

The Task of the EHLF is "To ensure that improved and timely information on the development and consequences of legal acts developed by the European Union which may pose a potential threat to cultural heritage are conveyed to the national competent authorities."¹

Report (update) of the European Heritage Legal Forum (EHLF) to the 7th Session of the European Heritage Heads Forum (EHHF) from May 23th to 26th, 2012 in Potsdam / Germany

for EHLF by Wolfgang Karl Göhner, Munich

http://w-goehner.de/cms/uploads/media/2.63_-_Denkmalrecht_-_Vorträge_-_7._EHHF-Konferenz_Berlin-Potsdam_vom_23.-26.05.2012_-_EHLF-report

Mr. Chairman,
Ladies and Gentlemen!

As a member of the EHLF-Secretariat → **(Folie 1)** I like to welcome you to this report on behalf of the European Heritage Legal Forum (EHLF). You shall find the report also in the printed version which is handed out to you already.

As we reported last year, in our update for the last period → **(Folie 2)** we can refer also this year to fine successes.

At first let us refer to **legal policy issues**. In the sector of EU Financial instruments there is still important the **Common Agricultural Policy (CAP)** → **(Folie 3)**. As we discussed and pointed out yesterday too also for CAP the interest of the CH sector has to be that the protection of cul-

¹ EHLF Operational Guidelines.

http://www.riksantikvaren.no/Norsk/Prosjekter/European_Heritage_Legal_Forum/Operational_Guidelines/

tural landscapes and the charges for the services are **recognized and directly included**. CAP-funding esp. for tourism aid or for regional planning and development have to be secured also in the new period against some strong interests for reducing these large sums of funding for example for rural heritage.

Last year we reported also about the renegotiation of the **Cohesion and Structural funds** towards 2013. They have in many cases provided interesting funding for the built and archaeological heritage too. The networking and lobbying of EHLF too was helpful, so in the end – I hope so – we were informed one month ago that the danger of substantial reduction of cultural heritage relevant funding in the upcoming EU legislative package which will set the framework for the cohesion policy for 2014-2020 seems to be banned already. For example in the European Regional Development Fund (ERDF) its funding will be based in the future in the Art. 5, 7 and 10.

In any case, a creative use of the terms "urban", "tourism" and "culture" seems to be feasible and an attractive way to promote conservation projects about ERDF. An extension of the eligible funding for ERDF 2014-2020 to the architectural heritage of the cities in every Member State should always be required, articulated and communicated from every Member State of the European Union.

Now, really problematic seems to only to be the Annex to Art. 6 where you can find under "Social Structure" an indicator for Cultural Heritage which defines its value as the number of visitors. Such definitions in regulations are not in line with the positive tasks of the EU according to Art. 3, para. 3, subpara. 4 EUT or the spirit of Art. 167 EUFT. The EHLF-Secretariat believes that measuring (and regulating) the positive effect of cultural heritage by focusing only on the number of visitors, not seldom tourists is dangerous; also it is understandable that parameter is needed for Cultural Heritage too, such one sided instrumentalization of the Cultural Heritage value leads at all to a loss and in the end

to meaningless values in term of the well-being of citizens, the aesthetic appearance and the historical continuity. Cultural heritage then would have been reduced to pure entertainment and exclusively reserved for the tourists; the people who live in the same place as the heritage are excluded from having any relevant and valuable benefits.

Another outstanding issue → **(Folie 4)** was the result of the proposal of the European Commission for an 8th EU Framework Programme for Research and Innovation (HORIZON 2020). Cultural Heritage Research has been omitted completely, thus taking away all the funds previously available for research in this field. This decision will have serious consequences, since the whole basis for the cultural heritage conservation research in Europe will be eliminated, probably for many years to come.

Against this background, some members of EHHF, EHLF and other European and national CH-Organisations took the policy initiative to argue strongly for the inclusion of cultural heritage research in HORIZON 2020. Several other actions for online petitions to be addressed to the European Parliament and the European Council with the same goal have been taken.

The European cultural heritage research community request the EU to acknowledge fully its responsibility to directly include cultural heritage research on its agenda and to address the topic appropriately in the 8th Framework Programme. In Germany the 16 States (Länder) were asked to request a separate cultural heritage research-programme with an adequate budget (at least 16 Euro-Cent / EU-inhabitant / per annum). The argument is that only in this manner our societies will be able to manage and handle such major challenges as climate change, energy efficiency and the scarcity of natural resources.

The EHLF Members as well as some ICOMOS International and National Committees → **(Folie 5)** have just started a discussion about including a collaboration on

questions relating to similarities and differences in national legislations resulting from transformation and implementation of EU legislations.

Members have worked for example on the illegal trade with archaeological finds based on EU-Directive and regulations on the return of cultural objects unlawfully removed from the territory of a Member State. In addition they have exchanged experiences on different approaches in the member states for taxation esp. VAT connected to cultural heritage and ownership. Further on the implementation of the European Energy Efficiency Directives into National Law shows that the value and worth of Cultural Heritage is judged in a very different manner in the EEA Member States and that reactions are very different when a confrontation with other more “popular” or high-profile policy fields like climate change, energy efficiency, wind energy is perceived. Yesterday I had the honour to emphasize this fundamental European and as well national problem. We all have to find solutions on this main issue, although also EHLF normally is working on special issues too.

The absolute focus of our EHLF work was undeniably the intensification of our European network for Cultural Heritage. So, please allow me a few words on this important policy and cooperative issues:

Most important → **(Folie 6)** was the initiative of the Belgian EU-Presidency for the Conference on Cultural Heritage in December 2010 in Bruges/ Belgium. The EHLF contributed to and accompanied this 2011 and the following 2012 Conference in Wroclaw / Poland as well. Through this “EU Reflection Group” EHLF become a dialogue partner of DG Education and Culture. There are on-going talks on how we can cooperate to the benefit of both parties, also on issues of early warning or possibly relevant legislation. It's basically again a question of how the concerns of cultural heritage can be brought out better in the various EU policy areas such as energy, environment, etc.

During this reporting period EHLF also affiliated to the “3.3 Alliance”, which is a grouping of NGO’s under the auspices of Europa Nostra. For the EHLF the affiliation is a source on information about on-going affairs as well as a channel of information out to the relevant actors.

EHLF became further on a member in the EU Transparency Register, which gives access to actual EU Consultations as well as “hard to find”- information on internal events in the EU, including start-up of expert groups initiating legislation, revision of directives and hearings. One of these actual EU Consultations concerns the financial support for Energy Efficiency in Buildings. In the basic EU Directive there are possibilities for essential and substantial protection of monuments, if the Member States wanted to implement also this partly exemption. Such a corresponding measure was still missing in the EU Consultation paper; although on one hand this might be correct in a systematic way, it seems to be on the other hand a substantial threat against the protection and conservation of monuments, if it becomes also by this new funding possibility more and more difficult for owners of monuments to accept the speciality of their monument. Therefore EU financial support does need an implemented special solution for monuments!

At least the EU Commission has already set up a new European Expert Network on Culture (EENC). The Network will support the Commission in the analysis of culture policies and their implications at national, regional and European levels. EECN shall give advice and support in EU policy development. Following an open call of tender, the EU Commission has decided to entrust the Network to a consortium led by Interacts and Culture Action Europe. At this time Cultural Heritage seems weakly represented in this expert group. To strengthen Cultural Heritage and – you all know, to fulfill the EU obligations under both EU Treaties – to win Cultural Heritage Expertise has to be a priority task for the EU Commission and the National Governments.

Thirdly let me inform you about some organisational and internal events → **(Folie 7)**. EHLF has decided in the past to

reduce its full meetings on one annually and to add it to the yearly European Heritage Forums. As the last one took place in Wroclaw on September 13th, 2011 during the Polish Presidency it is planned to have the 6th full meeting in Nicosia in the mid of October 2012 under the Presidency of Cyprus.

In Amsterdam we informed you about major changes in the composition of the Secretariat at the end of 2012. The representative of the Netherlands, Jacques Akerboom, will leave EHLF totally. We all are very glad that our Chairman, Dr. Terje Nypan, will only withdraw from the Chair, but will still remain in EHLF and its Secretariate; Secretariate and the full meeting in Wroclaw accepted the proposal that I will be his follower during our Cyprus meeting. The Secretariate decided further on to suggest Jacek Brudnicki as a new Member of Secretariate to the Full Meeting in Cyprus.

Finally, five **conclusions** have to be kept in mind: → **(Folie 8)**:

- The observatory function relative to legal policy matters in Brussels and Strasbourg is functioning fairly well. But as long as the work at national level is sub-optimal the capacity to influence policy and legal issues in Brussels and Strasbourg will remain a weak point. In this respect the results of the Belgian initiative in establishing a more permanent and formal contact and dialogue with the EU Commission is of great importance.
- Following this it seems absolutely necessary to get a better organisational work basis. The coordination and the quantity of important EU informations have shown that there is a need for one person in EHLF, which does nothing else. That has to be financed, but on the other hand that would be a tremendous asset to the European Cultural Heritage as well as for the EU, the EEA and both its Member States.
- Experience demonstrates that the next important workload for the EHLF would be to follow up the legislative developments at the national level. This is the area where

there is need for policy competence to work at a cross-ministerial level (cross-sector). The comparison of law, on the basis of at least one or two languages, would be another tremendous asset not only for EHLF!

- In addition to promoting the formalizing of communication with the EU Commission, the Secretariat wishes to be able to give priority to supporting and developing the cross-sector policy work of its members at the national level in the coming years.
- We must expect the aftermath of the debts-crisis to negatively affect the work also in the coming year.

→(Folie 9)

Thank you very much for your attention.

Wolfgang Karl Göhner, Munich

Permanent Senior Legal Adviser of the
Bavarian State Conservation Office (BLfD)
Visiting Lecturer of the Otto-Friedrich-University Bamberg
Vice-President of the Working Group on Law and Taxes of the
German National Committee on the Protection of Monuments (DNK)
Member of the Secretariat & German Representative
in the European Heritage Legal Forum (EHLF)
Member of the German Mirror Committee
"Protection of Cultural Heritage" (CEN/TC 346)
Vice-President of the Union of Higher
Civil Servants in Bavaria (VHBB) e. V.
Homepage: <http://w-goehner.de> (Jurisprudence,
Monument Protection Laws, Publications)