

Rechtstatsächliche Untersuchung zu den Möglichkeiten der Ausgestaltung einer verpflichtenden Absicherung der Ansprüche des Bestellers einer Bauleistung auf Fertigstellung und Mangelgewährleistung
Az.: 314-06.01-2815EHV003

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Im Auftrag der Bundesanstalt für Landwirtschaft und Ernährung (BLE) für das Bundesministerium der Justiz und für Verbraucherschutz (BMJV)

Anlage zum Abschlussbericht

Abstract

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Abstract

The research project "Legal study of the possibilities for structuring a system of mandatory coverage for the completion and defect warranty claims of the customers of construction work" was conducted by the consortium AFC Public Services GmbH and Meyerthole Siems Kohlruss - Gesellschaft für aktuarielle Beratung mbH. It is intended to assist the Federal Government in its decision-making on the question of whether it is appropriate to introduce a legal obligation to cover the customers of construction work in their completion and defect warranty claims. In addition to analysing secondary data, the study involved collecting an extensive amount of primary data (expert interviews, quantitative surveys and evaluations of insolvency proceedings at district courts) as well as carrying out model calculations for possible insurance models.

The assessment of current practice shows that the current levels of statutory protection are insufficient. In most cases, the additional costs of completion amount to 20 to 25% of the contract price. The defect warranty claims also occur to this amount. Coverage should at least be in place for this amount in order to protect the customer of the construction work in the event of the contractor going bankrupt. In the consumer sector, general contractors dominate the market with a market share of around 90%. In cases where the work is divided up into individual contracts, the need for coverage depends on the risk of the individual contractor going bankrupt. The architect advising the customer should decide whether security is required in the respective contract. For contracts between businesses, mandatory coverage is considered unnecessary.

In cases where all the work is performed by the same general contractor, the insurance premium for covering the risk of insolvency in the amount of the full construction sum – with a deductible of €5,000 – would amount to less than 1.5% of the contract price for the 80% of building companies with the best reliability, or less than 2.5% including quality control during construction. With individual contractors all belonging to the 80% of building companies with the best reliability, the premiums for covering their insolvency risk would amount to around 2.9% of the total contract price.