

# Act

## to Prevent the Exodus of German Cultural Property

(*Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung – KultgSchG*)

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### Chapter One

#### Works of art and other cultural objects (except archival material)

##### Section 1

(1) Works of art and other cultural objects – including bibliographic works in libraries – the exodus of which from the area of application of this Act would constitute a significant loss for German cultural heritage shall be entered in a “*Verzeichnis national wertvollen Kulturgutes*” [register of cultural objects of national importance] in the *Land* in which they are located upon the entry into force of this Act. Additions shall be made to the register as necessary.

(2) The registration shall remain in effect in the event of a change of location of the registered cultural objects from one *Land* to another *Land* within the area of application of this Act.

(3) Registered objects shall be covered by special statutory concessions for the purposes of taxation and the equalization of burdens regime.

(4) The export of registered cultural objects shall require a licence. This may be subject to conditions. An export licence shall be refused where in consideration of the circumstances of the individual case these are outweighed by significant interests of German cultural heritage. Any other form of removal from the area of application of this Act shall be deemed equivalent to export.

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Text reference effective as from 1 January 1975

Amendment on the basis of the Unification Treaty, see section 22

Introduced in the Saarland pursuant to section 15, letter n, of the Act of 23 December 1956 101-2

## Section 2

(1) The decision on registration of a cultural object shall be made by the supreme *Land* authority.

(2) Before a decision is made the supreme *Land* authority shall hear the opinion of a committee of experts, which it shall appoint. The committee shall consist of five experts, one of whom shall be appointed on the proposal of the Federal Government Commissioner for Culture and the Media. Specialists from the public administration, university faculty, private collectors, and the art and rare book trades shall be considered when appointing the experts.

## Section 3

(1) Registration may be effected upon application or *ex officio*. The *Land* government shall regulate the right of application by ordinance. It may delegate this authority to the competent supreme *Land* authority.

(2) The Federal Government Commissioner for Culture and the Media may apply for an entry to be made in the register in the common interest of the German people.

## Section 4

(1) If registration of a cultural object is initiated, its export shall be prohibited until the decision on registration becomes final.

(2) Notice of the initiation of registration of an object in the “*Verzeichnis national wertvollen Kulturgutes*” shall be published.

## Section 5

(1) The Federal Government Commissioner for Culture and the Media shall decide on the issue of a licence for the export (section 1 subsection (4)) of registered cultural objects.

(2) Before a decision is made the Federal Government Commissioner for Culture and the Media shall hear the opinion of a committee of experts, which he shall appoint. The committee shall consist of five experts, one of whom shall be appointed on the proposal of the *Bundesrat* and two others on the proposal of the *Land* in the register of which the cultural object is entered. Specialists from the public administration, university faculty, private collectors, and the art and rare book trades shall be considered when appointing the experts.

## Section 6

(1) Each registration and any changes thereto shall be reported to the parties involved and to the Federal Government Commissioner for Culture and the Media and shall be published by the supreme *Land* authority in accordance with the respective *Land* law and in the Federal Gazette. Neither the owner nor the location of the registered cultural object should thereby be named.

(2) The Federal Government Commissioner for Culture and the Media shall maintain a “*Gesamtverzeichnis national wertvollen Kulturgutes*” [consolidated register of cultural objects of national importance] compiled from the registers of the individual *Länder*.

## Section 7

(1) If more than five years have passed since publication of the notice of registration in the Federal Gazette and if circumstances have significantly changed, the owner may apply for a deletion to the supreme *Land* authority.

(2) Notice of the deletion shall be published in the same manner as the notice of registration pursuant to section 6 and reported to the parties involved and to the Federal Government Commissioner for Culture and the Media.

## Section 8

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 supreme *Land* authority of that *Land* in which the cultural object is located, in consultation with the Federal Government Commissioner for Culture and the Media, shall seek a fair settlement, taking into account the tax concessions pursuant to section 1 subsection (3).

## Section 9

(1) If a registered cultural object within the country is taken to another location or is lost or damaged, the possessor shall report this without delay to the supreme *Land* authority, which shall inform the Federal Government Commissioner for Culture and the Media. In the event of a change of possession, both the former and the new possessors shall have a duty to report.

(2) If the owner and possessor of the cultural object are not one and the same person, the owner shall also have a duty to report.

(3) If a registered cultural object is moved to another *Land* for other than a temporary period, it shall be transferred to the register of that *Land*.

## Chapter Two Archival material

### Section 10

(1) Archives, archival collections, estates and collections of correspondence of significant importance for German political, cultural and economic history shall be entered in a “*Verzeichnis national wertvoller Archive*” [register of archives of national importance] in that *Land* in which they are located upon the entry into force of this Act. The export of archival material from these registered archives shall require a licence. Additions shall be made to the register as necessary.

(2) In addition to written material of all kinds, archival material within the meaning of this Act shall include maps, plans, seals, and pictorial, film and sound material.

(3) Section 1 subsections (2) to (4) shall apply *mutatis mutandis*.

### Section 11

(1) The decision on entry of archival material in the register (section 10 subsection (1)) shall be made by the supreme *Land* authority,

(2) Section 2 subsection (2) and sections 3 and 4 shall apply *mutatis mutandis*.

(3) In the case of archival material relating to the history of the Federal Republic of Germany, the zonal administrative bodies, the German Empire, Prussia, the North German Confederation and the German Confederation, the Federal Archives shall also be consulted before a decision is made.

### Section 12

(1) The Federal Government Commissioner for Culture and the Media shall decide on the issue of a licence for the export (section 10 subsection (1)) of archival material entered in a register.

(2) Section 5 subsection (2) shall apply *mutatis mutandis*.

### Section 13

(1) Each registration and any changes thereto shall be reported to the owners and possessors of the registered archival material as well as to the Federal Government Commissioner for Culture and the Media and the competent state archive administration. If the Federal Archives has been consulted, it shall also be informed of the decision.

(2) Section 6 subsection (2) shall apply *mutatis mutandis*.

## Section 14

(1) Any person who conducts or acts as an intermediary in negotiations for the export of protected archival material (section 10) from the area of application of this Act shall report this to the Federal Government Commissioner for Culture and the Media without delay. The same shall apply to any person who prior to the entry into force of this Act concluded a contract for the export of protected archival material from the area of application of this Act but has not yet effected performance.

(2) Section 9 shall apply *mutatis mutandis*.

## Section 15

Obligations arising under existing international agreements shall remain unaffected by this Act.

### **Chapter Three** **Provisions governing criminal penalties and regulatory fines**

## Section 16

(1) Any person who

- a) exports a registered cultural object or registered archival material without a licence or
- b) in contravention of a temporary prohibition of export (sections 4 and 11) exports a cultural object or archival material for which registration has been initiated

or otherwise removes such object or material from the area of application of this Act shall be punished by a term of imprisonment of up to three years or by a fine.

(2) The attempt shall be punishable.

(3) Cultural objects or archival material to which the criminal offence relates may be confiscated. Confiscation shall be to the benefit of the *Land* in which the cultural object or archival material is protected through entry in the register or in which its registration has been initiated. Section 74a of the German Criminal Code [*Strafgesetzbuch*] shall apply.

## Section 17

Failure to comply with the duty to report under sections 9 or 14 shall be a regulatory offence. Such offence may be punishable by a fine.

## Chapter Four Supplementary and concluding provisions

### Section 18

(1) This Act shall not apply to cultural objects and archival material of national importance in public ownership if only the supreme federal or *Land* authorities have the right of decision in the matter of their sale or if the approval of a supervisory body of the public administration is required under special statutory provisions.

(2) Cultural objects and archival material of national importance in public ownership to which the Act does not apply pursuant to subsection (1) may, on the basis of an application by the given owner or upon the application of the Federal Government Commissioner for Culture and the Media, be entered *ex officio* in the “*Verzeichnis national wertvollen Kulturgutes*” or the “*Verzeichnis national wertvoller Archive*”. The decision on such entry shall be made by the supreme *Land* authority pursuant to this Act.

### Section 19

(1) This Act shall not apply to cultural objects and archival material in the ownership of the churches or other religious communities recognized as bodies under public law as well as the institutions and organizations subject to the supervision of their ecclesiastical bodies if the sale of valuable cultural objects and archival material has been made subject to the approval of an ecclesiastical supervisory body under ecclesiastical public law or to the approval of a state body under statutory provisions. Before a decision on approval of such sale is made, however, an expert body must be heard in regard to the provisions of this Act.

(2) The churches and the religious communities recognised as bodies under public law may apply to have cultural objects within the meaning of this Act and archival material which are in their ownership entered in the “*Verzeichnis national wertvollen Kulturgutes*” or the “*Verzeichnis national wertvoller Archive*”. The decision on such entry shall be made by the supreme *Land* authority pursuant to this Act.

### Section 20

(1) If foreign cultural property is to be temporarily lent for an exhibition on the territory of the Federal Republic of Germany, the competent supreme *Land* authority may, in consultation with the central federal authority, make a legally binding commitment to the lender to return it at the appointed time. In the case of exhibitions organised by the Federation or by a direct federal legal entity, the competent authority shall decide on the making of this commitment.

(2) The commitment shall be made in writing before the cultural property is brought into the country, using the wording “legally binding commitment to return”. It may not be retracted or revoked.

(3) The commitment shall have the effect that no conflicting third party rights to the cultural property may be asserted against the lender's right to return.

(4) Legal action for recovery, orders of attachment, attachment and seizure shall be inadmissible until after the return of the cultural property to the lender.

#### Section 21

The Federal Government Commissioner for Culture and the Media shall be authorised to issue ordinances, with the consent of the *Bundesrat*, for the implementation of section 2 subsection (2), sections 4, 5 and 6, section 9 subsection (3), section 11 subsection (2), section 12 subsection (2), section 13 subsection (2) and section 22 subsection (4).

#### Section 22

(1) (Deleted)

(2) (Deleted)

(3) The export of works of art which were entered in the “*Verzeichnis der national wertvollen Kunstwerke*” [register of works of art of national importance] on the basis of the Reich Government Ordinance of 11 December 1919 and have not yet been entered in a *Land* register shall remain subject to a licence until such time as a decision has been made on their entry in the registers to be compiled under this Act.

(4) The registers of works of art of national importance newly compiled by the *Länder* after 8 May 1945 shall remain in force until they are replaced by the registers to be compiled under this Act. The owners of the works of art in question may apply for a review of registration to the supreme *Land* authority within six months after the entry into force of this Act. Section 2 shall apply to this review procedure *mutatis mutandis*.

(5) The export of cultural property registered under the Act for the Protection of Cultural Property of the German Democratic Republic – *Kulturgutschutzgesetz* – of 3 July 1980 (Law Gazette [*GBL.*], Part I, No. 23, p. 191) shall remain subject to a licence until such time as a decision is made on the entry of such cultural property in the registers of cultural objects and archives of national importance to be compiled under this Act. Subsection (4), sentences 2 and 3 shall apply *mutatis mutandis*.

#### Section 23

(Deleted)

#### Section 24

(Entry into force)