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## **Federal state spatial planning, federal state development**



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# Federal state spatial planning, federal state development

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**Federal state spatial planning, just like federal state development, means the spatial, cross-sectoral and supra-local coordination competence of a certain administrative area at the federal state level. According to the current understanding of their task, the federal states' spatial planning role concerns the traditional function of the classic instruments as well as a new function for the 'soft instruments', which evolved at the procedural level. The classic instruments relate to spatial development plans at the federal state level and to the regional plans at the level of the 'planning regions'.**

## 1 Clarification of the term

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The term *federal state spatial planning* is sometimes used synonymously with the terms ▷ *Spatial planning (Raumordnung)* [in the traditional sense of normative concepts for the supra-local and superordinate regulation and planning of space and its related processes and institutions – Translator’s note] and *federal state development*, and is sometimes distinguished from them. If one assumes that every scientific specialist discipline’s understanding of its role and discourse is logical and systematic, it must also be assumed that different terms used within a system have different meanings. The difference, however, is merely the fact that *spatial planning* is the generic, comprehensive term, while *federal state spatial planning* and *federal state development* outline the competence for spatial planning at the state level, albeit with specific instruments and a specific binding effect. In other words, the terms are not substantively different in the sense that one focuses on the regulatory aspect and the other on the planning activity. In contrast to locally limited urban land-use planning and sectoral planning, federal state spatial planning thus means the spatial, cross-sectoral, supra-local coordination competence of a certain administrative area at the federal state level to regulate and develop the entire national territory or its subspaces. This definition is also true for the term *federal state development*: while the term itself may suggest an emphasis on the development aspect, it does not exclude the regulatory aspect. Likewise, *spatial planning* should not be defined differently; the distinction here is merely that it is not limited to the respective federal state; hence, the term can be used for both the Federation and the federal state level alike. If both terms, *spatial planning and federal state spatial planning*, are used in conjunction with each other, this is understood to be for linguistic emphasis.

## 2 Development

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In the sense of its current definition, as stated above, the development of federal state spatial planning commenced, strictly speaking, only after the Second World War, when the federal states of the Federal Republic of Germany began to create the statutory foundations for a cross-sector, coordinating planning function at the federal state level in the early 1950s with the adoption of federal state spatial planning acts (North Rhine-Westphalia in 1950, Bavaria in 1957). Prior to this time, federal state spatial planning shared its roots with spatial planning in the traditional, superordinate and supra-local sense (▷ *History of spatial planning (Raumordnung)*).

After the First World War, the further development of spatial planning and the federal states’ spatial planning approaches were challenged by conurbation and urbanisation problems in industrial areas, which were considerably burdened not only by their own inorganic growth, but especially also by significant immigration from the territories lost during the war. Again, these were especially the regulatory urban planning efforts as supported in the *Freie Deutsche Akademie des Städtebaus* (Free German Academy of Urban Planning), which was established in 1922. The supra-local approach that is specific to spatial planning and the federal states’ spatial planning was promoted in particular through approaches based on subareas. For example, the establishment of the Ruhr coal mining district settlement association in 1920 marked the launch of a series of regional planning associations. In accordance with the Ruhr area model, they were

formed especially to manage the densification of industrial, metropolitan areas, but were also found to an increasing extent in rural areas with economic focal points.

The period after the Second World War was characterised by a strong aversion to any form of state planning due to the experiences under the Third Reich. This perception of spatial planning was reinforced by the absolute priority of reconstruction and stimulating an economic upswing after the war. Only the negative experience of uncontrolled conurbations in the densely populated areas alongside the gradual emptying and associated structural decline of rural areas (▷ *Rural areas*) gradually reignited the awareness of the need for methodical planning processes. Stimulated by the working group of federal state spatial planners of the Federal Republic of Germany (*Arbeitsgemeinschaft der Landesplaner der Bundesrepublik Deutschland*), the federal states began in 1950 to make use of their competence to establish an instrumental and material framework for federal state spatial planning in their respective territories. The legal basis for this was formed by the respective federal state spatial planning acts, which were adopted within the framework of the Federal Spatial Planning Act (*Raumordnungsgesetz, ROG*) enacted in 1965 (▷ *Spatial planning law (Raumordnungsrecht)*).

The comprehensive, fundamental amendment of the Federal Spatial Planning Act of 1998 strengthened the position of federal state spatial planning as a policy area, increased its impact and harmonised its material content in the federal states. Decisive in this respect were the clarification of the tasks of the federal states, the uniform federal definition of their instruments under 'requirements of spatial planning', as well as the stabilisation of their binding effect in a first section establishing directly applicable law and the strengthening of their regional responsibility. The federal states had largely adapted to the new framework under federal law, which led to a greatly appreciated, higher degree of uniformity in the elaboration of the respective federal state's spatial planning function, and thus also to greater nationwide efficiency while also respecting the independence of the federal states under state law. The amendment of the Federal Spatial Planning Act of 2004 served especially to transpose the EC Directive on the assessment of the effects of certain plans and programmes on the environment (SEA directive) for the field of spatial planning into national law. The introduction of the strategic environmental assessment (SEA), which was fairly controversial in spatial planning circles, means that now not only individual projects have to be assessed in regard to their environmental impact (project environmental assessment), but spatial planning programmes and plans do as well (▷ *Environmental assessment*).

In the wake of the Federalism Reform (▷ *Federalism*), the legislative framework competence was revoked and spatial planning was made subject to the concurrent legislative competence of the federation in Article 74 section 1 no. 31 of the German Basic Law (*Grundgesetz, GG*) (▷ *Constitutional framework of spatial planning (Raumplanung)*). The federation made use of this newly gained legislative competence and adopted a new law with the Federal Spatial Planning Act of 2009, which was jointly elaborated by the federation and the federal states within the Conference of Ministers for Spatial Planning (*Ministerkonferenz für Raumordnung, MKRO*). The aim of this was to transpose as far as possible the tried and tested general provisions into full federal regulations and to leave the federal states the necessary discretion for enacting any supplementary state law.

### 3 Range of instruments

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According to the current understanding of their task, the federal states' spatial planning role concerns two aspects: the long-standing range of classic instruments as well as a new range of soft instruments, which have been developed at the procedural level since the 1980s (see also: ▷ *Informal planning*). The *classic instruments* are divided into two task areas in accordance with the responsibility for superordinate, supra-local and supra-disciplinary coordination embedded in federal and state law. The first task area concerns the elaboration of strategic programmes (spatial development plans), while the second encompasses the federal states' planning decisions in specific, spatially-relevant individual cases. Accordingly, the spatial planning function of all federal states provides for state-wide strategies in accordance with the requirements of federal law; these strategies serve to coordinate the planning activities and projects of all ministries to the extent that they may be relevant for the spatial planning and development of the federal state, and to interlink them with the state-wide strategic requirements of federal state spatial planning. An essential and decisive feature of these spatial planning strategies of the federal states – unlike federal spatial planning – is that their stipulations are not limited to planning elements, but also compel all public bodies to observe them as federal state spatial planning objectives (▷ *Objectives, principles and other requirements of spatial planning (Raumordnung)*); this duty to observe the stipulations also applies under certain circumstances to individuals under private law who perform public tasks (section 4(1), sentence 2 of the Federal Spatial Planning Act). The 'duty to observe' embedded in section 4 of the Federal Spatial Planning Act does not impose a duty on public bodies to act on their own initiative, but obliges them to comply with the federal state spatial planning objective in their actions. To the extent that state spatial planning objectives aim at ▷ *Urban land-use planning*, their binding effect has been extended by section 1(4) of the Federal Building Code (*BauGB*) into a 'duty to adapt', i.e. the urban land-use planning must be brought into line with the relevant state spatial planning objective (▷ *Instruments of spatial planning*), which may require the local authority to take some action, unlike the mere 'duty to observe'.

With the Federal Spatial Planning Act of 1998, the federal legislator allowed principles of spatial planning to also be included in spatial development plans for the first time. The benefit of making use of this option is the ability to draw a clearer distinction between sometimes scarcely distinguishable, vague statements of objectives, which would then become principles, as opposed to clearly defined objectives which can actually be implemented. Conversely, the risk of eschewing the binding objectives for the principles, which only require consideration (section 4(1), sentence 1 of the Federal Spatial Planning Act), may give cause for restraint. The state-wide strategies of federal state spatial planning are designated and formally regulated differently in the various federal states. For example:

- Baden-Württemberg has adopted a federal state development plan (declared to be binding by statutory ordinance of the federal state government),
- Bavaria has adopted a federal state development programme (passed by the government of the federal state with the consent of the state parliament in the form of a statutory ordinance),
- Berlin/Brandenburg have adopted joint federal state development plans with principles and objectives (in the form of a statutory ordinance by the governments of Berlin and Brandenburg with validity for each respective territory),

- Hessen has adopted a federal state development plan with principles and objectives for the large-scale spatial regulation and development of the federal state territory and its regions (passed by statutory ordinance of the government of the federal state),
- Mecklenburg-Western Pomerania has adopted a federal state spatial planning programme (passed in the form of a statutory ordinance by the government of the federal state),
- Lower Saxony has adopted a federal state spatial planning programme with Part I being principles and objectives for general development (passed in the form of a law), and Part II being other objectives (passed in the form of an ordinance by the government of the federal state after the state parliament had been given an opportunity to comment),
- North Rhine-Westphalia has adopted a federal state development plan with principles and objectives (passed in the form of an ordinance with the consent of the state parliament),
- Rhineland-Palatinate has adopted a federal state development programme (declared to be binding by a statutory ordinance passed by the government of the federal state after consultation with the state parliament's Committee on Internal Affairs),
- Saarland has adopted a federal state development plan (passed by the government of the federal state in the form of a statutory ordinance),
- Saxony has adopted a federal state development plan (passed by the government of the federal state in the form of a statutory ordinance),
- Saxony-Anhalt has adopted a federal state development plan (passed by the government of the federal state in the form of an ordinance),
- Schleswig-Holstein has adopted a federal state spatial development plan (adopted by the federal state spatial planning authorities in consultation with the relevant state ministers),
- Thuringia has adopted a federal state development programme (passed by the government of the federal state in the form of a statutory ordinance).

Likewise, in all federal states – except for the city states and Saarland – the state-wide federal state spatial planning strategies are regulated in detail in the spatial and sectoral respect by the establishment of *Regional planning*. Regional planning is strategic federal state spatial planning, not in relation to the territory of the entire federal state, but rather to manageable subspaces which are linked socio-economically. In accordance with the requirements imposed by federal law (section 8(1) of the Federal Spatial Planning Act), this specification of the federal state spatial planning through regional planning is not discretionary for each individual federal state – it is mandatory. Only the city states and Saarland are exempt from this duty.

According to the requirements of federal law, the federal state itself may undertake the tasks of federal state spatial planning at the regional level (with the participation of the local authorities), as is the case in Schleswig-Holstein. The other states have made use of the other available option, which is to transfer the regional planning responsibility to varying extents to the local authorities of a given planning region. This has been done to the furthest extent in Bavaria, where all local authorities of a given planning region form a regional planning association which then determines the regional plan. As objectives and principles of spatial planning and federal state spatial planning the stipulations of the regional plan have the same binding effect as the objectives and principles of the state-wide programmes and plans.

## Federal state spatial planning, federal state development

The most efficient instrument of federal state spatial planning with a direct impact on day-to-day politics is the ▷ *Spatial impact assessment procedure (Raumordnungsverfahren)*. This process serves to assess the territorial impact of individual, supra-local and spatially relevant projects. An essential benchmark in this regard, and thus the link to the strategic aspect of the range of federal state spatial planning instruments, are the objectives, principles and other requirements of spatial planning. The spatial impact assessment procedure was initially embedded exclusively at the level of the federal states. It was the transposition of the environmental impact assessment into national law in 1989 that provided this instrument of federal state spatial planning with a legal framework. The current Federal Spatial Planning Act compels the federal states (cf. section 15(1), sentence 1 of the Federal Spatial Planning Act) to conduct a territorial impact assessment, which is uniformly referred to as the 'spatial impact assessment procedure' across Germany. The German city states are exempted from this (cf. section 15(6), sentence 1 of the Federal Spatial Planning Act). The spatial impact assessment procedure is not only an instrument that specifically complies with the requirements for an up-to-date administrative procedure to assess individual, spatially relevant private or public projects; it is above all also an instrument that satisfies to a particularly great extent the mandate of federal state spatial planning to coordinate and regulate diverging and in particular opposing demands for the use of space. This is reflected in the early timing of the opening of the process prior to the formal approval process, which allows the federal state spatial planning function to have an advisory impact in order to assist the planning process before the project has solidified in planning or political terms; it is also expressed in the decision-making based on a broadly designed hearing in the form of an adjudicatory process, which is consistent with the duty of weighing interests and inherent in all conclusive and deliberated decisions in spatial planning at the federal state level. It is likewise reflected in the possibility provided for only in the spatial impact assessment procedure of examining alternatives in order to enhance the objectivity of the conclusive and deliberated decision and is finally confirmed in the legal nature of the final decision, which is specifically not designed as an administrative act in the sense of classic interventionist administration, but as an expert opinion with a limited binding effect in accordance with the planning and consensus-oriented nature of the federal states' spatial planning. The various federal states have adopted the *spatial impact assessment procedure* instrument for their spatial planning function in different ways and also managed the process with a varying degree of strictness. Apart from North Rhine-Westphalia, however, all non-city states had already successfully implemented the spatial impact assessment procedure as a steering instrument of federal state spatial planning for supra-local, spatially relevant projects by means of the respective federal state spatial planning acts and corresponding implementation notices prior to the binding Germany-wide introduction through the Federal Spatial Planning Act. Sections 15 et seq. of the Federal Spatial Planning Act of 2009 fully regulate the spatial impact assessment procedure, including maintaining additional statutory provisions under state law (Article 28(3) of the Federal Spatial Planning Act). The Act now includes a legal clarification that taking all spatially-relevant concerns into account is the benchmark for the territorial impact assessment. It also clarifies that the requirements of spatial planning, which serve as the main gauge for the review of a plan or planning measure within federal state spatial planning, do not exclusively define the standard of review.

The Act now also includes provisions for a simplified spatial impact assessment procedure. Here, the federal state spatial planning authorities may waive the need for the separate participation of (individual) public bodies and instead rely on statements already made in other

processes for the assessment of the territorial impact. In this regard, the federal legislature resorts to a provision introduced in Bavarian state law in 2004, which was intended to contribute to the deregulation and simplification of administrative processes in relation to federal state spatial planning. However, the approval process for a given project can only be expedited in individual cases by overlapping the various sub-processes. The slight acceleration and simplification of the administrative effort gained through the simplified spatial impact assessment procedure are often countered by a loss of the benefits associated with a preliminary spatial impact assessment procedure (early coordination of a project, conflict resolution, etc.).

The option for state law to deviate from the federal legal regime (so far only exercised in Bavaria), as envisaged in the Basic Law (*Grundgesetz, GG*), has led to the situation that the applicability of the spatial impact assessment procedure is not defined by a national, uniform catalogue (spatial planning ordinance) but instead by a general clause (projects of ‘substantial supra-local spatial relevance’). In this connection, the use of the extremely vague legal term ‘substantial’, which can be interpreted in any number of ways, does not appear conducive to an objective spatial impact assessment procedure.

As important and indispensable as this instrument is for successful, future-oriented development, and even though recurring attempts to decry it as an obstacle to development and economic growth must be dismissed as superficial and shortsighted, the author wishes to emphasise that the spatial impact assessment procedure by its very nature is limited to the necessarily eclectic assessment of each individual case and cannot provide the comprehensive conceptual view that is necessary in the long run for the sensible development of a federal state. Accordingly, binding state-wide development and regional plans are not only necessary as an essential basis for decision-making in specific spatial impact assessment procedures but even imperative in particular due to their function as a general overview from the perspective of the federal state and region (see also: ▷ *Spatial planning (Raumplanung)*). In addition to the two principal tasks of spatial planning by the federal states – the elaboration of programmes and plans and the review of spatially relevant individual projects from a federal state spatial planning perspective – the participation of the federal state spatial planning authorities as a traditional responsibility in numerous spatially relevant state planning and consultation processes within the administration and vis-à-vis the local authorities as must not be overlooked (▷ *Participation*). Here, the federal state spatial planning function acts at the different organisational levels in various ways and makes its know-how of the structuring and development of space available. In addition to their organisational function (e.g. supervision of subordinate authorities), the highest federal state spatial planning authorities focus on coordinating those strategies that may be required at short notice. This concerns routine participation in spatially relevant sectoral plans, notwithstanding the degree of their binding effect, such as transport infrastructure development plans, hospital plans, etc. But even individual aspects, such as the reduction of military troops determined by the German Federal Government, confront the federal states with the question of the sensible or desirable (from a federal state infrastructure perspective) focal points of these measures and may make an important contribution to the decision-making process through the intermediary of state spatial planning. Managing the projected population decline (▷ *Demographic change*) and the related spatial infrastructure issues is likewise a problem that the highest federal state spatial planning authorities address due to the state-wide significance. An important contribution of the highest federal state spatial planning authorities in the context of state decision-making is the assistance provided in the form of data on the structure and development of specific issues – e.g.

job creation, population trends and economic strength – which are processed electronically and are immediately available (also: ▷ *Spatial observation*). The mid-tier administrative level (e.g. regional governments) also carries out federal state spatial planning tasks based on their cross-sectoral function, e.g. managing a spatial planning register, which represents a comprehensive collection of planning and inventory maps of all known and intended planning activities. The spatial planning register is an important information framework for all areas of sectoral planning.

Involving the federal state spatial planning authorities as public agencies in urban land-use planning contributes to the implementation of the requirements of spatial planning and federal state spatial planning, in particular to achieve their respective objectives, in the local urban land-use planning process. Moreover, the federal state spatial planning authorities assist the local authorities with advice in the preliminary stages of urban land-use planning. From the remit of the federal state spatial planning function as a superordinate planning level it is evident that the focus is not on taking action at the lowest administrative tier. In other words, the lower federal state spatial planning authorities are essentially only responsible for safeguarding tasks. The regional planning authorities, on the other hand, such as the regional planning associations, carry out tasks in addition to their own planning work, which comprise a broad spectrum of participation and contributions to sectoral planning (▷ *Spatially-relevant sectoral planning*), higher-tier planning processes and urban land-use planning. Thus in Bavaria they participate in the elaboration of state planning objectives, both in comprehensive planning processes and in sectoral planning, but also in connection with internal administrative strategies, e.g. the school development plan and the kindergarten plan. Regional planning may also become involved in matters concerning the elaboration of local transport strategies. Furthermore, the regions are often a driving force for spatially relevant activities. This may entail the elaboration of joint, cross-border strategies with neighbouring countries (▷ *Cooperation, cross-border*), as after the opening of the Eastern borders of the EU, or general assistance for businesses in finding suitable locations. In contrast to these task areas, the establishment of ‘administrative regions’, as they exist or are envisaged in the case of the Stuttgart region, Hanover region or Frankfurt region, is not consistent with the generally accepted notion of regional planning. Even though these may be to some extent accepted in general terms due to their greater proximity to the level of action and in particular to the policymakers, the commitment for the necessary if occasionally rather dry and difficult task of elaborating a regional plan often fades into the background when confronted with the necessities of day-to-day administrative work, e.g. the responsibility for local transport associations or the like. Yet the significance of this responsibility in particular, which must be considered essential as an expansion and concretisation of state-wide planning, is undisputable. It also comes with the consistent politicisation of these administrative regions, with directly elected members of regional parliaments, who are also members of political parties. This may even lead to the erosion of the very positive sense of regional belonging that has grown over time, as it relates exclusively to spatial structures such as municipalities. Finally, the fact that administrative regions are often thought to endeavour to centralise and assume the local planning autonomy gives cause for increased caution about these approaches (cf. also: ▷ *Cooperation, intermunicipal and regional*; ▷ *Relations between cities and surrounding regions*).

The work of the federal state spatial planning authorities thus extends to a whole range of internal and external, *informal and informative activities* to exercise their legally defined coordination task, which goes far beyond the aforementioned principal tasks. In this regard, it is essential that the sectoral competence of the federal state’s spatial planning authorities is applied

confidently, especially with informal activities, and that there is no limitation to those fields of activity which can have binding effects. The *more recent, soft instruments* of federal state spatial planning did not emerge from the realm of planning theory – it is not the case that they were first structured in theoretical terms and subsequently implemented in planning practice. Instead, they have been developed from and applied within the necessities and constraints of actual planning practice. They were scientifically examined and systematically classified only afterwards, mainly in monographs. However, it is not inconceivable that planning theory played a role in the initial use and practical elaboration of these soft instruments, and is reflected in how they are perceived and handled. This is true for the ‘endogenous development’ approach, the principle of ‘bottom up’ planning, the considerations regarding a ‘creative milieu’ or on ‘networking and cooperation’ (also: ▷ *Networks, social and organisational*). The initial trigger for the new fields of activity in the spatial planning practice of the federal states was the massive changes of the framework conditions that had been underway since the 1980s – such as European unification and the related competition within Europe, German reunification, the opening of the Eastern borders of the EU, but also ▷ *Globalisation* and, in response, an enhanced regional awareness – which had to mean special challenges for a cross-sectional discipline such as federal state spatial planning. Above all, this was compounded by the fact that the limits of the classic instruments were becoming increasingly clear in the light of these changes. This particularly concerns regional planning, the level closest to the location and problems of the classic instruments of federal state spatial planning. The limits thus encountered are not attributable to the failure of the instruments themselves or their stakeholders, but rather were by definition inherent to the system, to the character of regional planning as a binding set of laws with the resulting formal constraints of a legislative process as well as to the large dimensions of the planning regions, at least in the non-city states. Against this backdrop, the territorial subarea report (also called subarea development strategies), regional marketing, regional management, ‘cross-border development strategies’, practical approaches to ‘promote creative milieus’ or ‘fitness programmes for the inner cities’ were launched by the federal states’ spatial planning authorities, with a special weighting in federal states like Bavaria, and at first had a thoroughly experimental character. As far as the definition of the soft instruments and the understanding of their role and purpose is concerned, they all share the central ‘practical approach’: By relying on their classic instruments, spatial planning and federal state spatial planning had been exclusively committed to a conceptual approach and, although they critically supported the realisation of their conceptual stipulations, they left this task to sectoral planning and the municipalities – which they can compel to implement the stipulations (cf. section 4 of the Federal Spatial Planning Act, section 1(4) of the Federal Building Code). By adopting the ‘soft’ instruments, however, they took the implementation of their stipulations and related measures in their own hands. Whilst viewed with some suspicion by the sectoral planning authorities, the soft instruments represent a paradigm shift in the perception of the role and function of spatial planning and federal state spatial planning. Furthermore, the soft instruments have the planning principle of ‘bottom-up planning’ in common. Thus, in principle, a soft instrument can only be used by the federal state spatial planning authorities if the impetus comes from the locale in question and the declared intention to use this instrument is evident. The question remains open in this context as to whether the evident dependency of the federal states’ spatial planning activities on the subareas of the federal state – in terms of their willingness to use a soft instrument or its targeted implementation and realisation – may have an impact on its function as an instrument as such. However, it merits discussion when the term ‘instrument’ is

ascribed to something systematic related to the entire federal state and calculable in its success. With all soft instruments, the bottom-up planning approach corresponds to a maximum degree of integration of the respective space concerned in each development step. Following this step, which is customarily done by private firms or by stakeholders commissioned by the federal state's spatial planning authorities and the subarea, intensive participation of the locale in question is mandatory. To this end, every individual step and each planned action must be agreed with the responsible stakeholders in the locale. Time has demonstrated that the direct cooperation of the parties holding official responsibility in the locale, over and beyond their participation, is both sensible and necessary. This is usually achieved (as has been the case for years for rural development activities) through moderated workshops that accompany the deployment of a soft instrument and in which the elected municipal officials jointly decide with experts or the manager on matters such as the strengths and weaknesses, the guiding principle or implementation projects.

For all soft instruments, the extent to which they require or are suitable for normative embedding in the legal bases of spatial planning and federal state spatial planning must also be discussed. There is no compulsion to do so; on the contrary, even in the case of the sovereign approaches of public law it has always been considered good practice to deploy instruments within the scope of their respective remits that have not yet been enshrined in law so that they can first prove themselves in practice before being adopted in permanent legislation. This may apply all the more for the soft instruments. Thus, while they are mentioned in general terms in section 13 of the Federal Spatial Planning Act, they are hardly embedded or are only embedded with a great deal of restraint in the spatial planning legislation of the federal states. This is due to the efforts on the part of the federal states' spatial planning authority to secure the greatest possible leeway and flexibility for these instruments, which could be undermined by being anchored in statutes. This consideration also explains the Bavarian approach of consciously not setting up any development programmes to provide sufficient financial means for soft instruments and instead integrating their funding in appropriate regional initiatives funded by the general budget of federal state spatial planning, as development programmes with their necessarily strict guidelines could restrict the freedom of discretion needed for creative, experimental approaches. The relationship between soft and classic instruments is an important issue, as both planning theory and practice time and again raise the possibility of systematically substituting soft instruments for classic ones, at least on a de facto basis. In so doing, the theoretical motivation is based on the fact that the soft instruments, in the way they are conceived and in their theoretical underpinnings, are especially consistent with contemporary theoretical planning principles, such as bottom-up approaches or endogenous development, while planning practitioners are rather focused on the current notion of a cooperative, service-providing state as opposed to a sovereign state. To some extent, however, policymakers also fail to resist the superficial temptation to prefer the applause and acceptance of the more headline-style, attention-grabbing soft instruments to the rather unspectacular classic ones, which to some extent require steadfastness, straightforwardness and possibly also the courage to say no on the part of the responsible officials.

Hence it is all the more important to note that the soft instruments, with all of their modernity and dynamics, are not remotely suitable for replacing the classic instruments to achieve the development mandate inherent in the federal states' spatial planning – rather, they can only supplement them. Only a body politic with orderly spatial structures that has managed to bring

together the competing social and sectoral demands for space across its territory and in its subareas by means of binding planning specifications to form a coordinated unit and thus both sets boundaries and creates latitude for development on a state-wide level offers a promising basis for the deployment of soft instruments. For example, social welfare in the locale is no different from the environment and public safety in terms of the demands made on the sovereign state. This is true for the latter's ordering and structure as much as for its development, which in view of the obligation to ensure equivalent living conditions, cannot be left exclusively to arbitrary bottom-up initiatives.

Unlike the classic instruments, the underlying concept and objective of the soft instruments do not permit a conclusive, catalogue-style delimitation. They are rather characterised in their nature and scope by process-based development. Currently, the following soft instruments can be identified:

- a) *Territorial subarea reports* (previously referred to as 'island reports') were used systematically for the first time in Bavarian spatial planning and consist of an integrated, comprehensive strategy for a subarea that is characterised by specific problems, which cannot be addressed by regional planning due to their specific nature or level of detail (cf. also: ▷ *Regional development*). In line with the fundamental concept of the soft instruments, they have increasingly changed over time from a purely conceptual character to a project-related character and, like all soft instruments, are taken up in federal state spatial planning only after a specific suggestion from below and assigned to a team of private experts.
- b) *Regional marketing* (▷ *Urban and regional marketing*) means cross-sectoral marketing of the qualities of a subarea, which pursues the dual objective of rendering the area more attractive at the external level and enhancing its self-concept and self-confidence on an internal level. With its focus on the internal level, regional marketing offers the sole instrumentally embedded approach hitherto to stimulate creative milieus (▷ *Milieu*) or a regional identity. Regional marketing, too, requires a bottom-up impetus and is assigned to private contractors, as in Bavaria. In accordance with the objectives of regional marketing, the assignment is usually divided into the compilation of a structural analysis to record the qualities of the locale, an image analysis to record the assessment of these qualities by the social groups within and outside the locale and their elaboration in a professional marketing strategy.
- c) ▷ *Regional management* embodies most consistently the action nexus of the federal states' spatial planning function, which has been broadly introduced through the soft instruments. It includes both a functional and an institutional component. On a functional level, it concerns a consistent new understanding of the role of federal state spatial planning, which is reflected in all of its soft instruments and consists of a new, particularly pronounced, regionally-oriented action nexus. Regional management in the stricter sense concerns the institutional component. This refers to the creation of an institution jointly supported by the regional and federal state spatial planning authorities, which is tasked with implementing specific spatially relevant projects in the region. As a rule, these projects will be of a sectoral nature and derive their overarching nexus, which is in turn the foundation of the legitimacy of the federal states' spatial planning function, from their integration in a guiding principle or strategic focus, which is the basis for action by the regional manager or by the relevant management institutions.
- d) *Cross-border development strategies*, if they are accepted as an independent instrument, will

correspond in their basic structure to the territorial subarea reports or regional development strategies and are distinguished from the latter by certain aspects of cross-border cooperation as well as by a particular project connection likewise owed to cross-border cooperation.

- e) The need for *creative milieus* for spatial development as well as for the mechanisms underlying these milieus have more recently received some attention in the literature, but in the federal state's spatial planning practice, this has hardly been addressed beyond the specific aspect of regional marketing. The creation and stimulation of creative milieus should be understood as an ongoing principle for all the major instruments. Bavaria sought to bring this matter, which will be exceptionally important for the future, to fruition with a dedicated instrumental approach in some pilot projects, for example with the attempt to transfer the expertise of business-oriented consultants to spatial identities in one district. Another project with a cross-border focus on establishing good neighbourly relations with the Czech Republic addresses action areas such as cross-border, intercultural competencies.

Due to their procedural nature, the soft instruments must be continuously developed and remain open to innovation. This is true for both the process as well as for the content of the strategies, plans, etc. that are used as instruments, and remains a key duty for regional and state stakeholders alike. For example, one current issue is the integration of direct, informal civic participation as an even more consistent pursuit of the bottom-up approach as well as a more emphatic connection between municipal political engagement and the will of local residents. It could also be considered whether certain current issues related to development, such as addressing demographic change or the production of renewable energy in subareas, should be specified in regional management as a prerequisite for the financial participation of the federal state spatial planning authorities, without prejudice to the bottom-up approach.

## 4 Substantive orientation

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The question of the substantive orientation of federal state spatial planning concerns all of its instruments, but naturally also to a particular extent the instruments that are of a conceptual nature (▷ *Concepts of spatial planning (Raumordnung)*).

In this regard, the substantive orientation is not immutable, but has to adapt to the prevailing situation and structural realities. In accordance with the system as a whole, the substantive orientation consists of the sum total of individual, interlinked, sectoral and cross-disciplinary objectives, which seek to meet the respective sectoral demands and to align these with the need to structure and develop the space in question.

Examples of sectoral aspects of the federal states' spatial planning objectives are arbitrary. Inclusion in a federal state spatial planning programme merely requires that the sectoral issue has a supra-local spatial impact and is implemented in a statutory planning provision. Examples of overarching content of objectives, i.e. content that is specific to federal state spatial planning, are the determination of ▷ *Territorial categories*, of central places (▷ *Central place*) or of development axes (▷ *Axis*). Notwithstanding the individual concerns embedded in the objectives, there are also overarching general objectives, in other words, the underlying philosophy of the federal states' spatial planning strategy, to which the individual spatial planning objectives at

the level of the federal states have to defer over and above the multilateral interactive process. The underlying philosophy adopted by the federal states' spatial planning function is thus of crucial significance, as it determines the general orientation of the individual cross-sectoral and sectoral objectives. The two most crucial yet conflicting underlying philosophies are based on 'equivalent living conditions' and the 'functional spatial structuring'. Equivalent living conditions concern the attempts of the federal states' spatial planning authorities to create or maintain living conditions in all parts of the territory which are equivalent as far as the conditions in the subareas are concerned. Accordingly, equivalent does not mean equal, which would be neither feasible nor sensible. On a substantive level, living conditions refer to all areas of life, in other words, the entire infrastructure as well as the economic development of the subarea. De facto, the policy of equivalent living conditions is primarily to the benefit of rural areas, as they have generally accumulated structural deficiencies compared to the densely populated areas. In principle, however, densely populated areas, too, may have a need for action in relation to equivalent living conditions where structures have deteriorated. As opposed to equivalent living conditions, the notion of functional spatial structuring assigns different functions to the individual subareas of the federal state. Placing a strong focus on economic concerns, it earmarks a development function for the densely populated areas, while the rural areas are predominantly deemed to have compensation functions, such as ecological, tourist and agrarian functions. The advantage of this philosophy, even if only presumed, is the more efficient deployment of means, at least in the short term, as the economy gravitates in any event towards the metropolitan areas due to their perceived strengths; accordingly, at first glance, faster and more spectacular results can be achieved with less public funds, and especially with a lesser strain on the infrastructure.

The strategy of equivalent living conditions, on the other hand, is considerably more costly, due to the great distances to the densely populated areas, the high costs for the network of supply and disposal infrastructure, as well as the lower capacity utilisation of rural areas; but above all, these results can only be achieved in the medium or long term, which considerably reduces their political acceptance. For the above reasons, functional-spatial structuring has been the preferred choice in all developing countries worldwide, where it was faster and cheaper to invest in a few metropolitan areas. The spatial planning of the German federal states, on the other hand, adopted the philosophy of equivalent living conditions, initially against the opposition of the federation. This was done primarily in the face of the alarming flight from rural areas into densely populated areas during the early 1970s and the problems that resulted for both types of area. Long-term accounting considerations were also opposed to this preference, as the depopulation and related decline of rural areas would lead to considerably higher costs than would have been the case if preventive actions had been taken immediately. But above all, there was consensus that for reasons of the mandate of the constitutional social state, equal opportunities must be guaranteed in all parts of a federal state, and a federal state could only pursue successful, consistent development if this took root in all parts of its territory. Just as the history of spatial planning of the 'old' federal states prior to German reunification was defined by the great theoretical dispute between equivalent living conditions and functional-spatial structuring, the discussion was revived again, at least de facto, when spatial plans for the 'new' federal states had to be defined after reunification. After initial controversy, there is now a broad consensus that equivalent living conditions must be an objective for the same reasons that also applied to the 'old' federal states. The embedding of equivalent living conditions in federal state spatial planning does not preclude the setting of temporal priorities in the realisation of this philosophy in all subareas of the 'new'

## Federal state spatial planning, federal state development

federal states in accordance with the available financial means, which would then benefit the rural areas to the same extent and may not be limited to the spatial focal points of concentration in the densely populated areas. Noteworthy are the 'development' principle and the 'preservation' principle as additional superordinate guiding objectives of federal state spatial planning, which are derived from the notion of equivalent living conditions. The development principle means the creation of infrastructure facilities in rural areas, e.g. motorways or universities, not in order to meet an existing demand but to lay the basis for further economic and structural development in expectation of a demand that must first be generated in order to provide additional opportunities for the rural area concerned. The preservation principle, on the other hand, means maintaining certain facilities, in particular those that aim to cover basic, essential needs, such as kindergartens, schools and hospitals, even if it can no longer be guaranteed that they will be utilised at the rate deemed to be necessary state-wide. In other words, an additional benefit is granted – compared to more structured areas – to compensate for other disadvantages at the expense of the general public. The preservation principle has gained new significance in view of the current population projections, which might require a sectoral planning-based particularisation of this principle in the spatial development plans of the federal states if the population decline projected to a varying extent for the federal states of the Federal Republic of Germany proves accurate. Central places play a key role in this regard as locations where facilities for the provision of essential services must be available.

▷ *Sustainability* has gained particular importance as a subject of federal state spatial planning. There is no doubt that the spatial planning and federal state spatial planning authorities are called upon to promote sustainable spatial development like no other state task.

In line with the Rio de Janeiro Conference, when properly understood, sustainability means more than ecologically-friendly development; in addition to ecology, sustainability also concerns the economy as well as social and cultural matters. Accordingly, sustainability means overarching, non-sectoral planning and action. However, within the framework of state tasks, only spatial planning and federal state spatial planning have this cross-sectional reference. Spatial planning and federal state spatial planning have exercised this obligation in regard to ecology too late: the spatial development plans of the federal states considerably lagged behind in submitting to the paradigms of sustainability. In so doing, the key challenge was to use the buzzword *sustainability* not merely as a planning label but instead to apply all of the three pillars of the Rio conference as a benchmark for the definition of every individual objective and to make corrections if necessary. The proper embedding of sustainability in spatial development plans means that there is the possibility of anchoring sustainability in binding sets of laws and regulations with which all public authorities and, under certain conditions, private individuals, must comply. The current Federal Spatial Planning Act (cf. section 1(2)) embeds sustainability as a guideline of spatial planning and provides a legal definition based on an approach that spans ecology, the economy and society. Thus the Federal Spatial Planning Act consciously opts against a one-sided, ecology-dominated approach. Contrary to the misleading treatment in section 1(2) of the Federal Spatial Planning Act (previous version), equivalent living conditions remain the key guiding principle of spatial development/federal state spatial planning and must be measured – as in the case of all objectives and principles of spatial planning – against the worldwide benchmark of sustainability, which concerns more than just spatial planning (cf. in this regard: ▷ Guiding principles for spatial development). New contents in federal state spatial planning are now required as a response to the European internal market and the associated competition between European subareas and the situation after the

opening of the Eastern borders of the EU. This means that in addition to rural areas, the densely populated areas will have to be strengthened in their external competitiveness, e.g. through cooperation and networking. At the same time, the federal states' spatial planning objectives may serve to safeguard their functionality and counteract the current problems at the internal level, as in the case of unrestrained ▷ *Suburbanisation*, housing shortages, disparities between housing and commerce, the use of required free spaces, etc. As an emphatic appeal to the federal states, it remains to be noted that they must make use of the planning means that are available to them through the state-wide and regional spatial development plans. If the less than encouraging trend of increasingly hollowing out these plans continues, as can be observed in several countries under the alibi of deregulation and administrative simplification, thus allowing them to become mere empty words, the question of whether under these circumstances a European spatial development power would not be preferable as the lesser evil could gain new traction.

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