

Statement for the press conference on 15 July 2015

Topic: Amendment of law on the protection of cultural property

Why amend the law?

- As explicitly assigned by the Coalition Agreement
 - “The coalition intends to amend the Act to Protect German Cultural Property (*Kulturgutschutzgesetz*) and create consistent legislation improving the protection of cultural property, in order to ensure that cultural property exported from other countries illicitly is returned and to protect German cultural goods against dispersal abroad.”
- The federal states have been calling for better protection against removal for years.
- Germany needs to implement EU Directive 2014/60 of May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State.
- Germany needs to improve implementation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in response to criticism of the 2007 law.

Regarding the procedure so far:

The Federal Government report on the protection of cultural property of April 2013 (is online: official report : <http://dipbt.bundestag.de/dip21/btd/17/133/1713378.pdf>;
summary in English:

http://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2013-07-11-bericht-kulturgutschutz-englisch.pdf;jsessionid=E5540051DB3362BE982D66D6A500C316.s3t1?__blob=publicationFile&v=2)

- Call for written comments from relevant associations, the research community and cultural institutions in summer/autumn 2014
- International conference held at the Federal Foreign Ministry in December 2014
- Oral hearing of relevant associations, the research community and cultural institutions on 22 April 2015
- Process of interministerial coordination started 29 June 2015
- After all ministries have agreed, the Joint Rules of Procedure of the Federal Ministries allow for publishing the draft legislation online
- Various preliminary drafts are currently circulating. An updated, preliminary draft will now be presented in printed form. It will probably be available online next week, together with the explanatory memorandum.

- At the same time, the draft will be sent to the federal states, the national associations of local authorities and expert associations for renewed comment.

What applies under the current law?

- There are German rules protecting against export from Germany and EU rules on exports from the single market and on the return of cultural objects unlawfully removed from the territory of a member state. It is necessary to carefully distinguish between these rules, because they are intended to achieve different things.

German protection against export:

- Since 1955, the federal states have been able to register cultural property as “of national significance” if it meets the relevant criteria.
- The current law does not explicitly define “national significance” in relation to cultural property; there are only recommendations by the standing conference of the state ministers of cultural affairs which are not legally binding.
- In the new law, the criteria for registration will be more clearly defined, and a statutory instrument (requiring Bundesrat approval) will clarify this in further detail.
- For sixty years, we have followed the practice of registering nationally significant cultural property (2,700 entries; a single entry may cover multiple objects, as in the case of collections). The new law and statutory instrument will build on this experience.
- Up to now, contemporary art has not been registered as cultural property of national significance. (One exception: A work by Günther Uecker, after it was purchased by the Federal Government and the states for the state of Mecklenburg-Western Pomerania.)
- The statutory instrument will clarify the criteria for registration et al. to indicate that it does not apply to contemporary art, as is currently the case.
- **Clarification:** Registration as having national significance is **not expropriation**; the Federal Administrative Court has recognized it as being compatible with the fundamental guarantee of property in Article 14 of the Basic Law (German Constitution)..

Rules at EU level:

- Exporting cultural property **outside the EU** requires an export permit according to uniform EU standards for age and value. In line with **almost all**

other EU member states (26 out of 28), the same will apply to exports from Germany within the single market.

As early as 1957, the Treaty establishing the European Economic Community allowed its member states to limit the free trade in goods in order to protect “national cultural property”. This has been practised in France and the UK and several other member states of the EU for decades; Germany is only now following suit.

What are the aims of the new legislation?

- **Implementing EU Directive 2014/60 of May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State;**
- creating a single, consistent law to protect cultural property (currently divided between three laws);
- simplifying and updating the law (in linguistic and legal terms);
- **improving protection against export and making the law conform to EU law** (export permit already required by other EU member states, with the new law also for export within the single market for certain categories of cultural property, depending on age and value);
- **better implementing the 1970 UNESCO Convention** (lawful export from countries of origin required for lawful import to the federal territory);
- **fighting illicit excavation and trafficking in cultural property**, and thus indirectly fighting terrorist financing (illegal excavation provides funding for terrorist activity, especially in the Middle East);
- **improving conditions for the art market in Germany** (through greater transparency, simplification and legal certainty; due diligence obligations will increase trust in the German art market and improve consumer protection);
- **simplifying international loans between museums** (simpler administration and more cultural exchange);
- **providing greater protection for public collections** (the law covers all cultural property), including explicit rules on loans.

To clear up misconceptions about the new law

1. Problem: Confusing the rules on export with those on the registration of nationally significant cultural property

- The current discussion mixes up the conditions for export permits with the criteria for registering cultural property as nationally significant. Further, requiring an export permit is not the same as a ban on exports!
- This seems technical and concerned with minor details, but it leads to the false impression that every work beyond a certain age and value would be registered as cultural property of national significance. This is not the case and would be completely inappropriate in terms of cultural policy!
- **So the rules on exporting cultural property and on registering nationally significant cultural property should be viewed separately:** The fact that certain cultural property requires a permit for export within the single market, depending on its age and value, has no bearing on whether it constitutes “nationally significant” cultural property. The fact that an export permit is required merely gives the federal states an opportunity to check whether the item could be “nationally significant” cultural property and whether it qualifies for registration.

2. The future registration by the federal states of “nationally significant” cultural property

- **The export rules are a mechanism for the federal states – an estimated 90% to 95% of cultural property is not “nationally significant” and will therefore receive an export permit from the states without difficulty** (if at all necessary: export permits are required only for property older than 50 years and worth more than 150,000 euros). Less than 10% will even be considered, on a case-by-case basis, for registration by a federal state as “nationally significant” cultural property.
- This should clear up the misconception that the owner of an artwork would have to prove that the artwork was not a “nationally significant” cultural good.
- The notion of having to report or even scan entire private collections is absurd and was never considered.
- The current draft of the legislation does not contain a right of access for officials, as provided in many of the state laws on the protection of cultural property.

3. Another misconception: that Germany could follow the “British system of export licenses”:

- The **British system results in protection depending on the state of the public coffers** and would ultimately make protection against removal superfluous in Germany, because it only protects what can be bought with

public funds. Supporters of the model fail to mention that the British system leads to expensive artworks leaving the country even though they have been classified as nationally significant, and that in some years, “nationally significant” works valued at more than 50 million pounds have been sold abroad.

- The Federal Administrative Court ruled in 1993 that “it cannot be the task of the state to participate in the international art market by exercising the pre-emption right and in this way nationalizing valuable cultural property”.
- Good practice in Germany: Private parties, the Federal Government and the cultural foundation of the federal states (*Kulturstiftung der Länder*) regularly buy cultural property of national significance.

4. Concerning the rules on export to the single market:

- The new law will give Germany, like 26 of the other EU member states, rules for exporting cultural property within the single market.
- As already noted, even the European Member States with successful art markets already require export permits for the single market, in addition to the permits required for exports to non-EU countries.
- During the oral hearing on the new legislation, art market representatives argued in favour of using the same age and value criteria for the new rules on exports as in Council Regulation (EC) No 116/2009, for ease of use. These rules will not be specified in the act itself, but in a statutory instrument, and the details are still under review. Raising the minimum age and value should be considered. For the statutory instrument concerning export in the single market, we will have to review all value thresholds of Council Regulation (EEC) No 3911/92.
- Large segments of the art market will not be affected by the new legislation, because the new export rules **do not apply to most contemporary art**. According to art market sources, trade in contemporary art in Germany is one reason for the relatively low number of applications for export permits under the EU regulation compared to France or the UK (currently about 1,200 applications and permits issued per year).

5. A topical issue: Protecting loans to museums

- Loans are essential to German museums, and the new law will make them easier.
- Nonetheless, every artist has the right to cancel loan contracts with museums and demand the return of loaned works.

- **To clarify:** It is true that according to the current draft, under certain conditions loans are nationally significant cultural property. But the purpose of this arrangement is to ensure increased protection for the works, as for the rest of the museum's collection, for the duration of the loan. If e.g. a loaned work is stolen from a German museum and taken to France, then a claim for return exists for 75 years, independent of property claims, for example in case of acquisition in good faith.
- This puts owners on much better footing than if they could only make a claim based on their property rights (*i.e., they could only assert their claim to return under civil law*).
- And the most important thing: Once the loan contract has ended, the loaned work is no longer protected as cultural property of national significance.

6. Lastly: “Art is international”

- That goes without saying – but some apparently want to use that statement to oppose the government task of protection against removal.
- This task is however made explicit in the Basic Law (Article 73 (1) no. 5a), underscoring the special social responsibility of owners of cultural property.