

Article 27

Professional insurance and guarantees

<p>COM(2004) 2 final/3</p>	<p>A6-0409/2005 EP REPORT (15.12.2005) Amendment 187 Article 27, paragraph 1</p>	<p>Proposed EFCA amendment</p>
<p>Member States <i>shall ensure</i> that providers whose services present a particular risk to the health or safety of the recipient, or a particular financial risk to the recipient, are covered by professional indemnity insurance appropriate to the nature and extent of the risk, or by any other guarantee or compensatory provision which is equivalent or essentially comparable as regards its purpose.</p>	<p>1. Member States <i>may require</i> that providers whose services present a <i>direct and</i> particular risk to the health or safety of the recipient <i>or a third person</i>, or <i>to the financial security of</i> the recipient, <i>or an environmental risk</i>, are <i>obliged to take out</i> professional indemnity insurance <i>adequate</i> to the nature and extent of the risk, or <i>to provide some</i> other guarantee which is equivalent or essentially comparable as regards its purpose. <i>The professional indemnity insurance or guarantee shall also cover risks presented by such services where they are provided in other Member States.</i></p>	<p>1. Member States <i>may require</i> that providers <i>who offer services in their country</i> which present a <i>direct and</i> particular risk to the health or safety of the recipient <i>take out</i> professional indemnity insurance <i>adequate</i> to the nature and extent of the risk, or <i>to provide some</i> other guarantee which is equivalent or essentially comparable as regards its purpose. <i>If professional indemnity insurance is mandatory, the liability of the service provider shall be limited to the maximum amount for which coverage can be obtained at a reasonable cost.</i></p>

Justification

1. As long as the national divergences in national rules on professional liability in construction have not disappeared or at least been narrowed and as long as there is not a single European insurance market for professional liability, it is premature to impose an insurance requirement because this requirement will create distortions in the competition. Moreover, the requirement should not be introduced without study and acknowledgement of the cost increase mandatory insurance will cause for construction services.
2. There is no reason to include in the scope of application services creating a risk to a third person. Any such service will necessarily also create a risk for its recipient.
3. It is not clear what is meant by services creating a risk for the financial security of the recipient. Services which come at a high price ? High in relation to what? Financial services? While it is understandable that the proposal aims to enhance health and safety, financial security does not appear to be of the same order of values worthy of protection.
4. The health and safety of recipients of services is a matter of interest for the state on whose territory the recipients receive the services. Hence there is no reason to provide that the insurance requirement should extend to services provided in other member states. Rather it should be specified that a member state can require insurance only for services rendered on its territory.
5. Since insurance coverage always has a ceiling, it is proper to limit the liability of the service provider to the amount of coverage required; this amount will be proportional with the nature and extent of the risk of the service and available to qualified service providers at a reasonable cost. The limitation of liability to that amount is proposed because it cannot reasonably be expected from any qualified service provider to carry the risk of a liability that is disproportional to the level of risks associated with the service to be provided and/or that no insurance company can take over from him against reasonable payment.
6. Requiring insurance for services presenting an environmental risk is inappropriate in this directive. Environmental liability as governed by directive 2004/35/EC is a strict liability, whereas professional liability insurance is insurance for negligence or fault. Insurance of environmentally risky activities, if to be made mandatory should be introduced into said directive in order to ensure compatibility with the general principles of that directive. Introducing it in the Services directive would, moreover, discriminate services as opposed to industrial and other activities which may create environmental risks.