically taken out in the UK than the legally mandatory *dommages ouvrage* cover in France.

In this perspective, when observing the existing systems, only three principal choices seem possible: leave the risks to the purchaser, transfer the risks by means of more or less automatic liability upon the constructors involved, or secure and potentially mutualise the risks by an insurance scheme.

2.3. The growing need of security and guarantees

Within the great diversity of the national regimes in Europe, it is possible to observe various manifestations of a growing need for security and guarantee in the construction sector. Several findings of our research are symptomatic of this need in the EU Member States.

Firstly, in terms of liability, in nearly all European regimes, namely in 25 from 27 Member States, the constructors are subject to specific provisions. Generally the applicable rules are imposed by law or, more rarely, they result from widely used standard contract forms. Whatever the way how the specific regime is imposed, the effects are the same: to facilitate and regulate the conditions in which architects, building contractors and other parties may be held liable as well as to reinforce protection of the property buyer.

Furthermore, the results of the ELIOS research show a widespread character of *in solidum* or joint and several liability mechanisms, the result of which is to transfer consequences of failure of one of the parties to the construction project to the remaining participants rather than to the buyer (see part 2.4.).

On the other hand, the most noticeable phenomenon consists in development and generalisation of insurances related to the construction operation. Thus, six national legislations have adopted insurance compulsory for the housing sector covering latent defects discovered within ten years from completion of works: France (1978), Sweden (1993), Finland (1994), Spain (1999), Italy (2004) and Denmark (2008).

In some national legal frameworks or practices financial guarantees are also available to protect the client against the risk of failure or of insolvency of the builder before completion of works. Moreover, mandatory professional indemnity (PI) insurances apply to architects in many countries.

Lastly, the need of guarantee may also be seen in some countries in a form of mandatory third party liability insurance imposed on construction parties.

2.4. The limits of contractual guarantees

In the context of failure or insolvency risk it does not seem satisfactory from the client's perspective to rely solely on guarantees granted by the construction parties without transferring the risk to an external guarantor such as insurance company. Furthermore it also seems inequitable from the point of view of some other participants to the construction operation, which face the risk of joint and several liability.

The solvency within the construction sector is an important element of consumer security (especially taking into consideration large amounts of investment and a high degree of risk involved in the case of construction projects). It is important to underline that the construction sector is one of the most

exposed to insolvency risk. At the European level, construction was among four economy sectors with the highest insolvency rates and has contributed to 20.9% of insolvencies in 2007⁴.

It is also important to notice that the construction industry is exposed to economic cycles and that companies operating in the construction sector are particularly exposed to the risk of financial failure within their supply chain.

In the large majority of the EU Member States, there is a system of *in solidum* or joint and several liability which means that a plaintiff may require a full compensation from any of the parties, who have contributed to a same loss. In case of insolvency of one or more parties, the remaining ones may have to bear the full charge of the loss. That is especially true when the guarantee provided by insurer ceases in case of insolvency of the insured professional (claim's made basis).

Although this system may be considered as advantageous from the clients' point of view, in some countries it raises concerns whether the risks and liabilities, to which the construction parties may be exposed, are proportional to the services they provide and to the remuneration they obtain.

2.5. Tendency to implement mandatory or widespread ten year insurances

We may highlight a growing tendency to implement 10 years post completion construction insurances or guarantees. This finding is contrary to the commonly held perception that such insurances are exceptional. In fact, such schemes are quite common at least in the oldest EU Member States.

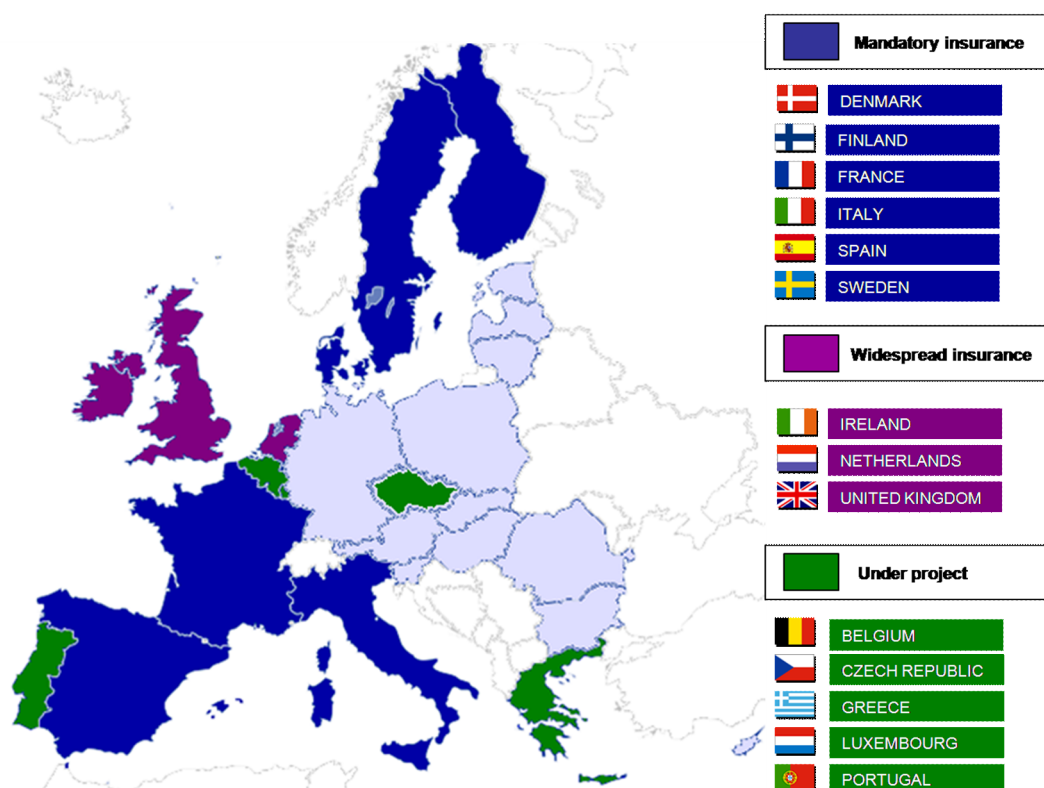
It is important to note that the majority of the above schemes address the housing sector. The 10 years duration is apparently a reasonable compromise between the necessity of protection of the buyer confronted with construction disorders and the constraints of insurance market.

Schematically, it can be said that there are two main ways to implement such schemes: some countries have chosen to impose them through a legal obligation, whereas the others opted for insurance schemes which are optional in theory but often indispensable in the market practice.

The following map shows the EU Member States, in which mandatory or widespread latent defects insurance schemes exist, as well as States where projects of implementation of such a guarantee have been considered.

⁴ "Insolvencies in Europe" a survey by Creditreform Economic Research Unit
http://www.infohub.moneyadvicetrust.org/content_files/files/insolvencies_in_europe_2007_2008.pdf

Figure 1 - Mapping of latent defects insurance schemes



2.6. Different contexts around Europe for technical assessment

Technical assessment is generally carried out in a defined context and on the basis of a specific knowledge: given state of the art, in order to state pertinent recommendations for the attention of specific stakeholders. This freedom in self-determination of the stakeholders who benefit from flexibility on the solution answering the need for the construction of particular works, can lead to the definition of specific requirements which are seen by others as a generation of barriers to trade or to competition. Some technical assessment bodies such as the members of the UEAtc (Union Européenne pour l'Agrément technique dans la construction) offer solutions in favor of technical exchange across the borders on evaluating the suitability for use of innovations.

3. Questions specific to sustainability

3.1. Sustainability: a growing concern

The relatively stable climate, though variable, over the last six thousand years has very likely favoured the development of societies and correlatively of the built environment. These anthropogenic developments have been huge and fast during the last hundred years. The associated production of

green house gases (GHG) has been increasing as well as the concentration of these gases in the atmosphere. There is less and less doubt that this will contribute to impact climate during the next decades and centuries as concluded by the IPCC experts. A major issue in such a perspective is the development of much less energy consuming and GHG emitting buildings. This strong requirement has to be fulfilled whilst easily accessible (and cheap) fossil energy reserves tend to decrease and world population experiences an exponential growth.

As such perspectives may clearly not be sustainable, “sustainable development” has been perceived for some years as a major issue and challenge for the XXIst century. The scope of sustainable development encompasses several domains (generally named as the three pillars of sustainability: economics, environment, ethics) and calls for a holistic view on any human activity.

As one of the major GHG contributors and resources consumers as well as a provider of infrastructures for nearly all human activities, the building sector must absolutely shift from a traditional towards a sustainable production/exploitation framework.

In this context, the EU has progressively recognized that sustainable construction had to be on the top of the agenda to reach its priority objectives: a low-carbon and resource efficient economy. The 2002 directive on energy performance of buildings (Directive 2002/91/EC), the 2006 directive on energy end-use efficiency and energy services (Directive 2006/32/EC), the 2007 Lead market initiative for Europe are examples of European initiatives in line with these objectives.

Important standardisation initiatives have also been taken for instance ISO TC59 “Building construction”/ SC17 “sustainability in building construction”.

Public and private actors are aware that actions on building stock (existing buildings) and flux (new buildings) will have the largest impact on the economy, the environment and the society. The share of eco-technologies and eco-innovation in the economy is already growing.

3.2. Frameworks for the development of sustainable buildings

A sustainable building is first of all a building. As such, it is a system that aims at fulfilling functions directly related to the programme of the construction operation, which describes the intentions and expectations of the client with respect to his budget.

Sustainability is not an additional function but is incorporated in generic functions through a thorough reflection starting at the early beginning of a construction operation. This reflection aims at incorporating environmental, economic and social issues over the built environment life-time. Whilst ensuring basic performances, sustainability brings new dimensions linked to a holistic approach of the construction in relation with its environment.

Sustainability could be seen as a movement towards a rural construction economy characterised by an efficient use of local resources to build locally adapted buildings. The challenge for the XXIst century is to succeed in this direction with an exponential demography, a fast growing urban population looking for more comfort, a perspective of relative scarcity for some natural resources and a very likely modified but locally uncertain climate.

Facing such a challenge will lead to develop innovative organisational and technical solutions. Sustainability will not be achieved by only implementing fashionable equipments/building parts such as windmills, photovoltaic roofing or efficient thermal insulation but will need a much deeper transformation of the construction process starting from a comprehensive expression of the future use of the building including users' behaviour and maintenance conditions.

Without any doubt, the introduction of these innovations will impact responsibility of construction stakeholders and call for a reflection on construction insurance schemes.

3.3. Insurance schemes and good practices

Based on the research findings, the ELIOS team has composed a table summarising initiatives and good practices identified in various EU Member States.

Details of the schemes indicated in the table are available in the country reports annexed to the final report. Chosen examples of schemes identified are provided in the full version of report. It is important to note that this table has been completed mainly based on information provided from various stakeholders and it must not be considered as exhaustive in any case.

Despite various initiatives undertaken, only a small part of construction activities in Europe is actually covered or regulated by such schemes. It can be said that in fact many construction technologies are offered without appropriate coverage and that often guarantees provided to consumers rely solely on the financial standing of construction parties.

Although a growing number of insurance companies offer insurance solutions focused on sustainable technologies, the insurers as a general rule, are still not closely involved in many technical solutions and legal commitments offered by the current construction activities.

3.4. Can we build sustainably without sustainable guarantees?

Despite the different attempts to provide more security and to accompany sustainable development through different initiatives and good practices the results of our study show that there is a gap between the new eco technologies offered by the construction sector and the guarantees provided by the insurance market.

Two main constraints to set up insurance guarantees adapted to sustainable development are:

- increasing speed of innovation generated by the sustainable development, and
- commercial tendency to offer innovative and sustainable solutions with specific performance promises.

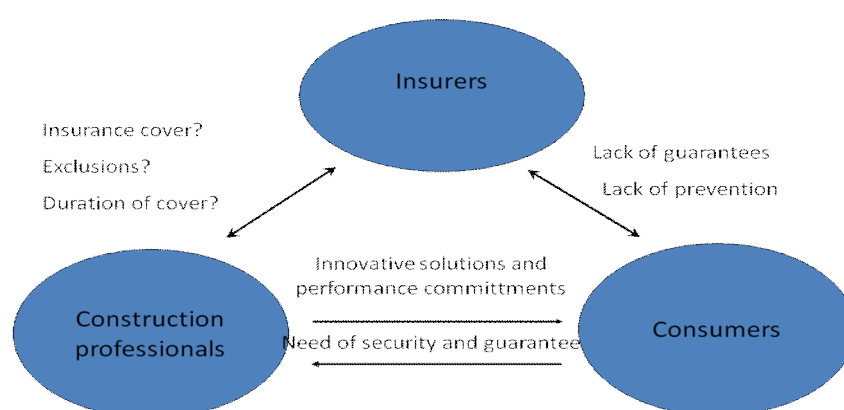
It seems, at a first glance natural and logical that the insurance sector adopts a prudential attitude, since, there is no sufficient feedback of experience available to assess the effectiveness of these new technologies.

The current political pressure to stimulate sustainable products and processes, tax and financial incentives available as well as commercial prospects offered by eco-innovations may lead to a potentially dangerous situation, if such eco-innovations are not followed by viable guarantees.

Moreover, for obvious reasons, professionals from the construction sector increasingly undertake commitments in terms of performance, which, as stated above, generally rely solely on their own financial standing.

The drawbacks of this situation are clear. Taking into account the insolvency risk described above, this means that the protection of the owner is not properly organised, which is somewhat paradoxical in light of the growing need for security and guarantee identified in the large part of the national insurance regimes across Europe.

Figure 2 - Interactions in terms of risk and insurance



4. Other issues within the scope of the study

4.1. Cross border activities

Previously, these activities mostly concerned either large companies or smaller firms operating in areas near the national borders. Currently the situation has changed and small and craft firms increasingly try to work outside their national market.

This situation has been taken into account by several professional organisations⁵. As highlighted in various reports, one of the difficulties faced by small and craft firms involved in cross border activities is related to access to insurance.

⁵ See in particular:

- European Builders Confederation, CAPEB, *Faciliter l'Accès aux Assurances des artisans et des petites entreprises du bâtiment pour encourager l'innovation et la promotion des éco-technologies dans l'Union Européenne*, 2007
- CAE – Centre d'Etudes d'Assurances, *Overview of liabilities and insurances in 32 European countries*, 2008
- EFCA - Anfor Normalisation, *Feasibility and opportunity to develop a standardization work programme concerning Engineering Consultancy Services*, 2008
<http://www1.fidic.org/news/content.asp?ArticleCode=082Pr&Rubrique=Practice&Date=12/12/09&lang=en>

Firstly, as confirmed by the stakeholders approached by the ELIOS team, impossibility to obtain statistically reliable information available in this field might suggest that the problem is in fact marginal. More exactly it seems that some simple measures such as improved access to information for the stakeholders concerned may be likely to resolve the existing difficulties.

On the other hand this problem should not be considered as exceptional and restricted to particular Member States only. In light of fundamental trends in terms of need of security and guarantee, such difficulties may be likely to reappear each time when a Member State decides to reinforce consumer protection by imposing new insurance obligations in its national market. In such cases, care must be taken that the businesses incoming from another Member States, in particular small and craft firms, have the practical means to comply with new requirements.

4.2. Access of small and craft enterprises to construction markets

The above situation could also contribute to a disadvantageous position for the craft and small enterprises.

According to Eurostat⁶ it is estimated that in 2007 there were around 3.1 million construction enterprises across the EU-27, which generated an estimated EUR 1 665 billion of turnover. The EU-27 construction activities provided employment to an estimated 14.8 million persons and generated an estimated EUR 562 billion of value added.

The tender specifications of the European Commission used the term of craft and small enterprises. Since the meaning of this term may vary in different countries, we have chosen to use the following definition:

"1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 people and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 people and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

*3. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 people and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million."*⁷

According to the FIEC (European Construction Industry Federation, 2006, www.fiec.eu), 93% of the 2.7 million construction enterprises (EU 27) employ fewer than 10 employees.

The concept of craft enterprises is not formally defined, however it is understood that it refers in particular to small or micro enterprises.

4.3. The place of insurance: increasingly a regulatory role

⁶ EUROSTAT, *The EU-27 construction sector: from boom to gloom*, Statistics in focus, 7/2010

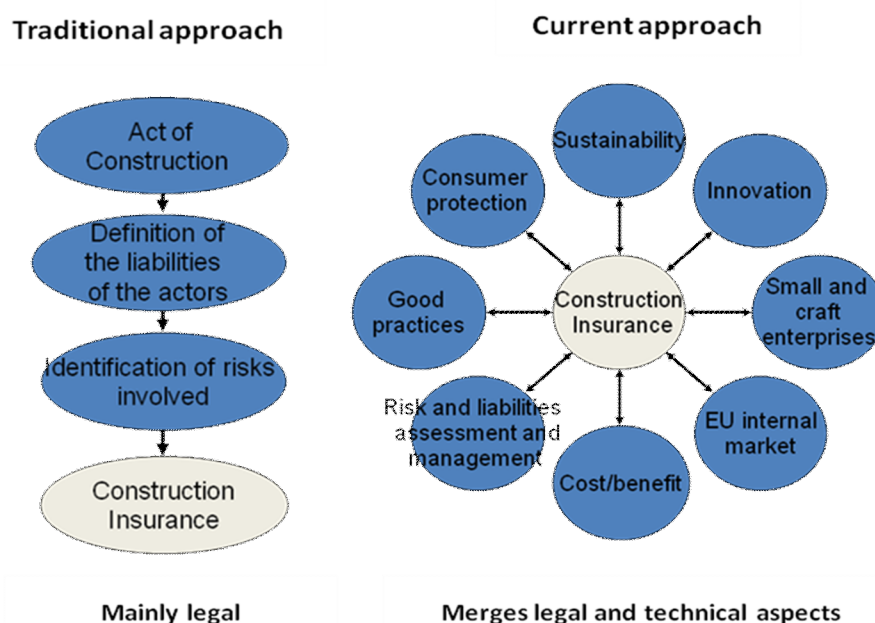
⁷ European Commission, Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, 2003/361/EC, *Official Journal of the European Union* L 124/39, 20 May 2003

Why and how insurance schemes could possibly play a role in stimulating innovation and sustainable development in construction?

The answer to this question requires acknowledging that the insurance sector has a growing impact on construction activities and plays a regulatory role in some national systems. This tendency is particularly true for the countries where insurance is systematically taken out, either as mandatory by law, or required as a part of market practice. In such cases, the role of risk selection and control by the insurers may affect (and it does affect indeed) the choices of products, methods of design and performance of construction works.

Furthermore, being involved in the methods of risk and quality assessment, the insurance sector may have a considerable influence on the access of small and craft firms to a given national market and on cross-border construction activities.

Figure 3 – Role of insurance, traditional and current approach



The question here is not about formulating judgments on this development but rather to highlight its existence and to analyse possible consequences of involvement of the insurance sector in risk assessment and in favouring construction quality, not forgetting the necessity of consumers' protection.

Such tendency has been highlighted in a study performed by Organization of Housing Warranty in Japan on 38 home warranty schemes in the world⁸ where it was considered that insurance industry, as an actor naturally concerned with quality and risk, may become a form of a "small government", playing a role of a regulator within construction activities.

⁸ Organization of Housing Warranty Japan, *Housing and Home Warranty Programs World Research*, 2005
http://www.ihhwc.jp/sessions/World_Research.pdf

5. Possible orientations

The findings of our research suggest that there is a gap between the necessity to develop sustainable and innovative construction and the need to reinforce security and guarantee for the end users.

In light of the great diversity of existing national responses to the above problem, it is logical and necessary that an involvement should be undertaken at the European level. Europe must ensure that concrete means are available for the efficient and lasting support for small and craft firms in order to enhance development of renewable energies and the related guarantees.

5.1. Examination of different possibilities

5.1.1. Insurance Guarantee Fund (Pilot Project)

This proposal, examined by the European Parliament in March 2008 following a report of the EBC, consists in creation of a financial instrument dedicated to facilitating access to insurance for small and craft firms wishing to implement eco-technologies in their activities.

Although this initiative addresses the specific needs expressed by small and craft firms, it also presents a number of constraints described below:

BENEFITS	DRAWBACKS
<ul style="list-style-type: none"> - Utilisation of feedback of experience from the successful EIB (European Investment Bank) and EIF (European Investment Fund) contribution as regards access to credit; - Short implementation time frame as an answer to a cyclical difficulty; - Specific response to similar needs expressed by small and craft construction firms for insurance coverage connected to the development of eco-technologies; 	<ul style="list-style-type: none"> - Lack of operating similarities between banking and insurance institutions in terms of risk analysis and assessment, technical reserves and reinsurance; - Difficulties linked to setting up consistent and uniform access criteria to the guarantee fund; - Discrimination according to the development level of national construction insurance solutions; - Risk of encouraging development of rather unreliable operators and of implementation of eco-technologies, which are of unsatisfactory quality and not controlled; - Lack of statistical data and experience feedback enabling risk assessment and definition of the price thereof; - Different approach adopted depending on technologies developed. - Operational constraints: relevance and sufficiency of allocated amounts, inexistence of a European body capable of managing this fund, assessment tools, short-term outlook, etc.

5.1.2. Harmonisation of liability and insurance regimes

Although the idea of harmonisation of liability and insurance systems seems difficult to envisage at present, there is a growing interest in research of some cohesion and the ways, in which some convergent evolution between the Member States could be enhanced.

The table below summarizes potential drawbacks and benefits of harmonisation of liability and insurance regimes:

BENEFITS	DRAWBACKS
<ul style="list-style-type: none"> - Potential way to facilitate cross-border activities, especially for small and craft firms; - Simplified access to the European construction insurance market; - Proposed protection levels and guarantees potentially easier to understand for consumers; - Facilitator of joint initiatives in the fields of risk assessment, quality promotion and creation of insurance schemes adapted to environmental technologies; 	<ul style="list-style-type: none"> - Strong differences of Member States' appreciation of the required harmonisation level, due to their domestic law and experience; - Lack of clarity about the nature and scope of a European policy (restrictive character, minimum provisions, applicability over time, etc.); - Complexity due to the significant and increasing number of Member States (difference in cultures, practices, traditions, protection levels, etc.); - Administrative burden and resulting costs related to the replacement process of current national systems; - Potential lack of consideration of local specificities related to traditional building rules, building standards, geographic and climatic constraints;

5.1.3. European standard contract

An alternative approach could consist in developing a standard insurance contract at the European level with the involvement of various professional organisations, including those representing construction and insurance sectors as well as customers thereof.

However, this solution would necessarily affect the traditional relationship between liability and insurance as well as certain national customs and market practices.

Table below provides a summary of potential drawbacks and benefits of this solution:

BENEFITS	DRAWBACKS
<ul style="list-style-type: none"> - Does not require harmonisation of the national insurance systems. - Initiative in the spirit of European rules governing contractual obligations (Rome I Regulations). - Specific response to cross-border activities and the question of sustainable development in the construction industry. - Long-term guarantees, adapted to the needs of SMEs and project owners. - Possibility of establishing risk prevention and control measures. - Speed of implementation. 	<ul style="list-style-type: none"> - Necessity of reaching agreement on the scope and working methods of the guarantees. - Challenging the traditional national links between liability and insurances. - Difficulties of implementation connected with the highly diverse administrative and technical rules of construction. - Challenging of national habits corresponding to the expectations of the project owner and society (Condition for obtaining a loan, transfer of ownership, legal deeds etc.). - Distortion of competition between intra and supra-national activities.

5.1.4. Involvement of insurance sector (charter)

The ELIOS team have recommended in the Progress Report to consider an adoption of a voluntary charter by the European insurers involved in construction risks, as a declaration of intent to support renewable energies and sustainable development in construction.

The insurers considered that the interest in such solution was limited taking into account their existing involvement in undertakings aiming to promote sustainable development on a larger scale, such as UN environmental programme, Corporate Social Responsibility or the European Committee on Climate Change.

Although the idea of a commitment by the insurers through a charter has been abandoned, the principle of creating two bodies, initially intended as vehicles for implementing the charter, has been retained because the stakeholders expressed an interest in developing a mechanism, which could help the insurance and construction sectors to adapt to sustainable development.

5.2. ELIOS recommendation – creation of European agency for construction insurance

Currently, an EU Member State, which would wish to adopt a new law in the field of construction insurance, can neither dispose of access to objective and up to date information on regimes existing in other Member States nor of guidelines from any European provisions.

This situation presents some drawbacks, in particular difficulties faced by some market stakeholders such as small and craft firms when they attempt to exercise the free provision of services within the internal market. Thus, the diversity of national legislations requires measures facilitating access to information and this need can only increase if new insurance obligations are created.

On the other hand, the findings of ELIOS research have revealed a gap between the desire to enhance development of sustainable construction and the guarantees effectively provided by the insurance sector. The above results from two main phenomenons, namely an increased speed of innovation and a growing number of performance commitments. Also in this respect a European coordination is necessary for any common initiative. How to achieve a mutual recognition of quality indicators (qualification, certification, technical approvals...)? How to collect and to diffuse information on pathology in order to benefit from feedback of experience as a signal of alert warning against a defective eco-innovation?

In light of findings of this research the ELIOS team proposes creation of European agency for construction insurance. The role and the possible activities of this body have been defined in a roadmap document comprising four principal missions:

- Interface between the Commission and the Member States in the matters relating to construction insurance;
- Single point of contact for information about cross-border construction activities;
- Handbook of quality labels and indicators at the European level;
- European observatory and database of construction pathology relative to eco-technologies.