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## **Objectives, principles and other requirements of spatial planning**



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URN: 0156-559928272

*This is a translation of the following entry:*

Runkel, Peter (2018): Ziele, Grundsätze und sonstige Erfordernisse der Raumordnung. In: ARL – Akademie für Raumforschung und Landesplanung (Hrsg.): Handwörterbuch der Stadt- und Raumentwicklung. Hannover, 2989-3000.

*The original version can be accessed here:*

urn:nbn:de:0156-55992827

Typesetting and layout: ProLinguo GmbH

Translation and proofreading: ProLinguo GmbH

Recommended citation:

Runkel, Peter (2018): Objectives, principles and other requirements of spatial planning. <https://nbn-resolving.org/urn:nbn:de:0156-559928272>.

# Objectives, principles and other requirements of spatial planning

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**Objectives, principles and other requirements of spatial planning (Raumordnung) are key terms of spatial planning law, which are defined in section 3 of the Federal Spatial Planning Act (Raumordnungsgesetz, ROG) and linked to the legal consequences stipulated in section 4 of the Act vis-à-vis public bodies and private persons equivalent to them.**

# 1 Requirements and binding effects

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Objectives of spatial planning, principles of spatial planning and other requirements of spatial planning jointly form the requirements of ▷ *Spatial planning (Raumordnung)*. They are key terms of ▷ *Spatial planning law (Raumordnungsrecht)*, which the federal legislator defined conclusively in section 3(1) of the Federal Spatial Planning Act. They are legal prerequisites for the legal consequences in the sense of a binding effect pursuant to sections 4 and 5 of the Federal Spatial Planning Act. Only requirements of spatial planning generate binding effects in terms of spatial planning law in a tiered form for spatially relevant planning and measures of other bodies. If the other bodies are agencies in their own right, e.g. local authorities in regard to municipal ▷ *Urban land-use planning*, the binding effects of spatial planning are equivalent to legal effects.

If a statement on spatial planning is not a requirement of spatial planning in the legal sense, other bodies are not legally bound by it pursuant to section 4 of the Federal Spatial Planning Act. While resolutions by the Conference of Ministers for Spatial Planning (*Ministerkonferenz für Raumordnung, MKRO*), for example, do not comprise other requirements of spatial planning and therefore do not entail any legally binding effect, their impact is rather based on the persuasiveness of their technical arguments and the consensus of the highest level of sectoral administrations expressed within them. Parties do not adhere to these resolutions because they are legally compelled to do so, but because they consider the positions expressed in them to be convincing.

The need to differentiate requirements of spatial planning from the objectives of spatial planning, principles of spatial planning and other requirements of spatial planning results from the varying intensity of the binding effects that stem from them (legal consequences). Section 4 of the Federal Spatial Planning Act differentiates between two types of binding effect: the duty to comply and the duty to consider. They differ in regard to the strictness of the duty. The duty to comply is of a more strictly binding nature compared to the duty to consider. Compliance in the legal sense means to adhere. The duty to comply cannot be overruled through the ▷ *Weighing of interests* in the planning process. The duty to consider, on the other hand, is relevant for subsequent weighing processes and discretionary decisions on spatially relevant planning processes and measures. The requirements of spatial planning that have to be considered must be included in the weighing process and assessed; a decision must then be taken about them in the overall context of all public and private interests affected by the planning or measure.

Objectives of spatial planning are only binding on public bodies for their spatially relevant plans and measures by virtue of their power to undertake spatial planning (section 4(1), sentence 1 of the Federal Spatial Planning Act). This is based on a perception of spatial planning as the ‘planning of planning’, or as supra-local planning compared to the local planning by public bodies. The same applies to the relationship of integrated spatial planning to sectoral planning. In view of the increasing privatisation of public tasks, section 4(1), sentence 2 of the Federal Spatial Planning Act stipulates that persons under private law (e.g. public companies [AG] or limited liability companies [GmbH]) that are controlled by public bodies and that carry out public tasks (formal privatisation, e.g. Deutsche Bahn AG in regard to the railway network) or that fund the planning and measures mainly with public funds are to be treated as equivalent to public bodies.

Increasingly, spatially relevant measures on the part of private parties are also governed by

objectives of spatial planning due to spatial planning clauses in sectoral laws. This applies, e.g. to certain spatially relevant projects (= measures) in the outer zone of urban areas pursuant to section 35(3) of the Federal Building Code (*Baugesetzbuch, BauGB*) (▷ *Permissibility of projects in building law*). As these clauses are binding provisions of sectoral law, they may provide for a somewhat weaker binding effect in spatial planning law. Section 35(3), sentence 3 of the Federal Building Code stipulates that an objective of spatial planning in general precludes certain spatially significant projects in the outer zone of urban areas (e.g. a wind farm) if such an order (= stipulation) has been made elsewhere. Thus the strict duty to comply with objectives in section 4(1), sentence 1 of the Federal Spatial Planning Act thus becomes a general duty to consider in relation to certain spatially relevant measures by private parties in the outer zone of urban areas, which also allows for exceptions under certain circumstances. Section 4(1), sentence 3 of the Federal Spatial Planning Act clarifies this point.

As the legal consequences of the duty to comply are stricter than those of the duty to consider, the legal prerequisites that must be met to impose such a wide-ranging binding effect on other bodies or agents are necessarily more extensive.

If the legal prerequisites (the requirements of spatial planning must be satisfied) are combined with the legal consequences (duties to comply or consider), the following applies: Objectives of spatial planning trigger duties to comply, while the principles and other requirements of spatial planning trigger (only) duties to consider. This means that objectives of spatial planning are subject to much stricter material and procedural requirements than the principles and other requirements of spatial planning. The diverse legal debates regarding statements on spatial planning mostly concern the question of whether a given statement is an objective or a principle of spatial planning. This distinction between principles and other requirements of spatial planning is, on the other hand, of secondary importance as a different designation would not affect the legal consequences.

## 2 Requirements of spatial planning

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Section 3(1) no. 1 of the Federal Spatial Planning Act provides that requirements of spatial planning for the purpose of the Federal Spatial Planning Act mean objectives of spatial planning, principles of spatial planning and other requirements of spatial planning. The intent and purpose of this provision is primarily to distinguish the requirements of spatial planning, which entail legal binding effects in the sense of section 4 of the Federal Spatial Planning Act, from those statements on spatial planning that do not result in any legally binding effects within the meaning of the Act. The last group is rather diverse: spatial planning reports by the federation and the federal states (▷ *Reports on urban and spatial development*), resolutions by the Conference of Ministers for Spatial Planning or recommendations of the Advisory Council on Spatial Planning (*Beirat für Raumordnung*), the European Spatial Development Perspective (ESDP; ▷ *European spatial development policy*) or the guiding principles for spatial development of the federal territory pursuant to section 26(2) of the Federal Spatial Planning Act (▷ *Guiding principles for spatial development*). It also includes cabinet resolutions or general administrative regulations, which may give rise to (internal) binding effects vis-à-vis other authorities, but not in the sense of

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requirements of spatial planning (on the entire subject, see also ▷ *Planning law*).

Stipulations in spatial development plans may have the nature of objectives or (planning) principles of spatial planning as well as other statements that are not requirements of spatial planning. This applies, for instance, to allocations from other plans recorded for information purposes, but which the planning agency has not adopted as part of its plan based on the principles of the weighing of interests. Political declarations of intent that have not been adopted in spatial planning stipulations are also included here. Likewise, the justification to be attached to the plan (cf. section 7(5) of the Federal Spatial Planning Act) is not per se a requirement of spatial planning but explains the stipulations of the plan, which may in turn constitute requirements of spatial planning.

If a statement on spatial planning amounts to a requirement of spatial planning, the nature of the requirement must be identified due to the different legal consequences resulting from it. This question of the difference between the objectives of spatial planning on the one hand, and the principles and other requirements of spatial planning on the other hand, must not be left unresolved due to the different binding/legal effects.

The distinction between objectives and principles of spatial planning is difficult, particularly in cases where planning practice and the legislator, in line with practice, have developed types of stipulation for the differentiated, flexible steering of spatial development processes; these types of stipulations impose intermediate forms of legal consequences, ranging between the duty to comply and the duty to consider. The debate in connection with the stipulations pursuant to section 8(7) of the Federal Spatial Planning Act currently concerns reserve areas and suitable areas for development (▷ *Priority area, reserve area and suitable area for development*). According to the prevailing view (Runkel 2010b: L § 3, para. 182 with further references), reserve areas comprise a principle of spatial planning which imposes (as far as legal consequences are concerned) a duty to consider with weighting specifications and thus restricts the planning weighing and discretion of others to a greater extent; this means that greater justification is required to override such a principle in a subsequent weighing of interests in connection with a spatially relevant planning or measure. As far as suitable areas for development are concerned, the prevailing opinion (Runkel 2010b: L § 3, para. 55 with further references) is – at least since the newly worded section 8(7), sentence 1 no. 3 of the Federal Spatial Planning Act – that they represent objectives of spatial planning in regard to the effects both within and outside the area concerned.

### 3 Objectives of spatial planning

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The legislator imposes the strictest requirements for objectives of spatial planning, as they have the most far-reaching binding effects. Objectives of spatial planning are conclusively defined in section 3(1) no. 2 of the Federal Spatial Planning Act. In addition, the general requirements of the rule of law must be satisfied, e.g. the objective must be within the remit of spatial planning as defined in section 1(1) of the Federal Spatial Planning Act. This issue is topical in the relationship between spatial planning and spatially relevant sectoral planning, especially if the objectives of spatial planning are to be used to set binding specifications for requirements planning by the sectoral planning agencies. For example, while the routing for a federal motorway can be kept clear of other uses (in particular municipal settlement development) by means of an objective

of spatial planning (keeping an area free for future use, so-called *Freihaltungsziel*), this does not result in any binding effect on the federation as a sectoral planning agency to include this motorway route in its requirements planning (Runkel 2010b: L § 1, para. 45 et seq.; ▷ *Spatially-relevant sectoral planning*).

### 3.1 Binding requirements in the form of stipulations in spatial development plans

Objectives of spatial planning are a specific type of stipulation in spatial development plans. Pursuant to section 3(1) no. 7 of the Federal Spatial Planning Act, spatial development plans include the spatial development plan for the territory of a federal state pursuant to section 8(1), sentence 1 no. 1 of the Federal Spatial Planning Act, the plans for the subareas of the federal states (regional plans) pursuant to section 8(1), sentence 1 no. 2 of the Federal Spatial Planning Act and the federal spatial development plans pursuant to section 17 of the Federal Spatial Planning Act. It also follows from section 7(1), sentence 2 of the Federal Spatial Planning Act that the preparation of partial spatial and sectoral plans is permitted. However, these must always be a spatial development plan as opposed to a sectoral plan; in this regard, it is irrelevant whether and in which legal form this plan is adopted. It is also not decisive whether they are textual or graphic stipulations or a combination of both elements. As spatial development planning is a task of the administration, objectives of spatial planning are administrative planning stipulations and not legislative orders, even though the plan is passed as an ordinance.

Conversely, this means that there cannot be any objectives of spatial planning outside of spatial development plans. Provisions in laws and ordinances may comprise statutory orders, but not objectives of spatial planning unless they serve to adopt a spatial development plan. Due to the limited legislative powers of the federation in regard to spatial planning, there are no objectives of spatial planning that apply nation-wide or even at the level of the European Community (there is, however, the possibility of establishing stipulations for the German Exclusive Economic Zone pursuant to section 17(3) of the Federal Spatial Planning Act).

The planning agency must also intend the allocation to be a binding specification. In textual stipulations, this must result in the first place from the chosen wording. If, for instance, something is merely to be considered or taken into account, or if it is a discretionary (formulated as 'can or may') or default provision, the stipulation does not have a binding effect, unless the exceptions are specified clearly enough. The question of whether a 'should' phrase suffices in the absence of a specification of the exceptions is contentious. But even strict 'is' or 'are' clauses do not lead as such to a presumption that the stipulations are binding. The federal principles of spatial planning are worded quite strictly in section 2(2) of the Federal Spatial Planning Act, as the duty to consider arises only at the level of the legal consequences and is so imposed in section 4(1) of the Federal Spatial Planning Act. Pursuant to section 7(4) of the Federal Spatial Planning Act, objectives of spatial planning (as well as planning principles) must be designated as such in the spatial development plans. This is generally indicated by a 'Z' (for the German word for objective: *Ziel*). This identification is not constitutive in the sense that any formal stipulation marked as an objective is also an objective in material terms. If the stipulation is not sufficiently specific, it fails to have the character of an objective. Conversely, there can be no objective that is not indicated as such in the spatial development plan. The Federal Spatial Planning Act constitutively protects

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local authorities in particular from having to observe an objective that has not been declared as an objective.

### 3.2 Spatially and materially certain or ascertainable

For no other terminological element is there such a plethora of opinions about the spatial and material specificity that a stipulation in a spatial development plan must have in order for it to trigger a duty to comply as an objective of spatial planning for subsequent spatially relevant planning and measures. The controversy results from a difference in the weighting of relevant legal principles, some of which are of a constitutional nature.

This concerns the requirement of legal certainty. Due to the compliance expected with objectives of spatial planning, their precise meaning must be clear. On the one hand, addressees of the objective must be able to identify from its formulation and interpretation the binding specifications of spatial planning with which they must comply in their spatially relevant planning and measures. On the other hand, the general principles of proportionality and necessity apply. These principles state – in regard to a tiered planning system – that superordinate planning should intervene only very cautiously and as far as necessary in the planning decisions of subordinate planning agencies, especially if those agencies act in their own right, e.g. local authorities as far as urban land-use planning is concerned.

Depending on whether the emphasis is on the requirement of legal certainty or on the principle of proportionality to safeguard subsequent planning latitude, the requirements for the spatial and material ascertainability of objectives of spatial planning are either more or less strict. The consideration that both principles serve to protect the addressees of the objective should be decisive. The addressees should know as far as possible what is expected of them but also their freedom of discretion should only be limited to the extent necessary.

The prevailing opinion and case law, which is consistent with this opinion, resolve this conflict through the notion of ascertainable general specifications that consist of a binding target core of the objective and a target framework for that objective that is to be filled in. According to this notion, the binding effect for subordinate spatially relevant planning and measures of a given part (the core) of each objective of spatial planning must be determined through interpretation, i.e. which part cannot be overridden, and which part (the framework) must be shaped and concretised by the subordinate planning agency. The requirement that objectives of spatial planning must be able to be specified at subsequent planning levels results from the different scales on which the planning is based; spatial development plans with their stipulations are area-specific, but not specific at the level of land or sites, as is the case with municipal preparatory land-use plans or binding land-use plans. The local authority can further specify a settlement expansion area allocated in the regional plan along sectoral lines, e.g. in accordance with the area typologies of the Land Utilisation Ordinance. The ability to specify the target framework differs from the weighing of interests in that the ‘if’ is no longer subject to discussion, while the ‘how’ requires further determination. This decision on the ‘how’ is also subject to the principle of proportionality and thus subject to partial elements of the weighing process.

Based on this notion of the specifications to be determined as binding through objectives of spatial planning in line with case law and the prevailing opinion (*BVerwG* [Federal Administrative Court], order of 20 August 1992, case no. 4 NB 20/91, published in *BVerwGE* [Official Reports of the

Federal Administrative Court] 90, 329-337; Runkel 2010a: § 3, para. 14 et seq.), (generally textual) stipulations, which have a relatively small binding target core but an extensive target framework to be concretised, are also permitted as objectives. On the other hand, if there is no binding target core that can be ascertained without a weighing process, this can only be a principle of spatial planning. ‘General objectives’ are frequently determinations that are applicable state-wide and thus in principle apply to all subareas in the same way, even if they may have a different impact in the individual subareas due to different situations on the ground in those areas. These stipulations frequently encompass principles, the planning relevance of which for each individual subarea must still be identified, assessed and determined through the weighing of interests. Quantitative objectives, on the other hand, which only limit additional land take for settlement purposes by a municipality without specifying the area earmarked for such settlement growth, meet the requirements that apply to objectives of spatial planning. As a binding target core, they impose a binding limit on land take by a municipality. Municipalities are also able to ascertain them in spatial terms as they permit settlement expansion subject to quantitative restrictions in all areas where the regional plan does not stipulate any conflicting objectives, such as green corridors or priority areas for nature and the landscape, while preserving a broad discretion in regard to specification.

This interpretation of the required ascertainability of a stipulation with the nature of an objective that is specific to spatial planning also mandates that this must be examined at specific levels. A determination in a state-wide spatial development plan can be sufficiently ascertainable in regard to regional planning but not in regard to urban land-use planning at the municipal level or in regard to the approval process for a spatially relevant measure. If a state-wide spatial development plan contains, e.g. a quantitative objective regarding the use of wind energy in a given subarea, this stipulation may be sufficiently determined for the purposes of ▷ *Regional planning*, meaning that it is an objective of spatial planning. At the level of ▷ *Urban land-use planning* in the individual local authority, however, such ascertainability is lacking, because the stipulation does not specify the areas of the subarea where the use of wind energy is to be permitted. Hence, the determination of the objectives of the state-wide spatial development plan requires in the first place further spatial specification through regional planning; regional planning, in turn, can specify the quantitative objective by allocating priority areas or suitable areas for development to a given space that corresponds to the quantitative objective. These are instances of stipulations that are sufficiently specific in regard to urban land-use planning at the municipal level and the approval processes under immission control law regarding spatially relevant wind turbine generators to qualify as objectives of spatial planning. If, however, the regional planning specifies the quantitative objective of federal state spatial planning to such an extent that it apportions the objective to certain municipalities based on principles for the weighing of interests, such stipulations may be sufficiently ascertainable for the municipality affected by them, but not for the approval process for a spatially relevant wind turbine generator. Only if the municipality specifies the quantitative objective apportioned to it by means of representations in the preparatory land-use plan pursuant to section 1(4) of the Federal Building Code is the objective specific at the level of the approval process, and the legal consequences of section 35(3), sentences 2 and 3 of the Federal Building Code can take effect.

### 3.3 Product of a conclusive weighing of interests

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Objectives of spatial planning must have been conclusively weighed by the body responsible for spatial development planning. The requirements imposed on the weighing process are closely related to the previously addressed issue of how specific stipulations in the nature of an objective must be and how much discretion in their specification they may allow for subsequent planning or approval decisions. If the stipulation is already very specific, e.g. to secure a certain location for an infrastructure facility, such as an airport or trade fair site, then the preceding ▷ *Weighing of interests* must also specifically identify and assess the concerns to be taken into account and include them in a decision on the weighing. If a narrow target core is flanked by a broad target framework, which can be specified in more detail, the weighing of interests must be limited to the concerns that are relevant and identifiable at this planning level (cf. section 7(2), sentence 1 of the Federal Spatial Planning Act). The other concerns are then taken into account at the subsequent planning and approval levels while detailed requirements for the objective are being established.

The weighing of interests must in any event be conclusive (in this regard). In other words, the weighing process takes place at different levels. Considerations that have already been weighed conclusively at a higher level are binding for the subsequent planning level. Conversely, concerns that have not yet been apparent or relevant at the higher planning level must be included in the specification process at the subsequent planning level if it might be relevant for the weighing of interests.

The required level-specific and conclusive weighing of interests mandates the identification, assessment and weighing of not only public concerns but private ones as well in the course of spatial development planning (cf. section 7(2), sentence 1 of the Federal Spatial Planning Act). The strict duty to comply with objectives of spatial planning at subsequent planning and approval levels may not lead to a failure to include private concerns that are relevant to the weighing of interests, unless the spatial development planning agency does not consider itself obliged (at its planning level) or deems the subordinate planning level to be bound in this regard.

### 3.4 Required participation in processes

The weighing of interests serves to protect public and private concerns. In addition to the material scope, it also has a procedural element, which is of increasing importance due to the impact of EU directives (e.g. Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment). This procedural aspect states that a party acting in their own rights can only be strictly bound if that party has been involved in the preparation of the plan to express their concerns. In the absence of such ▷ *Participation*, the objectives do not have any strict binding effect on this agent acting in their own rights, even if their concerns have been included in the weighing process. As regards spatial planning law, the Federal Administrative Court (*Bundesverwaltungsgericht, BVerwG*) elaborated this principle, which is expressed in sections 7 and 38 of the Federal Building Code in the relationship between local authorities, as the agencies for urban land-use planning at the municipal level, and sectoral planning (*BVerwG*, judgment of 18 February 1994, case no. 4 C 4/92, published in *BVerwGE* 95, 123-132; *BVerwG*, judgment of 19 July 2001, case no. 4 C 4/00, published in *BVerwGE* 115, 17-32), initially in regard to individual municipalities and later in regard to private individuals. This means that an objective of spatial planning can strictly bind a municipality or citizen only if the municipality or citizen has been given an opportunity to participate in the preparation of the plan and has been able to present their own concerns or interests. This also applies in regard to renewed participation if the draft

plan has been amended after their participation in an aspect that is relevant for the party acting in their own rights. If the party has not been involved, an objective of spatial planning has no binding effects for a municipality, and vis-à-vis a private individual only in the sense of a traceable weighing of interests. In the context of approval processes for a spatially relevant measure (= project) by a private individual, this requires an examination of whether the weighing process for spatial planning purposes remains justifiable even when the presented private concerns are taken into account.

The binding effect of objectives of spatial planning in respect of spatially relevant planning and measures of the federation is specifically provided for in section 5 of the Federal Spatial Planning Act. Accordingly, the binding nature of the objectives pursuant to section 4(1) of the Federal Spatial Planning Act applies in respect of spatially relevant planning and measures of the federation only if the responsible body or person (e.g. Bahn AG) has been given the opportunity to participate in the preparation of the spatial development plan and has not objected to the specific objective within two months after being notified of the binding spatial development plan. But not every objection of the federation can render the objectives inapplicable. Pursuant to section 5(2) of the Federal Spatial Planning Act this requires that the spatially relevant plan or measure of the federation cannot take place on any other suitable land than on that for which an opposing objective of spatial planning has been stipulated. Pursuant to section 5(3) of the Federal Spatial Planning Act, such an objection by the federal body or agent can also be raised at a later time. This is conditional on the facts of the matter having changed (e.g. if the spatially relevant planning or measure has only been included in the requirements planning of the federation at this stage). This inclusion must necessitate a derogation from the objective of spatial planning, in which case the same material requirements apply as for the initial objection. This objection must be asserted no later than six months after becoming aware of the changed facts of the matter. If the retrospective objection is raised in time and lawfully, the duty to comply with the objective lapses for both the federal body or agent even without conducting a procedure for derogation from spatial planning objectives pursuant to section 6(2) of the Federal Spatial Planning Act or a procedure for amending plans pursuant to section 7(7) of the Federal Spatial Planning Act.

## 4 Principles of spatial planning

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The second type of requirement of spatial planning are the principles of spatial planning. Section 3(1) no. 3 of the Federal Spatial Planning Act defines these principles as statements on the development, structure and safeguarding of space as prerequisites for the subsequent weighing of interests or discretionary decisions. Principles of spatial planning can be elaborated by law (statutory basis) or as stipulations in a spatial development plan (planning principles).

### 4.1 Statutory basis

The principles of spatial planning are laid down in section 2(2) of the Federal Spatial Planning Act or in the legal provisions of the federal states, as section 2(2) of the Federal Spatial Planning Act does not contain a conclusive enumeration of the statutory principles of spatial planning or the federal states may stipulate deviating statutory provisions pursuant to Article 72(3) of the German Basic Law (*Grundgesetz, GG*). Accordingly, there are the statutory principles of spatial planning

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pursuant to section 2(2) of the Federal Spatial Planning Act, which contain the supplementary principles under federal state law, and the principles under federal state law which contain statements that deviate from the principles under federal law. This distinction, which has become necessary since the Federalism Reform of 2006, is not always easily implemented in practice, especially if the federal state spatial planning acts do not clearly express whether these principles are supplemental or deviating in nature.

The nationally applicable principles of spatial planning are laid down in section 2(2) of the Federal Spatial Planning Act in the form of eight materially related items, each with numerous subitems. The principles concern fundamental statements on the most important spatial conditions. They contain statements on the overall space of the Federal Republic of Germany and on its subareas, on decentralised settlement structures, on the supply of services and infrastructures for the provision of public services, on the economic structure and commercially-related infrastructure, on the cultural landscapes, on environmental protection, on the spatial requirements for defence and on Europe.

The federal principles are of equal importance to each other and only gain their significance in the context of the specific planning situation. The principles may at times be contradictory, and the interests must be balanced as part of the specific weighing process. However, the principles must be applied in alignment in the sense of the guiding principle of sustainable spatial development pursuant to section 1(2) of the Federal Spatial Planning Act (▷ *Sustainability*). Each of them must contribute to sustainable spatial development, which harmonises the social and economic demands on the space with its ecological functions and leads to a permanent, large-scale, balanced arrangement with equivalent living conditions across all subareas.

### 4.2 Planning principles

Section 3(1) no. 3 of the Federal Spatial Planning Act also provides the opportunity to include stipulations in spatial development plans among the principles of spatial planning. These may include spatially or materially certain or ascertainable stipulations that merely lack the binding nature of objectives of spatial planning. For example, pursuant to section 8(7), sentence 1 no. 2 of the Federal Spatial Planning Act, reserve areas are area designations whereby particular importance is to be attached to certain spatially-relevant functions or uses in the weighing of interests in relation to competing, spatially-relevant uses. This means that the stipulation is specific but not (strictly) substantively binding. The reservation of such areas can only be overridden as part of the weighing of interests based on a stricter need for justification. The planning principles may specify the statutory principles (cf. section 2(1) of the Federal Spatial Planning Act), but may not deviate from them (a deviation from the statutory principles of the federation requires legislation by the federal states pursuant to Article 72(3) of the Basic Law). Stipulations in spatial development plans that have a binding effect as requirements of spatial planning are, therefore, either objectives of spatial planning or planning principles of spatial planning. Pursuant to section 7(4) of the Federal Spatial Planning Act, the planning agency must designate them as such.

## 5 Other requirements of spatial planning

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## Objectives, principles and other requirements of spatial planning

The Federal Spatial Planning Act lists other requirements of spatial planning as the third type of requirement of spatial planning. Section 3(1) no. 4 of the Federal Spatial Planning Act defines these in the sense of a catch-all provision as elaborations of objectives of spatial planning, as the results of formal federal state planning processes (e.g. ▷ *Spatial impact assessment procedure [Raumordnungsverfahren]*) and as opinions of the federal state planning agencies.

The elaboration of objectives of spatial planning requires the spatial development plan to have reached a certain level of progress with the corresponding stipulations, which is in turn conditional on further procedural steps in addition to the resolution to prepare, amend or expand the spatial development plan in pursuit of a certain objective. An objective of spatial planning in the process of elaboration is undisputedly deemed another requirement of spatial planning if the corresponding stipulation is ready for adoption.

The question has not yet been resolved as to whether individual principles of spatial planning which are in the process of being elaborated can also trigger *mutatis mutandis* duties to consider as other requirements of spatial planning, but must be accepted for principles that have a binding effect of a similar nature as objectives, e.g. reserve areas (for a somewhat different approach, cf. Runkel 2010b: L § 3, para. 186).

The results of a spatial impact assessment procedure pursuant to section 15 of the Federal Spatial Planning Act or any other formal federal state planning procedures are also included in the other requirements of spatial planning with the legal consequence that they must be considered in planning or discretionary decisions regarding spatially relevant planning and measures. This always concerns the spatial planning assessment of a specific, spatially relevant planning or measure in a formal process, as mandated in section 15 of the Federal Spatial Planning Act. Hence, the conclusion can only be that it is another requirement of spatial planning to be considered and not a binding objective of spatial planning, because it is not the result of an overall weighing process, but pursuant to section 15(1), sentence 2 of the Federal Spatial Planning Act merely the spatially relevant effects of the planning or measure with regard to supra-local considerations. To this extent, the outcome of a spatial impact assessment procedure corresponds to the result of an environmental impact assessment according to the Environmental Impact Assessment Act (EIA Act). However, if a spatial impact assessment procedure leads to the conclusion that one or more objectives of spatial planning conflict with the planning process or measure, then this result does not eliminate the strict binding effect of the corresponding objectives. If the spatial impact assessment procedure results in the conclusion that although the planning or measure conflicts with certain objectives of spatial planning, it is still spatially compatible (perhaps subject to certain changes or conditions), this can be considered in a procedure for derogation from spatial planning objectives (= exemption procedure) pursuant to section 6(2) of the Federal Spatial Planning Act; this means that the planning or measure can be implemented after the procedure for derogation from spatial planning objectives has been carried out.

Opinions of the federal state spatial planning agencies are statements by the bodies responsible for spatial planning in the federal state concerned on specific spatially relevant plans and measures, without these opinions being the result of a formal process. These mostly refer to opinions expressed by a spatial development planning agency as part of its participation in other planning processes. In this regard, they are other requirements of spatial planning in that they contain spatial planning-related statements beyond the scope of the objectives and principles of spatial planning in the context of a specific planning or measure. They may also refer to spatial

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development plans in the process of being elaborated together with their planning principles.

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Last update of the references: November 2016