

Delivering expert knowledge
to global counsel



Construction - Germany

Revision of regulations on architects' and engineers' fees due in 2013

Contributed by **SIBETH Partnerschaft**

September 05 2011

Background

Reinstatement of consulting services

Planning and building in existing contexts

Other planned changes

Comment

Background

The Fee Structure Commission of the Engineers' and Architects' Associations and Chambers has resolved to reform the regulations on architects' and engineers' fees (which were revised as recently as 2009) by 2013. It aims to publish the seventh revision of the regulations that same year, in conjunction with the Federal Ministry of Transport, Construction and Urban Development.

The goal of the reform is to update and modernise certain performance areas in the regulations. In addition, certain defects of the 2009 revision of the regulations are to be remedied. The reform focuses especially on reinstating the consulting services which are summarised in Appendix 1 of the 2009 revision (ie, Parts VI and Parts X to XIII of the 1996 regulations for architects' and engineers' fees dealing with environmental compatibility studies, thermal properties of the building, insulation and room acoustics, soil mechanics services, earthworks, ground engineering and surveying services) into the binding part of the regulations; and revising the fee structure for planning and building in existing contexts.

Reinstatement of consulting services

In a June 12 2009 resolution, the Federal Council called on the federal government to carry out critical monitoring of the practical effects of the non-binding provisions in Appendix 1 and, if appropriate, to reinstate the binding character of the fees for "consulting services" in Appendix 1 of the ordinance. It is claimed that the need to reinstate the consulting services defined in Appendix 1 of the 2009 regulations to the binding part of the regulations has been demonstrated to the Fee Structure Commission by two independent reports commissioned from the Technical University of Darmstadt. The independent experts concluded that the removal of engineering services from the binding part of the regulations and their reclassification as consulting services was not technically justified, and had caused major disruption to the quality of contract awarding and the fees paid for these services. The details are not yet known. Reinstatement would therefore appear to be a foregone conclusion.

Planning and building in existing contexts

The provision on fees in Section 35 of the 2009 revision has not led to the desired results. In practice, the agreement of a surcharge of up to 80% has not been accepted as was intended. Realistically, only surcharges of up to a maximum of 40% could be achieved in negotiations. Therefore, it is being considered whether the chargeable costs of the building fabric included in the work should again be included in the fee calculation for services related to building in existing contexts. On this basis, a system is to be developed for the calculation of the chargeable costs

which is both practicable for principals without expert knowledge and detailed enough to permit a calculation which is less controversial than that which applied under Section 10(3)(a) of the 1995 version of the regulations. The following parameters are being discussed as possible factors to include:

- fee bands;
- fee rates;
- a surcharge system; and
- increases in chargeable costs.

Various models are under discussion, although no tendency towards any one model is yet apparent.

Other planned changes

In addition, the coordinating group of the individual trade working groups is considering the introduction of new areas of performance with regard to fire safety, urban design and building site regulations. In addition, the old terms 'basic performance' and 'special services' are to be reintroduced. No separate area of performance and no separate fee scale are to be created for performance involving existing structures. It is possible that the fee rates in the regulations for architects' and engineers' fees will be adjusted again and increased in 2013, given that the single 10% increase which has occurred since 1996 is not regarded as sufficient to remunerate the work of architects and engineers in a way that is appropriate to the market.

Comment

To meet the ambitious deadline for revising the regulations, the Federal Ministry of Economics commissioned an independent expert report on fee level and fee structure in mid-2011. The report should be available by mid-2012, so that the seventh revised version of the regulation can enter into the final discussion stage.

For further information on this topic please contact [Christian Felix Fischer](mailto:c.fischer@sibeth.com) at SIBETH Partnerschaft by telephone (+49 89 38 80 82 36), fax (+49 89 38 80 82 04) or email (c.fischer@sibeth.com).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Christian Felix Fischer



© Copyright 1997-2011 Globe Business Publishing Ltd

Online Media Partners

