

Reform of the Cultural Property Law

Extension of the export restrictions to valuable and antique artworks

On 15 September 2015, the competent state minister, Monika Grütters, released the revised proposed legislation on the reform of the cultural property law

This proposed legislation, which only varies slightly from the first – unauthorized – draft dated at the beginning of July 2015, contains a reformation of the already established export restrictions on national cultural property and in the future stipulates a general export restriction on certain cultural property within the European Union. The export of cultural property into countries other than those in the European Union already requires approval according to the effective juridical position.

1. Extension of the export restrictions to all cultural property

It is particularly important to emphasize that, according to the proposed legislation, the export of all cultural property requires approval if the cultural property meets certain value and age requirements. As an example, for **photographs and paintings** these requirements are a value of EUR 300,000 and an age of 70 years, for **watercolors** a value of EUR 100,000 and an age of 70 years. The relevant financial value is the price paid for a purchase or sale within the last three years; in other cases, it is assessed as

a substantiated domestic value estimate as of the date of the application for approval.

An export approval will be granted if the cultural property is not included in the **registry of nationally valuable cultural property**. The authorities have ten workdays to determine approval of the request.

2. Registration

Registration in the registry of nationally valuable cultural property shall take place if the cultural property

- a) is **endowed with a sense of German cultural identity**
- b) and its presence in Germany serves the **prominent cultural public interest**.

A committee of at least five experts will provide a binding evaluation. This committee is comprised of representatives of scholarship, art dealers, private collectors and the state. Before the appointment of these experts, the state authorities shall request recommendations from the respective national associations of German museums and art dealers.

3. Exceptions to registration

Exceptions to the registration exist for the following cultural property:

a) **artworks by living artists** may only be registered with the artists' approval, regardless of whether the artists own these artworks or whether they are owned by third parties.

b) **artworks** that are to be repatriated and which have not been in Germany for more than five years before the planned legislation comes into force, a museum or facility that conserves cultural heritage and property may – upon request – obtain a binding warranty of non-registration. The requirement for such is that the artwork must subsequently remain in Germany for at least five years and it must be publicly displayed or available to researchers.

4. Restrictions on national cultural property

According to the proposed legislation, **national cultural property** shall **no longer be permitted to leave Germany** without approval.

National cultural property shall include all cultural property that

a) is already registered in the **existing registry** of nationally valuable cultural property (http://www.kulturgutschutz-deutschland.de/cIn_103/DE/3_Datenbank/Kulturgut/kulturgut_node.html) or

b) is **publicly owned** and is included in the inventory of an facility that conserves cultural heritage and property.

Private loans to a facility that conserves cultural heritage and property shall only be classified as national cultural property with the permission of the lender for the term of

the loan contract. Upon expiration or termination of the loan contract, the cultural property shall no longer be considered cultural property. The question of the actual handling of this issue remains open.

5. Consequences of export without approval

An export without approval is subject to criminal penalties. The draft legislation proposes a fine or imprisonment of up to five years. If cultural property is exported illegally, the Federal Republic of Germany can assert a restitution claim in the country, in which the cultural property is located.

6. Preferential tax treatment

Cultural property registered in the registry of nationally valuable cultural property enjoys preferential tax treatment. Expenditures for the cultural property may be considered deductions for expenses in assessing income tax. Under certain conditions, the donation or bequest of the cultural property itself may be tax-exempt.

7. Additional legislative procedures

Upon announcement of the proposed legislation, the states and central municipal and trade organizations were given a deadline of three weeks to respond. The law shall come into force in the first half of 2016.

8. Appraisal and prospects

The new draft legislation only conditionally neutralizes the previous legislation and also contains much terminology that creates substantial legal uncertainty. The draft legislation also represents significant interference

with the rights of ownership of the owners of artworks. In addition, the state also gains insight into all private sales transactions.

It remains to be seen what amendments will be made to the proposed legislation in further legislative procedures. Ultimately, administrative practice will probably first provide clarity. However, it should be noted that there will probably be no further (significant) neutralization. The German draft contains less stringent regulations than the provisions from Brussels. As compared to other European countries, there are significantly stricter (e.g. Italy and France) and only occasionally more liberal (e.g. Great Britain) regulations. In this respect, before making a possible decision to move artworks to other European countries before this legislation comes into force, it should be verified whether or not the destination country has stricter regulations.

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