

Guidelines for importing and exporting cultural property into and out of Germany

A. National rules to protect cultural property against export

A.I. Legislation

Act to Protect German Cultural Property against Removal (*Kulturschutzgesetz*, KultgSchG) in the version promulgated on 8 July 1999 (Federal Law Gazette I, p. 1754), last amended by Article 2 of the Act to Implement the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Federal Law Gazette I, pp. 757 and 2547).

In some cases, the **cultural heritage laws of the 16 German states** (*Länder*) also allow for protecting cultural objects as 'movable monuments'. These laws are primarily intended to protect the value of cultural objects as witnesses to cultural heritage against loss through damage, destruction, altered appearance or removal from their original location. The laws also protect their ideal value against loss through removal from the cultural context for which they were created or attained significance. In this way, state law also indirectly provides protection against removal.

A.II. The Act to Protect German Cultural Property against Removal

A.II.1 Scope of the Act and the definition of cultural property of national significance

The Act to Protect German Cultural Property against Removal protects movable cultural objects against transfer abroad only if they are listed in a register of cultural property or archival materials of national significance (principle of individual registration).

Cultural objects of national significance as referred to in Section 1 (1) of the Act are

- ▶ artworks and other cultural property, including bibliographic works and
- ▶ archival material,

whose removal from the territory covered by the Act would constitute a significant loss for German cultural heritage.

In its resolution of 22 April 2004, the Standing Conference of Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany issued the following recommendation:

“The Act applies also to cultural property that originated outside Germany but has been located in Germany so long that it is also considered an element of German cultural property.

“In order for this protection to apply, artworks and other cultural objects, including collections, must be listed in the register of cultural property of national significance if they are

- a) important objects by artists of international renown, or
- b) are of outstanding importance for German art or history (including natural history),

or

c) are of outstanding importance for the history of a state or historical regions.”

The Act always applies to cultural property and archival materials which are

- ▶ privately owned,
- ▶ owned by the churches, or
- ▶ publicly owned.

Every state maintains its own register of cultural property and archival materials of national significance located in that state.

All the state registers are compiled into two overall registers:

- ▶ the national register of cultural property of national significance, and
- ▶ the national register of archival materials of national significance.

These national registers are maintained by the Federal Government Commissioner for Culture and the Media (BKM).

A.II.2 Procedures to protect cultural objects of national significance

A.II.2.1 Registration

- ▶ **Jurisdiction:** The **supreme authorities at state level** decide whether cultural objects are to be listed in the relevant register (Section 2 (1), Section 11 (1) of the Act to Protect German Cultural Property against Removal).
- ▶ **Procedure:** Cultural objects and archival materials are listed in the registers as part of standard procedure or on request (Section 2 (2), Section 11 (2) of the Act to Protect German Cultural Property against Removal). In addition, the Federal Government Commissioner for Culture and the Media may request that cultural property be listed in the register in the common interest of the German people (Section 3 (2), Section 11 (2) of the Act). The **states** govern by means of regulation the right to request registration (Section 3 (1), Section 11 (2) of the Act). Before a decision is made, the supreme authority at state level is required to hear the opinion of a **committee of experts**, which it appoints (Section 2 (2), Section 11 (2) of the Act).
- ▶ **Legal consequences:** Based on the preliminary registration and announcement, cultural property is subject to an export ban (Section 4 (1), Section 11 (2) of the Act). Upon final registration in a register of cultural objects or archival materials of national significance, the export of such objects and materials requires an export licence (Section 1 (4) of the Act). If a registered cultural object is taken to another location within the country or is lost or damaged, this must be reported without delay to the supreme authority at state level in whose register the item is listed (Section 9, Section 14 (2) of the Act).

A.II.2.2 Export

- ▶ **Jurisdiction:** The **Federal Government Commissioner for Culture and the Media** may grant an export licence for registered cultural objects (Section 5 (1) in conjunction with Section 1 (4), and Section 10 (3) in conjunction with Section 12 (1) of the Act).
- ▶ **Procedure:** Before approving an application for an export licence, the opinion of a

committee of experts is to be heard (Section 5 (2), Section 12 (2) of the Act).

- ▶ **Legal consequences:** The cultural object may be exported out of the Federal Republic of Germany only if the export licence is approved. Export licences are issued in **writing without using a specific form**.

A.II.3 List of customs offices authorized to process exports

Germany does not limit the number of customs offices authorized to process cultural objects. Cultural objects may be processed at **any customs office**.

[Link zum PDF \(Zuständigkeit AES\)](#)

A.II.4 Authorities for protection at national level

The supreme authorities at state level and the Federal Government Commissioner for Culture and the Media are the authorities responsible for providing protection at national level.

A.II.5 Authority to conduct inspections for the purpose of protecting cultural property

A.II.5.1 Police agency responsible for protection (point of contact)

Germany does not have a central police agency responsible for protecting cultural objects. As part of their general duties, the state police forces are also responsible for protecting cultural property of national significance.

A.II.5.2 Customs authority responsible for inspecting exports

Any customs office involved in the **export** of cultural objects to **third countries** may inspect the objects in line with cultural heritage law.

On German territory, inspections may be carried out by the **transport route inspection units in the C divisions of the main customs offices**. These units may stop vehicles and persons in individual cases in order to determine whether the goods they are transporting comply with customs regulations and regulations concerning bans and limits (Section 10 of the Customs Administration Act).

The main point of contact for the Customs Administration is the

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A.II.5.3 Legal basis for customs inspections

Section 1 (3) and Section 10 of the Customs Administration Act in conjunction with Sections 1, 4 and 11 of the Act to Protect German Cultural Property against Removal and/or Article 183 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

The export of cultural property covered by the Act to Protect German Cultural Property against Removal is also monitored by the customs authorities on the basis

of Section 16 (1) no. 1 of the Act to Implement the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and to Implement Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (Act on the Return of Cultural Objects (*Kulturgüterrückgabegesetz, KultGüRückG*)).

A.II.5.4 Modalities of inspections

General authority to inspect exports

Inspections of exports destined for third countries follow a two-step export procedure:

Step 1: Preliminary processing by the customs office at the exporter's location (= customs office of export)

Cultural objects to be exported must be reported to the customs office at the exporter's location (= customs office of export, Article 4 no. 4 c of the Community Customs Code).

This customs office checks, among other things, to determine whether the reported objects are subject to an export ban or export licence (Article 161 Community Customs code in conjunction with Articles 788 to 795 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as well as Section 1 (3) of the Customs Administration Act in conjunction with Sections 1, 4 and 5 of the Act to Protect German Cultural Property against Removal).

- ▶ If the customs office determines that the objects constitute **cultural property requiring an export licence**, and no such licence exists, the application to export is refused. The person desiring to export the object may obtain and present the necessary licence after the fact.
- ▶ If an export licence for protected cultural property is presented, the customs office checks to make sure the licence is authentic (if necessary in consultation with the issuing agency) and matches the object. The original of the export licence, with an exact description of the item, must be presented. If there are no reasons under cultural heritage law to prohibit export, the customs office enters its permission to export on the export declaration.
- ▶ However, if the customs office finds that the item constitutes **cultural property subject to an export ban**, the office contacts the responsible state authority, refuses the application for customs processing and determines whether there are grounds for prosecution under Section 16 of the Act to Protect German Cultural Property against Removal concomitant with a customs violation under Section 372 of the German Fiscal Code. If so, prosecutorial actions, such as seizing the item, are to be taken (Sections 94, 111 of the Code of Criminal Procedure) (see A.II.6).

Step 2: Processing by the customs office at the point of exit

The permission to export entered on the export declaration must then be presented to the customs office at the actual point of exit from the EU (= customs office at the point of exit in accordance with Art. 4 no. 4 d of the Community Customs Code). The customs office at the point of exit checks to make sure this permission matches the export documents and the item to be exported, if necessary. If everything is in order,

the customs office makes a copy of the permission, stamps it with a processing stamp (name of the customs office, date, name of the processing officer and number of the export declaration) and with its official stamp and sends the copy to the Federal Government Commissioner for Culture and the Media. The original is returned to the person exporting the item.

In case of export via another Member State, the procedure described above is to be carried out by the customs office of export.

A.II.6 Provisions on punishment for criminal offences and fines

For cultural objects covered by the Act to Protect German Cultural Property against Removal (see 1.2), illegal transfer is subject to imprisonment of up to three years or a fine (Section 16 (1) of the Act). Any attempt is also punishable (Section 16 (2) of the Act).

Failure to comply with reporting obligations for these cultural objects as stipulated by law will be treated as an administrative offence and may be punishable by a fine (Section 17 of the Act).

A.II.7 Other specific national regulations

A.II.7.1 Right of first refusal, function conditions

Cultural objects listed in a register of cultural property or archival material of national significance are not subject to any **civil law restrictions**.

Neither the federal nor the state governments have any right of first refusal.

If an export licence is refused with final and binding effect, and if the owner of the protected cultural object is forced to sell it due to economic hardship, the competent state authority is to seek a fair settlement (Section 8 of the Act to Protect German Cultural Property against Removal).

A.II.7.2 National taxation, special conditions

According to Section 1 (3) of the Act to Protect German Cultural Property against Removal, registered objects are to be covered by special statutory concessions for the purposes of taxation and the equalization of burdens regime. Thus, under Section 13 (1) no. 2 b) bb) of the Inheritance Tax Act (ErbStG), registered cultural objects are **exempt from inheritance tax** and are **subject to income tax concessions** under Section 10 g (1) no. 4 of the Income Tax Act (EStG) in that the **owner** may claim expenses for restoring and maintaining the protected cultural property **in accordance with this provision**.

B. European Community rules to protect cultural objects against export

B.I. Legislation

1. Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods
2. Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/1996
3. Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

B.II. The legislation in detail:

B.II.1 Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods

B.II.1.1 Scope of the Regulation

Artworks and other cultural property whose removal from the European Community, and thus also from Germany, would mean a significant loss to European and national cultural heritage, are subject to special export regulations.

B.II.1.2 Protected cultural property

The annex to the Regulation contains categories of cultural property by age and value which define – independent of national definitions of cultural property – which objects qualify as cultural objects under the Regulation and require an export licence.

Export licences are required for those cultural objects which

- were lawfully and definitively located in the Federal Republic of Germany on 1 January 1993, or
- were imported after that date from non-EU countries, or
- were lawfully and definitively imported after that date from an EU country, i.e. with that country's permission, into the Federal Republic of Germany, or
- were re-imported into Germany after that date from a third country after being lawfully imported from another EU member state.

B.II.1.3 Authorities responsible for issuing export licences

The **state authorities for the protection of cultural property or institutions authorized by them** are responsible for issuing export licences.

(The state authorities responsible for issuing export licences under Article 3 of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods can be found using the website's search function.)

B.II.1.4 List of customs offices authorized to process exports

Germany does not limit the number of customs offices authorized to process cultural objects. Cultural objects may be processed at **any customs office**.

[Link zum PDF \(Zuständigkeit AES\)](#)

B.II.1.5 Authority to conduct inspections for the purpose of protecting cultural property

B.II.1.5.1 Customs authority responsible for inspecting exports

Any customs office involved in the **export** of cultural objects to **third countries** may inspect the objects in line with cultural heritage law.

On German territory, inspections may be carried out by the **transport route inspection units in the C divisions of the main customs offices**. These units may stop vehicles and persons in individual cases in order to determine whether the goods they are transporting comply with customs regulations and regulations concerning bans and limits (Section 10 of the Customs Administration Act). The main point of contact for the Customs Administration is the

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B.II.1.5.2 Legal basis for customs inspections

Section 1 (3) and Section 10 of the Customs Administration Act in conjunction with Article 2 of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods and/or Article 183 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

The export of cultural property subject to European Community import or export restrictions is also monitored on the basis of Section 16 (1) no. 2 of the Act on the Return of Cultural Objects.

B.II.1.5.3 Modalities of inspections

see A.II.5.4 (General authority to inspect exports)

Special authority to inspect exports

For the **export** of cultural objects, the authority granted the customs administration to make inspections under cultural heritage law is governed by Article 4 of Council Regulation (EC) No 116/2009 and by Articles 8, 11, 12, 14 and 15 of Council Regulation (EEC) No 752/93. Under these regulations, the customs administration is authorized to check documents and identification in addition to its general authority to conduct customs inspections under Article 183 of the Community Customs Code.

B.II.1.6 Sanctions

The **Regulation** refers to national law for the prosecution of violations of the Regulation. **National regulations to protect cultural property** do not contain any special legal provisions on fines and penalties for violations of the Regulation.

A violation may be punishable under Section 372 (1) and (2) in conjunction with Section 370 (2) of the German Fiscal Code in conjunction with Article 2 (1) of Council Regulation (EC) No 116/2009.

B.II.2 Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/1996

B.II.2.1 Scope of Council Regulation (EC) No 1210/2003 and definition of the protected cultural property

In addition to embargo measures under foreign trade and payments law, the Regulation also prohibits the import and export of Iraqi cultural objects and other objects of archaeological, historical, cultural, rare scientific and religious significance, including the objects listed in Annex II of the Regulation which have been lost from cultural institutions in Iraq or otherwise removed from Iraq in breach of Iraqi law and regulations, such as cultural objects from clandestine excavations. The Regulation prohibits dealing in these cultural objects as well as importing or exporting or transferring them into or out of the territory of the Community.

The ban on the import and export of and dealing in these objects does not apply if it is shown that these cultural objects

- were exported from Iraq before 6 August 1990, or
- are to be returned to Iraqi institutions.

The competent central authorities of the states are responsible for determining whether an exception to the ban on import and export should be made and whether the evidence shown may be recognized.

B.II.2.2 Authority to conduct inspections for the purpose of protecting cultural property

B.II.2.2.1 Customs authority responsible for inspecting exports and imports

Any customs office involved in the **import or export** of cultural objects into or out of **third countries** may inspect the objects in line with cultural heritage law.

On German territory, import and export inspections may be carried out by the **transport route inspection units in the C divisions of the main customs offices**. These units may stop vehicles and persons in individual cases in order to determine whether the goods they are transporting comply with customs regulations and regulations concerning bans and limits (Section 10 of the Customs Administration Act).

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B.II.2.2.2 Legal basis for customs inspections

Section 1 (3) of the Customs Administration Act in conjunction with Article 3 of Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/1996, and with Articles 37 and 183 of the Community Customs Code.

Under Section 46 (4) of the Foreign Trade and Payments Act, the customs authorities are responsible for enforcing this ban on imports and exports.

B.II.2.2.3 Modalities of inspections

General authority to inspect exports

As part of customs monitoring of export procedures (see A.II.5.4), the customs offices also check whether items to be exported are Iraqi cultural property. If there is reason to believe that items may be Iraqi cultural property, the customs offices inform the central authorities of the states.

General authority to inspect imports

Goods to be imported into the customs area of the European Community are subject to customs monitoring from the time they are transferred (Article 37, Council Regulation (EEC) No 2913/92). Customs monitoring ensures compliance with customs law, in particular ensuring that bans and restrictions under culture heritage law are enforced and that customs inspections are carried out (Section 1 (3) Customs Administration Act).

If import goods are reported and there is reason to believe they may be cultural objects from the Iraq region (obsolete: Mesopotamia), the central authorities of the states are to be informed.

B.II.2.3 Sanctions

Section 34 (4) no. 2 of the Foreign Trade and Payments Act in conjunction with the promulgation of Council Regulation (EC) No 1210/2003 of 7 July 2003 prohibits dealing in, exporting and importing Iraqi cultural objects and other objects of archaeological, historical, cultural, rare scientific and religious significance. In particular, dealing in, exporting and importing the objects listed in Annex II of the Regulation **in the economic territory of the Federal Republic of Germany**. However, transfer to and from other Member States is not a punishable offence under Section 34 (4) no. 2 and (5) of the Foreign Trade and Payments Act. The German Fiscal Code may also be applied as supplementary penal provisions.

B.II.3 Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

B.II.3.1 Implementing texts, related documents

The Act to Implement Directives of the European Communities on the return of cultural objects unlawfully removed from the territory of a Member State and to amend the Act to Protect German Cultural Property against Removal (*Kulturgutsicherungsgesetz*, KultgutSiG) of 15 October 1998 (Federal Law Gazette I, p. 3162) implements Council Directive 93/7/EEC **through the Act on the Return of Cultural Objects** (*Kulturgüterrückgabegesetz*, KultGüRückG). The Act on the Return of Cultural Objects was last amended by Article 1 of the Act of 18 May 2007 to Implement the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Federal Law Gazette I, pp. 757 and 2547).

B.II.3.2 Export ban for halted cultural property

The Act on the Return of Cultural Objects serves primarily to govern reciprocal return claims in the case of unlawful removal of protected cultural property of a Member State. **According to Section 8 (2) of the Act on the Return of Cultural Objects, halted cultural property may not be exported** while a procedure to return the property is ongoing, in order to secure the return of cultural property to the requesting Member State.

B.II.3.3 Authority to conduct inspections for the purpose of protecting cultural property of Member States

B.II.3.3.1 Customs authority responsible for inspecting exports of cultural property

Any customs office involved in the **export** of cultural objects to **third countries** may inspect the objects in line with cultural heritage law.

On German territory, inspections may be carried out by the **transport route inspection units in the C divisions of the main customs offices**. These units may stop vehicles and persons in individual cases in order to determine whether the goods they are transporting comply with customs regulations and regulations concerning bans and limits (Section 10 of the Customs Administration Act).

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B.II.3.3.2 Legal basis for customs inspections

Section 1 (3) of the Customs Administration Act in conjunction with Section 8 (4) of the Act on the Return of Cultural Objects and/or Article 183 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

B.II.3.3.3 Modalities of inspections

see A.II.5.4 (General authority to inspect exports)

B.II.3.4 Penal provisions

Under Section 20 (1) no. 1 of the Act on the Return of Cultural Objects, anyone who exports halted cultural property or withholds it from the responsible authorities in violation of Section 8 (4) of the Act on the Return of Cultural Objects may be subject to imprisonment of up to three years or a fine.

C. International agreements to protect cultural property against export

C.I. Conventions

1. UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
2. Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict

C.II. The conventions in detail:

C.II.1 UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

C.II.1.1 Implementing texts, related documents

The Act of 18 May 2007 to Implement the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Federal Law Gazette I, pp. 757 and 2547) implements the afore-mentioned convention.

The Act of 18 May 2007 to Implement the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and to Implement Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (Act on the Return of Cultural Objects (*Kulturgüterrückgabegesetz*, KultGüRückG), Federal Law Gazette I, pp. 757, 2547) constitutes Article 1 of the implementing Act.

C.II.1.2 Export ban for halted cultural property

The Act on the Return of Cultural Objects serves primarily to govern reciprocal return claims in the case of unlawful removal of protected cultural property of states parties to the Convention. **According to Section 8 (2) of the Act on the Return of Cultural Objects, halted cultural property may not be exported** while a procedure to return the property is ongoing, in order to secure the return of cultural property to the requesting state party.

C.II.1.3 Import procedures to protect valuable cultural property of states parties

C.II.1.3.1 The register of valuable cultural property of states parties

Under the Act on the Return of Cultural Objects, only **cultural property from states parties to the Convention** which is listed in the register of valuable cultural property of the states parties may be **subject to an import licence** (Section 14 (1) of the Act on the Return of Cultural Objects).

The Regulation on the register of valuable cultural property under the Act on the Return of Cultural Objects of 15 October 2008 (*Kulturgüterverzeichnis-Verordnung*, KultgVV, Federal Law Gazette I, p. 2002) governs the procedure and the conditions for creating, managing and updating the states parties' register

(Section 14 (3) of the Act on the Return of Cultural Objects).

Persons wishing to transfer to German territory cultural property belonging to a state party to the UNESCO Convention may check this register to make sure that the cultural property in question is not subject to any export restrictions and a resulting import licence for transfer to the Federal Republic of Germany.

C.II.1.3.2 Authority responsible for the register of valuable cultural property of the states parties

Under Section 14 (2) of the Act on the Return of Cultural Objects in conjunction with Section 3 of the Regulation on the register of valuable cultural property, the point of contact at the office of the Federal Government Commissioner for Culture and the Media is the

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C.II.1.3.3 Import licence

A licence is to be issued if the export of the cultural property from the state party is not prohibited (Section 15 (1) of the Act on the Return of Cultural Objects).

If the export of the object is prohibited by the state party, the Central Federal Authority must decide at its proper discretion.

C.II.1.3.4 Authority responsible for import licences for protected cultural property of states parties

Under Section 15 (2) of the Act on the Return of Cultural Objects, the point of contact at the office of the Federal Government Commissioner for Culture and the Media is the

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C.II.1.4 Authority to conduct inspections for the purpose of protecting cultural property of states parties

C.II.1.4.1 Customs authority responsible for inspecting exports and imports of cultural property

Any customs office involved in the **import or export** of cultural objects into or out of **third countries** may inspect the objects in line with cultural heritage law.

On German territory, inspections may be carried out by the **transport route inspection units in the C divisions of the main customs offices**. These units may

stop vehicles and persons in individual cases in order to determine whether the goods they are transporting comply with customs regulations and regulations concerning bans and limits (Section 10 of the Customs Administration Act).

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C.II.1.4.2 Legal basis for customs inspections

Section 1 (3) of the Customs Administration Act in conjunction with Section 8 (2) and Section 17 of the Act on the Return of Cultural Objects and/or Article 183 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

C.II.1.4.3 Modalities of inspections

see A.II.5.4 (General authority to inspect exports) and B.II.2.2.3 (General authority to inspect imports)

Special authority to inspect imports of cultural property of the states parties

For the **import of cultural objects from states parties**, the authority granted the customs administration to make inspections under cultural heritage law is governed by Section 17 (1) of the Act on the Return of Cultural Objects.

Customs inspections of cultural property of the states parties are conducted on the basis of the register of valuable cultural property of the states parties.

In case of doubt as to whether an import licence is required for cultural objects to be transferred to German territory, or whether their import is legal, the customs authorities are authorized to halt the cultural objects in question and take them into safekeeping. In such cases, the customs authorities may require the authorized person to present a certificate showing that the objects are not listed in the register of valuable cultural property of the states parties as referred to in Section 14 (2) of the Act on the Return of Cultural Objects (Section 17 (1) of the Act on the Return of Cultural Objects).

Designation of an expert individual or office

This certificate is to be issued by an independent expert individual or office recognized by the Federal Government Commissioner for Culture and the Media.

C.II.1.5 Penal provisions

Export ban during return procedures

Under Section 20 (1) no. 1 of the Act on the Return of Cultural Objects, anyone who exports halted cultural property or withholds it from the responsible authorities in violation of Section 8 (4) of the Act on the Return of Cultural Objects may be subject to imprisonment of up to three years or a fine.

Ban on transferring cultural property of states parties

Under Section 20 (1) no. 3 of the Act on the Return of Cultural Objects, anyone who transfers an object without a licence under Section 14 (1) of the Act may be subject to imprisonment of up to three years or a fine.

C.II.2 Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict

C.II.2.1 Implementing texts, related documents

The Act of 18 May 2007 to Implement the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Federal Law Gazette I, pp. 757 and 2547) implements the afore-mentioned convention.

The Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict (*Kulturgutschutz-Konvention-Ausführungsgesetz*, KultSchKonvAG, Federal Law Gazette I, p. 757) constitutes Article 4 of the implementing Act.

C.II.2.2 Obligation to return cultural property; transfer ban

As specified in Article 1 of the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict (Federal Law Gazette 1967 II, p. 1233), after the end of hostilities cultural property must be returned to the competent authorities of the previously occupied territory of a state party, if this property was transferred from the territory of this state to German territory after 11 November 1967 during an armed conflict.

Transferring cultural property in contravention of Section I no. 2 of the Protocol to the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict (First Protocol) to German territory from the occupied territory of a state party during an armed conflict is prohibited.

C.II.2.3 Export ban for halted cultural property

The Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict serves primarily to govern return claims in the case of unlawful removal of protected cultural property of states parties to the Convention. **According to Section 3 (4) of that Act, halted cultural property may not be exported** while a procedure to return the property is ongoing, in order to secure the return of cultural property to the requesting contracting party.

C.II.2.4 Inspections in order to protect cultural property

C.II.2.4.1 Customs authority responsible for inspecting imports

Any customs office involved in the **import** of cultural objects to **third countries** may inspect the objects in line with cultural heritage law.

On German territory, inspections may be carried out by the **transport route inspection units in the C divisions of the main customs offices**. These units may stop vehicles and persons in individual cases in order to determine whether the goods they are transporting comply with customs regulations and regulations concerning bans and limits (Section 10 of the Customs Administration Act).

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C.II.2.4.2 Legal basis for customs inspections

Transferring cultural property in contravention of the First Protocol from the occupied territory of a state party during an armed conflict to German territory in direct trade with third countries is monitored by the customs authorities (Section 2 (2) Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict).

C.II.2.4.3 Modalities of inspections

Authority to inspect imports of cultural property from the contracting parties

For the **import of cultural objects from states parties**, the authority granted the customs administration to make inspections under cultural heritage law is governed by Section 2 (2) and (5) of the Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict.

In case of doubt as to whether the cultural property is from occupied territory of a state party, the customs authorities are authorized to take the items into safekeeping or to entrust them to a third party until the matter has been clarified; the person transferring the items to German territory or in whose name they are being transferred (authorized person) is to bear the costs of such safekeeping. **In order to clarify the matter, the customs authorities may require the authorized person to present a certificate showing that the object is not cultural property from the occupied territory of a state party** (Section 2 (4) of the Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict).

Designation of an expert individual or office

This certificate is to be issued by an independent expert individual or office recognized by the Federal Government Commissioner for Culture and the Media (Section 2 (4) of the Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict).

C.II.2.5 Penal provisions

The Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict **does not contain any special legal provisions on fines and penalties for violations of the transfer ban covered by Section 2 (1) first sentence.**

A violation may be punishable under Section 372 (1) and (2) in conjunction with Section 370 (2) of the German Fiscal Code in conjunction with Section 3 (4) of the Act of 18 May 2007 to Implement the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict in conjunction with Sections 8 and 12 of the Act on the Return of Cultural Objects, which state that it is prohibited to export cultural property halted by the competent authorities.

Access to the above-mentioned information

- a) Practical information on the protection of cultural property and the text of legislation:
- b) www.kulturgutschutz-deutschland.de
- c) Information on exporting and importing cultural objects and on protected cultural objects:
www.kulturgutschutz-deutschland.de
[www.zoll.de/Schutz des Kulturgutes](http://www.zoll.de/Schutz_des_Kulturgutes)
- d) General information about the German Customs Administration:
www.zoll.de

Impressum

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