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Haugbølle, Kim; Lyes, Nick

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Edited by Kim Haugbølle and Nick Lyes

Welcome to the final newsletter of the Elios2 project

Access to insurance: a European Mediator?

Amongst the various areas our Project Pilot has to address, one in particular seems to be especially complex: The access to insurance for construction actors when providing their services in another Member State. Is this access to insurance an obstacle to cross-border activities and the development of the single market? If some difficulties have been faced in the past by SMEs, especially in the field of certain eco-technologies, what is the real extent of the problem today?

There have been several initiatives at National and European level since 2008 to solve the problem, but has this made a difference?

The European Commission issued a Staff Working Document on 31st March 2014 entitled "Access to insurance for services provided in another Member State".

The document shows that the provision of services still face important obstacles due to disparities in insurance obligations, and it refers to the Elios2 project: "The developments in this context should be monitored with a view to determine whether the experience gained from this pilot project in the construction sector could be valuable for other sectors dealing with the issue of insurance in a cross-border context". It also mentions that – according to article 23 of the Services Directive – the Commission may decide on common criteria for defining when an insurance requirement is appropriate or not to the risk covered.

Another initiative is the survey launched this summer by the EC about "the remaining obstacles to a fully functioning Single Market for services, including in so far as possible non-regulatory restrictions".

On the other hand, some actors in the insurance sector believe that the real extent of the practical difficulties has not been assessed and maintain that a lack of information cannot be assimilated to a drawback for the Single Market.

Over the last few months, the Elios2 team has worked on this topic and tried to come up with possible solutions. Five main orientations have been defined (see our Progress Report) and contacts have been made with some key stakeholders in order to exchange information on this topic.

Our recommendation is for a European Mediator to be put in charge in order to facilitate the access to insurance for cross-border construction activities. The role of the European Mediator would be to inform, advise and help the providers of services in case of difficulty.

The advantages of this solution include:

- Allowing anyone concerned to know to whom claims may be submitted (complaints bureau).
- Organising information that is appropriate and as complete as possible on the existing possibilities in the Host State for example through links with the Single Points of Contact (SPC), with national mediators, and with the associations and actors in the insurance market.
- Handling residual difficulties through negotiation with national actors.
- Centralising a track record of any difficulties, being able to analyse the situation and to finally give a reliable assessment of the (potential) hindrance of access to insurance for the Single Market.

By Jean Roussel

*On behalf of the Elios2 partners
Chairman*

Work Package 1: Use of quality signs by insurers

The Elios2 directory of quality signs (QS) is being populated: <http://signsdirectory.elios-ec.eu/>

The response rate remains rather modest in spite of numerous individual contacts and reminders to about 120 providers of QS in EU-28 countries. Some additional QS are being recorded by Elios2 team members.

Nevertheless the core question of the Elios2 project concerns the use of QS by insurers. Both the analysis of QS records and exchanges with (re)insurers give insight on this issue. The on-going electronic survey will bring additional information.

Quality signs aim to bring information to construction actors in order to design, build and maintain building works that meet basic requirements. Quality signs do not aim as such to bring information to insurers in order to assess their risks. Nevertheless, some QS contain information that may be useful for their risk assessment.

For example, insurers will be interested in information concerning specific aspects of innovative construction systems, e.g. field of use (is the projected use compatible with the information delivered by QS?) or required design/installation competences.

This information draws the attention of the insurer to aspects that may be a source of risk. For example, if a QS concerning an innovative construction system highlights the use of specific competences, the availability (or the

absence) of a QS on the said competence may be taken into account by the insurer to assess its risks.

Similarly, QS on individual/company competence may be of interest to the insurer in respect of construction project characteristics even if more traditional techniques are involved.

Quality signs concerning construction products happen to be less relevant for risk assessment by the insurer. Such QS mainly display that associated products comply with standards. The absence of such QS may attract the attention of the insurer. The existence of mandatory QS on construction products (i.e. CE marking) is likely to limit a lack of such information. The presence of such QS on construction products is nevertheless not a positive element in risk assessment as it does not bring discriminatory information to the insurer.

Few QS then can be considered as discriminatory and give insurers some information on their risk level. The following table is a synthesis of these findings.

Relevance of quality signs used for risk assessment of insurance guarantees

| Insured | Type of Insurance | Product | System | Competence | Work |
|---------------------------|-------------------|---------|--------|------------|------|
| Manufacturer | TPL | A | C | C | C |
| Contractor | TPL | C | B | A | C |
| Architect/ Engineering | PI | C | A | A | C |
| Building Work | IDI | C | B | A | A |

| KEY | A: high relevance | B: medium relevance | C: low/no relevance |
|-----|--------------------------------------|----------------------------|---------------------------------|
| | TPL: Third Party Liability insurance | PI: professional indemnity | IDI: inherent defects insurance |

By Jean-Luc Salagnac, WP1 leader
Centre Scientifique et Technique du Bâtiment

Work Package 2: Business models for the Eco-Technologies Quality European Observatory

The last phase of the Elios2 project was devoted to developing possible business models for a future EQEO: the European platform for the exchange of pathology information on (innovative) eco-technologies.

Three feasible business models were considered:

1. Operation on a non-profit basis with free public access;
2. Operation on a commercial basis with paid access;
3. Operation on the basis of a mix of commercial and non-profit;

The first model (non-profit) is characterised by free public access. In this non-profit model, a permanent (virtual or real) European working group is organised and maintained that studies and analyses pathology information for the database, selects data that has a European relevance and that is technically and economically significant and at least supports the dissemination of the information. This model would require a permanent stream of financing by one or more benefactors of at least a secretariat (who manages the database), the external consultants, and the providers of information. An example on a national level is the PATORREB pathology catalogue supported by eight Portuguese universities (www.patorreb.com) or the database on structural safety by the Institution of Structural Engineers (www.structural-safety.org).

In the second model the database is managed by a commercial agent (e.g. a publisher) on a purely commercial basis. The pathology cases could be delivered by a number of expert bureaus who receive a fee for each case. The commercial agent gets its revenue by subscriptions or a usage fee for entrance to the database. Depending on the business model, there is a full or partial moderation by the commercial agent of the cases before they are published. There are several national examples of such commercial databases like the NBD Bouwgebreken of SDU Publishers (Netherlands), (<http://bouwgebreken.sdu.nl/bouwgebreken>) or 'Schadis – Die Datenbank zu Bauschäden' of Fraunhofer Institut IRB (Germany) (<http://www.irb.fraunhofer.de/schadis/>).

If a fully non-profit set up (with free public access) is not reachable, part of the activities of the EQEO can commercially be exploited (model 3). For example Agency Qualité Construction (AQC, www.qualiteconstruction.com) in France operates in this way. AQC is an association that aims to prevent building defects and promote quality in construction. It is financed by the contributions of its members (governmental and professional construction organisations). AQC has some free public services, but also some services that are only accessible for its members.

From the viewpoint of scope and accessibility, model 1 would be preferred. However, from a cost perspective model 3 would provide a good alternative.

By Henk Vermande, WP2 leader
ARCADIS

Work Package 3: Possible paths to improve accessibility to construction insurance

Possible actions to improve the accessibility to construction insurance can be grouped in two main categories:

- 1) Improving the access process between national construction systems through transnational communication, and;
- 2) Modifying the construction systems themselves through harmonisation.

The first option is to improve the access process between national construction systems through transnational communication. Below we highlight how this could be done:

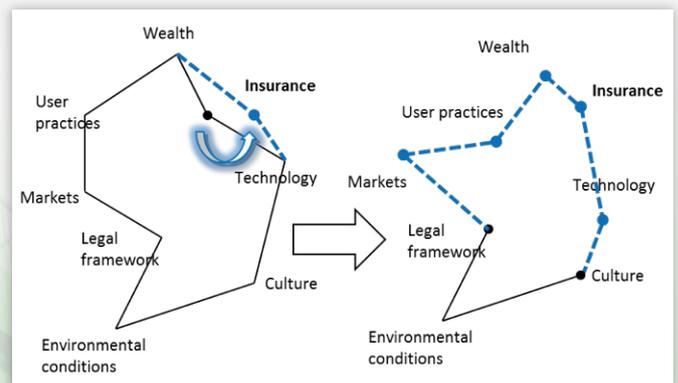
- Improve failure forecasting and share pathology information through the EQEO initiative (developed by WP2) and the creation of a “hazard notification procedure” in order to retrieve information at a European level.
- Share information about existing quality signs in order to help insurers assess the competences of foreign applicants (as initiated by WP1).
- Create a European Technical Inspection Service certification, based on independence and risk analysis competences criteria.
- Use the existing national Points of Single Contact (PSC) in order to facilitate subscribing procedures:
 - o Add an insurance access procedure guide, notably providing information on insurance provider contacts and on information requirements (standard application form).
 - o Add the Elios2 insurance regimes mapping to these PSCs which will require updates from Member States.
 - o Standardise the information presented (form factor specifications), and translation possibilities.

- Create a European enterprise insurance prequalification even though comparable attempts failed (CEN TC-330).
- Create an “Insurance accessibility” complaint procedure at European level, through the PSCs or directly sent to a European envoy.
- Under the Freedom to Provide Service law, require the communication of existing domestic financial regulations (and notably provision rules) associated to specific guarantees (notably IDI), from “Host Member State” toward “Home Member State’s” regulatory authority, through the EIOPA.

The second option would be to modify the construction systems themselves through harmonisation. This may be achieved through the setting of a common European minimum level of guarantee requirement on contractors, architects, engineers and inspectors’ liability on solidity / stability of the building works.

Nonetheless, from a systemic approach perspective, insurance cannot be considered independently from other construction framework elements, such as construction techniques (adapted to local environment circumstances such as climate, or construction materials availability and cost), legal history, or general economic wealth.

Consequently, pure harmonisation creates an undesirable reconfiguration of all national construction processes, while transnational communication mechanisms should improve accessibility without disrupting existing frameworks. This system reconfiguration is illustrated below:



By Thomas Dunand, WP3 leader
Hannover Re