2019

Consulting engineers' liability and insurance requirements

COMPARATIVE STUDY ACROSS EUROPE

efca

Representing FIDIC in Europe

Neither the European Federation of Engineering Consultancy Associations (EFCA) nor any person acting on behalf of EFCA is responsible for the use which might be made of the following information.

If legal advice is required, it is recommended the reader consult a lawyer.

Acknowledgements

This second update of the initial December 2010 report was coordinated by Ulla Sassarsson, EFCA liaison in the FIDIC Risk and Quality Committee.

Thanks go to everyone involved in the preparation of the September 2019 report, and especially the national associations that contributed the information for the report.

EFCA would strongly encourage feedback on this report (to be sent to **efca@efca.be**) and will strive to include updates on the EFCA and FIDIC website in the future.

Information on the European Federation of Engineering Consultancy Associations can be found at: **www.efcanet.org**

EFCA represents FIDIC in Europe (**http://fidic.org/**)

Publication date: October 2019

Reproduction is authorised provided the source is acknowledged.

PREFACE

The integration of the European internal market constitutes a major objective of the European Union.

Firms often face several difficulties when they wish to provide their services in another EU country, among which easy access to accurate information they need about national legislation on liability, regulatory requirements and the local insurance market.

The purpose of this comparative report is to provide the National Associations and their consulting engineering firms with an overview of the liability and insurance conditions in European countries.

The report summarizes the responses to the 2009 survey and updates received in 2013 and respectively late 2018 - early 2019, from the member associations of 20 representative European countries, namely Austria, Belgium, the Czech Republic, Denmark, England, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland and Turkey.

This booklet is not a detailed legal study; it does not cover all aspects in detail, and firms that are interested in other markets are advised to refer to legal specialists in those markets for further guidance.

CONTENTS

Executive summary

1. Applicable law and legal issues

1 Basis of the law

2 Rules and statutes on duration of liability

3 Statutory financial caps

4 Duty of care imposed on professionals

5 The rights of third parties (funders, purchasers and tenants) and the ability to bring a claim against the consulting professional

6 Joint and several liability

7 Corporate versus personal liability

8 Laws of particular relevance to consulting engineers

9 Other relevant issues

2. Contractual arrangements

1 The ability/freedom of the parties to freely negotiate contract terms

2 Use of standard forms; demands for liability and insurance

3 Collateral warranties

4 Bonding, guarantees and payment retention

5 Intellectual property rights

3. Insurance

1 Statutory requirements

2 Insurance markets

3 Other relevant issues

Appendix I Survey questionnaire

Appendix II Glossary

Appendix III Overview - liability regimes

Appendix IV Overview – insurance

EXECUTIVE SUMMARY

1. In most continental countries, the **applicable law** on liability is to be found mainly in the Civil Code. In England[1] and Ireland, the main source of law remains the court decisions, through case law, based on the "precedent" principle, but the influence of statutory law is increasing.
   In some countries, additional statutes provide for specific rules relevant for the consultants' liability even though there are no specific statutes or regulations governing the consulting engineer's liability only. However, in some countries, General Conditions for Consulting Services have been approved by the professional bodies (applied by consulting engineers and architects).

2. The **length of liability periods** for most common situations regarding consulting engineer contracts varies between countries and type of situation. The range spans: from one or two years in some countries for specific defects e.g. Spain and France, two years in Finland, three years or thirty years if the damage or the producer of the damage is unknown or was caused by a criminal action in Austria, five years in Germany and Norway, five years but ten years for consumers in Denmark, six years in Ireland and England when the agreement is executed as a deed, but twelve years when being under seal and the claimant has 3 years from date of knowledge subject to a 15 year longstop (hidden defects/issues), ten years in Belgium, France, Greece, Italy, Romania, Spain, Sweden, five or twenty years in the Netherlands, five years up to fifteen years when working for public clients in Turkey, five to twenty-five years in Hungary. Two years, in the case of defects related to autonomous equipment assigned to the works, five years in the case of non-structural or technical installations defects but ten years in the case of structural elements defects in Portugal. In Switzerland the duration of liability varies from two years (mobile works), five years (immobile works) and ten years (services/mandate). The Czech Republic has no limitation.

3. In general, there is no **statutory financial cap**. However, in Denmark, Finland, Sweden and Norway, the General Conditions for Consulting Services provide for a financial cap. In Spain, public procurement law limits the liability for engineering design. According to the Spanish Public Procurement rules and Public Contracts, the consultant will be responsible for loss and damages that could occur as a consequence of their possible technical errors in engineering projects. The liability of the consultant is limited to 50% of loss and damages that could occur, up to a maximum limit of five times the contract value (the fees). This limit is not applicable in the case of Private Contracts.

[1] The notes on England in this report are based on English law only

4. Some countries impose a general condition on a consulting engineer to carry out the work with reasonable (professional) **skill and diligence**, such as England (care and skill, strictly speaking), Ireland, the Netherlands, Belgium, Sweden, Austria, Germany, the Czech Republic, France, Greece, Spain, Finland, Norway, Turkey, Switzerland and Denmark. In other countries however (such as Romania and Italy), the consulting engineer is under an obligation of **result** (or even of warranty): in case of defects to the building work, the consulting engineer's liability is presumed, which means he has the burden to prove that he is not liable because the defect was caused by force majeure, or the negligence of the employee or someone for whom the employer is responsible. Hungary has a building law that imposes duties on professionals at various phases.

5. The question of whether a third Party can claim rights against the consultant or e.g. a client who contracts with a main contractor/consultant has a direct **claim against the contractor/consultant's subconsultant** (for instance the consulting engineer hired by a contractor) is a much disputed one. Some countries such as Belgium, the Czech Republic, Finland, Greece, Sweden, France and Denmark tend to consider that a client generally has no claim against the subcontractor even in tort, for economic loss, except in England and Ireland, through the use of collateral warranties. In some countries, however, the client does have such a right of action, under certain conditions e.g. in Germany or in Austria, under the conditions of the "protective effect" theory. In France and Denmark (if using ABR 18) the employer has under certain circumstances e.g. bankruptcy a possibility to bring a claim against the subconsultant, but the employer must respect the limitations made by all parties. In some other countries such as France, Spain, Turkey or Italy a client can claim in tort against the subcontractor. Of course, the client who wants to claim from a subcontractor usually first claims from the main contractor, and the main contractor (or its insurance) claims against the subcontractor (redress).

6. In half of the countries e.g. Belgium, Romania, England, Ireland, Italy, Spain, Switzerland, The Netherlands, France, Germany a consulting engineer can be held **jointly and severally liable with other parties involved with him in the project.** However, in the other half of the countries as e.g. Austria, Turkey, Czech Republic, Greece, Sweden, The Netherlands, Norway, Finland, Spain and Denmark, partners are only jointly and severally liable to the client when working in a total-consultancy group or Joint Venture. In Turkey, the consultant is severally liable together with the contractor for the inspection of construction works performed under the public procurement contract.

7. As a matter of principle, there is no prohibition in the EU Member States for consulting engineers to exercise their professional activities in the form of a limited corporation. Except in specific circumstances, the injured party has **no claim against individual members of the firm**.

8. In countries such as France, Spain or Belgium consulting engineers are not allowed to **limit their liability** towards the client for serious hidden defects. Also, the length of the liability period cannot be shortened in some countries. The validity of the limitation of liability clauses towards consumers is also limited. Moreover, in most countries, these clauses are not valid in the case of intentional or gross negligence.

9. Most EU Member States, covered by this report respect the freedom of the parties to **negotiate contract terms**, subject to the application of mandatory laws.

10. There is no uniform practice in the **use of Standard Forms of Contracts** specific to consulting engineers, which do not exist as such in several EU Member States. However, a lot of member organizations have produced standard forms of contracts.

11. The notion of **collateral warranty** is specific to English and Irish law. In the countries where there is no right of action of the third party against the consulting engineer, a right of action in contract can be established in specific situations only on the basis of a mechanism which can be compared to collateral warranties in English law.

12. **Bonds and guarantees** are not required by law, except in some countries in the case of public services.

13. **Intellectual property rights** of the consulting engineer are protected by the usual national or European legislation on intellectual property rights. In some countries (such as Denmark, Sweden, Norway, Finland and the Netherlands), the transfer of IP rights is also laid down in the General Contract Conditions and here the intellectual rights are not transferred to the client but kept by the consultant. The client obtains a right to use the results for the intended purpose with the assignment.

14. Even in the EU Member States where no mandatory insurance is imposed by statute, it is customary for contract conditions to require the consulting engineers to provide **insurance**. However, it is not possible to make general comments on the usual coverage, which depends on the project or the duration of the insurance policy, which in turn depends on the duration of the liability periods.

Most countries have no statutory requirements about the **duty for the engineer to maintain any insurance**. In France, engineers are considered as “constructeurs” and have a legal obligation to take out ten-year liability insurance for buildings but not for infrastructure. Since July 2019 Belgian engineers and engineering firms are obliged by law to take out a professional liability insurance. The new law extends the insurance obligation of architects to all intellectual service providers in the construction sector, such as engineers and engineering firms, to ensure their civil liability. It is additional to the existing ten-year liability insurance (law of 31 May 2017) and increases the scope from residential buildings to houses, civil engineering works, roads, etc. In Greece insurance must apply in major contracts. In Italy insurance is mandatory. Some organizations e.g. in Denmark require insurance from their members.

15. It is generally considered that **insurance is readily accessible**, even if in some countries it is more difficult for a consultancy business to obtain liability insurance. In some countries the member associations offer insurance for their members such as Italy, Switzerland, England, Denmark, Norway and Sweden.

1. APPLICABLE LAW AND LEGAL ISSUES

1. Basis of the law

In most continental countries (*Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Romania, Spain, Sweden and Turkey*) the source of law is civil law.

In *England* and *Ireland*, the legal system is based on common law and Statutory Acts.

In many of the continental countries (*Austria, Belgium, France, Germany, Greece, Hungary, Italy, the Netherlands, Romania, Spain and Turkey*), the applicable law on liability is normally found in the Civil code. In these countries, as a matter of principle, there are no statutory provisions on the liability of contractors or engineers outside the Civil Code. In *France* the Civil Code is copied into the Construction and Housing Code. In 2013 the *Netherlands* introduced a new law on public procurement. As a result, a governmental decree about proportionality came into force. This decree includes provisions on the engineers' liability in general that are also applicable to consulting engineers.

In some countries, specific rules on liability can also be found in the regulations on public works, e.g. in *Spain*: Civil Code, Building regulations law (38/99 of 5/11/99), and Law on Public Sector Contracts (LCSP - 9/2017).

- *Greece*, article 286 (Violation of rules of construction) of the Penal Code applies in the event of bodily injury or death during construction or demolition works.
- *Portugal:* Civil Code, Public Procurement Contracts Code*,* Portaria 701-H/2008 (Engineering Plans Regulation), Lei 40/2015 (Professional qualification required for the technicians responsible for the projects and for project coordination).
- *Romania*: Civil Code and Civil Law 1-/1995.
- *Czech Republic*: Law 183/2006, Building Act, Law 89/2012, Civil Code, and Law 134/2016 Public Procurement Act – mainly.
- *England*, *Ireland*, *Denmark*, *Norway*, *Finland* and *Sweden*: private law is not codified in a "Civil Code".
- *Denmark*, *Finland*, *Norway* and *Sweden*: General Conditions for Consulting Services have been approved by the professional bodies. These Conditions are presented as "agreed documents" and can be considered as an example of soft law regulation in the construction sector. In Denmark: ABR 18 and ABR Forenklet (General Conditions for Consulting Services). In Finland: KSE 2013. In Norway: NS 8401, 8402, 8403 and 8404 (General Conditions of Contract for Design Commissions*).* In Sweden, ABK 09 (General Rules of Agreement for Architectural

and Consulting Services) constitute “the general basis of consultation agreements for professional assistance by architects and engineers”. The environmental liability rules contained in the Swedish “Miljöbalken” are also relevant. In Finland, applicable law on liability is to be found mainly in the tort liability act, the land use and building decree and the land use and building act. General Conditions (KSE2013) as well as the Finnish building code also include articles about liability.

- *England* and *Ireland*: The main sources of law are legislation (through Statutory Acts of Parliament) and the court decisions, leading to case law based on the principle of “precedent”. Certain legislative Acts are particularly relevant to the construction industry, such as the “Housing Grants, Construction and Regeneration Act 1996” (HGCRA), which provides a variety of protections and rights to suppliers in this sector, including fair payment terms, a right to suspension and a right to statutory adjudication for speedy resolution of disputes. Other legislation relating to Health & Safety, corruption, etc., is also relevant.

2. Rules and statutes on duration of liability

In the countries where a Civil Code is in force, the rules on limitation and duration of contractual liability can be found in the Code. The duration depends generally on the type of damage caused by the negligence of the engineer. Usually the restrictions on time do not apply to cases involving malicious intent or gross negligence.

- *Belgium*: Articles 1792 and 2270 of the Civil Code provide for a 10-year liability period for serious defects. For minor defects, the claim must be introduced within a “reasonable” time after the defects have appeared (with an ultimate limit of 10 years following the acceptance). If the acceptance of the building is split between a “provisional” and a “definitive” phase, the year (or two) between the two is considered a warranty period, during which the contractor has to remedy defects which become visible.

- *France*: The duration is 10 years for serious defects to the works after completion (articles 1792-1 and 1792-2 of the Civil Code); there is also a 2-year liability for defects to the “non indissociable” elements of equipment’s of works (article 1792-3 of the Civil Code). There is a warranty of perfect completion, to which a contractor is held during a period of one year after the approval (duty to repair all shortcomings indicated by the building owner (article 1792-6).

- *Greece*: The contractor is liable for 10 years following the handover for defects in the building and remains liable for any hidden defects according to Articles 692

and 693 of the Code. The construction contract also plays an important function in defining liability, since it can limit or extend the duration of liability[2].

- *Romania*: Law no 10/1995: 10 years – liability for hidden building defects and consequential damages. Liability for structural and resistance defects resulting from non-respect of design and execution norms lasts for the whole useful life of the building.

- *Hungary*: The duration of the liability is partly dependent on the nature of the defects or issues. The duration varies from 5 up to 25 years.

- *Germany*: In line with articles 195 ff. of the Civil Code, consulting engineers are liable to the client for 3 years following acceptance of the works. This period starts from the end of the year in which the liability claims originated, or at the moment the client knew or should have known about the damage. In addition to this general rule, article 634 of the Civil Code establishes specific rules for construction contracts, which include for instance design contracts, and a 5-year liability for defects in relation with works to a building.

- *Austria*: The warranty system is independent from default and based on the principle that the client can expect to get a correct work and can claim warranty if the work shows a defect. If the defect was caused by fault, the client can additionally get compensation for damages. The duration for warranty is 2 years for movable objects and 3 years for immovable. There are varying legal opinions as to whether a plan can be seen as movable. The starting point of the duration is the acceptance by the engineer's client. When the claim is based on the engineer's negligence (liability claim), the duration is 3 years starting from the knowledge of the damage and of the author of the damage, with a maximal duration of 30 years.

- *The Netherlands*: The Dutch Civil Code provides for a limitation to 5 years to claim damages on the basis of a contract (article 3:307 of the Dutch Civil Code). There is a possibility to interrupt the limitation period up to a maximum of 20 years (3:306 of the Dutch Civil Code). It is possible to deviate from or add to these conditions in the civil code, by agreement or by general conditions. The DNR 2011 (as a set of general conditions) imposes a duty on the client to inform the consulting engineer "reasonably shortly" after he discovered or should have discovered the defect. The engineer's liability then expires 2 years after the client has brought the defect to light and in any case 5 years after the completion of the consultation assignment.

---

[2] (source of this last sentence: https://ec.europa.eu/docsroom/documents/30345/attachments/1/translations/)

- *Spain*: for buildings, 10 years for structural defects; 1 or 3 years for other defects. Claim must be introduced within 2 years from appearance of the defect.
  For contracts with the Spanish Public Sector in relation to design and study contracts (service and engineering contracts) the liability limitation is 10 years from the date of reception of the contract/works by the Public entity (art 315.2 LCSP).

- *Italy*: In the case of contractual liability, the limitation period is 10 years (article 2946). In some recent judgments (referring to professions other than technical ones), it has been specified that the limitation period runs from the moment that the injured party has knowledge of the damage, and not from the time that this damage occurred (or from the time the negligence has been committed). Regarding liability for public works, the period of limitation is 5 years, and this runs from the time the Public Administration has knowledge of the fact. The Civil Code Article 2226 states that hidden defects must be notified by the client to the professional within 8 days of the discovery. The right of action against the professional shall cease one year after the handover of the works (in case of liability for hidden defects). This article may be applied (on the basis of some judgments) only to designers and not to consulting engineers who are for example supervising the construction works. In the case of extra-contractual liability, the limitation period is 5 years.

- *Switzerland:* The duration of liability varies from 2 years (mobile works), 5 years (immobile works) and 10 years (services/mandate).

- *Turkey*: According to the Turkish Code of Obligations in case of any defective work of the engineering consultant for the immovable (land and permanent structures) then the lapse of time is five years, given that the consultant does not have any gross fault. If there is a gross fault, the lapse of time becomes twenty years. In public procurement consultancy contracts, this duration is 15 years.

The situation in the Scandinavian countries is as follows:

- *Denmark and Norway*: The general duration of liability claims in Denmark is 3 years after a party discovered or should have discovered the defect. Regarding the liability for errors and negligence, the general conditions in both Denmark and Norway provide that the consultant's liability shall cease 5 years after the handing over of the building or the works. The client has to notify the consultant within a reasonable period after he has reasonable grounds to assume that the consultant is liable for damage. The client's claim must be made in a form, so it is possible to identify the claim. If the client is consumer or if general conditions are not approved, liability in Denmark ceases after 10 years.

- *Sweden*: The liability period is 10 years. The consultant's liability period starts from the date his assignment is completed. However, ABK 09 provides that in

order to claim compensation the client has to notify the consultant within three months after he has reasonable grounds to assume that the consultant is liable for damage, but no later than nine months after the client became aware of the damage.

- *Finland*: General limitation (KSE 2013) of liability period is two years after the object of the design has been completed and handed over, or if there is no object, two years after the content of the assignment has been handed over to the Client. If the construction of the object is postponed, liability ends five years after handing over the design. Also, after this period, the consultant is liable for mistakes and errors that are caused by gross negligence or intentional action. This liability ends 10 years after completion of the object / handing over of the assignment in case there is no object. The Client has to present the preliminary claim within one year after the error has been identified, and the final claim within one year after the end of consultant's liability.

- *Ireland*: Civil Liability and Courts Act 2004 Actions for breach of a contract which has been executed as a deed must be commenced within twelve years of the accrual date. The corresponding period for all other contracts, including oral contracts is six years. In both cases, the accrual date is the date of breach by the defendant, which can usually not be later than the date upon which the consultant completes the services. The default period under most standard conditions of engagement and Government contracts is six years. It is also not unusual to see the liability period running from the date of practical completion.
  Negligence actions are subject to a limitation period of six years, where the loss claimed is physical damage to property or economic loss. In the case of latent damage there has been some uncertainty as to point from which the six-year limitation begins. In November 2017, The Supreme Court of Ireland handed down its decision in the case of Brandley -v- Deane and determined that the date upon which the cause of action accrues is the date upon which the damage becomes manifest (i.e. the date upon which the damage was capable of being discovered by a plaintiff).

- *England*: According to the Limitation Act 1980, the general limitation period for a claim in a (consulting engineer) contract is 6 years from the related non-performance. However, for contracts made under seal (which construction contracts often are), the liability period is 12 years (Limitation Act 1980, articles 5 and 8). In case of tortuous liability, the liability generally is 6 years from date cause of action accrued. Hidden defects/issues: claimant has 3 years from date of knowledge subject to a 15-year longstop.

3. Statutory financial caps

- *Norway*: General contract conditions NS 8401, NS 8402 and NS 8404 provide a cap of 150 Norwegian price base amounts (2019: appr. 1.589.000 EUR) for liability in damages resulting from design errors and NS 8403 provides for a cap of NOK 3 million. (2019 appr. 328.000 EUR) for each claim with an aggregate of NOK 9 million per project (2019 appr. 984.000 EUR) in case the consultant causes damages regarding error while carrying out the assignment.

- *Sweden*: The General conditions ABK 09 provides a cap of 120 price base amounts[3] in case the consultant causes damages while carrying out the assignment.

- *Denmark*: Both the General Conditions ABR 18 and ABR Forenklet include a financial cap: If a project insurance has been taken out, the liability is limited to the amount left on the insurance. If there is not a project insurance, ABR 18 limits the liability to twice the consulting engineer's fee but no less than 2.5 million DKR. (2019 appr. 335.000 EUR). Daily penalty cannot exceed 10% of the engineer's fee. ABR-Forenklet limits the liability to DKK. 2.5 mio.

- *Finland*: The upper limit of consultant's liability in the General Conditions KSE-13 is the total remuneration received from the assignment. It shall be laid down in the contract whether any other kinds of liabilities affect the consultancy compensation and whether any liability insurances must be taken out.

- The *Netherlands*: DNR 2011 provides a choice between a financial cap of 1 time the amount of the contract with a maximum of €1 million or a cap of 3 times the amount of the contract with a maximum of €2.5 million.

- *Austria*, *Belgium*, *France*, *Greece*, *Hungary*, *Ireland*, *Italy, Romania, Czech Republic, Turkey*, *Germany, Switzerland* and *England* have no statutory financial caps on liability.

- *Portugal*: On contractual basis (civil contracts): triple of the fees, except gross negligence if the losses arise from errors or omissions (public contracts). Otherwise none, but at the request of the parties, the court may reduce or moderate the amount of liquidated damages clauses if it considers them to be disproportionate or excessive. The right to hold the Designer liable for errors and omissions shall lapse after 20 years. Public contracts rules foresee delay penalties up to a maximum amount of 30% of the fees.

---

[3] The basis for calculating the price base amount follows from Swedish law. The calculation is made on basis of the consumer price index. The price base amount changes once every year. For 2019 the price base amount is SEK.46.500. 2019: approx. EUR 4.400. ABK 09 sets out a limitation of liability for consultant that is 120 price base amount for each assignment approx. EUR 524.

- *Spain*: For contracts with the Spanish Public Sector in relation to design and study contracts (service and engineering contracts) the liability limitation is:
  - Amount: 50 percent of the amount of the damages caused, up to a maximum limit of five times the price agreed for the project.
  - In private contracts a financial cap does not usually appear, but engineering firms often negotiate an amount between 10% and 100% of the fees.

In several countries, such as the *Netherlands*, *Belgium* and *France*, courts have a right to moderate the damages claimed, inter alia on the basis of the theory of the "abuse of rights".

4. Duty of Care imposed on Professionals

All countries have reported an obligation for consulting engineers in relation to the duty of care imposed on professionals. Different wording though, but in general an obligation to render the service with due skill, care and diligence.

- *Austria*: The consulting engineer has the legal obligation (Civil Code § 1299 ABGB) to provide services with the professional standard of care, which can be expected of a consulting engineer as an expert. The warranty system is independent from any fault or liability: the client can claim warranty if the work shows a defect. If the defect was caused by fault, the client can additionally get compensation for damages.

- *Belgium:* The Civil Code contains no explicit general rule. However, there is a widely accepted principle that the designer (including the consulting engineer) has to perform his services with professional skill and efficiency and in accordance with professional standards. This rule is also mentioned explicitly in the Code of Deontology of the Architects. Except in some specific cases, the burden of proof lies on the client, who has to prove the engineer's negligence (obligation of means).

- *France*: the designer must apply the so-called rules of the art (règles de l'art). The principle that the consulting engineer has to perform his services with professional skill and efficiency also applies here.

- *Switzerland:* the consulting engineer has to provide his services with the duty of an ordinary professional in the given situation.

- *Greece*: The consulting engineer has to provide services with "duty of care".

- *Portugal:* Widely accepted principle that the engineer has to perform services with skill and efficiency in accordance with applicable norms and rules and the good rules of art; the burden of proof is on Designer.

- *Romania*: As the only European country, the consulting engineer is obliged to obtain the final result of his job whether this is design, supervision, technical assistance or quality control on the construction. This refers only to the legal obligation to achieve a specific result: the designer or the contractor is required to deliver to the employer the design/the work as he has contracted. The duty of care in delivering his services (with professionalism and appropriate skills) is accepted as principle for the consulting engineer, but it is not regulated by a specific article of law in Romania.

- *Czech Republic:* There is a legal obligation of a person who offers professional performance as a member of an occupation or profession to act with the knowledge and care associated with his/her occupation or profession. If the person fails to act with such professional care, he or she bears the consequences (Article 5 of the Civil Code).

- *Hungary*: Building law imposes several duties on the professionals, in varying phases of the construction project (for example, building permits, tender, construction documents, etc.). No specific rule is mentioned regarding the nature of the consulting engineer's obligations.

- The *Netherlands*: The general rule on the standard of care is laid down in article 7.401 of the Dutch Civil Code. The consulting engineer has to provide the standard of care expected of a professionally skilled service provider. An obligation of means is imposed on the consulting engineer. His services must comply with the current state of science and technology at the time the service is provided. If the consulting engineer was not or should not have been aware that his services were unfit for purpose, considering his professional knowledge of his science and technology, the damage is not for his risk or account.

- England: In *English* contract law, the duty of care exists in implied rules as well as standard forms of contracts such as the ACE (Association for Consultancy and Engineering) standard forms of contract. The implied duty of the designer is to carry out his duties with proper skill and care and in a workmanlike manner; in other words, to the standard of the typical skilled and competent practitioner in the profession concerned.

- *Spain*: The consulting engineer is required to carry out the work with skill and diligence in accordance with the law. The consulting engineer has to carry out the work with skill and diligence in accordance with the law.

- *Ireland:* The required standard for the provision of professional services is established under the Sale of Goods and Supply of Services Act 1980. Consulting

engineers are required to hold the necessary skill to render the service and to supply the service with “due skill, care and diligence”.

- *Italy*: Article 1176 of the Civil Code states that “in fulfilling the obligations inherent to a professional activity, diligence must be evaluated in relation to the type of activity rendered”. Furthermore, article 2236 of the Civil Code states, about professional services, that “if the service implies the solution of technical problems on an especially difficult level, the person rendering the service is not liable for damages, unless these are due to either intent or gross negligence”. Regarding the burden of proof, case law has determined that the obligation undertaken by the consulting engineer is related to performance-guaranteed execution (obligation of result), while that of the site engineer is a best-endeavours obligation (obligation of means).

- *Turkey*: The duty of care is regulated in Article 471 of the Turkish Code of Obligations. In order to determine the level of duty of care, works of a prudent consultant are taken as example.

The *Scandinavian countries*:

- In *Finland*, under the General Conditions (KSE 2013), consulting engineers have an obligation to carry out their work with reasonable professional skill and diligence.

- Also, in *Denmark*, *Norway* and *Sweden*, general rules on performance can be found in the agreed documents. For instance, in *Sweden,* ABK 09 provides that the designer shall carry out his work in a professional manner and with due care. In *Norway* the term proper professional conduct and care is used.
  In *Denmark* the agreed documents AB 18 and ABR Forenklet state that services must be provided in accordance with the contract, good consultancy practices and the clients instructions, and that the consulting engineer must perform quality assurance of his services. The consulting engineer is liable for negligence in the exercise of his assignment.
  The courts in the Scandinavian countries considers in each court case what a professional is to be knowledgeable about science and technology.

5. The rights of third parties (funders, purchasers and tenants) and the ability to bring a claim against the consulting professional.

A first aspect of this issue is whether a third party who suffers damage as the result of a professional’s negligence in the performance of a contract can sue that professional.

- *France* and *Belgium*: It is widely accepted that the potential claim against the consulting engineer for defects in real estate is implicitly assigned by the client to

the purchasers of the property: the right to claim is, as it were, an accessory to the property and follows it to whoever becomes its owner.

- *Greece*: Consulting engineers cannot be sued directly by the project owner.
- *Portugal:* Third parties can't claim any losses directly to the designer (civil contracts); the Contractor may claim indemnity for losses arising from errors or omissions.
- *Romania*: Third parties cannot bring a claim directly to the consulting professionals.
- *Czech Republic:* Not effective because of the lack of the contractual relationship

Another aspect is whether the client who contracts with a main contractor/-consultant has a claim against the subconsultant (for instance the consulting engineer hired by an architect or a contractor). Since there are no direct contractual links between the client and the consulting engineer, one would expect that the claim is in tort. However, this process is far from being harmonised across the Member States.

- *England*: Such a non-contractual liability (liability in tort) was eliminated by the House of Lords 1990 decision Murphy vs. Brentwood. It is no longer possible for a third party to claim against the consulting engineer for economic loss in case of defective work unless a special relationship akin to contract can be established. However, it is still possible to claim for damages caused to other property or to the person as a result of such work (for instance, if a piece of roofing comes loose due to an engineer's negligent design and causes personal injury). However, warranties or collateral warranties, with respect to third party rights, are commonplace. These contracts create a contractual relationship (rights and obligations) between parties' collateral to the main contract. In relation to design and construction, the warrantor might be the design consultant, sub-consultant, contractor, subcontractor or supplier (warranting the performance of their services, construction works or supplies under the main construction contract or appointment with the project promoter or developer). The beneficiary would typically be the purchaser, tenant or possibly a funder with an interest in the project/development but having no direct link or relationship with the construction team. Under the appointment or construction contract, the promoter/developer has a right of action against the construction team with whom he is in contract in the event of default or losses arising on the project. Without a collateral warranty, the purchaser/tenant/funder, on completion of the project, has no contractual right of action against the defaulting construction team member in the event of them being at fault (although there may be other avenues of redress). By way of example, a consultant may warrant, to the purchaser, reasonable satisfactory performance of his services as provided to the developer under the design services appointment. The warranty is thus collateral to the design services appointment.

- *Czech Republic*: In the situation of subcontracting there is still the possibility for the client to pursue the claim, but very limited. All must be stipulated in the contract. The client usually has no tort claim against the sub-consultant, but there is still the legal possibility of the claim.

- *Germany*: since 1963, the client has no tort claim against the subcontractor. In very specific situations, there is a possibility for the client to claim damage on a contractual basis, when the contract between the contractor and the subconsultant has a "protective effect" for the client. The "protective effects" theory permits a court to hold that a third party has a claim against the defendant when this third party (victim) is someone the defendant could expect to be harmed by a breach of contract.

- Austria: The theory of the "protective effect" has been imported from and applies in cases where the consulting engineer, acting as a sub-consultant, acts against (statutory or contractual) rules which have a protective effect for third persons, and causes precisely the damage that the rules are designed to avert.

- *Finland:* The same applies as a matter of principle, where the client has no claim against the subconsultant, even in tort.

- *Italy*: The site owner can sue the subcontractor on a tort basis (article 2043 or article 1669 of the Civil Code).

- The *Netherlands*: Third parties are allowed to bring a claim in tort against the consulting engineer who acted as a subconsultant (article 6:162 of the Civil Code), without prejudice however to the liability of the consultant himself (art. 6: 171 of the Civil Code).

- *Spain*: Case law clearly allows the site owner to bring an action against the subconsultant. Most claims in Spain are regulated by a specific law (e.g Building Law or LCSP) and failing that by the Civil Code. For consulting professionals, the claims are normally related to legal liability and the duty of the parties.

- *France*: The Cour de Cassation decided in 1991 that the right of action of the client against a subcontractor/subconsultant is an action in tort. An issue arose, however, in connection with the difference in the [duration of the] prescription of the action against the subcontractor/subconsultant in that case. This issue has now been resolved by the adoption of a new article 1792.1 in the French Civil Code which provides in this specific case the same prescription period as for the decennial liability.

- *Belgium*: The right of action of the client is extremely limited in comparison with the French solution: since there is no contract between the client and the subcontractor (engineer), the only claim of the client rests on article 1382 of the Civil Code (liability in tort). However, in a leading case (7 December 1973), the

Belgian Supreme Court has decided that a party to a contract has a claim against the subcontractor if, and only if (i) the breach of the contract is also negligence in the sense of article 1382 - a violation of law or negligence other than contractual breach) and if (ii) the damage claimed is not a damage resulting merely from the non-performance of the contract. The second condition is seldom met in the case of damage caused by the subcontractor.

- *Sweden, Denmark* and *Norway*: The client's chance of obtaining compensation from the subconsultant is rather poor, because of the lack of direct contractual relationship. Usually, the client claims from the consultant, and the consultant's insurance company claims from the subconsultant (redress). A third party can claim directly against the client, consultant or sub-consultant for personal injuries or property damages caused by negligence.

- *Denmark:* However, the ABR 18 states that if it is considered to have been substantiated that the client is not able or is able only with great difficulty, to pursue a claim for defects against the consulting engineer, the client is entitled to bring the claim directly against the consulting engineers/architects/contractors sub-consultants if their services suffer from the same defect. Any direct claim is subject to the limitations following from the contracts both between the client and the consulting engineer and the sub-consultant including exclusions and limitations set out in both contracts.

- *Norway:* NS 8401 has regulations of the clients right to direct claims against a sub-consultant.

- *Finland:* The client has no claim against the subconsultant, not even in tort.

It should be noted that, in most other countries, actions based on tort are subject to statutes of limitation, which are different from those for contractual claims.

6. Joint and several liability

In countries as *Belgium, England, France, Germany, Ireland, Italy, Switzerland, The Netherlands and Spain*, there is a principle that the consulting engineer can be held jointly and severally liable, which means that any single defendant who is held liable may be requested by the claimant to pay 100% of the damages. The defendant who paid the claimant has recourse against the other jointly and severally liable defendants for their portion of the damages but bears the risk of their insolvency (the so-called 'deep pocket' syndrome). In other words, if one of the jointly and severally liable contractors or consulting engineers goes bankrupt, the client can oblige one of the others to pay, even when their share of the damage is small.

This principle is sometimes confirmed by an explicit provision of the Civil Code. For instance, in *Germany*, article 840 § 1 of the Civil Code states that: "if more than one

person is responsible for damage arising from a tort, then they are jointly and severally liable". A similar provision exists in *Italy* (article 2053) and the *Netherlands* (article 6:102). In *England*, the same principle is recognised by article 1 of the Civil Liability (Contribution) Act 1978 and in *Ireland* (Civil Liability Act, 1961).

- *Austria*: According to the Civil Code (ABGB), the consulting engineer is jointly liable when he acts with intent or when it is not possible to determine his proportion of the damage and that of the other actors. In other words, joint liability is not applicable when only one party proves negligent and the proportion of responsibility can be determined. If the consulting engineer and other actors work together in the form of "Arbeitsgemeinschaften" (an informal cooperation foreseen in the ABGB and often used for cooperation in certain projects), all partners of the "Arbeitsgemeinschaft" are jointly liable.

- *Belgium* and *France*: The so-called "in solidum" liability between those responsible for the same harm has been recognized for a long time by case-law.

- *Portugal:* The Designer Coordinator has in solidum liability with his colleagues of each specialty toward his Client.

- *Spain:* The general rule is the individualization of the liability of the tortfeasor, but in the event that liability cannot be attributed to a single agent (degree of intervention is not precise), it will be joint and several among all the parties involved in the damage caused (e.g. art. 17.2 and 17.3 Building law and 1.137-1.151 Civil Code).

- *Hungary*: Statutory joint and several liability does not exist as such.

- *Denmark*: ABR 18 states that if the consultant and one or more other parties are liable towards the client for a loss in connection with building or construction works or preparations for such works, the consultant is liable only for the part of the client's loss which corresponds to the part of the total fault.
  This rule contrasts with the general practice in Danish law concerning joint and several liability for the losses of the injured party (with subsequent recourse among the defendants). This exclusion of joint and several liability is not applicable to the individual consultants in the case of a so-called "total-consultancy". The term "total-consultancy" means a form of consultation in which one consultant or a group of independent consultants in one single joint agreement with the client undertake all, or the major part of, the consultation work involved in a given project. In such a case, each consultant is fully liable for the work involved.

- *Sweden:* The same rules as in Danish ABR 18 are found in ABK 09.

- *Finland*: Even though it is not written anywhere in the KSE-13, it is generally accepted that a company is only responsible for its own action unless otherwise specifically agreed.

- *Norway:* The rules of joint and several liability differs. In case of a self-imposed group of independent designers e.g. Joint Ventures, joint and several liability is stated in NS 8401. But the rule is different for group contracts between members appointed by the client and group contracts In the first case the joint and several liability shall not be applied if the breach of contract is caused by the other party's financial problems, intentional breach of contract and in some cases lack of professional skills.

- *Czech Republic*: Just in cases where the contract is a joint venture or a consortium. In general, the consultant shall either perform the work or services in person or have it performed under his personal direction. The consultant then shall provide compensation for the damage caused by such a person as if he or she caused it himself or herself. However, according to Article 2914 of the Civil Code, if, in the case of a performance provided by another person, someone has undertaken to carry out a particular activity independently, he or she is not considered to be a helper and shall provide compensation for the damage he or she caused. This does not apply if the consultant chooses such other person carelessly or provide inadequate supervision over him or her. In this case, the consultant is liable as a surety for the fulfilment of his duty to provide compensation for damage.
  The client who wants to claim from a sub-consultant usually claims first from the main consultant, and the main consultant claims against the sub-consultant (redress).

7. Corporate versus personal liability

This depends on the type of person whose liability is claimed: when the consulting engineer is an employee, it is widely accepted that he will never be liable towards his employer or third parties, except in the case of gross negligence or intentional fault.

- *Portugal:* The designer liability is individual/personal. Although, if the designer is an employee of a legal person the legal person has *solidum* liability with its Employees.

- *Greece:* In case of a Third-Party bodily injury / death the legal representative of the company is considered liable by law in case of Employer´s liability (an employee is injured), then, it is the company's management (Directors and Officers) that is considered liable.

- *Czech Republic:* This is quite a rare case, 95% of claims are against companies. Claim against individual is possible in the case the chartered engineer is responsible for stamping the documentation – during building permitting process.

- *Spain:* Yes. Normally claims are made against the firms not against a single person as contracts are always signed between firms. The question is somewhat different when analysing the potential liability of the consulting engineer as a member of the Board of Directors of a firm. In this case, the directors have no personal liability for the debts of the corporation if this is a properly organized, maintained and capitalized corporation. If such a corporation undertakes an obligation and causes injury to a third party, only the corporation and not the directors are legally responsible as a matter of principle. If a corporation does not have sufficient assets to satisfy the liability, the creditors are not entitled to claim against the personal assets of the directors. There is an exception to this rule in the case of penal infringements committed by the directors or in other specific situations resulting from company laws from the individual Member States.

- *England* excepts contractual exclusion (such as the exclusion provided for in the ACE standard forms of appointment), nothing prevents an injured party from seeking damages from an individual member of a firm of consulting engineers, if that individual's negligence caused the injured party to suffer loss.

- *Finland:* There is no prohibition for the consulting engineers to exercise their professional activities in the form of a limited corporation but, since the injured party may claim against individual members of the firm, there is little benefit in using a limited corporation for that purpose.
  However, when the consulting engineering activity is not operated in the form of a corporation, but in the form of a partnership (or a trust), the partners have in this case an unlimited liability for debts incurred in the business.

There is no prohibition in the Member States for consulting engineers to exercise their professional activities in the form of a limited corporation (except, in some countries, when the consulting engineer also acts as a registered architect).

8. Laws of particular relevance to consulting engineers

As a rule, the responses to the questionnaire underline that there are no specific rules in the Member States which are particularly relevant to consulting engineers only.

- As mentioned previously, *Norway*, *Sweden*, *Denmark, Finland and the Netherlands* widely use standard conditions (soft law) which govern almost all aspects of the contractual relationship between the consulting engineer and the client (see above).

- *England*: Two specific examples are adjudication rights and payment provisions under the Construction Act.

- *Austria*: There are standards governing several aspects of the contractual relationship between a client and a consulting engineer, which can be made applicable. There are also professional laws and codes of ethics, but they only cover professional behaviour, rights and duties of the consulting engineers.

- *Belgium*, *Italy* or *France:* very specific regulations for architects also apply to consulting engineers when they act as an architect and are registered as architect. Several Member States have also adopted regulations that grant architects a monopoly for the design of (some types of) buildings. In some countries (e.g. *Germany* and *Italy*), this monopoly is shared with engineers.

- *Ireland:* Has specific rules in The Arbitration Act 2010. Arbitration is often used as an alternative to litigation for technical disputes. The Building Control Acts 1990/2007/13 set out minimum standards for construction/certification processes in Ireland. Health and Safety at Work Act 2005; various acts on environment including the Protection of Environment Act 2003; Planning and Developing Acts 1963 to 2002.

- *Portugal:* Interest of debts are annually fixed by the Banco de Portugal; Payment terms and dispute resolution are at parties' disposal (civil contracts) and regulated on Public Procurement Contracts Code (public contracts).

- *Spain:* Private contracts (contract between two private firms) are regulated by the Spanish Civil Code and the conditions agreed between the parties. Public contracts are regulated by the Law on Public Sector Contracts (LCSP - 9/2017) and all the issues binding on the parties are regulated there. The payment conditions (term for payments and late interest) are regulated by law 15/2010, of 5 July, amending Law 3/2004, of 29 December, establishing measures to combat late payment in commercial transactions.

9. Other relevant issues

The most important issue to note is that in some countries, consulting engineers are not allowed to limit their liability towards the client for damage to serious hidden defects.

In *Belgium*, articles 1792 and 2270 of the Civil Code - as well as articles 1792-1 to 1792-4 in *France* - are mandatory: any limitations of liability for these damages are void. The same solution applies for instance in *Italy*. In *England*, contracting parties are not permitted to exclude or limit liability with respect to death, personal injury or fraudulent misrepresentation.

Generally speaking, the validity of the limitations of liability is subject to the general law of contract of each Member State. For instance, in *Germany*, clauses which limit the liability sum are only valid if the liability sum is still reasonable in relation to the design and corresponds to the expected damage. In *Belgium* and *France*, such a limitation of liability clause is valid only if it does not have the effect of discharging the engineer of his obligations. The validity of these clauses, regarding consumers, is also limited. Moreover, in the largest part of countries, these clauses are not valid in cases of intentional or gross negligence. In *England*, there are many relevant examples – liability for dishonesty cannot be excluded; English laws treatment of consequential losses; statutory requirements in terms of health and safety, data, bribery, modern slavery act; there is also the consideration of EU law applicable within the U.K.

- *Portugal:* Public Procurement Contracts Code articles are to be observed in public contracts.

- *Spain*: The social security law excludes the possibility of insuring against punitive damages which are a consequence of negligence in health and safety measures. On first of July 2015 the new Penal liability of firms became effective

Finally, it is important to bear in mind that if the client is a private individual, generally the protection provided by domestic consumer laws will apply (for instance the rules on unfair contract terms in consumer contracts, distance selling when applicable, commercial practices and codes of conduct, defective goods). This observation applies to all EU Member States.

In any case, contractual limitations of liability are not enforceable vis-à-vis third parties.

2. CONTRACTUAL ARRANGEMENTS

1. The ability/freedom of the parties to freely negotiate contract terms

In all the Member States covered by this report except *Romania* (when working with public clients), there is full freedom of the parties to negotiate contract terms, provided that mandatory laws are respected (such as the consumer protection laws or, in some countries such as *France*, *Italy*, *Spain* or *Belgium*, the mandatory rules on liability for serious hidden defects). Parties usually refer to standard terms or conditions in their contract. This is the case in *Denmark*, *Norway*, *Sweden*, *Finland and* the *Netherlands* for instance. However, even in these countries, it is still possible for the parties to deviate from such standard conditions and to draft a tailor-made contract. Finally, when contracting with the Public Authorities, in some countries the contract is based on standard conditions for public contracts, which can only be modified to a limited extent.

In several countries, for instance *Belgium* and *Austria*, the parties can agree on a penalty clause (liquidated damages). These liquidated damages are independent of the proof of the amount of the damage suffered. In *Austria*, it is possible to agree on a contract penalty that is independent of any fault or negligence. In several countries, the amount of the penalty can be reduced by a judge.

- *England*: The parties are free to negotiate their own contractual terms, but enforcement is subject to the UK judiciary's assessment of the equity of the provisions, and statutes such as the Unfair Contract Terms Act 1977, consumer legislation etc.

- *Portugal:* There is such freedom on civil contracts.

- *Romania:* In most contracts based on public funds the parties have no possibility to negotiate any clause prior to the signature. This is the case only for the contracts based on standard conditions for public contracts where tenderers accept the form of the contract as part of the tender documents. In private contracts there is full freedom of the parties to negotiate all clauses of the contract.

- *Czech Republic*: Freedom of the parties is quite high, generally parties are free to negotiate terms. It depends on the contract arrangement, but usually clients are in stronger position to demand even their one-sided terms.

2. Use of standard forms; demands for liability and insurance

There seems to be a large variety of practices and situations in each of the countries which were analysed.

- *Spain*: Article 19 of the Law 38/99 of 5 November 1999, reforming liability and insurance in the building sector, imposes a duty on the promoter/developer to be covered by insurance for the appearance of serious defects for 10 years following completion of the works.

  No professional liability insurance is imposed by law on the contractor or the designer, however it is almost always required by the client when signing a contract. This law obliges the promoter / developer or contractor to take out an inherent defect policy but only for housing construction.

- *Greece*: Major clients may use standard forms.

- *Portugal:* There aren´t any standard forms.

- *Romania*: There are no standard forms for consulting and /or design contracts, only work contracts are standardized. Romania used FIDIC contracts for big infrastructure projects for many years. Starting from 1st of January 2018 new standard contracts are in place (Government Decision 1/2018) - only for execution of work (replacing Red and Yellow FIDIC contracts). These forms of contracts contain, as FIDIC Red and Yellow contracts, some rules for the supervision of works (Engineer's obligations).

- *Czech Republic*: The consultants are using the FIDIC White Book in infrastructure projects (services for mainly State clients/investors). Special Conditions for 2017 version are under preparation at present. There are in fact no standard forms for consulting services generally.

In some countries, it is not customary to use standard forms of contract in the construction sector, except in the case of public works.

For instance, in *France*, the parties in the public works sector use the Cahiers des Clauses Administratives Générales (CCAG) conditions; Similarly in *Belgium*, the conditions for the performance of public works are contained in the Cahier Général des Charges (CGC); *Germany*, in the VOB Teil B. General conditions for public work contracts also exist in *Italy*, *Spain*, *Turkey* and *Austria*.

- *Hungary*, some companies (clients, designers or insurance companies) have developed their own contractual conditions, but these conditions cannot be considered as standard conditions for the whole sector.

- *Denmark*, *Norway*, the *Netherlands*, *Ireland*, *England* and *Sweden*: The organisations for engineers and architects have drafted standard forms of contracts. However, many big clients still prefer to use their own contracts.

- The *Netherlands*: Koninklijke NLingenieurs, the Dutch association of consulting engineers, has set up standards for general conditions together with the professional organisation for architects (BNA). Use of these standard forms of

contract is not mandatory for Koninklijke NLingenieurs and BNA members. However, there is evidence that more than 90% of the Koninklijke NLingenieurs members do use the standard forms of contracts. The most widely used standard contract conditions are the DNR 2011 (some of the members have their own general conditions but these conditions are often based on the standard conditions of Koninklijke NLingenieurs).

- *Switzerland: S*tandard forms are highly used for design contracts. In particular, two types are common: SIA (Swiss Association of Engineers and Architects) and KBOB (government). Both do not fundamentally divert from the statutory provisions. The SIA standard form contract proposes the limitation of liability (not the one of KBOB) such as the DNR 2011.

- *England*: Some standard forms are also widely used in the building construction area. Some of them are specifically dedicated to consulting engineering activities. This is the case, for instance, for the ACE agreements, the FIDIC (International Federation of Consulting Engineers) White Book or the NEC3 professional services contract. These standard forms of appointment usually require the consulting engineers to provide professional insurance coverage.

3. Collateral warranties

A “collateral warranty” is a legal term with a specific meaning under *English* and *Irish* law. A collateral warranty is a contract which gives a third-party collateral rights in an existing contract entered into by two separate parties. For instance, an architect or a consulting engineer is appointed to design a building for a developer, who will later sell this building to a purchaser. Due to the “privity of contract” rule, the architect or the consulting engineer would normally only be contractually liable to the client should defects arise. The collateral warranty establishes a contractual relationship between the purchaser and the architect and/or the consulting engineer in the case of defects which appear after the sale of the building.

- *England*: Collateral warranties are frequently used. There is also the option of rights under the Contract (Rights of Third Parties) Act 1999.

The right of a third party to sue the consulting engineer is dealt with in section 1.5 above. In countries where there is no right of action of the third party against the consulting engineer, a right of action in contract can sometimes be established, in specific situations only, based on a legal mechanism which can be compared to the collateral warranties of common law. There is no use of collateral warranties in, for example, the Netherlands, where third parties have the right to sue in tort (article 6:162 BW).

4. Bonding, guarantees and payment retention

In almost all Member States covered by the present report, a growing tendency can be observed in situations where clients use a payment retention mechanism. In *England* however, financial guarantees and retention for consultants are unusual although the requirement for parent company guarantees is increasing. Moreover, warranties have become more frequent in recent years because of the clients' fear of bankruptcy of the consulting engineer. For instance, clients frequently demand a specific guarantee when the consulting engineer is a member of a consortium. Law does not require these bonds and guarantees, however.

In several countries, a mandatory guarantee has to be provided by the consulting engineer engaged in a public works contract. For instance, a 5% warranty is required in *Greece*, *Spain* and *Belgium* for contracts with a public authority; in *Italy*, however, the Public Contracts Supervising Authority has established that consulting engineers are not obliged to give the said guarantees, except in the case of payment by instalments, where the consulting engineer will then be required to give a guarantee equal to the amounts to be paid by the principal.

- *Portugal:* Generally, the use of warranties is required in public contracts as it is expressly foreseen in the Public Procurement Contracts Code. The designer has to give a warranty equivalent to 10% of the contractual price, valid until the conclusion of the contract.

- *Romania:* Bid bonds, performance bonds, money retention bonds are available through the local insurance market and permitted by the law (public procurement law). These instruments are highly used (mainly by Romanian companies), as the collaterals required by insurance companies are easier to set up than the one's required by the banks.

- *Czech Republic:* Not so common. Private clients use guarantees and retention. Public sector clients use bonding or retention.

- *Turkey*: There is a common demand for mainly bank guarantee letters as provisional (bid bond) and final guarantees (performance bonds). Application of retention money is also possible.

- *Austria*: Such guarantees are not frequently used

- The *Netherlands*: The Dutch Guide of Proportionality stipulates that warranties must not exceed a maximum 5% of the total amount of the assignment and no double warranties are allowed.

5. Intellectual property rights

In all EU Member States, the intellectual property rights of the consulting engineer are protected by national or European legislation on intellectual property rights. The protection and/or the transfer of property rights (IP) on the works performed by the consulting engineer are generally laid down in the contract.

- *Greece*: Intellectual property rights are normally not included in the contract.
- *Portugal:* Usually the designer assigns the economic rights of its intellectual property; the client or any third party cannot change the project without the Designer authorization.
- *The Czech Republic:* Standard way, a licence to use the services results for client's project, IPR ownership stays with consultant. The protection and the transfer of property rights on the services results are generally laid down in the agreement.
- *Turkey*: Parties cannot negotiate immaterial aspects of intellectual property.
- *Denmark*: Property rights are dealt with in ABR 18. In *Sweden*, ABK 09 includes stipulations concerning intellectual property rights.
  The same is true in *Norway* under the NS 8401. The main rule is that the right to the result of a project remains with the consultant. The client obtains a right to use the results for the intended purpose with the assignment.
  Finland does not deal with IP-rights in KSE 2013 that only defines the rights and limitations of the client to use the material, but according to Finish law the consultant owns the IP-rights and generally the design material can only be used for the original intended purpose that the design has been made for, and the client cannot hand over the material to third parties. Any other way must be defined in contract.
- The *Netherlands*: The DNR 2011 contain specific regulations in relation to the transfer of IP rights to the consulting engineer's client, which are in line with the general Dutch Patent Law.
- *England*: IP rights are often dealt with by contract, with the parties free to agree the ownership or licensing of IPR.

3. INSURANCE

1. Statutory requirements

Only four countries (*Belgium*, *France*, *Italy* and *Portugal*) in this report have a statutory obligation to take out professional liability insurance.

- *Belgium:* Engineers are obliged by law to take out a professional liability insurance (since July 2019).

- *France:* Engineers have a legal obligation to take out professional liability insurance. Specific rules on this obligation have been established in the Code des Assurances (insurance regulations). According to article L241.1 of the Code des Assurances, the person or entity whose professional liability may be established under article 1792 of the Civil Code has to be covered by insurance. Accordingly, the obligation to take out professional liability insurance applies to the "constructeurs", which refers to architects, engineers or contractors having a contract with the client. The liability insurance covers the engineer for a period of 10 years following acceptance of the works. It covers damage which jeopardizes the stability (essential elements) of the works or the suitability of the works, taking into account the client's intended use. The insurance cover is mostly limited to the total construction sum. The damage for which engineers can be liable and which is not in the scope of the decennial guarantee is not covered by the professional liability insurance of engineers (see above). In other words, not all possible damage is covered by the engineer's legal obligation to take out professional liability insurance. The consulting firms generally have two annual insurances: a compulsory insurance, with a limit of guarantee of €3 million, and a professional liability insurance to cover all kinds of liability except the decennial liability, with a cover depending on the average price of the projects studied (between €1 million to €10 million).

- *Italy*: Has a mandatory obligation according to D.P.R 137/2012 of 14/08/2012 for professionals to establish an insurance covering liability due to erroneous omissions, professional negligence and contractual liabilities determined by third parties.

- *Portugal:* It is a prerequisite by law (Lei 40/2015) that a Designer has a Professional Civil Insurance Liability policy.

Most countries have no statutory requirement on the duty to maintain any insurance.

This is the case for instance in *Austria*, *Denmark*, *Norway*, *Finland*, *Sweden*, *The Netherlands*, *Hungary*, *Spain, Germany, Turkey, Greece, Romania*, *Czech Republic*, *England* (except for common business operational insurances such as motor vehicle, employer's liability, public liability, etc) and Ireland. In all these countries there is no legal requirement for the consulting engineer to take out any professional liability insurance or for the client to take out any project specific defect liability insurance. It is worth observing that, in most of these countries, general contractual conditions

always require the consulting engineer to take out professional liability insurance. In addition, social law or collective agreements generally require the employer (public or private) to insure its employees, including coverage for workplace accidents; however, this is not a duty which is specifically imposed on consulting engineers or contractors.

- *Austria:* It is very common for contracts to require the consulting engineer to provide insurance. This insurance is normally not connected with a certain project but is a general coverage up to a certain liability sum depending on the size and complexity of the project.

- *Spain*: Article 19 of the Law 38/99 of 5 November 1999, reforming liability and insurance in the building sector, imposes a duty on the promoter/developer to be covered by insurance for the appearance of serious defects for 10 years following completion of the works. However, no professional liability insurance is imposed by law on the contractor or the designer, nevertheless it is almost always required by the client when signing a contract.

- *Denmark:* No statutory law imposes mandatory insurance. However, ABR 18 requires the consulting firm to be insured. Members of FRI, the organization of consulting engineers, are also obliged to have a professional liability insurance. However, it is not possible to generalize coverage, which depends on the project.
  The coverage exists as long as the insurance is effective. If the ongoing insurance is valid, claims can generally be made until 5 years following handover of the building (10 years in the case of private consumers). If the client requires insurance with an insurance amount earmarked for one specific project, the consultant can subscribe to special project insurance.

- *The Netherlands:* There is no statutory obligation for a consulting firm to have insurance. However, Koninklijke NLingenieurs members are required to carry insurance cover for at least €1 million. Consulting firms that are not a member of Koninklijke NLingenieurs or other trade organisations have no insurance obligation. However, clients often ask for such an insurance (no figures are available on this issue).

- *Finland:* Statute law does not impose any mandatory insurance. However, it is customary to find in the contract conditions a duty for the consulting engineer to be covered by insurance.

- *Sweden:* No statutory law imposes mandatory insurance, but according to the general conditions ABK 09, there is a duty for the consulting engineer to be insured. The limit for the liability according to the ABK 09 is 120 price base amounts, approximately SEK 5 million, and the duration is 10 years. The typical standard professional damage insurance for architects and consultants is based on the ABK 09 and has the same limit of 120 price base amounts per

assignment with a maximum of 360 price base amounts per year. The insurance is renewable on a yearly basis. If the client requires insurance with an insurance amount earmarked for one specific project, the consultant can subscribe to special project insurance. In most of these cases, the client sets a higher amount than 120 base amounts and is almost always the one who pays for the insurance, even if the consultant is the insured party.

- *Norway:* No statutory law imposes mandatory insurance but the General Conditions NS8401, NS8402, NS 8403 and NS8404 impose on the consulting engineer a duty to be insured in accordance with the financial cap for damages from errors.

- *Germany:* Despite the absence of general conditions specifically applicable to the consulting engineers, most consulting engineers are in fact covered by professional liability insurance. This is especially the case for the consulting engineers who intend to act as architect, because one of the requirements prior to the registration at the BAK (Bundesarchitektenkammer - professional body of architects) is that architects have taken out a professional liability insurance

- *Greece*: Professional Indemnity is usually required and has become a selection criterion (related to economic and financial standing) in major public contracts. Finally, a Presidential Decree under preparation on the Establishment of Business Directories and Classification of Consultancy Firms (Official list of approved economic operators), includes the obligation to have a professional liability insurance (annual open cover).

- *Romania:* The statute of a consulting firm doesn't specify if any insurance must be concluded/maintained. Usually, concluding/maintaining an adequate insurance programme is a prudential measure that each consulting firm is deciding. Almost 99% of the contracts are requiring professional liability and employer's liability. Regarding the duration of the insurance, this is required to be the same as the contract period.

- *Czech Republic*: Even though there is no duty to insure for companies, most companies are insured, and it is very common to ask for coverage of professional liability. According to Article 16 of the Law 360/1992, consulting engineers who intend to act as a chartered engineer have a legal obligation to take out professional liability insurance. This compulsory insurance does not apply if the chartered engineer is an employee in a consulting company. The consulting companies generally have annual insurances to cover professional liability. This insurance is normally not connected with a certain project but is a general coverage up to a certain liability sum. The insurance shall last for the entire duration of that profession or to the end of the warranty period. Insurance terms is usually dependent on the type and scope of services.

- *England*: There are statutory requirements in respect of certain forms of liability – employers' liability and motor liability for example. There are no statutory requirements in relation to professional liability, although professional bodies often impose additional requirements on their members.

- *Ireland:* Consulting contracts will generally contain requirements regarding the maintaining of Public, Employers Liability and Professional Indemnity insurances. The indemnity limit requirements on Public liability will vary depending on the contract this can also be the case for Employers liability, but in general firms are required to maintain a minimum cover of €13 million any one occurrence and unlimited in the period of insurance.

- *Turkey and Hungary*: In these countries, there is a growing tendency for contracts to stipulate a duty on the consulting engineers to be insured, especially in the case of public works and large projects.

2. Insurance markets

Survey responses indicate a tendency to consider that access to the insurance market is relatively easy, even in countries where the building insurance market has shrunk (such as *Belgium*, *Norway*, *Austria* and *Denmark*).

Some professional organizations of engineers (such as *Italy*, *Denmark, Sweden, Norway* and *England*) have concluded agreements with insurance companies, in order to provide an insurance policy specifically covering consulting engineering activities. In some countries, difficulties can arise when clients want a higher coverage than the one set in the general conditions. While large consulting firms generally have no problems in finding additional coverage, smaller firms can experience difficulties. And the premiums are rising intensively these years.

- *Greece*: Professional Indemnity Insurance is feasible but very few local insurance companies can respond at acceptable terms. Also, very few consulting engineering firms maintain such an insurance on an annual basis, at an amount of 1,000,000 / claim, covering their professional activity. The local insurance market is not very mature. Policies with low indemnity and poor wordings (exclusions, strict conditions) are available.
  In order for this market to respond properly, standard insurance terms with minimum requirements respective to the size / type of contract should be defined.

- *Portugal*: The insurance companies operating in Portugal have some experience in professional indemnity insurance.

- *Romania*: The access to insurance coverage is usually facile and there are insurance solutions for almost any requirement.

- *Czech Republic:* Only 4-5 insurance companies are willing to cover professional indemnity insurance.

- *Spain and Denmark:* It is not particularly difficult to find insurance coverage, but nevertheless, it represents a high cost and policies are very diverse in terms of coverage.

- *Ireland:* Given the specialist nature of PII, there have traditionally been a relatively small number of insurers locally and there is a tendency to rely heavily upon the UK market. The availability of cover will vary depending on market conditions but given its size, the Irish market is arguably more exposed to greater volatility. Employers and Public liability are less of a concern as the frequency and severity of claims against consultants tend to be low when compared to PII. Cover is normally widely accessible, but availability and cost can fluctuate in line with general market conditions.

- *England:* There is no mandatory requirement imposed on the commercial insurance market to provide cover. Each professional firm is individually assessed and individually underwritten. The availability of cover is therefore dependent both on the individual characteristics of the firm, and the market forces affecting the insurance market at the time. Availability of cover fluctuates over time, and experiences will differ from firm to firm. Decennial liability insurance is not required for projects in the U.K.

3. Other relevant issues

The following additional comments were provided in the survey responses:

- *Sweden, Denmark* and *Norway*: Although most insurance companies offer professional indemnity insurance to some extent, only the bigger ones also offer project insurance.

- *England*: The UK insurance market is globally recognised. It is significantly well established and has available a sizeable number of experienced practitioners.

- *Italy*: A recent survey of the insurance market of professional liability insurance for consulting engineers shows that the Lloyd's share has increased to 30% for engineering companies, which is due to the existence of an agreement between Lloyd's and the OICE (consulting engineers' professional body).

- *Portugal:* The Insurance and Pension Funds Supervision Authority has standard clauses for some types of insurances. In those cases where this doesn't happen, the insurance companies have to submit their policies to the approval of the supervision authority. By law, all the mandatory insurance policies have to cover

liability for damages caused by wrongful act (wilful misconduct), which are generally excluded from non-mandatory insurance policies.

- *Romania:* Local insurance market is a stable and slow growing one. Almost all “global players” in insurance industry are present in Romania (with local based entities or through their EU subsidiaries) and usually offer insurance solutions for every requirement that they receive.

- *Spain:* The Spanish insurance market is well developed and of particular interest because of the international presence of Spanish engineering, solutions being obtainable for anywhere in the world.

- *Switzerland:* The national organization for consulting engineers USIC offers its members a collective insurance programme. Most USIC members adhere to such programme. The collective scheme allows for better conditions in the insurance policies than on the general market.

APPENDIX I SURVEY QUESTIONNAIRE

1.0 Applicable law and legal issues Include in this Section a summary of the laws (where applicable) relating to: (1) The basis of the law (Statute, Codes, Court imposed/precedence etc) (2) Rules and statutes of limitation and duration of liability (3) Any statutory financial caps (4) The duty of care imposed on professionals (5) The rights of third parties (funders, purchasers and tenants) and their ability to bring a claim against the consulting professional (6) Joint and several liability (does the law allow an injured party to recover all losses from a party that has only contributed to part of the losses?) (7) Corporate versus personal liability (for example can an injured party claim against the individual members of the firm?) (8) Any laws particularly relevant to consulting engineers (such as laws providing for fair payment terms, dispute resolution, interest for debts etc) (9) Any other relevant issues (such as exclusion of certain classes of damages, laws that cannot be excluded by the parties in contract)	Add any comments (explanatory or otherwise) that you consider may be relevant to each Section
2.0 Contractual Arrangements Include in this Section: (1) The ability/freedom of the parties to freely negotiate contract terms (such as financial caps, exclusion of consequential losses, liquidated damages etc) (2) The frequency and use of standard forms and specify what benefits (and/or disadvantages) such forms provide (such as financial caps and other protections) (3) The use of collateral warranties to provide a contract (and right to sue) between the CW beneficiary (funder, purchaser, tenant etc) and the consulting firm (4) The frequency and use of bonding, guarantees, payment retention (5) If relevant how are intellectual property rights addressed between the contracting parties (6) How common it is for contracts to require the consulting firm to provide insurance (if relevant specify type of coverage and typical duration)	
3.0 Insurance Include in this Section an insight into country insurance matters: (1) Does statute specify any insurances that consulting firms must maintain (Professional Indemnity, Public (or General) Liability, Employers Liability etc) (2) How easily is it to obtain required insurance coverage (3) If relevant, add any obligation vis a vis decennial liability insurance (4) If available add some commentary on the local insurance market	

APPENDIX II GLOSSARY

AGREED DOCUMENTS
Special Conditions agreed on by the Clients and consultants in some countries e.g. Scandinavian countries and The Netherlands. The agreed documents can be considered as an example of soft law regulation in the construction sector

CIVIL CODE
A body of private law developed from Roman law as set forth in the Justinian code. It is based on the judicial application of a certain legal code to a particular case by learned jurists and theorists, in conformity with logical and systematic deduction.

CLAIM
A demand for payment of damages by one party against one or more other parties.

COMMON LAW
The body of legal principles and rules of action that derive their authority solely from a society's usages and customs or from the judgments and decrees of the courts.

CONSULTANTS
A person or entity who provides professional advice or services.

CONTRACT UNDER SEAL
Contracts under seal derive its binding force from its form alone. It is in writing and is signed, sealed and delivered by the parties.

The principal effect of executing a contract under seal is that the limitation period (i.e. the time following a breach of contract in which the innocent party is entitled to commence proceedings to enforce the agreement) is extended from 6 to 12 years.

DEFECT
The fact that a portion of the work, as actually constructed, does not conform to recognized rules, to qualitative or quantitative specifications or, in case the same are insufficient, is not fit for its purpose.

DESIGN
The process of applying engineering principles in a disciplined way to provide a practical and economical solution to a required task or process.

LIABILITY
A debt of responsibility; subjection to an obligation; an obligation which may arise by a contract made or by a wrong committed.

LIQUIDATED DAMAGES
A sum established in a construction contract, usually as a fixed sum per day, as a genuine pre-estimate of the damages which will be incurred by the owner due to the failure to complete the work on schedule.

NEGLIGENCE

Failure to exercise that degree of care which an ordinary careful and prudent person would exercise under similar circumstances.

TORT

A wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction.

WARRANTY

A written contract in the favour of the beneficiary in order to compensate the latter against financial loss caused by material damage and/or personal injury.

APPENDIX III LIABILITIES FOR CONSULTING ENGINEERS

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Austria	Civil Code (ABGB)	3 years counted from knowledge of the damage and the author of the damage. If the damage or the author of the damage is not known (or was caused by a criminal action) the duration of liability is 30 years.	Right of action if the consulting engineers acted against the consumer protection law. In specific cases, employer can bring on a contractual basis a claim in tort against the subconsultant.	Legal obligation (Civil Code § 1299 ABGB) to provide services with the care and professional standards, which can be expected of a consulting engineer as an expert. Warranty system independent from fault or liability. If defect was caused by fault, client can additionally get compensation for damages.	None.	Not if only one party is proved negligent and proportion of liability can be determined. Yes, when the consulting engineer acted with intent (i.e. not with negligence only) or when his contribution to the damage and those of other actors are not determinable and when working in an informal cooperation foreseen in the ABGB ‘Arbeitsgemeinschaften’.	Standard forms are provided by the Chambers. Major public clients use their own contracts.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Belgium	Civil law and civil Code.	Civil Code:10 years for serious defects. For minor defects, within a "reasonable" time after the defects appear (with maximum of 10 years after acceptance).	Employer has very limited tort claim rights against subconsultant (in case of violation of law or tortuous behavior and if the damage is not resulting merely from the non-performance of the contract).	Widely accepted principle that the designer has to perform services with skill and efficiency in accordance with professional standards. Burden of proof on client.	None, but courts have the right to moderate the damages claimed.	No, but when working together 'total consultancy', i.e. Joint ventures or single joint agreement between client and one consultant/group of independent consultants, then the participants are joint and several liable	Public contracts: Cahier Général des Charges (CGC).

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Czech Republic	Civil Law and civil code.	No limit.	Not effective because of the lack of the contractual relationship.	There is a legal obligation of a person who offers professional performance as a member of an occupation or profession to act with the knowledge and care associated with their occupation or profession. If the person fails to act with such professional care, he or she bears the consequences (Article 5 of the Civil Code).	None.	In case the contract is a joint venture or a consortium. In the situation of subcontracting there is still the possibility of client to pursue the claim, but very limited. All must be stipulated in the contact.	FIDIC White Book.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Denmark	Civil law. Agreed document ABR18 have been approved of the professional bodies within the building industry) and ABR-forenklet, which is also an agreed document but meant for projects with less or no project engineering. These documents do not regulate consumers.	Max. 10 years. 3 years from discovery of defects. ABR 18 and ABR Forenklet: 5 years from handover. 10 years when the client is consumer.	Employer has very limited tort claim rights against subconsultant, e.g. in case of intend. But different in ABR 18: If it is very difficult for the Employer (to bring a claim to the Employer's direct business relation (eg in case of bankruptcy), the Employer has a possibility to bring a claim against the subconsultant, but the employer has to respect the limitations made by all of	Consulting engineer has an obligation of means. Services must comply with scientific & technological state of the art at the time the service is delivered. ABR 18 has set new rules for delay, where consultant can be liable for max. 10% of contract/consultant fee. Also, if consultants has made mistake in project calculation, which leeds to additional cost for project owner, then a penalty of 5% of the additional cost is to be paid by the	Yes. Both in ABR 18 and ABR Forenklet: If a project insurance, the liability is limited to the amount left on the insurance. If there is not a project insurance: ABR 18 limits the liability to twice the consulting engineers fee but no less than 2.5 mDKR. ABR Forenklet limits the liability to 2.5 mDKK.	Excluded under the ABR 18 and ABR Forenklet (However, not for 'total consultancy', i.e. Joint ventures or single joint agreement between client and one consultant/group of independent consultants).	FRI & Danske Arkitektvirksomheder jointly set up standards for general conditions for technical service and Client consultants in 2019. Neither are compulsory.

			the parties.	consultant.			

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
England	Common law Court decisions (case law). Also, certain legislative Acts (e.g. Housing Grants, Construction and Regeneration Act 1996). NB: Legal systems differ in England, Wales, Scotland and Northern Ireland.	Contract: 12 years from breach of contract for contracts under seal or otherwise 6 years. Tort of negligence: 6 years from date cause of action accrued. Hidden defects/issues: claimant has 3 years from date of knowledge subject to a 15-year longstop.	No liability in tort: Generally, third parties cannot claim against consulting engineer for economic loss due to defective work but can claim for damages to other property/person due to defective work. Warranties or collateral warranties with respect to third party rights are commonplace.	Under contract law, duty of care exists both in implied rules and in standard form of contracts. Implied duty of the designer is to carry out duties with proper skill and care in professional manner.	None.	Yes.	ACE agreements, FIDIC white book, NEC3 professional services contract.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Finland	Civil Law. Tort liability act, land use and building decree, building act. Agreed document KSE 2013 (General Conditions).	KSE 2013: General Limitation period is 2 years. If the construction of the object is postponed, liability ends five years after handing over the design. If gross negligence or intentional action, the liability ends 10 years after completion of the object / handing over of the assignment in case there is no object. Client has to present claim within 1 year.	Client has no claim against the subcontractor, not even in tort. Only in case of crime or strong carelessness.	KSE 2013: obligation to carry out the work with reasonable professional skill and diligence. The content that is handed over in electronic format must be computationally solid and fully accessible with the agreed version of software.	KSE 2013: Upper limit of consultant's liability in KSE-13 is the total remuneration received from the assignment. Any other limit must be separately agreed in the contract.	Finnish consultant service is not several and joint liable, except when working in joint ventures.	KSE 2013 RT 80343.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
France	Civil law and Civil Code Spinetta law (1978).	10 years for serious defects. 2 years for defects to "non-dissociable" elements of equipments of works. 1-year warranty of perfect completion.	Employer has very limited tort claim rights against subconsultant, e.g. in case of intend. But if it is very difficult for the Employer (eg in case of bankruptcy) to bring a claim to the Employer's direct business relation (eg in case of bankruptcy), and if the subconsultant has committed a significant fault or has not complied with the law, the Employer has a possibility to bring a claim against the	Designer must apply the 'state of the art' and perform with professional skills and efficiency.	None, but courts have the right to moderate the damages claimed.	Yes ('in solidum' liability) between those responsible for the same damage.	Public contracts: Cahiers des Clauses Administratives Générales – CCAG conditions.

			subconsultant. Third parties may present claim against consulting engineers Employers and, in some cases, against the Contractors for any damage. At the hearing, consulting engineers may be called upon as collateral on a quasi-defect basis.				

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Germany	Civil law and civil Code.	3 years following acceptance of works. Specific rules for construction contracts, e.g. 5-year liability for defects in relation to works to a building.	Third parties have claims for compensation for breach of regulations or rules on direct legal basis, § 823 BGB.	Engineering is conducted under work contracts. Engineers in Germany have to deliver a work success in plans and the building. There is a legal obligation to provide services in a professional standard.	None.	Yes	Public contracts: VOB part B.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Greece	Civil law and civil Code. Article 286 of the Penal Code applies for eventual liability in the design, supervision and management services.	There are no specific provisions regarding the duration of liability of consulting engineers and contractors. Regarding liabilities in building construction, 10 years mentioned (Article 693 of the Civil Code). Moreover, it is important to mention that according to the very strict article 286 of the Penal Code, practically no prescription period applies!	Consulting Engineers cannot be sued directly by the Project Owner. In case of a Third-Party bodily injury / death the legal representative of the company is considered liable by law injured), then, it is (Directors and Officers) that is considered liable.	Consulting Engineers have to provide their services under duty of care.	None.	No, only when forming a kind of Joint Venture in the provision of Design Services Contracts. To this extent, all members are legally considered as joint and severally liable.	In public contracts, general / standard conditions apply.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Hungary	Civil Law and Civil Code.	5-25 years, depending on type of defect or issue.		Building law imposes duties on professionals at various phases. No specific rule on the nature of the consulting engineer's obligations.	None.	No.	No common standard forms; some companies have developed their own contractual conditions.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Ireland	Common law. Statute of Contract Law	Sealed contracts 12 years of the accrual date (in practice no later than the date of completing the service). All other contracts including negligence actions 6 years. A period of 2 years applies to claims for personal injury. If more than one wrongdoer, the wrongdoer has to initiate proceedings against other wrongdoers within 2 years of the date liability was established.	Generally, third parties cannot claim against consulting engineer for economic loss due to defective work but can claim for damages to other property/person due to defective work. Warranties or collateral warranties with respect to third party rights are common place.	Sale of Goods and Supply of Services Act 1980: Necessary skill to render the service and to supply the service with "due skill, care and diligence".	None.	Yes.	Public clients have introduced standard forms of contracts.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Italy	Civil law and Civil Code.	10 years in the case of contractual liability. For non-contractual liability 5 years. Limitation for intellectual contracts e.g. Engineering consultancy art. 2236 except for wilful misconduct or gross negligence. .	The Client or any Third Party can only address their claims to (or sue) the consultant. Therefore the Client/third parties cannot not -even on a tort basis -.sue subconsultant directly.	Professionals must abide by the Ethical Code of the Professional Order. Companies are committed to legal diligence contemplated by the Civil Code. Professionals must abide by the Ethical Code of the Professional Order.	None.	No – only when working in e.g. Joint Ventures.	Public contracts: general conditions apply.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
The Netherlands	Civil Code. DNR 2005 and DNR 2011 (Standard conditions).	Maximum 20 years DNR 2005 and 2011: The liability of the consultant expires after five years from the day upon which the commission is terminated either by completion or cancellation.	Third parties can sue subcontractor on a tort basis (without prejudice to the contractors' liability).	As per Civil Code, consulting engineer has an obligation of means. Services must comply with scientific & technological state of the art at the time the service is delivered.	None, but courts have the right to moderate the damages claimed.	Yes.	Koninklijke NLingenieurs & BNA have jointly set up standards for general conditions (DNR 2011). Not compulsory but used by over 90% of members.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Norway	Civil/Private law. NS 8401:2010, 8402:2010, 8403:2010, and 8404: 2010, (General Conditions of Contract for Design Commissions).	NS 8401, 8402, 8403 and 8404: 5 years after completion of the assignment. Statute of Limitations: 3 years. If the error/damage is not known 1 year extension up to max 13 years.	Regulated by civil law and court decisions. Several of the agreed documents has provisions regarding direct claims against sub-consultants.	General rules on performance are included in the agreed documents. The consultant must follow the requirements of proper professional conduct and care.	NS 8401, 8402 and 8404 provide a cap of 150 price base amount appr. 1.589.00 Euro. For liability of errors NS 8403 provides cap of app. 328.000 Euro. for each claim with an aggregate sum per project of app. 984.000 Euro.	Excluded under NS 8401 (however, not for Joint ventures, 'total consultancy', i.e. single joint agreement between client and one consultant/group of independent consultants).	RIF has drafted standard forms of contract. Not compulsory. Big clients have their own contracts which they try to impose on the consulting engineers.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Portugal	Civil law and civil Code, Public Procurement Contracts Code, Portaria 701-H/2008 (Engineering Plans Regulation), Lei 40/2015 (Professional qualification required for the technicians responsible for the projects and for project coordination).	10 years in the case of structural elements defects 5 years in the case of non-structural or technical installations defects 2 years, in the case of defects related to autonomous equipment assigned to the works	Third parties can't claim any losses directly to the designer (civil contracts); the Contractor may claim indemnity for losses arising from errors or omissions.	Widely accepted principle that the engineer has to perform services with skill and efficiency in accordance with applicable norms and rules and the good rules of art; the burden of proof is on Client.	On contractual basis (civil contracts): Triple of the fees, except gross negligence if the losses arise from errors or omissions (public contracts) The right to hold the Designer is liable for errors and omissions shall lapse after 20 years. Public contracts rules foreseen delay penalties up to a maximum amount of 30% of the fees. At the request	No – but the Designer Coordinator has in solidum liability with his Colleagues of each specialty toward his Client. The designer liability is individual/personal. Although, if the designer is an employee of a legal person the legal person has solidum liability with its Employees	

					of the parties, the court may reduce or moderate the amount of liquidated damages clauses if it considers them to be disproportionate or excessive.		

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Romania	Civil Code and Law 1-/1995.	10 years liability for hidden building defects and consequential damages. Liability for structural and resistance defects resulting from non-respect of design and execution norms lasts for the whole useful life of the building.	Third parties cannot bring a claim directly to the consulting professionals.	Obliged to obtain the final result of this job whether this is design supervision, technical assistance or quality control of the construction (An obligation of result: fit for purpose).		Yes.	

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Spain	Civil law and civil Code Building regulations law (38/99 of 5/11/99).	10 years for structural defects; 1 or 3 years for other defects Claim must be introduced within 2 years from appearance of the defect.	Site owner can sue subcontractor.	The consulting engineer has to carry out the work with skill and diligence in accordance with the law.	In contracts financial cap usually does not appear, but engineering firm tries to negotiate a cap. (aiming for around 10% of the fees).	Yes.	With the Administration there are standard general conditions for private contracts; some companies have developed their own contractual conditions.

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Sweden	Civil law. ABK 09 (General Rules of Agreement for Architectural and Engineering Consultancy Services).	10 years from completion. 3 months for notification of defects and at the latest within 9 months from knowledge of the damage.	Claim rights against employer, consultant or sub-consultant for personal injuries or property damages, caused by negligence or tort. Liability for certain environmental damages.	General rules on performance are included in standard forms of contract. ABK 09: the consultant shall carry out his work according to good professional practice and is liable for negligence in the exercise of his assignment.	None, but in case of damage while carrying out the assignment ABK 09 provides caps in 2019: approx. EUR 524 000. and max. approx. EUR 1 574 000 per year is covered by the standard professional damage insurance. For delay ABK 09 provides a cap of 10 price base amounts for each assignment, approx. EUR	No, only if acting jointly in a consultancy group.	Standard forms of contracts to be prepared by representative building sector organisations. Certain clients have their own contracts which they try to impose on the consulting engineers.

					44 000.		

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Switzerland	Statutory law applies to design contracts, namely the Swiss code of obligations. Normally, the provisions on the mandate and/or the contract for services and works are applicable with respect to design and site supervision contracts.	The duration of liability varies from 2 years (mobile works), 5 years (immobile works) and 10 years (services/mandate).	Generally, no third party claims, only such in tort. Normally, claims are based on contract and involve the contracting parties only.	Duty of an ordinary professional in the given situation.	No.	Yes.	

	Source of Law	*Duration of liability*	*Rights of third parties/extra contractual liability*	*Duty of care*	*Statutory financial caps*	*Joint & several liability*	*Use of standard forms of contract*
Turkey	Civil Law and Turkish Code of Obligations.	5 years. If gross fault of lapse the duration expands to 20 years. In public procurement consultancy contracts the duration is 15 years.	Third party may start legal actions in scope of tort law.	Turkish Code of Obligations art 471, measures liabilities of consultant by his care, loyalty and being looking after Principal's benefits; works of a prudent consultant are taken as example.	None.	Not according to Code of Obligations. But it is required in Public Procurement law through secondary regulations.	In public procurement law.

Note on corporate & personal liability

General to all countries:

Employees: not liable to employer or third parties except in case of gross negligence or intentional fault.

Board of Directors: no personal liability for the debts of the corporation. In case of injury to a third party, only the corporation, and not the directors, is legally responsible, except in the case of penal infringements committed by the directors or other specific situations.

Partnerships: partners have an unlimited liability for debts incurred in the business.

APPENDIX IV INSURANCE FOR CONSULTING ENGINEERS

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Austria	No.	Very common contractual requirement for general coverage.	Depends on size and complexity of the project.	Warranty system is independent of default and based on the performance.
Belgium	Engineers are obliged by law to take out a professional liability insurance (since July 2019).			Mandatory guarantee for public works and services contracts (5% warranty).
Czech Republic	No, there is no duty to insure for companies, but most of companies are insured. The consulting companies generally have annual insurances to cover professional liability. According to Article 16 of the Law 360/1992 consulting engineers, who intend to act as a chartered engineer duty to be insured for professional liability. This compulsory insurance does not apply if the chartered engineer is an employee in a consulting company.	No.		No.

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Denmark	No, but an obligation in General Conditions ABR 18 and ABR Forenklet.	Standard forms of contract generally require the consulting engineer to be insured. FRI demands their members to have insurance covering Professional Indemnity.	Coverage is specific to each project. Duration is generally 5 years after handing over of the building (10 years for consumer clients).	Most unusual.
England	No.	Standard forms of contract generally require the engineer to be insured for both public liability and Professional Indemnity.	Generally, either 6 years or 12 years for PI-insurance.	Use of financial guarantees and retention is not common practice.

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Finland	No.	Standard forms of contract generally require the consulting engineer to be insured.	Usually CE has normal continuous insurance of some amount and if necessary, coverage may be expanded for a specific (larger) project when normal coverage isn't sufficient. The duration is normally as long as consultant's liability i.e. until guarantee time expires or, if there is no guarantee time, within one year following completion of the project.	Most unusual.
France	Yes, compulsory insurance when covering decennial liability and for damages affecting structural building elements). No mandatory obligations when concerning engineering assignment outside construction e.g. public works and structural works.	Client usually asks for additional Professional Indemnity insurance, especially for civil works.	For compulsory insurance: limit of guarantee of €3 million. For professional liability insurance: cover depends on average price of projects (€1-10 million).	No.

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Germany	No.	Most consulting engineers do take professional liability insurance.	Insurance contracts normally only covers projects on national level.	
Greece	Professional Indemnity must systematically apply. Public (General) and Employer's Liability Insurance should apply in major contracts / consulting engineering firms. The government is preparing a presidential decree to introduce an obligation to have a professional liability insurance in 2019.	No.	Professional Indemnity Insurance is feasible but very few local insurance companies can respond at acceptable terms. Also, very few consulting engineering firms maintain such an insurance on an annual basis, at an amount of 1,000,000 / claim, covering their professional activity.	No.

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Hungary	No.	No general conditions, but a growing tendency to impose a contractual duty, especially for public works & large projects.		Most unusual.

<table>
<tr>
<td>Ireland</td>
<td>No.</td>
<td>Standard forms of contract generally require the consulting engineer to be insured for Employers liability and Professional Indemnity.</td>
<td>Guideline relating to requirements on Public Sector projects:

<table>
<tr><th>Est. construction costs</th><th>Min. indemnity insurance cover</th></tr>
<tr><td>Up to €0,5 m</td><td>Min. PII € 0,5 m.</td></tr>
<tr><td>€0,5 to 1 m</td><td>€0,75 m</td></tr>
<tr><td>€1-€5 m.</td><td>€ 1,5 m</td></tr>
<tr><td>€5-€ 20 m.</td><td>€ 3 m.</td></tr>
<tr><td>€20-€30 m</td><td>€ 4,5 m.</td></tr>
<tr><td>€30-40 m</td><td>€ 5 m.</td></tr>
<tr><td>€40-60 m.</td><td>€ 6 m.</td></tr>
<tr><td>€50-60 m.</td><td>€ 6 m.</td></tr>
<tr><td>Over €60m</td><td>€ 6.5 m.</td></tr>
<tr><td>Duration:</td><td>Generally, either 6 years or 12 years for PI-insurance.</td></tr>
</table>
</td>
<td>Most unusual.</td>
</tr>
</table>

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Italy	Yes according to the D.P.R . (Decree of the President of the Republic) 137/2012 of 14/08/2012 establishes an obligation for professionals to have an insurance covering liabilities due to errors, omissions, professional negligence and contractual liabilities determined by third parties.		The Legislative Decree 124 04/08/2017 known as the DDL on Competition, prescribes the obligation to extend the coverage the Civil Responsibility beyond the period of 10 years for all the damage claims reported within the 10-year period.	Guarantee not required for public works, except for payments by instalment, in which case guarantee is equal to the amounts to be paid by the principal.
The Netherlands	No.	Koninklijke NLingenieurs requires its members to have insurance cover for minimum €1 million. Clients often ask insurance cover.		

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Norway	No.	Insurance is required under NS8401, NS8402, NS8403 and NS 8404 Act relating to industrial injury insurance.	Liability insurance for design errors in accordance with the contracts financial caps of the agreed document. Duration: 5 years.	
Portugal	Yes. By law the consulting firms involved in design activities have to maintain a Professional Indemnity Insurance Policy.		The Insurance and Pension Funds Supervision Authority has standard clauses for some types of insurances. In those cases where this doesn't happen, the insurance companies have to submit their policies to the approval of the supervision authority. By law, all the mandatory insurance policies have to cover liability for damages caused by wrongful act (wilful misconduct), which are generally excluded from non-mandatory insurance policies.	

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Romania	No.	No, but in practice insurance is always required.		
Spain	According to law, not for contractors or designers, but promoter/developer must be insured for appearance of serious defects within 10 years of works completion.	No, but in practice insurance is always required.	Obligatory coverage under Building Law is for 10 years after the work is handed over and when it is to be used for residential purposes. Nowadays Engineering firms need a Civil Liability Insurance to sign contracts. The duration of these policies is annually renewable. Some single projects require a specific civil liability insurance with a much longer duration.	Mandatory guarantee for public works contracts (5% warranty). In private contracts performance bonds are almost always required.

	Legal obligation?	*Obligation from another source?*	*Coverage & duration*	*Use of bonding, guarantees, payment retention*
Sweden	No.	Insurance requirement under ABK 09 conditions (Obligation to subscribe for and to maintain consultancy liability insurance corresponding to agreed liability).	Limits according to ABK 09 financial caps in 2019 : app. EUR 524.000 per assignment, and max. app. EUR 1.574 per year. Duration: 10 years. Insurance offered to members of the Federation of Swedish Innovation Companies.	Most unusual.
Switzerland	No.	No, but as a principle, public clients require insurance coverage. For private clients there is no requirement and it may be less common, but still highly used.		Not commonly used in design contracts, except payment retention (normally up to 10% during the project; payment at the end of the project).
Turkey	No.	Contractually can be required.		Bid Bonds and Performance Bonds. Application of retention money is also possible.

Note: the tables in the appendix should not be taken as an isolated quick reference and should be used with due care.