Preserving Germany’s cultural heritage through legislation

Sixty second summary
The United Nations Educational, Scientific and Cultural Organization (UNESCO) currently list 32 properties in Germany on its World Heritage List. These are properties that the World Heritage Committee considers as having outstanding universal value. There are however around a million historic monuments, buildings and city centres in Germany, and many of these have not been protected.

Post world war two, urban planning strategies gave precedence to transport infrastructure and many historic buildings were destroyed to make way for new developments. The prospects for Germany’s historic buildings looked bleak, until in 1975 events took a turnaround thanks to the European Architectural Heritage Year, organised by the Council of Europe. In Germany, heritage protection became an important aspect of urban planning and in the creation of attractive cities and villages.

Following Germany’s reunification in 1990 it became clear that many of East Germany’s historic buildings were in a poor state of repair following years of neglect. It was up to Germany’s sixteen federal states (Länder) to maintain and repair these buildings.

“Heritage is our legacy from the past, what we live with today, and what we pass onto future generations” (UNESCO)

Through this research, Andreas Saxinger of Nurtingen-Geislingen University, Germany, considers the historical context of Germany’s development, and how legislation has impacted on the preservation of its historic buildings.

The key findings are that:
• Many historic town centres have been put at great risk because of the planning processes implemented over the past few decades
• Germany has introduced a significant number of tax measures which should benefit the owners of historic properties and ensure that these properties are adequately maintained for future generations
• Tax incentives are working – the conditions of many historic buildings especially in East Germany have improved
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Preserving Germany’s heritage
There are around one million individual monuments, building complexes and historic city centres in Germany, 32 of which are World Heritage Listed properties1. This special status means that these buildings and monuments have been given a place on UNESCO’s World Heritage list, which catalogues and conserves sites of outstanding cultural or natural importance. Despite this achievement, Germany’s historic architectural heritage hasn’t always been protected

Between 1945 (post world war two) and 1973 (the time of the worldwide oil crisis), Germany’s economy was booming. New housing areas were developed and in an urban planning context precedence was given to traffic in the design of towns and cities. This growth in the economy led to a rapid expansion of infrastructure, such as the construction of roads and other transportation networks, industrial buildings and new houses, and consequently many historic buildings were destroyed (more than were destroyed during World War Two) to make way for these new developments. A prime example of this was the capital Berlin, where electric and power generation companies dominated the landscape in what was considered to be one of the largest industrial cities of Europe at the time².

Then, in 1975, events took a turnaround thanks to the European Architectural Heritage Year, organised by the Council of Europe. Across Europe, efforts were made to ensure that the general public became more aware of the cultural, social and economic heritage and value of historic monuments, old buildings and sites of special interest in both urban and rural regions. In Germany, heritage protection became an important aspect of urban planning and in the creation of attractive cities and villages.
Despite these efforts, after Germany’s reunification in 1990, where East and West Germany were once again joined, it became clear that many of East Germany’s historic buildings were in a poor state of repair following years of neglect. It was up to Germany’s sixteen federal states (Länder) to maintain and repair these historic but run down buildings and monuments.

Many public buildings and private houses have since been saved from dilapidation largely using money from a city building fund (Städtebauförderung) and thanks to various tax exemptions for owners of heritage properties. Yet many historic properties still need to be restored.

There are many issues facing those involved with the preservation and restoration of Germany’s architectural heritage. Many historic town centres have been put at great risk because of the planning processes implemented over the past few decades, whereby priority has been given to out-of-town developments meaning that town centres, local trade and small scale commercial enterprises are under threat.

So, what is being done to reverse these trends?

1 Source: http://home.bawue.de/~wmwerner/english/heritage.html
2 Source: http://www.stadtentwicklung.berlin.de
3 Source: http://wwwinternational.icomos.org/risk/germa_2000.htm
Preserving Germany’s cultural heritage through legislation

Legislation – Germany’s federal states

Germany (officially the Federal Republic of Germany) consists of sixteen federal states (Länder) that form the German government, which is headed by the Chancellor. The overall head of state is the President of Germany.

Under the German constitution “Grundgesetz” the law for protecting historic buildings is not within the legislative power of the federation, so it is up to the Länder to take responsibility for heritage conservation - consequently there are sixteen different laws (albeit relatively similar in context) protecting Germany’s historic buildings. This protection not only applies to historic buildings but also to urban areas (such as old industrial factory areas), underground monuments (such as caves and funeral hills) and non-statutory monuments (such as archaeological objects). The main differences between the laws of the sixteen Länder can be divided between two main legal systems:

1. **Ipso iure system** – if a building fulfils all the conditions specified within the law, it is classified as being protected. It applies mainly to all federal states in southern Germany, most federal states in eastern Germany, and Lower Saxony in the northern region (some of these states use a mixed system, for example the Registration system applies for ground-based and non-stationary monuments in Baden-Württemberg).

2. **Registration system** – a building is protected once it is registered on an official list of protected buildings and monuments. This system applies mainly to the federal states in northern and western Germany. It is a special administrative act, if the owner does not agree with the registration he/she must officially object to it, or the act becomes legally valid.

So we can see that the individual federal states have their own specific criteria for assessing and protecting heritage buildings. Despite these differences, a building or monument can only be protected by these sixteen laws if it fulfils two specific conditions:

1. **The ability** to be a protected monument. This can be on the basis of historic reasons, technical reasons, art and design, and relevance for urban development.

2. **Worthiness** to be a protected monument. The monument must be considered worthy for conserving for future generations. This can be on the basis of rarity, authenticity, and if it contains original building components.

To add further complexity to matters, there are a number of overarching federal laws that can apply to the protection of historic buildings in Germany.
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Legislative powers of the Federation

While the main legal frameworks are put in place by the states (Länder), the Urban Planning Law and the Income Tax Law, which are in the legislative power of the federation (i.e. apply to the whole of Germany), are also key.

One of the many aspects of Germany’s Urban Planning Law is to ensure that the cultural heritage is respected and historic monuments are conserved. Under this particular law the municipality must consider how to develop their own urban area. This can be difficult at times for elected members, particularly when deciding on issues like whether the municipality should extend an industrial area or protect a historic town quarter. Whatever decision the municipality’s elects for they have to give their reasons and to make their decision public.

The second federal law that can be applied to the protection of historic buildings is the Income Tax Law. There are two tax reductions for owners of historic buildings or monuments:

1. If the building is let, the owner has taxable income from rent. Under normal circumstances, the owner of a building has a depreciation of only 2% per annum. The owner of a historic building has for eight years a depreciation of 9% per annum and for the following four years a depreciation of 7% per annum.

2. If the building is not let and the owner occupies the building, he/she has no taxable income from rent, and also does not have the advantage of a high level of depreciation. In this case the German Income Tax Law allows the owner special tax expenses for nine years, at 9% per annum. The result is that the owner, who occupies the historic building, has the same tax advantages as an owner who prefers to let his historic building.

It is evident that Germany has introduced a significant number of tax measures which should benefit the owners of historic properties and ensure that these properties are adequately maintained for future generations.

But, in order to receive these tax incentives there are a number of conditions that owners of historic buildings or monuments must abide by. What exactly are these conditions and do they affect the way people view the restoration and protection of historic buildings in Germany?
In Germany, heritage protection became an important aspect of urban planning and in the creation of attractive cities and villages.

Duty-bound ownership

Owners of historic properties in Germany must undertake a number of duties and adhere to certain legislation. Fundamentally they are responsible for the maintenance and conservation of the building, but must also follow the restrictions on use set for historic buildings (for example, no modern large windows are allowed in a historic building) and seek permission from the state authorities for all proposed changes to the building, or demolitions.

But how strict is the owner’s duty to conserve? Here are some examples:

- The owner must apply for all available public (not private) subsidies.

- If a property is sold on within ten years of its original purchase, any capital gained by the owners will count as miscellaneous income. The gain is generally equal to the difference between selling price and cost. Where the owner has benefited from accelerated depreciation, improvement expenses are reduced by the amount of any deductions already allowed.

- If the historic building/monument is neglected in the long-term, the owner has a duty to sell other properties they own.

- There are a large number of decisions of the courts, which make the law more concrete and the duties for the owners more clear.
How can we ensure that Germany’s historic buildings are preserved for future generations?

Andreas Saxinger makes some recommendations for the future. He believes that it will be important to make it clear to the public that historic monuments are “not only a cost producing factory, but also a part of the history of a city”. Indeed, historic monuments and buildings can give a city an identity that is specific and unique from other cities.

For some years, in Germany the first Sunday in September is the day of the ‘open monument’, whereby historic monuments are opened up to the general public, to encourage them to get involved with and learn about their cultural heritage. This year - 2007- Andreas Saxinger reports that “it was a great success…a lot of people visited the numerous historic monuments Germany has to offer, which shows it is possible to awaken the passion of local people in their historic monuments and cultural heritage.”

In a final statement, Andreas Saxinger concludes that, “the tax incentives are working. The conditions of many historic buildings especially in East Germany have improved.”

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About the study

This research was presented at the 14th Annual European Real Estate Society (ERES) Conference, June 2007, at Cass Business School, London, UK. The initial research was carried out by Prof. Dr. Andreas Saxinger, Nürtingen-Geislingen University, Germany. Email: Andreas.Saxinger@hfwu.de

Further information relating to this topic can be found in “A review of fiscal measures to benefit heritage conservation”, Rob Pickard and Tracy Pickerill. This report is available to download from the RICS website:


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Photographs by Andreas Saxinger, 2007
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