
Some Aspects regarding builder´s liability and insurance legal system in Germany

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Situation in Germany:

- **Low prices for construction works because high competition on the market.**
 - **Companies feel “invited” to produce lower quality or try to get better prices with supplements.**
 - **Consumers need high quality not only because of safety but also we want to built sustainable buildings (also following European directives).**
 - **But: who at last is responsible for that?**
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- **Clients have the opinion, that architects, engineers and construction companies have the duty to do a good job, that means a building without defects even if the price is low**
“contract is contract”
 - **Law courts often are giving them quite right (but fact is, that court procedures are complicate and take quite a long time).**
 - **Nevertheless there are a lot of quarrels because the clients cut wages if quality seems not acceptable and companies have the opinion, that they have to bring more achievement without getting (enough) money for that. Therefore the contracting parties often have no real interest in quality.**
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National building control should control more because of

- **sustainability,**
- **for reducing energy (European commission wants the national states to control at last about 3% of the new buildings)**
- **security**

But in reality the responsible federal states reduces stuff.

Therefore private People or engineers are getting more responsible, they shall be liable.



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- **In Germany (only) freelancers like architects and engineers have to be insured.**
 - **When clients find defects they make in particular architects liable (although there is a joint and several liability between architects and construction company). Therefore the architects have to pay higher premiums to their insurance companies.**
 - **It is a problem when in the end the construction company is bankruptcy, because then the architects or the insurance company has to pay all the damage – and premiums increases again.**
 - **There is no duty or even habit, to insure construction companies like in France (decennale assurance – compare 1. Elios study)**
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There are several possibilities to solve the problem (2010 - 2013 an expert commission of the federal government discussed several solutions:

- **Because architects and engineers have more responsibility they could be payed higher to exercise more control (in Germany we still have rules relating to fees).**
(Note: It doesn't make sense, to reduce stuff in public services and pay more for external control – and the public sector is one of the biggest clients for infrastructure.)
- **Construction companies could get more rights to refuse working, when they don't get money in time.**
- **More rights (only) for consumers, that means more securities given by the companies during the building period.**
- **But no extension of the warranty period / no ten years guarantee.**



Other aspects:

- **Actual guarantees are given are very expensive because of the fee customers have to pay to their banks.**
- **Clients and Construction industry are looking for new “modells” contracts with more partnership (“partnering”).**
- **There are wishes for more dispute resolutions out-of-court (dispute boards instead). That means for example more adjudication (like in UK).**
- **Again more building control but relieving more cost to the clients, because they are the polluters of the building.**

One Suggestion: New system of insurances should be discussed:

- **It is no solution, to eliminate only the liability or to shift more of the costs from the public sector to the market.**
 - **Then the risks will continue and damages will only be spread to someone of the involved.**
 - **Advantage of an insurances system:**
 - **it should not be mandatory like in France (because of the costs and to differentiate between good and bad companies – we need a quality competition not a system that only pays for the damages).**
 - **good control is better than the distribution of damages = no insurance without quality control during and at the end of the construction phase.**
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We should think about a combination:

- **An insurance system for the construction project not the companies or architects.**
- **Insurance only if the client comply with certain quality requests, for example**
 - **Qualification by the construction companies (like in some countries in the EU)**
 - **Careful selection of building materials (European construction product regulation / EPD)**
 - **Independent quality control**
- **States should give a frame – but not make insurance mandatory.**



Thank you
for your attention!



The End



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