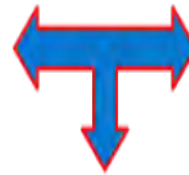


World Cultural Heritage and the „Energy Turnaround“ in Germany: A Legal Perspektive

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2017

System of Legal Protection and Preservation of Monuments and Sites in Germany

**Federal Regional
Planning Act
(ROG)**



**Federal Building
Code
(BauGB)**

16
**Monument Protection
Acts
(Denkmalschutzgesetze)**

Regional Planning: Cultural Heritage and Renewable Energies

Federal Regional Planning Act (ROG)

§ 2

The principles of regional planning
Regional planning shall be governed by the
following principles:

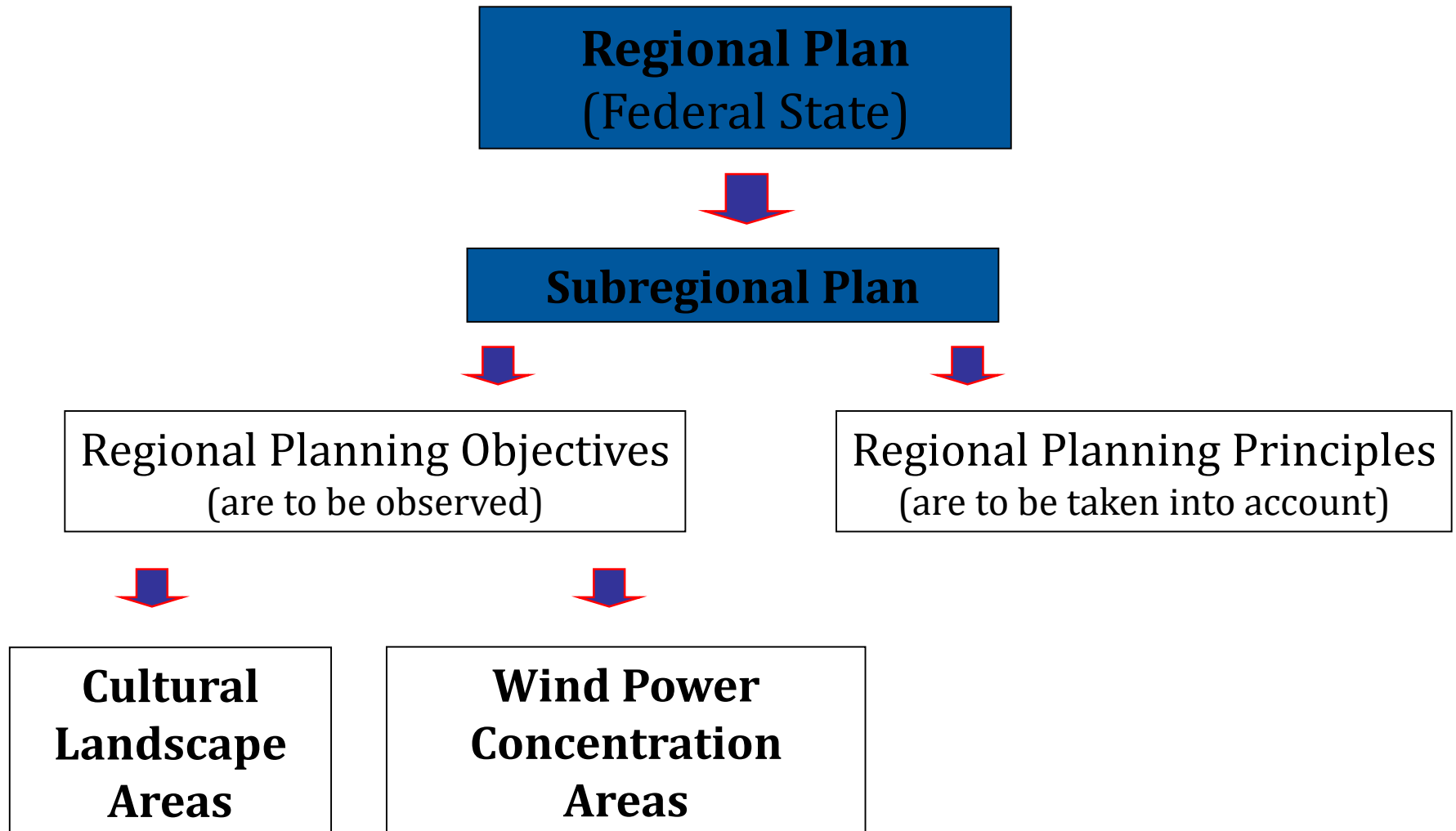


Cultural landscapes shall be preserved and developed. **Historically characterized and evolved cultural landscapes** shall be preserved with their characteristic features and their cultural and natural monuments.



Regional requirements for a cost-effective, secure and **environmentally compatible energy supply**, including the expansion of energy grids, shall be taken into account.

Requirements of Regional Planning



Urban Land-Use Planning: Cultural Heritage and Renewable Energies

Federal Building Code (BauGB)

§ 1

The Scope, Definition and Principles of Urban Land-Use Planning

In the preparation of land-use plans, attention is to be paid in particular to the following:



the requirements relating to the building culture, **preservation and protection of historic monuments** and to local centres, streets and public spaces of historical, artistic or architectural importance and the appearance of the locality or of the landscape.



the requirements of environmental protection, in particular relating the **use of the renewable energies**

Urban Land-Use Planning: Environmental Assessment (UP)

Municipality



Investigation of likely
significant effects on the
environment



Environmental Report



Reasoning



Statement



**Monument
Preservation
Authority**

Wind-Generators in the Undesignated Outlying Area

Federal Building Code (BauGB)

§ 35

Building in the Undesignated Outlying Area



A conflict with public interests exists in particular where the development project [...] is in conflict with the interests of nature conservation, the preservation of the countryside, the **protection** of top-soil and **of monuments and sites**, or detracts from the natural character of the landscape or from its function as an area for recreation, or mars the overall appearance of the locality or of the landscape.



A development project in the undesignated outlying area is only permissible where there are no excluding public interests, ample public infrastructure provision can be guaranteed and where [...]

it is intended for research, development or use of **wind** or water-powered energy sources

UNESCO World Heritage in the Monument Protection Acts of the Federal States

UNESCO WHC
implemented

UNESCO WHC
not
implemented

Monument Protection Act of
Schleswig-Holstein
(DSchG SH 2015)

§ 2

World Cultural Heritage



Monuments

Protected Areas

World Heritage Sites, which are recognized by the World Heritage Committee, shall be regarded as protected areas within their recognized borders, so far they are not protected as monuments.

UNESCO World Heritage and Renewable Energies in Hesse

Hessian Monument Protection Act (HDSchG 2016)

§ 1

The Purpose of Protection and Preservation of Monuments

The purpose of protection and preservation of monuments is to protect and to preserve monuments as sources and evidences of the evolution and the history of the mankind according to this law and to ensure that they are integrated into the urban development, the regional planning and the maintenance of the historically evolved cultural landscape.

§ 9

Measures of Monument Protection Authorities

The authorities shall give **special consideration** to the requirements of the climate protection and resource preservation while making any decisions or granting permits.

§ 3

UNESCO World Heritage

In Hesse, the UNESCO World Heritage deserves an **special care** of the state.

Appropriate Legal Measures for the Protection of the World Cultural Heritage?

Regional Planning



Protection of a World Heritage Site as a regional planning objective in a (sub-) regional plan

Urban Land-Use Planning



Protection of a World Heritage Site as a designation for the urban development in a binding land-use plan

Approval Procedures



Protection of a World Heritage Site as a consideration criterion in relevant planning and permitting procedures

Wind Turbines in the Upper Middle Rhine Valley



State Development Programm of Rheinland-Palatinate (Landesentwicklungsprogramm)

Objective Z 163 d

- Construction of wind turbines within the **core zones** of the World Heritage Sites “Upper Middle Rhine Valley” and “Upper German-Raetian Limes” is excluded.
- **Buffer zones** of the World Heritage Sites “Upper Middle Rhine Valley” and “Upper German-Raetian Limes” exclude a designation of wind energy locations if they are not compatible with the UNESCO World Heritage status.



Subregional Plan Middle Rhine - Westerwald (Regionaler Raumordnungsplan)

Objective Z 148 c

- Within the **buffer zones** of the World Heritage Sites “Upper Middle Rhine Valley” and “Upper German-Raetian Limes” spatially relevant wind turbines are, as a rule, inadmissible. Exceptions are to permit if the compatibility with the UNESCO World Heritage can be proved.

Coblenz Administrative Court

Decision of 28 October 2015

1 K 23/15. KO

- The UNESCO World Heritage Convention is not effectively implemented in national legislation. Thus, decisions of the World Heritage Committee have no binding effect within domestic law.
- The planning legislation, however, may refer to the demarcation of a World Heritage Site and make statements on the admissibility of wind turbines in the core zone and the buffer zone. These statements have a binding effect on the urban land-use planning and permitting procedures.

World Cultural Heritage in the Permitting Procedure

Federal Immission Control Act (BImSchG)

§ 6

Project precluded by
conflicting public interests?

Monument Protection
Act



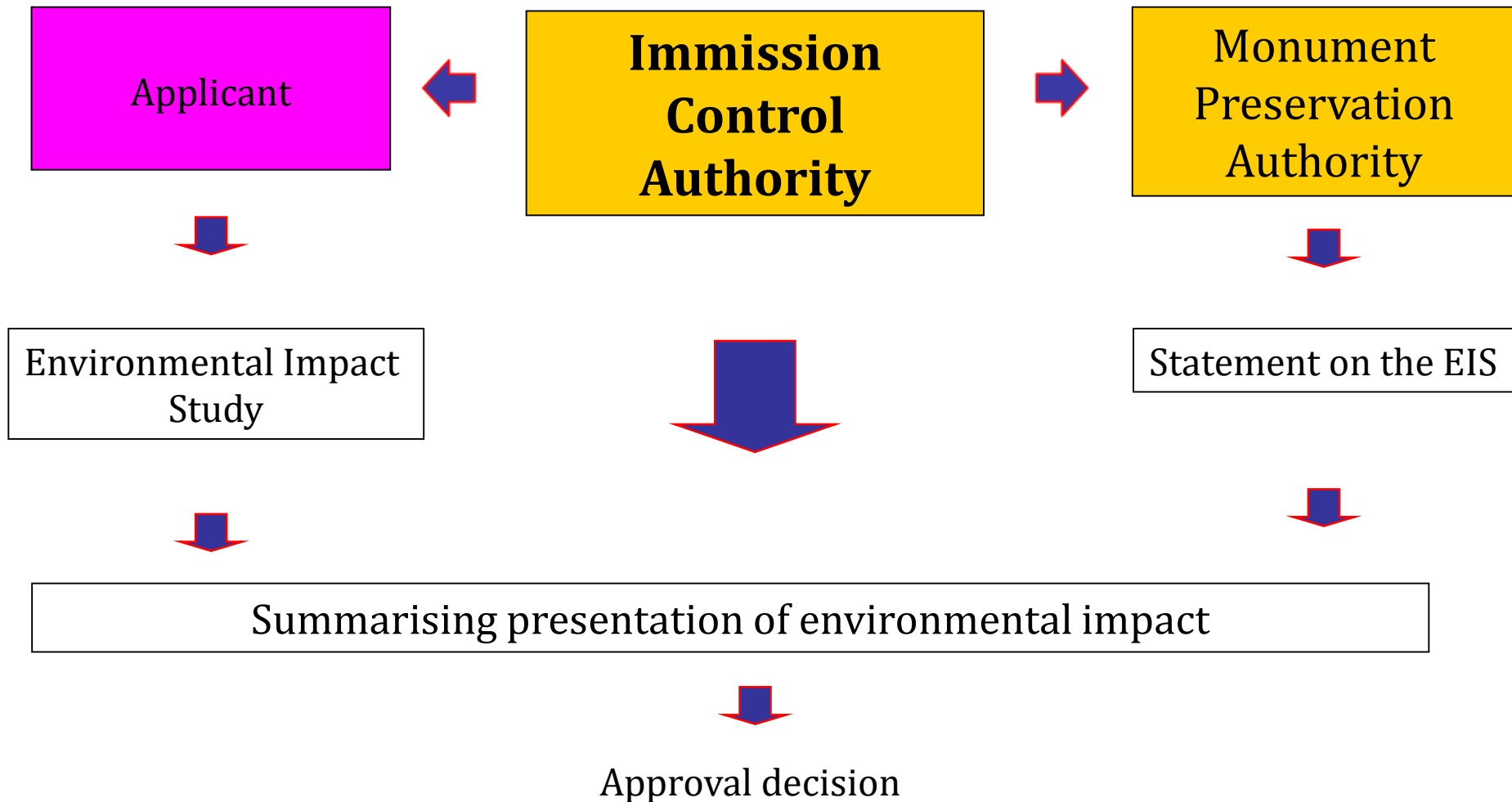
Protection of the
Monument's Setting

Federal Building
Code



Protection of the
Undesignated Outlying Area

Environmental Impact Assessment (UVP)



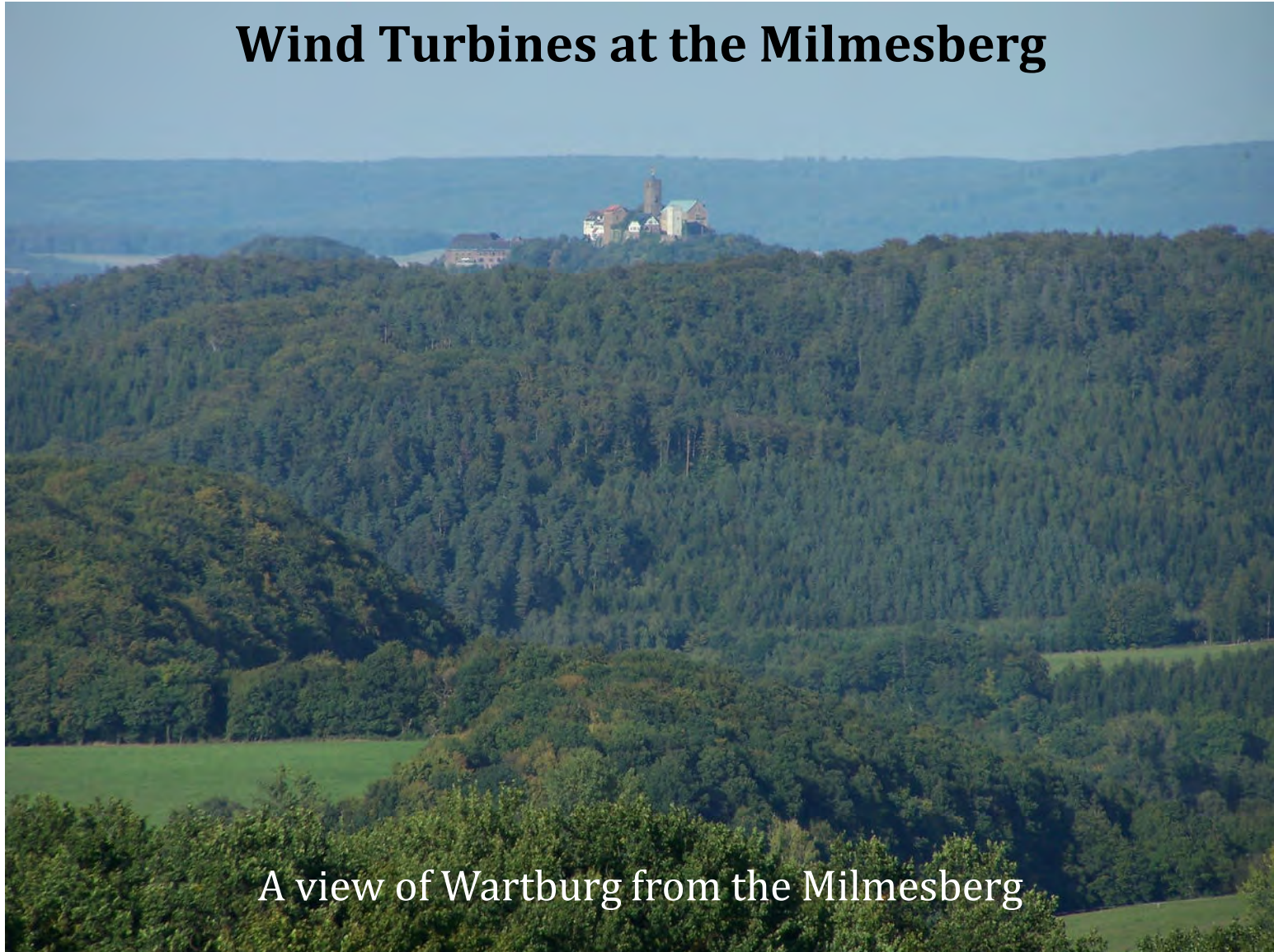
Approval Procedure



Monument Preservation Authority

- checks application documents
- Requests, if necessary, additional data (e.g. visualization, sight line study)
- gives a statement on the compatibility with the UNESCO World Heritage

Wind Turbines at the Milmesberg



A view of Wartburg from the Milmesberg

Meiningen Administrative Court

Decision of 28 July 2010

5 K 670/06 Me

- In principle, an inscription of a monument on the World Heritage List lowers the threshold of its susceptibility.
- From the planning law perspective, the status as a World Heritage Site constitutes a considerable public interest, whose binding effect goes beyond the monumental law of the concrete Federal State.
- A development project (e.g. construction of wind turbines) has no negative impact on the visual integrity of a monument, if the project location does not belong to those topographic elements, which make understandable its history, architecture or its outward appearance.
- A development project has no legally relevant negative impact on the status as World Heritage Site, if the project location does not belong to the setting, which constitutes the OUV.

Résumé

- In Germany, the preservation of monuments and sites and the expansion of the renewable energies are considered as legally equal public interests. Thus, the interest in the siting of wind turbines may, in particular cases, assert itself against the interest in the preservation of historically characterized cultural landscapes or the visual integrity of single monuments and sites.
- The UNESCO World Heritage Convention is just partially implemented in national legislation. Thus, there are different legal positions on the binding effect of the World Heritage status of monuments and sites.
- The regional planning legislation, however, allows to make legal arrangements on protection of World Heritage Sites.

Thank You for Your Attention!
