



Area 2 - Practice of the Profession

Scope of Services & Insurance WG (SoS-LI WG)

Notes of the Meeting of 27 July 2015, Brussels

Date: 7 August 2015 - Ref: 181/15/idP

- Participants** Ruth Schagemann, Chair, BAK, Germany
Fulgencio Avilés Ingles, CSCAE, Spain
Brigitta Bartsch, BAK, Germany
Thomas Kowalke, VfA, Germany
Olga Mihalikova, SKA, Slovakia
Philip Ridgway, CNOA, France
Roger Shrimplin, RIBA, United Kingdom
Alexander Schwab, VfA, Germany
Alain Vivier, MAF, France
Patrick Verschuere, ARCO, Belgium
Pedro Ravara, OA, Portugal
Paul Jeppesen, DA, Denmark
Pierre Obajtek, ACE Policy Officer
- Apologies** Pavel Martinek, CCA, Czech Republic
Kalle Kärkkäinen, SAFA, Finland
Mathias Lehner, BNA, Netherlands
- Guests** Carmen Bell, Policy Advisor, Insurance Europe
Jürgen Tiedje, EU Commission, DG GROW
Ionut-Octavian Raduletu, EU Commission, DG GROW

1. Introduction

1.1 Welcome & apologies

Apologies were received from:

- Pavel Martinek, CCA, Czech Republic
- Kalle Kärkkäinen, SAFA, Finland
- Mathias Lehner, BNA, the Netherlands

1.2 Notes of the meeting held in Paris on 20-21 May 2015

The notes of the meeting were agreed as a true record.

1.3 Matters arising from the notes and recent work and actions

A meeting with a few WG members (R. Schagemann, R. Shrimplin, O. Mihalikova) took place in early June in London in order to incorporate comments from the WG into the policy position on insurance.

The EB adopted both policy positions on insurance and fees at its last meeting on 18 June 2015.

On 9 June 2015, R. Schagemann, P. Ridgway and I. Pritchard had a meeting with J. Tiedje (Head of the Unit "Service Policy for Consumers" at DG GROW) and his colleagues P. Mihok and I. Raduletu to discuss insurance issues and other matters relating to the evaluation of the SIM Directive. A detailed report of the meeting was sent to the WG. J. Tiedje introduced a short questionnaire DG GROW had prepared and invited ACE to assist in obtaining responses. To date, three responses have been received from NL, ES, and DE



(BAK). (UK and SL have indicated that they do not have the data requested by the Commission).

- I. Pritchard and P. Ridgway attended a conference on 2 July organised by the EU Commission on "[Making the EU Services market an engine for growth](#)". A detailed report by the Commission is available online¹.

ACE Secretariat is asked to circulate the Commission's report of the conference "Making the EU Services market an engine for growth".

2 Part 1 on Insurance issues

2.3 Preparation of the meeting with the EU Commission and Insurance Europe

The WG discussed the main messages to be passed on to J. Tiedje

- the three main points of the ACE policy position on insurance, namely 1) unified time limits (5 years) for making claims ; 2) liability relating to actual errors made rather than unforeseen circumstances ; 3) fair apportionment of liabilities between the parties
- Professional liability is the core issue – it is a prerequisite for quality and consumers safety. Insurance is only a tool to guarantee professional liability,
- ACE is open to discussion with other stakeholders / professions of the construction industry,
- ACE does not defend corporatist interests but promotes good regulation of the construction sector, for the benefit of the consumers / citizens.

PO is asked to send the document produced by the Association of consulting architects in Norway on liability and insurance with respect to BIM.

2.4 Meeting with J. Tiedje, I. Raduletu (DG GROW) and C. Bell (Insurance Europe)

R. Schagemann introduced the three main claims of the ACE policy position on insurance:
i) unified time limits (5 years) for making claims ;
ii) liability relating to actual errors made rather than unforeseen circumstances;
III) fair apportionment of liabilities between the parties.

She underlined that this policy position was endorsed by the ACE Executive Board but has not yet been officially adopted by the ACE General Assembly (vote expected in November). She then invited J. Tiedje to react to these claims and inform the WG about on-going developments in the EU Commission.

J. Tiedje said he was unable to give a definitive statement on this policy position.

He articulated his answer in 3 points:

- *Context / background*
 - Following the Communication on the implementation of the Services Directive (June 2012), the EU Commission published a Staff working paper on access to insurance for services provided in another Member State in March 2014. . A series of workshops was then organised in the latter part of 2014 to identify the difficulties encountered by service providers when working abroad. It turned out that professional liability and insurance is a

¹ <http://ec.europa.eu/DocsRoom/documents/11511/attachments/1/translations/en/renditions/pdf>



strong barrier since domestic insurances are not always recognised abroad and professional liability varies from one MS to another.

▪ *The issue*

While Article 23 of the SIM Directive required MS to accept equivalent insurance in a non-discriminatory manner, this equivalency principle does not work properly in practice. It results in uncertainty for economic actors, in particular SMEs.

▪ *On-going discussion and next steps*

- The Commission is currently discussing whether or not applying Article 23 paragraph (4) of the SIM Directive, which allows the Commission to establish, by comitology procedure, "a list of services which exhibit the characteristics referred to in paragraph 1 of this Article" and to "adopt measures designed to amend non-essential elements of this Directive by supplementing it by establishing common criteria for defining, for the purposes of the insurance or guarantees referred to in paragraph 1 of this Article, what is appropriate to the nature and extent of the risk". The Commission is pondering whether it would be politically opportune, sufficient - and how far to go.

- The EU Commission will release on 23 October 2015 a Strategy for the Internal Market. It is not planning to re-open discussion of the SIM Directive, but rather to focus on its implementation and target specific actions in the area of business services and professional services. The Commission is preparing actions on a number of specific problems, notably professional indemnity insurance for cross-border service providers. A top-level internal debate will take place on 27 September in order to define the orientation of the Strategy.

Discussion with the WG

J. Tiedje pointed out that there is a need to carry out an inventory of the minimum insurance coverage of architects across Europe, in order to get concrete and focused data on where Member States stand, and thus be able to figure out how the equivalence principle could better work. R. Schagemann mentioned that, besides the on-going questionnaire prepared by DG GROW, the SoS-LL WG is working on three surveys on the legal situation and responsibility of architects ; civil liability insurance ; and practical experience.

The analysis of all these questionnaires will complement and underpin the ACE policy position on insurance.

T. Kowalke announced that GEEAC is working on a new insurance product for architects willing to provide their services in another MS. This new product will be launched by the end of the year. J. Tiedje expressed interest in this project.

C. Bell from Insurance Europe said that insurers are aware of problems encountered by service providers working cross-border and that they need to adapt their products for cross-border business. Insurance Europe is willing to co-operate with service professionals and the Commission to better understand the issues and find solutions.

R. Shrimplin: it is important to distinguish between the minimum legal requirements and the requirements of the markets.

A. Vivier underlined that the main problem in France is that all actors of the construction sector do not have not the same level of liability. Architects are often responsible / liable for other actors (in solidium principle).

J. Tiedje accepted to meet again the WG in early September to continue the discussion, notably the results of the on-going ACE surveys on insurance issues.

The general feeling of the WG was that while the Commission was questioning / data collection mode, it was timely to feed in its thoughts to help to formulate solutions and firm up opinions.



2.5 Next steps

o *Policy position on insurance*

It was agreed to change the title of the policy position, which will now read “Policy position on Professional Indemnity Insurance (PII)”, and to slightly modify the introduction to refer to other professions / other design phases.

It was felt that the main points of this policy position should be made public as soon as possible (if possible, before the official adoption by the General Assembly).

o *Preparation of the next meeting with J. Tiedje*

In view of the next meeting with J. Tiedje, it was agreed:

- to analyse the answers already received to the various questionnaires,
- to prepare a new questionnaire to collect precise data on the minimum insurance coverage in MS, as well as data to underpin the 3 main points of the policy position. Members of the WG are asked to ensure that a response is provided for their respective country.

The data and information collected through the questionnaires should complement and underpin the policy position on insurance.

- **R. Schagemann and R. Shrimplin will revise the policy position on insurance and prepare a new questionnaire in view of the next meeting with J. Tiedje.**
- **ACE Secretariat was asked to invite J. Tiedje to the next meeting of the SoS WG, scheduled to take place on 9 September 2015.**

3 **Part 2 on Fees**

3.3 Policy position on fees

The EB adopted the policy paper on fees at its last meeting in June 2015. G. Pendl is expected to send comments in writing.

P. Martinek, who was not able to attend the meeting, sent a revised version of the policy paper, from which he has removed some repetition.

R. Shrimplin underlined that this paper should be presented as an “information document”, and not as a ACE policy position.

- It was agreed that the revised version of the ACE fees paper, prepared by P. Martinek, will be discussed at the next meeting of the SoS-LL WG, together with G. Pendl’s comments.**

3.4 Infringement procedure against Germany for lack of compliance with the SIM Directive

On 18 June 2015, the EU Commission launched infringement procedures against several Member States for lack of compliance with the Services Directive in the area of regulated professions².

- The Commission has asked Austria and Cyprus to adapt their rules governing shareholding requirements and prohibitions of multidisciplinary practices for architects and engineers. The Commission estimates that excessive shareholding requirements – such as the requirement that the professionals should hold 100% of the voting rights and capital in a company, or should have its corporate seat in a given jurisdiction – can make a second establishment or cross-border provision of services in these Member States difficult.

² Commission’s press release: http://europa.eu/rapid/press-release_IP-15-5199_en.htm



- The Commission has asked Germany to repeal minimum compulsory tariffs for architects, engineers and tax advisors. It estimates that compulsory minimum tariffs are not necessary in order to ensure high-quality services of either domestic or foreign services providers, whilst depriving consumers of more competitively priced services.

A letter of Formal Notice is the first step in the infringement procedure and constitutes an official request for information. In principle, the MS has two months to respond to the arguments put forward by the Commission. Germany has until 18 September to answer the Commission.

A. Schwab read a draft letter of support that the ACE could endorse in order to defend the German fee scale. The ACE German delegation will discuss this draft letter and A. Schwab will come back to the SoS-LL and RQI WGs and ACE Executive Board in due course.

WG reactions:

- R. Shrimplin: ACE support might backfire since it will show that the German fee scale is an exception in Europe.
- P. Ridgway advised A. Schwab to look at the ACE Guidance Document on Cost Information System produced in 2009.
- This issue should be further discussed with the RQI WG (next meeting on 2 September) and the ACE Executive Board.

O. Mihalikova mentioned another on-going infringement procedure against Finland regarding building permits.

ACE Secretariat is asked to send the ACE Guidance Document on Cost Information System, produced in 2009, to A Schwab.

The ACE German delegation is preparing a draft letter of support to the German fee scale, for endorsement by ACE Executive Board. It was suggested that the ACE RQI WG discuss this draft letter at its next meeting (2 September 2015).

4 Next meeting

The next meeting will take place on 9 September 9 from 10.30 to 16.30 at ACE Secretariat. J. Tiedje and his colleagues will be invited to join the meeting from 14.00.

It was agreed that the first meeting in 2016 will take place in Lisbon.

The Secretariat is asked to invite J. Tiedje to the next meeting of the SoS WG, to be held on 9 September (from 14.00).