



REPORT ON GERMANY'S NEW CULTURAL PROPERTY PROTECTION LAW

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Table of content

1. Introduction	3
2. Legal perspective on Germany's Cultural Property Protection Law	4
2.1. Legal developments and basis of the new Act	4
2.2. Overview of the legislation	6
3. Psychological perspective on Germany's Cultural Property Protection Law	10
4. Economic perspective on Germany's Cultural Property Protection Law	14
4.1. Implications for buyers and sellers of art	15
4.2. Implications for other stakeholders	16
4.3. Empirical analysis	16
5. Limitations and suggestions for future research	19
5.1. Limitations	19
5.2. Suggestions for future research	20
6. Interdisciplinary exchange and conclusion	22
References	24
Appendix	26

1. Introduction

Last year, on June 23, 2016, German Bundestag adopted a law on the protection of national cultural property from being illegally exported. This law is of a great importance for the reason that it intends to restrict illegal trade in cultural goods and facilitates the retrieval of goods that were exported in an unlawful manner. For instance, the new reform is immensely important in the light of the current developments in Syria, where cultural property is being destroyed or illicitly imported. Thus, the law aims at creating a coherent system of art protection, whereby German cultural property, as well as foreign cultural property, will be protected from illicit or illegal exports and imports. The new Act to Protect Cultural Property aims to revise and amend the older German legislation on protection of cultural property.¹ The new legislation constitutes a comprehensive reform of the national law by combining: the amendment of existing legislation with the implementation of EU Directive 2014/60 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast), and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. In fact, the new Act constitutes a mixture of different legal sources which complement each other. This multi-layered structure of the Act means that it might influence various disciplines, such as law, economics or even psychology. Therefore, the aim of this paper is to evaluate the law from three different perspectives and to investigate whether it has an effect on the market for German art.

This analysis is taken care by first, looking at the legal perspective of the Germany's cultural property protection law. The first part of the paper, dealing with the law, will first of all, provide an outline of the legal developments which influenced the Act's present form. Furthermore, it will focus on the Act itself: the key aspects and the most important provisions of the Act will be described and scrutinized. Secondly, it turns to the psychological point of view in order to examine the reaction of the general public and in particular, of an expert in the art market by means of an interview. Thirdly, the paper presents an economic analysis: one part of this is a theoretical understanding and the other part is an empirical analysis performed on the basis of a data set which has been constructed for the purpose. The fourth part of the paper explains the

¹ Jenny Gesley, 'Germany: Act to Protect Cultural Property Passed (Library of Congress, 16 July 2016) <http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/>

limitations that the writers encountered and gives an ample suggestion for future research. Finally, the paper finishes with a meeting between the 3 disciplines, which were represented in the paper.

2. Legal perspective on Germany's Cultural Property Protection Law

2.1. Legal developments and basis of the new Act

The new Act on the Protection of Cultural Property did not appear out of a vacuum. It can be seen as a conclusion of a long-term process- its evolution was shaped and influenced throughout many years. As mentioned in the introduction, the Act, firstly, revised the old national legislation on the protection of cultural property, and secondly, implemented Directive 2014/60/ EU and the 1970 UNESCO Convention.² The analysis will be, first of all focused on the latter, and then on the former piece of legislation.

The 1970 UNESCO Convention is of a great importance as it influenced adoption of national rules on cultural property. First of all, when we discuss the concept of cultural property and the issues associated with it, such as the effect on art trade, we have to determine in the first place the meaning of 'cultural property.' Article 1 of the Convention provides a definition of cultural property as '*property which on religious or secular grounds is...of importance of archeology, prehistory, history, literature, art or science.*' This definition also consists of a list of categories of property, such as: collections of flora and fauna; artistic or historical monuments; pictures, paintings, drawings; archives; furniture and many more.³ Moreover, the Convention allows individual states to determine particular items from the respective categories as cultural property, and the states have the discretion to restrict this definition.⁴ This implies that states, such as Germany, can determine their own categories of cultural property, of course within the limits provided by the Convention. Germany enacted implementing legislation for the Convention in 2007, which means that since then, import of any illegally exported cultural

² The Federal Government, 'New Act to Protect Cultural Property' (17 July 2015)
https://www.bundesregierung.de/Content/EN/Artikel/2015/07_en/2015-07-17-protecting-culture-property_en.html

³ Art. 1 1970 UNESCO Convention on The Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
<https://eca.state.gov/files/bureau/unesco01.pdf>

⁴ Reichelt, Gerte, 'International Protection of Cultural Property [comments] (1985) Unif. L. Rev. o.s. 42
http://www.heinonline.org/HOL/Page?handle=hein.journals/frdint16&div=36&start_page=1033&collection=journals&set_as_cursor=0&men_tab=srchresults

objects that have been classified in the country of origin one year prior to removal became prohibited. Furthermore, the main obligations of parties to the Convention include: taking necessary measures to prevent museums or other institutions, within their territories, from acquiring cultural property originating in another State;⁵ prohibiting the import cultural property stolen from a museum, religious or a secular public monument;⁶ taking appropriate steps to recover and return any such cultural property imported;⁷ and to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners.⁸ These rules apply not only to Germany, but to all contracting states. Implementation of these rules in the new Act means that German law does not substantially differ from the laws of other States, and that all states that are parties to the Convention are bound by the same obligations.

Another important piece of legislation that forms the basis of the new Act is the Directive 2014/60/EU. The new Directive, brought several changes to the old EU system on art restitution. Furthermore, all of the changes are now included in the new German Act which implements the Directive. The most important aspects of the Directive are *inter alia*: the extension of the scope of application of the Directive to any cultural objects defined by a Member State under national legislation as a national treasure possessing artistic, historic or archaeological value within the meaning of Article 36 TFEU;⁹ and an extension of the time limit for initiating return proceedings. Moreover, the Directive shifts the burden of proof with regard to the receipt of compensation, and by doing so it establishes a new level of due diligence,¹⁰ which means that in order to qualify for compensation, the possessor must provide proof that he exercised due care and attention in acquiring the object.¹¹ In addition, the Directive marked an introduction of the Internal Market Information System for the exchange

⁵ Art. 7a 1970 UNESCO Convention.

⁶ Art. 7b (i) 1970 UNESCO Convention.

⁷ Art. 7b (ii) 1970 UNESCO Convention.

⁸ Art. 13(c) 1970 UNESCO Convention.

⁹ Art. 2 of the DIRECTIVE 2014/60/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) OJL 159/1

¹⁰ Institute of Art of the Polish Academy of Sciences in Warsaw, 'The Return of Cultural Objects within the European Union – Implementing the Directive 2014/60/EU' (22 March 2016) p 9. http://heuright.eu/wp-content/uploads/2016/02/Directive-2014-60-EU-Warsaw_Final_Programme_Heuright-4.pdf

¹¹ Lambrecht Law Office: Directive EU 2014/60 finally implemented in Belgian law (*Published on 23/05/2016*) <http://www.lambrechtlaw.be/en/news/2016/5/23/directive-eu-2014-60-finally-implemented-in-belgian-law>

of information and administrative cooperation between national authorities.¹² It is being argued that the EU legislation in this area of law is necessary in order to increase standards of protection of cultural property and to meet legal obligations under the UNESCO Convention.¹³

The Directive was due to be transposed on 18 December 2015.¹⁴ So far, Spain, Cyprus, Poland and Romania are the only Member States that have not enforced any implementation measures of the Directive. Nevertheless, most of the Member States have implemented the Directive into their national legislations, which means that the German Act will not be substantially different from the national legislations of other states. All Member States are bound by the same rules, and even if the wording of the national rules would differ, there will be no considerable differences. Hence, the new German Act does not constitute a ground-breaking development in the field of art-protection law, contrary to what has been claimed by the media and the stakeholders.

In addition, it is worth mentioning that the new Act does not (nor the Directive or the Convention) influence in any way exports of cultural property to non- EU countries. Such exports are already regulated by Regulation 116/2009 on the Export of Cultural Goods. Under this Regulation, the export of cultural goods to non- EU countries is subject to an export license. Moreover, the limits as regards export are even stricter than the ones contained in the German legislation.¹⁵

Lastly, it is important to note that the implementation of the Convention and the Directive into national legislation lead to a creation of a two- dimensional system: the legal reform introduced a protection of the *national* cultural property, as well as the protection of *foreign* cultural property.

2.2. Overview of the legislation

The Act to Protect Cultural Property (*Gesetz zur Neuregelung des Kulturgutschutzrechts*), as was already mentioned, sets as its main goals the fight against clandestine excavation and illicit

¹²Institute of Art of the Polish Academy of Sciences in Warsaw, 'The Return of Cultural Objects within the European Union – Implementing the Directive 2014/60/EU' (22 March 2016) p 9.
http://heuright.eu/wp-content/uploads/2016/02/Directive-2014-60-EU-Warsaw_Final_Programme_Heuright-4.pdf

¹³ *ibid.*

¹⁴ Art. 19 Directive 2014/60/EU OJL 159/1.

¹⁵ Jenny Gesley, 'Germany: Act to Protect Cultural Property Passed' (Library of Congress, 16 July 2016)
<http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/>

trafficking in cultural property, the implementation of the UNESCO 1970 Convention, the transposition of new EU law and the legislative simplification.¹⁶ Indeed, it constitutes a comprehensive reform of German national law protecting cultural property, combining previous legislation into a single piece of legislation.

The Act enables the prevention of permanent or temporary exports of cultural goods to other EU Member States by requiring export licenses for certain cultural works (§ 21 Act). Such a requirement applies to goods belonging to the national list of cultural treasures.¹⁷ In § 7 of the Act, a national cultural treasure is defined as ‘national cultural property of outstanding significance for the nation’ whose removal would cause a ‘significant loss,’ resembling the previously mentioned definition of the UNESCO 1970 Convention. Such a classification is provided by a committee of five experts selected by the German State Agency, particularly comprising scholars, art dealers, private collectors and the state (§ 14 Act).¹⁸ Therefore, registration on the registry of a nationally valuable cultural property is mandatory in case of pieces which are endowed with a sense of German cultural identity and their presence in Germany serves the prominent cultural public interest.¹⁹ Nevertheless, there are two exceptions to registration. First, artworks by living artists may only be registered with the artists’ approval (§ 7 Act). Secondly, artworks that have to be repatriated and have not been in Germany for more than five years before June 2016, for which a museum can request a binding warranty of non-registration.²⁰ This form of registration has existed since 1955, but Germany used to

¹⁶ The Federal Government, ‘New Act to Protect Cultural Property’ (17 July 2015)

https://www.bundesregierung.de/Content/EN/Artikel/2015/07_en/2015-07-17-protecting-culture-property_en.html

¹⁷ Jenny Gesley, ‘Germany: Act to Protect Cultural Property Passed’ (Library of Congress, 16 July 2016)

<http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/>

¹⁸ Christoph Philipp and Margot von Westerholt, ‘Germany: Reform of the cultural property law’ (P+P Pollath, 1 October 2015)

<http://www.mondaq.com/x/430840/Export+controls+Trade+Investment+Sanctions/Reform+Of+The+Cultural+Property+Law>

¹⁹ Christoph Philipp and Margot von Westerholt, ‘Germany: Reform of the cultural property law’ (P+P Pollath, 1 October 2015)

<http://www.mondaq.com/x/430840/Export+controls+Trade+Investment+Sanctions/Reform+Of+The+Cultural+Property+Law>

²⁰ Ibid

differentiate between cultural property and archival materials.²¹ In addition, no uniform definition of ‘national cultural treasure’ was in place before the adoption of the Act.²²

§ 6 of the Act provides for the pieces of art falling within the meaning of national cultural goods. These include objects on the register, objects owned by the public and held by a public institution holding cultural property (e.g. a national museum), objects owned and held by an institution holding cultural objects that is financed predominantly by public funds, or objects forming part of a collection owned by the Federal Republic or a German state.²³ Moreover, according to § 6(2) of the Act objects owned by private collectors that are loaned 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. After the termination of the contract, the object is no longer considered cultural property.²⁴

Cultural property falling into certain categories (‘category principle’) also requires an export license when being exported to another Member State of the European Union, although not being classified as national cultural treasures.²⁵ This is the case when the object falls under a certain age and financial value thresholds as set out in § 24 of the Act. For example, for photographs and paintings, these requirements are a financial value of EUR 300,000 and an age of 75 years.²⁶ The relevant financial value is the price paid for the purchase or sale within the last three years.²⁷ The application for the export license should be filed with the competent regional authority of Germany where the object is located. According to § 23(3) of the Act, an

²¹ The Federal Government, ‘New Act to Protect Cultural Property’ 17 July 2015)

https://www.bundesregierung.de/Content/EN/Artikel/2015/07_en/2015-07-17-protecting-culture-property_en.html

²² Jenny Gesley, ‘Germany: Act to Protect Cultural Property Passed’ (Library of Congress, 16 July 2016)

<http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/>

²³ **Pierre Valentin and Till Vere-Hodge, ‘Protecting national heritage or stifling the German art market?’ (Art@law, 29 March 2016)**

<http://www.artatlaw.com/archives/2016-jan-dec/protecting-national-heritage-stifling-german-art-market-2>

²⁴ Christoph Philipp and Margot von Westerholt, ‘Germany: Reform of the cultural property law’ (P+P Pollath, 1 October 2015)

<http://www.mondaq.com/x/430840/Export+controls+Trade+Investment+Sanctions/Reform+Of+The+Cultural+Property+Law>

²⁵ The Federal Government, ‘New Act to Protect Cultural Property’ (17 July 2015)

https://www.bundesregierung.de/Content/EN/Artikel/2015/07_en/2015-07-17-protecting-culture-property_en.html

²⁶ Jenny Gesley, ‘Germany: Act to Protect Cultural Property Passed’ (Library of Congress, 16 July 2016)

<http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/>

²⁷ Christoph Philipp and Margot von Westerholt, ‘Germany: Reform of the cultural property law’ (P+P Pollath, 1 October 2015)

<http://www.mondaq.com/x/430840/Export+controls+Trade+Investment+Sanctions/Reform+Of+The+Cultural+Property+Law>

export license is ‘to be rejected, if, having regard to the merits of the application on a case-by-case basis, material considerations of Germany’s cultural heritage are prevalent.’ Therefore, the German authorities are provided with a lot of discretion to block the export of objects that fall within into the category of national cultural property.²⁸ Furthermore, the Act allows the export of such objects only if they are either Nazi looted art (cultural property that is known or thought to have been taken from its owners due to National Socialist persecution) or only intended for a temporary export.²⁹ An export without approval when required is subject to criminal penalties.³⁰

According to § 28 of the Act, the import of goods that other countries consider as a national cultural property is also prohibited. In addition, it provides for a system for an obligation to return national cultural property in exchange for compensation in §§ 49-57 of the Act. UNESCO contracting states have the right to retrieve national cultural heritage unlawfully exported. Under the Act, the ban on selling stolen, illegally excavated or unlawfully imported cultural property applies not only to the professional art market but to everyone who is selling art and antiquities, including online sales. Moreover, art and antiquities dealers are obliged to retain records of their transaction for 30 years. Indeed, they are generally required to comply with due diligence requirements.³¹

In conclusion, although it may appear that the new Act seems to radically reform the protection of cultural property in Germany, one should bear in mind, as mentioned in the first section, that this law constitutes a compilation of existing laws, as well as EU Directives and international Conventions. Hence, from a law-perspective, it does not have any overarching or drastic consequences, it only aims to provide a simplification of the law, taking Germany in line with other European Member States.

²⁸ **Till Vere-Hodge, ‘New German provisions for the ‘Protection of Cultural Property’ now in force’ (Art@Law, 29 September 2016)**

²⁹ Ibid

³⁰ Christoph Philipp and Margot von Westerholt, ‘Germany: Reform of the cultural property law’ (P+P Pollath, 1 October 2015)
<http://www.mondaq.com/x/430840/Export+controls+Trade+Investment+Sanctions/Reform+Of+The+Cultural+Property+Law>

³¹ The Federal Government, ‘New Act to Protect Cultural Property’ (17 July 2015)

https://www.bundesregierung.de/Content/EN/Artikel/2015/07_en/2015-07-17-protecting-culture-property_en.html

3. Psychological perspective on Germany's Cultural Property Protection Law

In the following, the article analyzes the psychological reactions of the new law by the different parties of the art market, mainly focusing on the state, German museums, artists, private collectors or sellers and auction houses.

The German Cultural Property Protection Law has led to various reactions from the different participants of the art market. The strongest supporter of the act is the German politician Monika Grütters who introduced the law. The Minister of State for Culture states that the law will ensure that international standards are acknowledged and cultural property is protected, which is essential for a nation's identity. Furthermore, in light of terrorism, illegal trading with cultural goods to finance wars could be reduced (Apollo Magazine, 2015). In my opinion, this is the strongest argument towards the law as it would serve the goal of protecting our nation's identity and secure that German national objects are protected from ending up in the wrong hands.

The International council of museums (ICOM) also strongly supports the idea of protecting cultural heritage. This was stated by Prof. Dr. Hans-Martin Hinz and Michael Henker from the chair of the German National Committee of the ICOM. In an interview with the Art Magazine Apollo, Michael Henker welcomes the act as he states the consequences as strengthening of German museums and a fulfilment of the responsibility of every state to protect their national identity in times of illegal art trading. He further claims that many of the amendments that ICOM Germany had demanded were incorporated into the act.

The main opponents of the act are artists and art sellers which see their personal freedom as endangered and fear that the value of their artworks will decrease. This could lead to a disadvantage of German auction trade when compared to international competition (Apollo Magazine, 2015). The reaction to these financial losses was described by the gallery Günter Puhze from Freiburg who report in their interview with Apollo that German art with an estimated value of one billion euros has been exported out of Germany before the act was passed. Moreover, the effect of loaned art being taken from museums was named after the politician as "Grütters-effect". The article further reports that gallery owners have moved to other art markets around the world, to sell their art at higher prices.

This dramatic reaction was mainly seen by private collectors who pulled Max Beckmann, August Macke and Caspar David Friedrich artworks out of museums (Tagesspiegel, 2015). Besides collectors also contemporary artists have withdrawn their loans from German museums. The most extreme example was the painter Georg Baselitz, who took his art from many museums and inspired Gerhard Richter with those actions, who consequently threatened to withdraw his loans too (Tittel, 2015). In the case of Baselitz, it can be said that this response was an overreaction to the news of the law as artworks can only be classified for national significance when they are over 70 years old and living artists need to give their consent. In general, the media displayed the reaction of the artists and private collectors or sellers as an overreaction of the art market which can be for example seen in the interview with Günter Puhze (Apollo Magazine, 2015). Before the law was passed, the sellers did not explicitly know whether their art would be of significance for protection and Grütters later stated that only a small amount of artworks would be affected by the law (Puhze & Henker, 2015).

This overreaction of a market has psychological backgrounds and was already analyzed in the stock market. The Overreaction or Contrarian theory by De Bondt and Thaler was a contrary hypothesis to the efficient market hypothesis which assumes that investors use rational Bayesian calculation when analyzing probabilities of price changes in the market. Their theory states that investors will overreact when unexpected market news come up and will underweight their old information and ignore base rates. In the article of Paul Andreassen from 1990, he explains that the information processing of unexpected news depends on the relative salience of a given source. This saliency of news has an impact on attention and can further increase the impact of the information on one's own judgment (Andreassen, 1990). As an unauthorized draft from 2015 was leaked to the media, which stimulated many debates in the art market, this could be an example of a really salient information which was unexpected and would therefore fit the overreaction theory. As Andreassen explains further, the impact of such salient and unexpected news on an individual seller in the market depends on the immediate context which can be described as heated due to many debates (Henker, 2015) and the judge's expectations and prior knowledge. The author goes on by saying that once the sellers or investors forecast that the market prices will be fundamentally altered, they will ignore base rates and older price data with the consequence that the market overreacts and many investors sell their stocks. Therefore, the article stresses the importance of media and salience on the market which is fitting to the situation of this law.

A further explanation for a possible overreaction of the art market can be seen from decision making theories of Kahneman and Tversky. Their theories stress the influence of heuristics and cognitive biases such as representativeness, anchoring and availability heuristic when making judgments in uncertain situations, such as after the law was published. Again a main characteristic of these situations is that sellers make errors in their prediction and estimation of future prices and ignore base rate information (Tversky & Kahneman, 1974). Adding to that, Werner de Bondt mentions loss aversion from prospect theory in his article. The idea of Kahneman and Tversky's theory is that individuals all start with a reference point symbolizing their monetary current state. In general, from this state their evaluations are much more sensitive to potential losses than to potential gains (Glimcher, 2010). Therefore, they demonstrate loss aversion and will seek a high risk in a situation where the probability of losing a lot of money is high, only due to the fear of losing (Glimcher, 2010). This theory can be applied to our project as it was previously described that many collectors gave up their German galleries and moved to other international markets only to avoid a potential loss in the value of their artworks. Loss aversion demonstrates a further irrational thinking style in markets and could have been a main motive for the possible overreaction of sellers. The author further refines an overreaction as a mental frame of individuals in a market, which is reinforced and validated by the media, experts and peer consensus. The author again stresses the importance of biases and irrational thinking in information processing.

By quoting Graham and Dodd he concludes "The market (...) is a voting machine whereon countless individuals register choices which are the product partly of reason and partly of emotion" (Graham & Dodd, 1934, p. 23). The fact that emotion has a significant impact on economic decision making has already been proven in psychological research and literature such as Elter's work (as cited in Ackert et al., 2003). Especially this emotional influence on decisions could have played a role in some of the reactions to the law. The best example for that might be the reaction of Baselitz who's art was not affected by the law, still he overreacted by pulling his art from museums (Tittel, 2015). This emotional reaction could have also been a form of protest as artists see their personal freedom as limited. The art expert Peter Raue even called the strong influence of politics on the art market, in limiting the owner's actions, as a form of expropriation executed by the state (Raue, 2015). The right of freely deciding about one's own property, being taken away from the state, could have been the trigger of an emotional protest and an influence of affection on decision making. In conclusion, the literature review has shown that there are many factors influencing economic decision making such as

cognitive biases, heuristics, and emotions which can lead to market overreactions or in general to irrational thinking of market participants.

So far all our information came from the media but to assess the real opinion of German art sellers apart from the media this project incorporated a short interview with an expert in the art market. From the art dealers shop “Julius Böhler” in Starnberg, Florian Eitle-Böhler was kind enough to help with our project by answering several questions regarding the law. The art dealers shop was founded in 1880 by Julius Böhler and since 1995 it is in the hands of Florian Eitle in the 5th generation. The art dealers shop is based on family tradition but is also in the international art market, exhibiting at the TEFAF Maastricht and New York. Florian Eitle-Böhler worked for the Metropolitan Museum of Art in New York and from 1987 onwards he was head of the department for European sculptures and art handicraft at the auction house Sotheby's in New York (BR Fehrnsen, 2011). Therefore, he has built contact with museums and collectors in the international art market (BR Fehrnsen, 2011). The following interview was translated from German to English, the original can be found in the appendix.

My first two questions for the interview were: “How did the new law influence your art trading and what is your opinion about the law?” Mr. Florian Eitle’s answer was that the bureaucratic burdens have doubled due to the law. He further refines, that the export permits are only valid once and therefore need to be renewed for every consecutive transfer of an artwork abroad. This further applies for every object regardless whether it is German or foreign. In the opinion of Florian Eitle, this procedure is absurd and should be resolved in favor of applicants as well as the institution which has to approve the applications. Moreover, he claims many questions to be unresolved by the law. As an explicit example the art trader names the problematic situation of buying an object in Austria for an international market price but once it is brought to Germany and falls under the law, it cannot be sold out of Germany and there will be a depreciation followed by a financial loss. For these situations, there is no regulation aiming to compensate for the financial loss. In general, Eitle illustrates this example as one of many burdens, causing vast uncertainties for market participants.

My next question was regarding the market price of German art and whether the art trader noticed an increase or decrease in its value. Florian Eitle stated that he did not notice this effect for art works specifically. He further stressed that the law does not only cover art but all objects having a cultural connection to Germany for example provenances from ancient German collections.

The final question asked for an opinion whether the law achieved the aimed effects such as protecting cultural heritage and minimizing illegal trading. As an answer, Mr. Eilte stated that the law will definitely protect cultural heritage but the question is from whom. The art trader is personally against a law allowing the state to forbid selling art objects into foreign countries without the state being obliged to buy the art for the international market price like it is done in France and England. Regarding the illegal art trading Mr. Eitle cannot give an opinion as their market segment does not include art from archaeological findings.

In conclusion, it can be argued that there were many contrasting reactions towards the act and many debates were held regarding the role of the state in the art market as well as personal freedom of owners. To summarize, the main profiteers of the new law are German museums and politics who reacted with a welcoming response and see their goal in protecting the nations identity. The main opponents are private collectors, German auction houses as well as contemporary artists who see their own selling and trading within the international art market as limited. In general, our literature research found an overreaction of German art sellers in the news whereas the statistical analysis of the economic part, which will be reported later, showed no significant change in art. From our interview with a German art dealer it can be further said that the overreaction of artists and others could have been exaggerated by the media but without any influence on the actual market. The art dealer in our interview, portrayed the situation in a rational way and showed positive and negative aspects. He did not seem to show any aspects of overreaction and irrational, heuristic thinking. In my opinion, his reaction to the law is completely justified as he has to suffer from the bureaucratic changes and much more extra work. The media portrayed the situation as an overreaction of the different parties whereas the real problem are the bureaucratic and financial changes of the law for market participants without any compensation from the state.

4. Economic perspective on Germany's Cultural Property Protection Law

Although there may exist educational, historical and cultural benefits of the Law, this piece of legislation impacts the valuation of art. As a result, the efficiency of art markets is distorted. In turn, the Law directly impacts a number of stakeholders in many different ways. There are two important stakeholder groups in the art market – buyers and sellers of art. Key participants of the former group are private collectors and professional speculators while the latter includes

the auction houses and owners of art. Other stakeholders – such as individuals, communities, and businesses – are indirectly influenced by the Law.

4.1. Implications for buyers and sellers of art

In the short run, an export ban usually decreases the prices of the goods in question. When exports restriction policy takes place, total demand for a good is decreased due to decrease in foreign demand. Furthermore, oversupply of the good persist until a new equilibrium is reached. In turn, these effects decrease the price of the good at hand (Bonarriva, Koscielski & Wilson, 2009). When it comes to the art market, a case in point is a similar piece of legislation in Italy which decreases the valuation of art up to 50% (Adam, 2014). Italy has an export ban in place for art older than 50 years. Art affected by the law cannot be sold outside of the country unless a license is obtained. Therefore, along the lines of the aforementioned theoretical analysis, lack of foreign demand resulted in lower art prices. For sellers, this tumble in valuation means much lower welfare – lower “producer” surplus – due to a greater differential between marginal cost of art and the price. Specifically, for art owners (e.g. artists themselves) this distortion implies lower earnings for the same art produced. And under the assumption that the average time spent completing an art piece does not change, the effects of the Law are translated into lower return on investment (ROI) for artists. Another consequence of this Law is a significantly lower surplus for art dealers whose cost structures – primarily rent and payroll – are inelastic to changes in art prices. However, for individuals interested in buying art exclusively for non-monetary benefits, welfare increases because they can buy more art for the same amount of money. When it comes to art markets, bridging the gap from short run disequilibrium to long run equilibrium proves to be a much harder task. So as to achieve an equilibrium, the supply must adjust to the drastically negative shift in demand. But because art supply is inelastic (quality art is not produced *en masse*) the price adjustment (fall) necessary to balance the market is even greater than for regular good markets (Bonarriva et al., 2009).

Abovementioned effects of the Law are derived assuming markets consist of rational decision-makers and are completely efficient *a priori*. Obviously, this is an oversimplification of any market – let alone the famously inefficient art market. Asymmetric information – where one of the stakeholder possesses more information than the others – and irrational behavior add variability to the simple supply-demand forecast analyzed here. The uncertainty caused by asymmetric information decreases the accuracy and efficiency of art valuations. Regarding stakeholder welfare, it appears that professional speculators – irrespective of being on the buy-

or sell-side – and art dealers are less prone to irrational behavioral patterns because their fundamental motif is financial return. On the other hand, private collectors – such as individuals and museums – value art for its cultural and historical importance (Frey & Eichenberger, 1995). Such varying incentives make the art market even more inefficient. Consequently, when encountered with an export ban, its impacts may not be so obvious to all stakeholders and, although still along the lines of abovementioned analysis, might result in a lower or higher than expected market reaction.

4.2. Implications for other stakeholders

Besides the participants in the art market, other stakeholders – primarily businesses and individuals – are affected by the Law. Regular long-run growth impacts and short-run consumption impacts of art, according to the framework proposed by Seaman (2003), are distorted under the new Law.

In the long term, regions benefit from positive externalities of developed art markets – called long-run growth impacts. In the presence of vibrant art communities, people are effectively provided with “second paychecks”. By enabling them to somehow enjoy the consumption gains of art – by, for example, visiting galleries or enjoying the company of artistic people – individuals working in such areas might need less monetary incentives to supply their labor inputs. What is more, according to Florida (2002), more creative people are attracted to live and work in areas with an established art scene. In anticipation of the Law, art owners might move art to other countries (e.g. Gerhard Richter), in this way art communities might wane out. Consequently, positive externalities are most probably, and until a certain extent, lost under the new Law. Germany might experience a marginal rise in wages – due to an absence of the “second paycheck” – and loss in human capital – due to lack of attractive art communities. Such implications especially negatively affect labor-intensive businesses in search of skilled employees. On the other hand, effects on workers are mixed and personalized since the welfare benefits of art consumption are unquantifiable.

Similarly, in the short term, art markets improve the economic well-being of a particular area through a multiplier effect on art spending – these are called short-run consumption effects. In order to enjoy the consumption benefits of art, individuals are willing to spend a considerable amount of money. This includes expenditures on transportation, accommodation, leisure and other activities. In turn, there exists important spillovers from the art market into other sectors operating in the same area. This time around, the implications of the Law are mixed. If art

owners relocate their art, this is marginally negative for spending growth as less people will be attracted to Germany. If not, more art will stay inside the country and more people will visit it. Through the multiplier effect, more/less growth implies marginally better/worse prospects for employment.

4.3. Empirical analysis

This section presents an overview of an empirical analysis which aims to discover some of the effects on the art market. The data used in the sample (100 observations) is based on information by the auction houses Christie's (2017) and Sotheby's (2017) that is publically available. We have selected 12 German painters that have their art sold in at least one of those auction houses in order to control for that variable, because e.g. collecting data from many different sources might create bias reflecting the reputation of the auction house. One of the main criteria that we took into account when selecting the artists was whether they have sold paintings in both the months before and after the announcement of the law in the media (July 2015); to be more specific, the two intervals of interest in our research are December 2013-July 2015 and July 2015-March 2017, allowing for equal periods with respect to the benchmark. We have focused on a specific kind of art, oil on canvas, in order to control for the implemented technique. Another variable that has been controlled for is the size of the painting, since for every artist we have tried to identify a pattern in the dimensions of the art piece and refer primarily to those paintings. We have only included a painting with unusual dimensions for the artist if there is a corresponding painting with similar dimensions for the other period as well (e.g. if there is an unusually small painting sold before the announcement of the law, we have only included it if there is one of similar dimensions sold after the announcement in order to avoid bias). We have selected the data in such a way that for each artist, there is an equal number of art pieces before and after July 2015. Whenever more data was available for either of the two periods, the endpoints (i.e. outliers) were excluded.

We have performed a number of t-tests in an attempt to provide us with an estimate for the effect of the announcement of the law in the art market for German art. The first tests are focused on the price difference between all paintings sold before July 2015 and all paintings sold after that date which would allow us to observe a possible influence of the law on the market as a whole, even on art pieces that do not fall under the criteria described by the law. Thus, the relevant null hypothesis is that the two groups do not differ significantly in price, while the two-sided alternative suggests that there is such difference. Here, a 2-sample t-test

and a paired 2-sample t-test are used (the latter is possible because we have included equal number of paintings for each artist with a similar size, technique and auction house, therefore, we can use them as pairs). The second type of tests divide the data in a different manner and focus on the paintings that fall under the law's criteria as one group (we have 29 of them) against the other paintings that should not be affected by the introduction of the law. Hence, the null hypothesis again states that there is no difference in the prices, while the alternative is that one of the two groups has a higher average price. In both cases we have used a two-sided alternative, because art prices vary in ways that are not always evident (e.g. because of some omitted variable), therefore, we have left the possibility for changes in either direction. Table 1 summarizes the results from the various tests performed.

Groups	Type of test	Mean 1 st group	Mean 2 nd group	t-statistic	Two-sided P-value
50 before vs. 50 after July 2015	2-sample t-test	\$5,567,940	\$5,213,415	0.18035	85.73%
50 before vs. 50 after July 2015	Paired 2-sample t-test	\$5,567,940	\$5,213,415	0.44691	65.69%
29 under vs. 71 not under the law	2-sample t-test	\$3,880,268	\$6,007,605	-0.95062	34.66%
29 under vs. 55 not under the law (without Richter)	2-sample t-test	\$3,880,268	\$2,105,965	0.87439	38.80%

Table 1. Summary of the estimated results.

The first two rows of Table 1 refer to the first hypothesis on interest and compare the art pieces depending on their date of sale. Both the regular and the paired t-test yield a very low t-statistic and therefore, a high p-value. Those results indicate that there is no real evidence against the null hypothesis and thus, there is no significant difference in the prices of the two groups. This could be because of two reasons: either the possible effects of the law were correctly captured and prices in general were not affected or despite the unclear information in the press about the law, there was not a significant change in expectations. The third test that we performed already refers to the second hypothesis outlined above – by examining the 29 paintings that are falling under the law (in terms of age and price valuation) and comparing their price with the 71 which are not affected by the law. The result is not significant (p-value of approximately 35%) despite the much higher mean price of the second group which is to a large extent caused by the number of observations. However, having a closer look at the data indicates that this higher mean is risen considerably by the paintings of Gerhard Richter which tend to sell for very large sums. In order to obtain a more reliable result, we have then excluded the 16 paintings of Richter in

the sample and performed a new test. The results of this test show a high p-value of almost 39% suggesting that there is not enough evidence for a price difference between the two groups, i.e. the affected and the not affected pieces of art. Therefore, all tests yield insignificant results and show no evidence of an influence of the announcement of the law on the prices of German pieces of art, based on this sample.

5. Limitations and suggestions for future research

5.1. Limitations

First of all, the biggest problem in our research was the dataset. As previously explained in the paper, the observations we used were exactly 100, which is a rather small sample for so broad questions as our hypotheses. Additionally, as already mentioned in the methodology, the controlling of our variables was not done in a statistical way but rather in a more conventional one. Thus, our dataset was left only with a specific type of paintings (oil on canvas), and not with diversified enough measures. Therefore, this might have led to a biased statistical results. Another problem of our data was the fact that we used only publically available data, which is rather limited and not so well structured. Finally, there were some variables which we could not include but would have been beneficial for the research. All in all, even though our dataset was good enough, it definitely could be improved and by doing that, some biases might disappear, leading to more representative statistical results.

Secondly, the statistical method that we performed was not the most sophisticated one. As explained we used the two-sample t-test, and some of its variations, as our statistical method, which we consider as our limitation. The reason that we did not use the simple regression model is threefold. Firstly, our data was far from normal, which would have impeded us from using the OLS. Secondly, and more importantly, was the limitation that our dataset was too small to lead us to a satisfying result. Finally, there was not enough data for characteristics of different pieces of art to actually perform a regression, since it would have been only based on a couple of explanatory variables, most of which would have been dummy variables. This would have resulted in a model with many omitted relevant variables and biased coefficient, not reflecting actual effects. Thus, limitations in the available data impeded the application of a more sophisticated statistical or econometric technique.

Finally, when it comes to the analysis as a whole, several problems appear: the most important being the rather small set of available articles, opinions and analyses on the topic. The paper has limited sources of media materials not because of a bias in the researchers but because of the unavailability of such information in English. Due to the short timing after the law in which its evaluation was executed, those problems appeared. Additionally, we only have one interview, which might give the analysis a shortsighted perspective.

All in all, despite the fact that the results were not significant and the method was not optimal, we believe that this is an important initial analysis and that our results has contributed to the interested in the field. Nevertheless, we truly believe that our research is just a first step of the understanding of the impact of this law. Because of this, the next section presents a new set of research opportunities which we think might shed some more light on this interesting issue.

5.2. Suggestions for future research

Our first suggestion for future research would be to construct a bigger dataset, with more explanatory variables, such as number of owners, number of auctions, how many times it was mentioned in the literature, whether it was a gift to the first owner, whether it was signed and how many times it was exhibited (Tekindor, 2013). Moreover, the artists age can be used, as well as the place in which the painting was sold (Tekindor, 2013). Finally, we wanted to include a reputation measure, but as this is hard to measure in quantitative terms; thus, if future researchers of the topic are able to come up with a construct for this, we believe it will be truly beneficial for the regression model. Also, we would suggest to increase the types of paintings (not only oil on canvas as we have done), and even different types of art, not only paintings, but sculptures, valuable books, etc. All of this leads us to the main recommendation for future research: using a regression model not only because it will be easier to spot if there is a significant difference due to the law, but also because it will allow many more opportunities for analyses of the different coefficients (e.g. performing regressions with a different set of control variables, testing the robustness of the estimates, etc.). By having the bigger dataset, it is going to address the second and the third issues of the third limitation that we have outlined. The only one left is going to be the not-so-normal distribution of the data. There are two different paths in this case: either a bigger sample data that will make the distribution normal enough for the future researchers to use the OLS regression model, or the researchers may opt to use some other regression model, which does not call for normal data.

Another research proposal is, if the researcher decides to perform t-tests, to take as a benchmark a different point in time, which might provide better results. The first thing that future researchers can do is to choose a different cutoff date. It would be even better if they can choose a number of such dates and compare the results of those. That way conclusions could be drawn for when exactly an effect of the law appeared. Secondly, again using the same statistical tests, the researchers can wait for several years in order for them to be able to construct a bigger data set and obtain significant results. In our analysis, we have used around 15 months before and 15 months after the law, which is rather a small timespan for art selling. That comes along with the limitation of the whole analysis, which was concerned with the unavailability of enough credible information. If this research is performed after some years, a lot of the problems we encountered will not be issues for the future researchers. Finally, in the case of bigger budget and more time, it would be truly beneficial to hold multiple interviews with different stakeholders in the fields to gain different perspectives.

The suggestions for future research can also be applied to the psychological part of the paper. As we tried to have an empirical analysis of the psychological reactions of the different parties it was very difficult to get official opinions. The big auction houses as well as smaller art sellers were quite cautious when giving out information via e-mail or on the telephone. To ensure a complete and detailed analysis of the different viewpoints a bigger reliable market institution doing the analysis should be considered. It could be that the main fear of the auction houses and private sellers is that information about their opinions gets out into the media affecting their reputation. Therefore, they insisted on an official statement from their lawyers which they did not see as worth the time for this project. A bigger market analysis with some incentives for the different parties to cooperate could be an idea for future research on the topic.

Furthermore, regarding the analysis of the overreaction of the market, we mostly considered literature assessing the stock market. There is not yet much research on the art market regarding decision making which could also be a further goal for future directions. Applying and generalizing the findings of the stock market to the art market could therefore also be considered a limitation of this review decreasing its validity. In general, as the law was quite recent there will hopefully be further data and analyses in the following years leading to more specific findings for the law in general and for theories about decision making in the art market.

6. Interdisciplinary exchange and conclusion

The main positive aspect of our diverse group was that the topic was considered from three different viewpoints. The Law part of this paper gives an official and detailed explanation about the Act and the motives for its implementation. This Act, on the other hand, caused the psychological part of the reactions from different parties as well as the changes on the market from an economic point of view. In particular, the psychological and economic fields interacted as there are many theories of decision making and behavioral economics in markets developed by business psychologists such as Kahneman and Tversky. Therefore, the Economics part provided an empirical statistical analysis in an attempt to estimate the effect of the law while the psychological part tried to explain these reactions of various parties involved. Further, the field of Law is strongly connected to Economics as it can set boundaries and limitations for a market such as in the example discussed in this paper. Consequently, markets and traders' actions are greatly dependent on the current laws and regulations of a country which can greatly influence not only the domestic market but also change the international competition in markets. The Law aspect was also connected to the psychological viewpoint as behind every act there are psychological motives of the different parties ideally to increase social welfare and potentially improve an economic market. In general, due to the interaction of disciplines, this article could shine light on a variety of different perspectives all connected with the release of the law. We believe that such an interdisciplinary study of the topic is suitable for a thorough understanding of the Act.

This paper helped us to examine the Cultural Property Protection Law from different aspects allowing for an overall analysis of its content and possible reactions. When it comes to the main results of the different fields, they are mostly consistent: the law does not seem to have a particular influence on German pieces of art and, more generally, does not seem to have affected considerably the functioning of art markets. From a Law point of view, the law was not radically innovative because most of its clauses could have already been encountered in existing laws, EU directives and international conventions. Regarding the emotional reaction observed by several parties, it was argued that even though there were strong opponents and believers in the importance and effects of the law, the reactions might have been too spontaneous and not representing a true evaluation of the Act's implications. Overreaction is a problem often encountered on the financial markets as well, which leads to the economic perspective in this paper. In the theoretical part, different stakeholders were examined in order

to hypothesize for different scenarios, and in the empirical analysis, a data set was constructed and a basic statistical analysis was performed. The results were not statistically significant: the examined means in prices do not exhibit a significant change between the periods before and after the announcement of the law in the press. Therefore, the paper presented a multidisciplinary analysis of the implications of the Germany's Cultural Property Protection Law by combining legal, psychological and economic arguments; it evaluated the Act and its implications for the art markets, which appear to be relatively unaffected so far.

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Appendix: Interview with Florian Eitle-Böhler (art expert)

1. *Wie hat das Gesetz sie in ihrem Kunsthandel beeinflusst und was ist ihre Meinung zu dem Gesetz?*

Der bürokratische Aufwand hat sich mehr als verdoppelt.

Die Ausfuhrgenehmigungen haben nur eine einmalige Gültigkeit und müssen bei einer erneuten Verbringung ins Ausland NEU gestellt werden und zwar für jedes Objekt, ganz gleich, ob es deutsch oder ausländisch ist.

Ein Absurdum, das schnellstens geklärt werden sollte im Sinne der Antragsteller wie auch den Institutionen, welche die Anträge bewilligen.

Es gibt so viele Fragen, die noch nicht eindeutig geklärt sind, z.B. man erwirbt ein Objekt in Österreich für einen internationalen Marktpreis, bringt es nach Deutschland und kann es ggf. nicht mehr ausführen, was zu einer erheblichen Wertminderung und mit großer Sicherheit zu einem finanziellen Verlust führen würde. Hier gibt es keinerlei Regelung, wie diese Verluste ausgeglichen werden sollen.

Das ist nur eines der vielen Stolpersteine, die für uns Marktteilnehmer große Unsicherheiten bergen.

2. *Haben sie bemerkt ob der Wert von deutschen Kunstwerken im Markt gefallen oder gestiegen ist?*

Nein, aber dieses Gesetz betrifft ja nicht nur deutsche Kunstwerke, sondern alle Objekte, die in einem kulturellen Zusammenhang mit Deutschland stehen, z.B. Provenienzen aus alten deutschen Sammlungen.

3. *Denken Sie, dass das Gesetz die gehofften Effekte (deutsches Kulturgut zu schützen und illegalen Kunsthandel zu minimieren) erzielen wird?*

Natürlich wird dieses Gesetz deutsches Kulturgut schützen, es ist nur die Frage, vor wem. Ich persönlich bin grundsätzlich dagegen, dass ein Gesetz es dem Staat erlaubt, die Verbringung von Kunstobjekten ins Ausland zu verhindern, ohne in die Verpflichtung einzutreten, diese Objekte dann zu einem internationalen Marktpreis erwerben zu müssen (wie in England oder Frankreich). Was die Bekämpfung des illegalen Kunsthandels betrifft, so kann ich dies nicht kommentieren, da unser Marktsegment keine Ausgrabungskunst enthält.