

International Conference „Energy Management in Cultural Heritage“ from April 6th to 8th, 2011 in Dubrovnik / Croatia

**Workshop III – Legislation:
Overview of regional and European legislation regarding modern cultural heritage protection**

„The impact of EU Legislation on Cultural Heritage – Observatory Function of EHLF and implementation in the Federal Republic of Germany“

by Wolfgang Karl Göhner, Munich → (Folie 1)

<http://w-goehner.de/cms/uploads/media/2.46 - Denkmalrecht - Vorträge - UNDP-Konferenz Dubrovnik vom 06.-08.04.2011 - report.pdf>

Ladies and Gentlemen,

on behalf of the German National Committee on the Protection of Monuments and of the European Heritage Legal Forum I like to welcome you to this lecture → **(Folie 2)**. Thank you for giving me the opportunity to provide an insight into the impact of EU legislation on Cultural Heritage, the observatory function of the EHLF and the implementation in the Federal Republic of Germany.

The European Heritage Legal Forum (EHLF) → (Folie 3)

The EHLF was founded as a European consultation body in 2008 in Brussels. It is composed of representatives of several European countries who investigate the effect of EU legislation on European Cultural Heritage. Although Cultural Heritage is a major economic factor for Europe, especially from a touristic point of view, the European Union has no direct say on this. This field is reserved for the individual member states themselves. However, legislation in other areas, on which Europe has a say, such as the environ-

ment, working conditions or energy efficiency and so on increasingly affects the preservation of our historical monuments and landscapes. Of course, European legislation never purposely harms historical monuments, but there may often be harmful side effects, resulting from a law or a measure, whose consequences could not be assessed sufficiently in advance.

Time and again such harmful side effects to Cultural Heritage have to be countered in individual countries by implementing special or exception clauses if and where possible. In this respect, the EHLF aims to achieve, that in the future all intended EU legislation is assessed in advance, in order to detect harmful side effects that legal measures may have for Cultural Heritage. Recommendations for exceptions or for developing alternatives can then be formulated at an early stage and may even be integrated into the intended legislation.

Actual discussion and situation in Germany →(Folie 4)

The main discussion in Germany the years before was dominated by the extended utilization of nuclear power and nuclear power plants as a bridging technology as well as now in the days after the Fukushima-Desaster the German society wants to step out of this technology as soon as possible. Our society has to find long-term sustainable solutions to the energy problems of the future on responsibility for our survival and future generations. Germany therefore needs a comprehensive energy concept. The main political task will be to shape the transition to renewable energies in a pretty short period of time.

Promotion of energy efficiency measures on built monuments by law →(Folie 5)

For years the European Union as well as national and federal (Länder) administrations in Germany are engaged to support energy efficiency measures by law, to realize the ambitious aims of the energy efficiency legislation of the EU and the energy policy concept of the German government. The amendment of the Directive [2010/31/EU of May 19th,

2010] on the energy performance of buildings came into effect on July 18th, 2010 and became national law in all the Member States. In Germany the directive will lead to an amendment of the German Energy Saving Ordinance (EnEV), presumably in 2012.

As a lawyer and Senior Legal Adviser for Cultural Heritage as well as a former environmental representative, I was very pleased to see that the amendment of the directive on the energy performance of buildings once again allows special procedures for built monuments (about 1-3 % of the existing buildings in Germany) – possibly for archaeological artefacts and sites inter alia in connection with photo-voltaic systems in open spaces as well. So the preservation of the substance of the cultural remains of our common past is now a little bit safer than before.

In § 24 par. 1 of the German Energy Saving Ordinance (EnEV) 2009 in a special exemption clause for energy efficiency measures on built monuments it is clearly stated that matters of Cultural Heritage have priority over the implementation of energy efficiency measures.

In general, I like to underline, that the granting of a licence for energetic modernisation of a built monument as a rule has to be refused according to State Protection Laws, if the intended measures can adversely affect substance and appearance of a monument.

Assessment of energy efficiency measures on built monuments in German jurisdiction →(Folie 6)

In German jurisdiction and legal literature as well as in national and federal (Länder) legislation no clear understanding is found, that the promotion of electricity production from renewable energy sources has in the current constitutional situation no priority over other matters of society, like environmental protection, nature conservation and the protection of our built and archaeological heritage. In so far, according to the homogeneous German jurisdiction “no official interest for the adaption of external insulation on built

monuments exists, because built monuments don't have to meet the legal thermal insulation requirements for new buildings.” →(Folie 7)

In the political debate on the amendment of 16 – let me repeat: 16! →(Folie 8) – Monument Protection Laws in Germany not seldom there are increasing concerns about the possibility of legal decisions, instead of single-case arbitrary decisions about measures on a historical monument, as the implementation of energy efficiency measures should have priority over the matters of Cultural Heritage – all this in Cultural Heritage Protection Laws, of course!

It is a very important, basic necessity in principle, to analyse such legislative attempts for legal priorities in favour of singular public interests over other public interests.

A comprehensive balancing of interests with the interests of preservation of Cultural Heritage is imperative. Only then, an appropriate solution, depending on local conditions, can be achieved in every single case.

Promotion of energy efficiency measures on built monuments by law: “Scrap bonus for replacement buildings after demolition of older buildings” →(Folie 9)

In current plans of the Federal Government of Germany a “scrap bonus for replacement buildings after demolition of older buildings” is discussed, which will, figuratively speaking, urge the owners of old buildings and built monuments to demolish their buildings - unsuitable for energetic modernisation to the standards requested- , in order not to lose the economic profits promised by the government. It goes without saying that this will cause fatal damage to our historic towns, villages and cultural landscapes. This plan creates unacceptable hardships for the owners of built monuments, just like the no longer pursued plans, to bring all buildings in Germany to a “zero-emission-level“ by 2050. On the one hand, owners of built monuments are bound to preserve their property by Monument Protection Law. On the other hand, a suitable support programme for energetic modernisation, in a monument friendly way, does not exist.

So, special funding regulations for energetic modernisation of these built monuments should be found. This would open the door to recognize the eligibility of built monuments for the first time and to make the funding of energy-saving improvements possible, even if the energetic standards of new buildings might not be reached in the end, with respect to the characteristic features of the built monuments.

Activities of the European Committee for Standardization (CEN) →(Folie 10)

With regard to the ongoing activities of **European Committee for Standardization (CEN)** it became clear that the establishment of common criteria with regard to the increase of energy efficiency of monuments, which on the one hand follow predominantly the system of the Laws of Monument Protection, on the other hand deal with the possibilities and limits of the increase of energy efficiency however would be worth to be aspired.

Besides, it would be very crucial and helpful, to improve the quality of energetic consulting and restoration with regard to the guidelines of monument protection.

Energy-related modernisation in historic districts or Ensembles: →(Folie 11)

In recent German jurisdiction social restrictions on individual property are interpreted in the way that it is of general interest to take into account the legal obligations of Cultural Heritage owners. According to the judgement of the Federal Administration Court of Germany every owner of a built monument can legitimately challenge permissions for building projects on neighbouring properties in courts, if these projects affect the historical value of his built monument. So, not only the building substance of a built monument is protected by monument protection law, but also the appearance of historic districts or Ensembles as a whole, in most cases regardless of the worthiness of protection of individual built monuments found in it. A historic district or Ensemble – an entire area containing different structural works – has to be recognized and treated like a built mon-

ument and changes in the surrounding area of a historical monument are also defined by law, just like changes on built monuments. In order to implement energy-related measures on built monuments in historic districts, it is therefore absolutely necessary to take into consideration the protection and the appearance of the built monument as well as the historic district (Photo: historic district: Historic City Center of Nuremberg, view from the north tower of St. Lorenz towards the Castle, around 1870/1880) →(Folie 12)

Example: External insulation → (Folie 13)

Around the turn of the year a heated debate arose in Germany about the question: “Why should it be wrong to hide our buildings and towns behind uniformed thermal insulating panels?” Terms like “German insulation-mania” and “disfigurement of historical monuments” could be heard and the demand for higher sensibility in reconstruction was expressed in public and in the media (Photo: External insulation on a built monument, located in northern Bavaria. Güntersleben, Administrative District of Würzburg) – here you can see a comparison “External insulation: arguments pro and contra on the usage on historical monuments” →(Folie 14)

In the middle of this discussion external insulation could lead the way to reach an acceptable reconciliation between energy efficiency and monument preservation, if the preservation of historical facades, which means historic buildings and districts is guaranteed

We still have look upon the new actual developments f. e. in Germany following the Fukushima-Desaster. You don't have to be a prophet to see many new large windcraft plants all over Germany and at least changing our Cultural landscape. And in the same way, politicians may try to solve the missing of nuclear power utilization in the future with a massive increase of many efficiency measures on existing buildings and historical monuments.

So we all have to pay attention to what will happen to us, to our built and archaeological Cultural Heritage and the so-called "Common Sense"!

The complete replete report is available as pdf file on my homepage. →**(Folie 15)**

Thank you very much for your attention. →**(Folie 16)**

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