Germany - Planning Systems

Introduction

Political and administrative organisation

Germany is a federal republic consisting of 16 States (Land, plural Länder), three of which are City States: Berlin, Bremen and Hamburg. Germany’s spatial landscape is characterised by a large number of medium and small towns as an inheritance from the time. “Decentralised concentration” is the spatial strategy that guides spatial planning in Germany. It is based on the concepts of central places and development axes. It implies that population, workplaces and infrastructure facilities are concentrated in agglomerations of different sizes that spread quite evenly over the whole country. It involves several intermediate centres, surrounded by smaller centres, situated along axes of transport facilities: roads and railways to create a network of cities with different functions, instead of a major city with an accumulation of inhabitants, activities and services.

Planning Framework

1. Administrative structure

The German constitution (Grundgesetz, literally, “Basic Law”) defines the country’s system as a democratic, constitutional, social and federal country. One of the main consequences of these principles is the separation of powers both in functional/administrative partitions and at territorial levels. The functional (horizontal) separation means, that the political power is divided into legislative, judiciary and executive. These powers are completely independent from each other. This organisation was chosen to secure the country from an abuse of power as it happened during the period of National Socialism. The territorial (vertical) partitioning of power is reflected in the Federal character of Germany. Each of the 16 States has a constitution, an elected parliament and a State government. Each State is further divided into cities and counties.

The States (Laender) have the political and administrative power to decide nearly all questions related to affairs within their territory and liability, while the Federal government mainly administrates and decides questions of national importance, such as foreign affairs, defence and national finance. In addition, the Federation has some powers regarding parts of infrastructure and environmental matters. It also owns the highest courts to guarantee a harmonised interpretation of law. One of the most important principles of the federal system in Germany is the subsidiary concept, which means that every decision should be made at the lowest possible political level. A higher political level should intervene only, if the subject cannot be handled or organised by the lower one.

2. Administrative competences for planning
Similar to the political and administrative federal system in Germany which is based on a division of competence and power at different levels, spatial planning is organised hierarchically. Although, the Federation represents the top of this spatial planning hierarchy, it has only framework responsibilities and no direct planning competence. On the contrary, the municipalities represent the basic planning level where the main spatial planning authority is located. In addition, the States have planning authorities on their territory and the regions are responsible for sub areas of each State. Beyond these national levels, the European spatial development concept represents a guideline for national plans of the member countries. The most important aspect in this hierarchy is again the above-mentioned subsidiarity rule.

This hierarchic system of spatial planning in Germany is governed by two basic principles, namely: “municipal planning autonomy” and “mutual influence”. The first principle means that the municipalities are autonomous and responsible for spatial planning in their territory according to the principles and guidelines defined by higher levels. This municipal autonomy is guaranteed by the federal constitution that emphasises the municipal self-government. Consequently, the Federation and the States cannot withdraw this right from the municipalities. Based on this right, municipalities have an information, participation and hearing right during super-ordinate planning, e.g. infrastructure planning.

The Federation and the States are obligated to take interests and plans of the municipalities into consideration. Meanwhile, each lower level is obliged to consider the guidelines and principles of the higher level. These two aspects comprise the principle of “mutual influence”. Consequently, in the above-mentioned hierarchy, spatial planning authority and competence starts from the top with framework and coordinating tasks and powers, while direct and detailed competence are vested in the lower levels. Hence, each planning level has different tasks, deals with a different coverage, and delivers different degrees of details in respect to both plan preparation and planning legalisation.

### 3. Planning legislation

**Main planning legislation**

Regarding spatial planning legalisation, the Federation enacts a framework law called the Federal Act on Spatial Planning (Bundesraumordnungsgesetz - ROG). This act has a framework character. In this framework, each State can regulate its State planning and regional planning in more detail in a State spatial planning law. In addition, the Federal Act enacts the regulations for planning at the municipal level. Each planning level, except the Federal level, can prepare spatial plans - the Federation can only give guidance and support for State and regional planning levels. These plans have a final character, which means they show a final wished status of the situation and how it should be at the end of their validity.

Though the municipalities are considered autonomous in their planning for spatial development, both the Federation and the States introduce financial programmes to guide and support specific development trends and activities. In addition, the federal level and the State level attempt to initiate and support discussions about spatial strategies through innovative programmes and pilot projects.
1. Planning system

Plan making:
In reviewing the planning system in Germany, “change” is understood as the attempt to realise, influence or preserve a specific spatial order. Change also implies any activity that has spatial impacts. The following table shows the different types of change at different levels in Germany:

<table>
<thead>
<tr>
<th>Table 1: Planning system on four levels.</th>
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<tbody>
<tr>
<td>Federal - Framework planning</td>
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<td>The highest and most abstract type of change in Germany is concerned with preparing the spatial guidelines for the whole Federation. This task is assigned to the Federation by the Federal Act on Spatial Planning and is defined as preparing a comprehensive interdisciplinary and interregional framework for the spatial development in the whole country, taking into consideration the goals of the European spatial development policy. Consequently, spatial planning authorities at the Federal level are limited to defining principles for spatial planning.</td>
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<td>State - State development plan</td>
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<td>The main task of spatial planning at the State level is to prepare strategies for the spatial development of the State territory. Each State should prepare a State Development Plan that represents the strategy for the spatial development of the State. This plan is concerned mainly with the coordination of activities that have State wide spatial significance and have to consider the special situation in different regions of the State. A ministerial conference on spatial planning is held to coordinate the development plans of the different States.</td>
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<tr>
<td>Regional - Regional plan</td>
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<td>The main function of regional planning is the interdisciplinary and inter-municipal coordination of urban development, taking account of the binding goals and principles of the State plan. In addition, regional planning is responsible for defining and allocating functions and infrastructures of regional significance. In Germany, the State laws regulate regional planning. Hence, they vary from one State to the other. The three city-States (Berlin, Bremen, Hamburg) and the State of Saarland have waived this planning level completely. In some small States, the State prepares the regional plans for its regions. In most States, the municipalities form regional planning associations. Hence, they are participating directly in formulating the regional plans.</td>
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<td>Municipal - Land use plan</td>
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<td>Aiming at safeguarding a sustainable urban development and a socially equitable utilisation of land for the general welfare of the community, the main task for municipalities regarding urban land-use planning, as defined by law, is to prepare and control the use of land within the municipality, for development or for other purposes. Each municipality is responsible for preparing land-use plans - as soon as needed and to the extent that is required for urban development - in accordance with the regional development policy. Urban land-use planning on the municipal level is based on a two-tier system:</td>
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<td>- The first level implies the preparatory land use plan. Based on the intended urban development, this plan defines the type of land use for the whole area of the municipality.</td>
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<td>- The second level implies the development plan, which represents the legally-binding land-use plan. It defines the detailed type and use of individual land parcels or part of the municipalities.</td>
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<td>Municipal - Legally binding land use plan</td>
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### Table 2: Authorities Issues

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<tr>
<th>Level</th>
<th>Description</th>
<th>Name</th>
<th>Description</th>
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| Federation (Federal) | Ministry responsible for development and/or environment Parliament | - Federal Act on Spatial Planning  
- Federal Town Planning Act  
- Land Use Ordinances  
- Map sign Ordinances  
- Special Provisions for development and urban renewal  
- Ordnances and Statutes Programmes | - Principles of the country’s spatial organisation taking account of European Union spatial policy and setting a framework for the States  
- Legal regulations affecting municipal planning: types of plans, range of potential contents, procedures, public participation. |
| State (Land)   | Ministries State Parliament                  | - State Planning Act  
- Design Guide Ordinance  
- State Building Code  
- State Development Program  
- Approval of regional plans  
- Approval of preparatory land-use plans | - Laws for State and regional planning: General guidelines for regional and local planning  
- State development programmes  
- State developments plans |
| Regions (Regionen) | Regional associations                       | - Regional plans  
- Regional landscape plans | - Goals and principles for regional development. |
| Municipality (Gemeinde) | Municipality, Council Development control office | - Preparatory land use plans (1:10,000) | - Made for the entire area of the community, fixing the main directions of future urban development. Obligations only for public authorities which were involved in its preparation. |
| Legal, binding land-use plan (1:5,000 resp. 1:1,500) | | - Local statute to which all building and development must conform. Regulations: density and type of land use, public and private spaces, building mass, etc. |

### Table 3: Glossary Germany (source: ARL)

**Federal Building Code**
The Federal Building Code is the most important plank of urban development law. It contains four chapters:
- Chapter One: General Urban Planning Law;  
- Chapter Two: Special Urban Planning Law;  
- Chapter Three: Other Provisions;  
- Chapter Four: Transitional and Concluding Provisions.

**General**
Urban planning law covers such areas as urban land-use planning, building permission, land reallocation, reappropriation and compensation, infrastructure provision and servicing, and nature conservation. Special urban planning legislation is concerned principally with urban rehabilitation, urban development and redevelopment, the preservation of physical structures and the specific character of areas, and urban development enforcement orders. Other provisions deal with valuation, competencies, administrative procedures and planning safeguards.

**Federal Spatial Planning Act**
Since the federal reform of 2008, the Basic Law assigns competence in spatial planning to the federal, state, and local governments in the context of concurrent legislation (formerly framework legislation). Federal law sets the fundamental issues of spatial planning; the states can derogate from the provisions adopted. Under the Federal Spatial Planning Act as currently amended, the federal function is not limited to formal, organisational arrangements, but can also lay down substantive spatial planning principles constituting the general, superordinate model for spatial development planning, and protection of the national territory. An amended version of the Federal Spatial Planning Act is planned following changes in the distribution of competencies between the federal and state governments under the federalism reform. Over and above the Federal Spatial Planning Act, the federal government has legislative and administrative powers in a number of other fields of relevance for spatial planning at the national level (e.g., spatially relevant sector planning).

**State Spatial Planning Act**
State spatial planning acts govern spatial planning within their territories on the basis of the Federal Spatial Planning Act. All states – except the city-states of Berlin, Bremen and Hamburg – have enacted state spatial planning acts, however they differ in many aspects. Some states restrict the scope of legislation to organisational matters and instruments; others go beyond this minimum content to include substantive provisions in the form of spatial planning principles.

**State Development Programme / State Development Plan**
State development plans outline the desired spatial and structural development for the territory of the state. The name given such plans varies from state to state. They are termed state development plan (Landentwicklungsplan), state spatial planning programme (Landesraumordnungsprogramm), state development programme (Landentwicklungsprogramm), etc. Plans for sub-divisions of states (regions) are referred to as regional spatial structure plans (Regionalraumordnungsplan) or regional plans (Regionalplan) (see regional plan).

**Preparatory Land Use Plan**
For the entire municipal area, the zoning plan (German Federal Building Code) lays out the general outline of land-use by type, as resulting from intended urban development and according to the foreseeable requirements of the municipality. The zoning plan as the preparatory land-use plan (Federal Building Code) thus contains the views of the municipality about future land-use and prepares the building and other uses of the land parcels in the municipality. In particular, the type of built land-use, public institutions, green space (regional green belt), agricultural and wooded areas can, for instance, be laid out. The zoning plan is binding only for the local authorities. The plan thus represents a commitment by the municipality to implement its contents, but it has no directly binding effect on citizens. The plan must be passed by the higher administrative authorities. The Federal Building Code requires neighbouring municipalities to draw up a joint zoning plan if their urban development is significantly determined by shared conditions and requirements, or if a joint zoning plan permits a fair balancing of different needs. To this end, municipalities and other public planning authorities can join together to form a planning association, which then – subject to its statute – replaces the municipality in land-use planning and its execution.

**Zoning Plan**
The Local Building and Construction Plan is the binding land-use plan and as such con-sists of legally binding stipulations for the urban development ordinance. It is always to be developed from the Zoning Plan. It is possible to regulate, for instance, the type and amount of land-use, building coverage or measures intended to compensate for interventions, areas for secondary developments such as parking spaces and car-areas, traffic areas or green spaces. The Local Building and Construction Plan also forms the basis for further measures intended to help execute the German Federal Building Code, for instance measures related to land holding, expropriation and development. The municipality is to issue the Local Building and Construction Plan as a legally binding planning statute, i.e. citizens are also bound by the contents of the plan. According to the German Federal Building Code, when considering the legal permissibility of a proposal in terms of development planning law, a distinction is made between the qualified Local Building and Construction Plan and the simple Local Building and Construction Plan. In con-trast to the latter, the former contains at least stipulations concerning the type and amount of land-use, permitted building coverage and local traffic areas. In addition the German Federal Building Code recognises the Proposal Related Local Building and Construction Plan as a subset of the Local Building and Construction Plan. This consists primarily of a plan of the proposed development and related infrastructure.