Federal Act on the International Transfer of Cultural Property

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ONLINE COMMENTARY
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COMMENTARY ON

Introduction CPTA

A commentary by Tous les auteur-es du commentaire de la LTBC

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INTRODUCTION

The commentary on the Federal Act on the International Transfer of Cultural Property is the result of a group project carried out by ten Master's students in law at the University of Geneva. The research and drafting took place during the 2024-2025 academic year as part of the Legal Clinic on Cultural Property Law offered by the Faculty of Law and with the support of the University Center for Art Law. The introduction was written by Laurence Amsalem, Esther Boccia, Camille Bögli, Xinyin Hu, Selly Lagun, Margaux Rod, Lisa Salama, Vincent Tschannen, Audrey Tschiffeli, and Eliane Vasseur.

With the **creation of the modern federal state** in 1848, the Swiss cantons 1
saw their sovereignty limited in areas expressly provided for in the Federal Constitution, particularly in cultural matters in Articles 3, 69, and 78 of the Federal Constitution. This federal model, as opposed to that of a centralized state, has had ambivalent effects on the construction of a national heritage identity. On the one hand, it has allowed each canton to preserve its own culture; on the other, it has hindered the development of a coherent heritage policy at the federal level. For a long time, the only federal provision relating to the protection of cultural property was Article 724 of the Civil Code, which came into force in 1912 and stipulates that archaeological objects found by chance become the property of the canton. Apart from this provision, there was no specific legislative framework governing the import or export of cultural property in Switzerland.

This **lack of regulation** in a country located at the crossroads of Europe, sur- 2
rounded by powerful cultural and financial markets, created fertile ground for the development of a largely unregulated international art trade. Add to this a general climate of deregulation in several areas, as well as pressure from powerful financial lobbies, and Switzerland became a major hub for the illicit trade in cultural property in the second half of the 20th century. This alarming situation, coupled with widespread international criticism, led to a re-examination of the status quo.

Two **major international conventions** marked this growing awareness: the 3
UNESCO Convention of November 14, 1970, on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (RS 0.444.1; hereinafter: UNESCO Convention) and the UNIDROIT

Convention on Stolen or Illegally Exported Cultural Objects of 1995 (hereinafter: UNIDROIT Convention). UNESCO Convention of 1970) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995 (hereinafter: UNIDROIT Convention of 1995). The first, adopted at the instigation of Latin American countries such as Mexico and Peru, aimed to curb the massive looting of their cultural heritage. This text, the result of a compromise between so-called "source" countries and "market" countries, uses deliberately broad terms to allow States Parties to implement it within their own legal frameworks. Not directly applicable, this UNESCO Convention requires transposition into national law. It is now the main multilateral instrument for the protection of cultural property in times of peace, ratified by 147 States.

4 The **1995 UNIDROIT Convention**, although seen as an extension of the 1970 UNESCO Convention, differs from it in that it lays down directly applicable civil obligations, particularly with regard to restitution. It proposes a stricter and more binding regime but has only been ratified by 56 States, not including Switzerland. Nevertheless, its principles still influenced the legislature when drafting the Federal Act on the International Transfer of Cultural Property (RS 444.1; hereinafter: LTBC). LTBC), particularly on the introduction of due diligence in the art trade.

5 Before the LTBC was adopted, Switzerland had no federal standards governing international trade in cultural property. **Restitution claims** were rare due to the lack of adequate legal mechanisms for recognizing foreign export regulations. In addition, the short period of time available for claiming stolen objects (Art. 934 para. 1 CC) facilitated money laundering linked to illicit trafficking in cultural property. In response to these shortcomings, the Federal Council submitted a message to the Federal Assembly in 2001 with a view to ratifying the 1970 UNESCO Convention and adopting a domestic implementing act based in particular on Articles 69 para. 2 and 95 para. 1 of the Federal Constitution.

6 The LTBC, which entered into force on June 1, 2005, is thus based on a solid **constitutional foundation** and reflects a clear desire to anchor Switzerland in the international framework for combating illicit trafficking in cultural property. This law is supplemented by implementing ordinances: the Ordinance on the International Transfer of Cultural Property (RS 444.11; hereinafter: OTBC) of 2005 and the Ordinance on the Federal Inventory of Cul-

tural Property (RS 444.12; hereinafter: OIBC) of 2014. In 2024, an ordinance establishing an Independent Commission for Cultural Heritage with a Problematic Past (RS 444.21; hereinafter: OCPCP) was adopted. All of these contain only secondary norms and are intended to clarify the practical application of the law, with the second focusing specifically on the management of the inventory provided for in Art. 3 LTBC.

The LTBC also introduced a number of **concrete measures** to protect cultural heritage. In particular, it provides for the establishment of a federal inventory of important cultural property, with options for restitution in the event of illegal export. Temporary measures may be taken in cases of exceptional threat, and the duty of care in the art trade is formalized in Art. 16. International cooperation mechanisms have been established, such as bilateral agreements (Art. 7), financial support (Art. 14), mutual legal assistance (Arts. 22–23), and administrative and criminal control and penalty measures. The entire system is designed to prevent, deter, and punish violations, while encouraging voluntary restitution. 7

Over time, the LTBC has had to evolve, particularly as a result of the **reform of customs law** in 2005, which led to an amendment of section 8 of the OTBC with regard to free ports. The application of the LTBC has also been marked by a landmark court ruling: the Federal Court's "Isabelle d'Este" judgment revealed an overly broad interpretation of the law that went beyond the legislature's intent. Following this case law, the Federal Council undertook a substantial revision of the LTBC in an attempt to bring the law back in line with its original, correct interpretation. 8

The introduction of Articles 4a and 24(1)(c^{bis}) of the LTBC, as well as the amendment of Articles 2(5) and 24(1)(c) and (d) and (3) of the LTBC, led to an extension of the **sanctions** regime and created new obligations outside the initial treaty framework. 9

Even today, case law remains limited on several key concepts of the LTBC, leaving some legal uncertainty. At the same time, a **new political dynamic** has emerged. In 2022, the Federal Council announced the creation of an independent commission on cultural heritage with a problematic past, a project approved by Parliament in March 2025. The 2025–2028 Culture Dispatch confirms this direction, while also emphasizing the need for enhanced cooperation with sub-Saharan African countries. To provide a framework for this 10 policy, several legislative amendments have been approved by the Chambers and are expected to enter into force in the second half of 2025: the provisions of a new Article 2bis will define "heritage with a problematic past," while the scope of Article 14 will be extended to create a research platform. Article 18a will form the legal basis for the independent commission.

11 Despite these advances, **criticisms** remain regarding the consistency and practical application of the LTBC. The Swiss law has mainly a deterrent and incentive effect, rather than a repressive one, as is clear from the periodic report submitted by Switzerland to UNESCO for the period 2019–2022. It has facilitated voluntary restitutions, but remains partly dependent on the goodwill of all actors in the sector. To be fully effective, the mechanism would benefit from being strengthened and clarified, in particular through better coordination between domestic law and international commitments.

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COMMENTARY ON

Art. 3 CPTA

A commentary by Margaux Rod

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Section 2 Registers of Cultural Property

Art. 3 Federal Register

[1] Cultural property owned by the Confederation that is of essential importance to cultural heritage shall be registered in the Federal Register.

[2] Registration has the following effect:

a. the cultural property may neither be acquired by adverse possession nor be acquired in good faith;

b. the right to recovery is not subject to a statute of limitations;

c. the definitive export of the cultural property from Switzerland is prohibited.

[3] The entry in the Federal Register relating to an item of cultural property may be removed if:

a. the cultural property is no longer of essential importance to cultural heritage;

b. the cultural property is to be made part of an ensemble;

c. the Confederation loses or waives its ownership of the cultural property.

[4] The Specialised Body shall maintain and publish the Federal Register in the form of an electronic database.

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I. GENERAL

1 Articles 5(b) and 13(d) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of November 17, 1970 (RS 0.444.1; hereinafter referred to as the 1970 UNESCO Convention), to which Switzerland has been a party since 2003, serve as the **basis** for Article 3 of the Federal Act on the International Transfer of Cultural Property of June 20, 2003 (RS 444.1; hereinafter: LTBC). In this way, Switzerland is giving concrete expression to some of the commitments it made when ratifying the Convention, which sets minimum requirements for the protection of cultural property in times of peace.

2 Article 5 of the 1970 UNESCO Convention provides that the States Partiesundertake to establish one or more cultural heritage protection services responsible for various tasks, including the establishment and updating of a national **inventory** of protected cultural property containing a list of important public and private cultural property whose export would constitute a significant impairment of the national cultural heritage of the State (letter b). The material scope of this inventory is therefore limited to property that forms part of cultural heritage as defined in Article 4 of the 1970 UNESCO Convention.

During the consultation process on the draft convention, Denmark and the United States expressed doubts about the feasibility of such an inventory, arguing that it would be an enormous undertaking that could exceed the resources of some States. Nevertheless, the arguments in favor of an inventory prevailed and, ultimately, it was included in the text of the convention adopted on November 14, 1970. Initially, its purpose was scientific, in particular to distinguish between property that should be preserved and subject to an export ban from those whose lawful export from the country is authorized. However, O'Keefe points out that it would have been preferable for it to be not only a scientific instrument but also a tool for customs controls (which, in the first half of 2025, is the case in Switzerland in particular, since the possibility offered to the cantons in Art. 4 para. 1 LTBC to link their inventories to that of the Confederation is intended to contribute to the simplification of cross-border controls). According to the UNESCO Secretariat, the inventory tool is of crucial importance for requests for the restitution or return of cultural property.

Article 5(b) of the 1970 UNESCO Convention states that national inventories must be kept up to date. Consequently, newly discovered archaeological objects, newly created works and returned property must be included in them, provided that they are of some importance to the cultural heritage of the State Party. It should also be noted that Article 5(b) of the 1970 UNESCO Convention applies equally to public and private property, which reflects the spirit of the Convention, which is more concerned with the question of ownership of cultural property than with that of property rights. In this regard, the preamble to the Convention states in particular that "every State has the duty to protect the heritage constituted by the cultural property existing on its territory [...]".

Article 13(d) of the 1970 UNESCO Convention provides that the States Parties undertake to recognize the inalienable, i.e. permanent and irrevocable, of each of them to classify and declare inalienable certain cultural property which, as a result, may not be exported. They shall also facilitate the successful outcome of requests for the return of such inalienable property in the event of its unlawful export. 3

The concept of **inalienability**, a prerogative of the State, has far-reaching consequences since it means that ownership of the property cannot be legally transferred, whether through sale, donation or any other means of disposal. It is mainly used by civil law countries, particularly France. It was on the French model thatUNESCO based its adoption of this provision. The main consequence of this legal concept is that cultural property can be claimed at any time if it is located on the territory of the State that has declared it inalienable, regardless of any legal transfers of ownership that may have taken place.

These two provisions provide for **commitments** that are described as general obligations in that they are undertaken by each State Party "under the conditions appropriate to each country" (for Article 5 of the 1970 UNESCO Convention) and "within the framework of the legislation of each State" (for Article 13 of the 1970 UNESCO Convention). They are valid to the extent possible, with each State Party thus having considerable latitude in their implementation depending on its resources and legislation. However, although these provisions are not binding in the strict sense, the fact remains that "the State Party shall undertake all possible measures to give effect to them in its [national] legislation." 4

II. CONDITIONS FOR INCLUSION IN THE INVENTORY

5 Art. 3 para. 1 LTBC provides for the maintenance of a **federal inventory** (hereinafter "federal inventory" or "inventory") of cultural property owned by the Confederation that is of significant importance to cultural heritage. To be included in this inventory, in accordance with Art. 3 para. 1 LTBC, the property in question must therefore satisfy all of the following conditions:

- be classified as cultural property within the meaning of the LTBC;
- be owned by the Confederation;
- be of significant importance to cultural heritage.

A. Qualification as cultural property within the meaning of the LTBC

6 Under Art. 2 para. 1 LTBC, **cultural property** is defined as "property that [...] is of importance for archaeology, prehistory, history, literature, art or science and which fall within one of the categories set out in Art. 1 of the 1970 UNESCO Convention or Art. 1 para. 1 let. a of the 2001 UNESCO Convention ."

The first cumulative condition in Art. 2 para. 1 LTBC relates to the importance of the property for the various fields, which are, alternatively, archaeology, prehistory, history, literature, art or science. The second refers to the property's classification in one of the categories set out in the 1970 UNESCO Convention or in the Convention on the Protection of the Underwater Cultural Heritage of November 2, 2001 (RS 0.444.2). Any property that cumulatively fulfills the two above-mentioned conditions is classified as cultural property within the meaning of the law and is eligible for inclusion in the federal inventory (provided that it also fulfills the two other cumulative conditions of Art. 3 para. 1 LTBC, as set out below).

7 There are therefore **two categories of cultural property** within the meaning of the LTBC: cultural property under Art. 2 para. 1 LTBC, also known as "simple cultural property," and cultural property under Art. 3 para. 1 LTBC, which is included in the federal inventory and referred to as "cultural property in the strict sense.". The category of cultural property listed in the federal inventory is more restrictive than that of cultural property within the meaning of Art. 2 para. 1 LTBC, since an item may be designated as "cultural property" within the meaning of the law without being included in the inventory. Fur-

thermore, the specific regime applicable to items listed in the inventory is more protective than that applicable to cultural property within the meaning of Art. 2 para. 1 LTBC, since they enjoy effects relating to their mode of acquisition and their export from Switzerland which "simple cultural property" does not enjoy. These various effects will be specified below (*infra* para. 29-47).

B. Ownership by the Confederation

8 In order for cultural property to be included in the federal inventory, it must be owned by the Confederation and the Confederation alone. A private individual cannot therefore request the inclusion of one of their assets in the inventory, even if it meets the other conditions necessary for inclusion. In principle, the Confederation becomes the owner of an asset, as a private individual, through a legal transfer of ownership (purchase, donation, bequest, etc.). etc.). *Conversely*, it does not become the owner by operation of law, as is the case with natural curiosities and antiquities found, which belong ipso jure to the canton in whose territory they were discovered (Art. 724 para. 1 CC). Furthermore, unlike other states, the Confederation does not have the right to "appropriate privately owned cultural property that it considers to be of national importance."

According to Art. 641 para. 1 of the Swiss Civil Code of December 10, 1907 (SR 210; hereinafter: CC), the owner of an item has the right to dispose of it freely, within the limits of the law. Ownership is defined as "the most complete real right, conferring within the limits of the law the total, exclusive and imprescriptible control of the object to which it relates ." Control is total in the sense that it grants its holder all the powers – i.e., use, enjoyment, possession, and disposal – that can be derived from the property. Furthermore, ownership and the powers it confers belong exclusively to the owner, who may oppose any third party's interference with his control. Finally, ownership offers its holder imprescriptible control, in the sense that it does not, in principle, expire with the passage of time or through non-use.

9 It should be noted that cultural property may be owned by the Confederation without being possessed by it. Under Article 15(1) of the Federal Act on Museums and Collections of the Confederation of June 12, 2009 (RS 432.30; hereinafter: LMC), the Confederation grants the Swiss National Museum (hereinafter: SNM) the usufruct of the cultural property it owns. The **right of**

usufruct, governed by Articles 745 et seq. CC, is a limited real right which, unlike the right of ownership, only confers partial control over the property. The holder of such a right thus has the right to use (*usus*) and enjoy (*fructus*) the property in full without having the right to dispose of it. Usufruct is classified as a personal servitude in the strict sense of the term, since it is established in favor of a specific person (natural or legal) and is inextricably linked to that person. Like all real rights, it is an absolute right, enforceable against all third parties, in the sense that " everyone is required to refrain from interfering with the holder's [total or partial] control over the thing ."

10 Despite several previous attempts, the legal basis for the creation of a **Swiss national museum** did not come into being until 1890 with the entry into force of the Federal Act on the Establishment of a Swiss National Museum of June 27, 1890. The decision to create such a museum was based, on the one hand, on the Swiss government's awareness of the value of cultural heritage and the need to preserve it, and on the other hand, on the growing need for the newly formed federal state "to create a cultural self-representation in the form of a national museum." The museum opened its doors for the first time in 1898 in the city of Zurich. Over the years, as it needed more space, the institution moved to new sites. In 1998, the Château de Prangins, donated to the Swiss Confederation by the cantons of Vaud and Geneva, became the home of the SNM in French-speaking Switzerland. This location seemed ideal for creating a "cultural bridge" between German-speaking and French-speaking Switzerland. Pursuant to Article 6 of the MNA, the MNS currently comprises the National Museum in Zurich (letter a), Prangins Castle (letter b), the Swiss History Forum in Schwyz (letter c) and the Collections Center in Affoltern am Albis (letter d). In 1998, Furger wrote that the purpose of the SNM was "to collect and exhibit objects relating to the history and culture of the territory of present-day Switzerland, from its origins to the present day." Almost 30 years later, this aim is still relevant (Art. 7 LMC *cum* Art. 4 LMC).

C. Be of significant importance to cultural heritage

11 This last condition contains three fundamental terms, namely "importance," "significant," and "cultural heritage," which must be defined individually.

12 The **concept of importance** is also found in Art. 2 para. 1 LTBC, which deals with the definition of cultural property. Although used by the legislator in various articles, there is no general and abstract definition of the concept of im-

portance in the LTBC (nor in the 1970 UNESCO Convention). It is therefore an undefined legal concept that must be interpreted objectively on a case-by-case basis, based on various indicators. This interpretation must take into account "the community to which the cultural property belongs, the context and the state of the debate in the scientific community at the time.". In principle, archaeological property, sacred objects and archives are considered important because they are particularly susceptible to theft and/or illicit export.

For this third condition to be met, the importance must be **significant**, i.e. in- 13
trinsically essential. This requirement further restricts the scope of cultural property that can qualify as such and thus be included in the federal inventory. Like the concept of importance, the qualification of "significant" is subject to constantly evolving social perceptions.

Finally, this importance, which is considered significant, must be significant 14
for the **cultural heritage**. Cultural heritage is defined in Art. 2 para. 2 LTBC, which essentially refers to Art. 4 of the 1970 UNESCO Convention. According to the latter provision, the cultural heritage of each State includes cultural property belonging to one of the categories listed. These relate to the nationality or domicile of the artist and the place of creation of the property (letter a), the place of discovery of the property (letter b), the transfer of ownership and legal export from the State of origin (let. c to e). Cultural heritage thus consists of all cultural property that falls, alternatively or cumulatively, into one of these categories. It should be noted that ownership of the property is not relevant in determining whether or not it belongs to the cultural heritage of a State. The concept of cultural heritage thus refers to the "special significance of an object for the civilization of the country concerned."

When adopting the Ordinance on the International Transfer of Cultural Prop- 15
erty of April 13, 2005 (RS 444.11; hereinafter: OTBC), the Federal Council attempted to introduce a **definition of the concept of significant importance** for heritage by listing various categories of property with this quality. However, this idea was abandoned in the text of the OTBC that entered into force due to a constitutionality issue raised during the consultation procedure. Under Art. 31 LTBC, the Federal Assembly delegates to the Federal Council the power to issue implementing provisions. It is precisely on the basis of this provision that the Federal Council adopted the OTBC. As an implementing ordinance, the provisions it contains must only clarify the provisions of the LTBC (secondary legislation) and certainly cannot extend or restrict the scope

of the law (primary legislation). As Contel and Renold explain, "by establishing certain categories of cultural property as the only ones of significant importance [as did Art. 2 para. 1 P-OTBC], the scope of application of the law is restricted ." This situation raised the question of compliance with the principle of separation of powers between the legislative and executive branches, leading to a revision of the initial draft.

16 Art. 2 para. 2 of the Ordinance on the Federal Inventory of Cultural Property of May 21, 2014 (RS 444.12; hereinafter: OIBC) provides some **guidance** to help understand the concept of significant importance for heritage, stipulating that cultural property is considered to be of significant importance if it meets at least one of the following criteria:

a. "artistic, historical or scientific importance;

b. uniqueness or rarity;

c. craftsmanship;

d. iconographic significance;

e. historical significance;

f. significance in the context of the collection;

g. material value."

Although, according to the OIBC, only one of the criteria needs to be met, in practice, each item listed in the inventory satisfies several of them. According to Bandle and Renold, items of significant cultural heritage value can be “rare objects whose financial, emotional or aesthetic value is considered high at a given moment.” It should be noted that only Swiss cultural property or property with a strong connection to the Swiss Confederation is included in the inventory. These are therefore items for which the Swiss population is recognized as having a very strong attachment. Unlike Art. 2 para. 1 P-OTBC, Art. 2 para. 2 OIBC does not provide for categories of property that may be considered of significant importance, but simply criteria for determining this. It thus complies with the legal requirements for implementing ordinances.

17 Finally, it is worth mentioning that Art. 7 para. 2 LTBC also establishes the concept of significant importance for cultural heritage as a **condition** for determining the categories of cultural property contained in the annexes to bi-

lateral agreements concluded between Switzerland and another State Party to the 1970 UNESCO Convention.

An item that meets all the conditions set out above (i.e. it must be cultural property, belong to the Confederation and be of significant importance to cultural heritage) may thus be included in the federal inventory. The text of Art. 3 para. 1 LTBC states that cultural property “shall be included” in the inventory, which may imply that **inclusion** is automatic. In practice, however, it is necessary to apply for this listing. Art. 6 OIBC deals specifically with the application for listing an object in the federal inventory (*see below* para. 27). 18

Work on creating the inventory began as soon as the OIBC came into force in July 2014 and was completed in December 2018. In the first half of 2025, the federal inventory, updated on July 15, 2021, will be published on the website of the Federal Office of Culture (OFC). It lists 75 cultural properties. 19

III. THE PROCEDURE FOR INCLUSION IN THE INVENTORY

As its name suggests, the OIBC and its annex are intended to clarify Art. 3 LTBC on the federal inventory. Article 1 OIBC thus provides that the ordinance regulates the criteria for listing movable cultural property in the inventory (letter a), the listing procedure (letter b, paragraph 1) and the removal procedure (letter b, paragraph 2) (*see below* paragraphs 48-54). 20

Art. 4 OIBC deals with the **description of registered cultural property** and provides that, for each item, the federal inventory shall contain the following information, insofar as it is known: 21

a. "the reference number;

b. the date of registration;

c. the name of the federal institution that owns it;

d. the type of object;

e. the material;

f. the technique;

g. the dimensions and weight;

h. the lots, number or volume;

i. the reasons;

j. the inscriptions;

k. any distinctive marks or signs, in particular damage and repairs;

l. the period or date of manufacture;

m. the author;

n. the title;

o. as detailed information as possible on the provenance and place of manufacture or, in the case of objects from archaeological or paleontological excavations or discoveries, on the place of discovery;

p. bibliographical references with a table of illustrations, if available;

q. a photograph or other representation of the object.

It is clear that the content of each inscription is therefore quite substantial. This is a fundamental aspect that has been emphasized in order to ensure better protection of registered cultural property. As mentioned in the National Report on the Implementation of the 1970 UNESCO Convention in Switzerland, the information to be provided under Art. 4 OIBC is based on the standardized requirements of "Object ID." These international standards set out a list of minimum data (type of object, materials and techniques, measurements, inscriptions and marks, distinctive features, title, date or period and creator) that must be recorded in order to identify cultural property.

22 In accordance with the legal provision, the **list** in Art. 4 OIBC is exhaustive. Certain points, such as the reference number (letter a), the provenance (letter o), and the federal institutions (letter b), require some additional explanation.

23 The **reference number** is a reference, consisting in principle of letters and/or numbers, used to identify and classify items in a collection. Pursuant to Art. 3 OIBC, each cultural property listed in the inventory is identified by a reference number (para. 1) which is composed in accordance with the appendix (para. 2). According to the latter, the reference number consists of three elements:

- the abbreviation of the federal institution that owns the property;
- the number corresponding to the type of object in question;

• additional information added by the federal institution.

In the context of the LTBC, the terms **origin** and **provenance** are considered interchangeable synonyms, even though they are in fact two terms with different meanings. They are defined in Art. 1(b) OTBC as the "provenance of the cultural property and [the] place of its manufacture or, in the case of archaeological or paleontological finds or discoveries, the place of its discovery ." The purpose of provenance research is to obtain "an ideally complete picture of the history of the object and documentation of changes of ownership." However, this chain of provenance is often incomplete due to a lack of information and documentation. As previously mentioned, Article 4(o) OIBC specifies that the provenance must be established, as far as possible, for all cultural property listed in the federal inventory (*supra* para. 21). *A priori*, since it is to be established "as far as possible," an incomplete provenance should not, in principle, prevent an item from being listed in the inventory. Two types of property, namely property from colonial contexts and property looted during the National Socialist era, require particular attention with regard to their provenance and the legality of their acquisition. 24

In this regard, the working group of the Federal Office of Culture published an initial **report on provenance research** relating to cultural property owned by the Confederation covering the period from 1933 to 1945. The aim was to examine acquisitions made by various federal institutions (the federal art collections, the Swiss National Museums and the Swiss National Library) during this particularly troubled period. The findings concluded that, *a priori*, no property owned by the Confederation had been acquired illegally or appeared on the lists of looted works published by various states. 25

Twenty years after its initial publication, the Federal Office of Culture undertook a review of the provenance research findings, which were published in two stages (2018 and 2020). The results of this review concluded that the majority of the acquired property could be considered unproblematic in terms of provenance (category A or B). Eight items were considered potentially sensitive in the sense that, although their provenance could not be fully clarified, the available information suggested that "there could be links to the issue of looted art" (category C). Finally, only one item was classified as "confiscated by the Nazis " (category D).

For the sake of completeness, it should be noted that, following the motion submitted by Jon Pult in 2021, the Federal Council established an Independent Commission for Cultural Heritage with a Problematic Past, tasked with examining, among other things, questions of provenance of property looted during the National Socialist era and property originating from the colonial context. This should facilitate the establishment of their provenance, which, in accordance with Art. 4(o) OIBC, is information that must be provided, as far as possible, when an item is entered in the inventory. The Commission is governed by the Ordinance on the Independent Commission for Cultural Heritage with a Problematic Past of November 22, 2023 (RS 444.21; hereinafter: OCPCP).

26 The **institutions of the Confederation** are defined in Art. 1 let. c OTBC as:

1. "the Swiss National Museum, comprising the National Museum in Zurich, the Château de Prangins, the Forum of Swiss History in Schwyz and the Collection Center in Affoltern am Albis,

2. the Swiss National Library, to which the Swiss Literary Archives, the Prints and Drawings Department and the Centre Dürrenmatt Neuchâtel are attached,

3. the Oskar Reinhart Collection Museum “Am Römerholz” in Winterthur,

4. the Museo Vela in Ligornetto,

5. the Museum of Musical Automata in Seewen,

6. the Swiss Federal Institute of Technology in Zurich and its collections,

7. the art and cultural property collection of the Gottfried Keller Foundation,

8. the art collection of the Swiss Confederation ".

27 The **application for inclusion** of an asset in the federal inventory is governed by Art. 6 para. 1 OIBC, which stipulates that it is the federal institution that owns the asset that must submit the application. Only a federal institution within the meaning of Art. 1(c) OTBC, excluding cantonal and municipal public entities, may apply for such registration. The application must be submitted to the specialist department of the Federal Office of Culture, one of whose tasks is to maintain the inventory pursuant to Art. 18(g) LTBC. According to Art. 6 para. 2 OIBC, it must contain the information specified in Art. 4

OIBC and be submitted in electronic form. It is possible to request the registration of an item in the inventory at any time.

Pursuant to Art. 7 sentence 1 OIBC, cultural property is considered to be registered as soon as it is entered in the electronic database. In addition, the **date of registration** is recorded in the inventory (Art. 4 let b OIBC and Art. 7 sentence 2 OIBC). 28

IV. EFFECTS OF INCLUSION IN THE INVENTORY

According to the Federal Council's message, maintaining an inventory is "a proven means of protecting cultural property that is important to the community from loss ." Its purpose is to strengthen the protection of assets that constitute the national cultural heritage against permanent loss. To this end, the inventory establishes two types of major effects: those intended to control and restrict cross-border movements (in particular exports) and those intended to affect ownership rights. Article 3(2) LTBC thus provides that inclusion in the inventory entails the following **restrictive and derogatory effects**: the cultural property cannot be acquired by prescription or in good faith (letter a), the action for recovery is imprescriptible (letter b) and the permanent export of the cultural property from Switzerland is prohibited (letter c). It should be noted that these various legal effects are limited to Swiss territory. 29

A. Effect relating to the impossibility of acquisition by acquisitive prescription (Art. 3 para. 2 let. a LTBC)

Acquisitive prescription is a method of acquiring ownership of movable property. Art. 728 para. 1 CC provides that anyone who has possessed another person's property peacefully and without interruption for a certain period of time becomes the owner by prescription, provided that they possessed it in good faith and as the owner. When all these conditions are met, the acquisition of ownership by prescription (by the current possessor) results in the automatic extinction of the previous owner's right of ownership. 30

The usual **period of** prescriptive acquisition is five years (Art. 728 para. 1 CC). Following the entry into force of the LTBC, this period was extended to 30 years for cultural property (Art. 728 para. 1^{ter} CC). This extension provides greater protection for the rights of the previous owner of the cultural property by delaying the moment when ownership is acquired by prescription. 31

32 Cultural property listed in the inventory enjoys greater protection, as Art. 3 para. 2 let. a LTBC provides that it simply **cannot be subject to acquisitive prescription**, regardless of whether the 30-year period has expired. This is a major exception to the rules on acquisitive prescription and was laid down in the CC, in Art. 728 para. 1ter, when the LTBC came into force, making it a case of exception provided for by law.

B. Effect relating to the impossibility of acquisition in good faith (Art. 3 para. 2 let. a LTBC)

33 **Acquisition in good faith** is governed by Art. 714 para. 2 CC, which provides that "a person who, acting in good faith, is put in possession of movable property as owner acquires ownership of that property, even if the transferor was not entitled to transfer it; ownership is acquired as soon as he is protected under the rules on possession [i.e. Articles 933 to 935 CC]". There are two situations in which a bona fide acquirer may become the owner of cultural property under the rules on possession. The first is the case of Article 933 CC, which deals with the acquisition of movable property that had been entrusted (in principle by the owner of the property) to the person who transferred ownership to the purchaser in good faith. The second possibility is that of a purchaser in good faith of lost or stolen property or property whose previous possessor has been deprived of it in any other way against his will. In this case, the purchaser in good faith becomes the owner by virtue of Art. 714 para. 2 CC, only when the right to bring an action in rem within the meaning of Art. 934 CC has expired. This is because if the former owner who was involuntarily deprived of possession takes action against the purchaser acting in good faith within the statutory period, the latter must return the property to the former owner (see below, paras. 37 and 39). When the conditions for acquisition in good faith are met, the transfer of ownership is considered valid. The purchaser acting in good faith then becomes the actual owner of the property.

34 In both of the above situations, the purchaser who wishes to be protected in his acquisition must be acting in good faith at the time of the **transfer of ownership**. It is said that he must have acted "in good conscience [and] that any dishonest or morally reprehensible behavior appears to be excluded ." In other words, they must have believed in the disposer's power to dispose of the property, which was apparent from their possession. Good faith is presumed under Art. 3 para. 1 CC, provided that it is compatible with the care that could

be expected under the circumstances (para. 2). In this regard, it should be emphasized that, in principle, there is no general obligation on the purchaser to inquire about the power of disposal of his co-contracting party. Only in cases of doubt or special circumstances that should arouse his suspicion is he required to carry out a more thorough investigation. However, this general rule must be qualified, since a higher degree of vigilance and caution is required in areas where objects of dubious provenance are abundant (this is particularly the case in the field of cultural property). A certain duty of care is therefore required in transactions involving cultural property, particularly since the entry into force of the LTBC. This duty is not limited to professionals, since what is decisive is the purchaser's knowledge of the sector concerned (and not whether they are acting in a professional capacity or not). In the "Malevitch ," the Federal Court also clarified that the requirements for diligence on the part of the purchaser at the time of transfer of ownership (*in this case*, the transfer took place in 1989) cannot be assessed based on our current knowledge. It is necessary to take into account the context of the time when provenance research, although common, focused on the authenticity of the property and any renowned previous owners, and not on clarifying the transferor's power to dispose of the property (this aspect became particularly important after the fall of the Iron Curtain and the emergence of the debate on looted art).

In the case in question, the Federal Court, which was responsible for examining the purchaser's good faith, concluded that the purchaser could not ultimately rely on it. In its view, the fact that H., an expert on Russian avant-garde art, had informed him of a rumor circulating on the market that a stolen Malevich painting was available for sale should have prompted him "to take the necessary precautionary measures ,“ consisting, in particular, of ”obtaining further information about [the rumour] from H. or another expert, or asking such a person to undertake the relevant research [which he did not do in this case]." As the federal judges were unable to rule on the merits of the case, it was referred back to the Zurich Superior Court, which ultimately dismissed the appeal. The Zurich court held that the presumption of ownership (of the seller of the painting) arising from his possession (Art. 930 para. 1 CC) was applicable in this case, since no evidence to the contrary had been provided. It follows from the above that the buyer had acquired the property from a person who had the power to dispose of it. Since the absence of such power, a necessary condition for an action in rem, could not be proven, the cantonal judges naturally concluded that the claim should be dismissed. They thus considered that the Federal Court's conclusion regarding the purchaser's lack of good faith was irrelevant since it had to be assumed that he had acquired the property from a person who had the right to dispose of it. Consequently, this reasoning allowed the Zurich court to dismiss the applicant's claim while complying with the binding considerations of the Federal Court's judgment. The purchaser was thus able to retain the disputed property, even though he had been found not to be acting in good faith.

35 As a general rule, cultural property, with the exception of that listed in the inventory, may be acquired in good faith, provided that the usual requirements in this regard are met. Art. 3 para. 2 lit. a LTBC prevents the acquisition in good faith of cultural property listed in the federal inventory. Their acquisition after the expiry of the **limitation period** under Art. 934 para. 1^{bis} CC is therefore impossible.

36 Even if Art. 3 para. 2 let. a LTBC did not provide for such an effect, the acquisition in good faith of cultural property listed in the inventory would be virtually impossible in practice. The federal inventory can be considered a **public register** within the meaning of Art. 9 CC. As such, it is authentic evidence of the facts it records, the inaccuracy of which has not been proven (Art. 9 para. 1 CC). This gives rise to the following presumption: until proven otherwise, the assets listed in the inventory belong to the Confederation and are of significant importance to cultural heritage. Thus, the good faith of the purchaser will be all the more difficult to prove, since he could not have been unaware of the existence of the inventory and the inclusion of the cultural property therein.

C. Effect on the imprescriptibility of the action for recovery (Art. 3 para. 2 let. b LTBC)

37 There are two types of **actions** aimed at restoring the previous situation *through the* return of the item: the action for recovery by the owner and the action by the previous possessor of movable property.

38 The **action for recovery by the owner** under Art. 641 para. 2 CC is a so-called condemnatory action. The owner who no longer has (or never had) possession of his property has standing to bring the action. The person who possesses the property at the time the action is brought has standing to de-

fend it. In order for the action to be successful, two substantive conditions must be met. First, the plaintiff must prove that he has validly acquired ownership of the property claimed, i.e., that he is indeed the rightful owner. Second, they must also demonstrate that the defendant holds the property "without right," meaning that they do not have "a right enforceable against the claimant that would allow them to refuse to return the property." The action for recovery of property is not subject to a statute of limitations.

The **action on movable property by the previous possessor** under Article 934 CC is based on previous possession (and not on ownership). In fact, any previous possessor who has been deprived of the property against their will is entitled to bring such an action. Like the action for recovery of property, it is brought against the current possessor. Once again, two material conditions must be met for the action to be successful. The claimant must have been deprived of the object against his will, i.e. he must have lost possession of it other than by entrusting it (within the meaning of Article 933 CC). This may be due to loss, theft or confiscation in a foreign country for political reasons. However, where the property claimed is cultural property, "non-compliance with export provisions is not considered involuntary dispossession ." Involuntary relinquishment may have taken place in Switzerland or abroad. The defendant, i.e. the current possessor, must also be unable to invoke any exception, in particular by claiming a preferential right to the property or the expiry of the limitation period. Unlike the action for recovery of property, the action for recovery of movable property usually expires within five years of the involuntary dispossession (Art. 934 para. 1 CC). 39

Since the LTBC came into force, cultural property has been subject to a **special regime**, since under Art. 934 para. 1^{bis} CC, the limitation period is 30 years from the date of involuntary relinquishment (absolute limitation period) and one year from the moment when the owner became aware of the location of the property and the identity of the current possessor (relative time limit). This wording is somewhat awkward since, *a priori*, the one-year time limit runs from the moment the owner becomes aware of certain facts. However, as stated above, the right to take action lies with the dispossessed possessor (whether or not they are the owner of the property). Therefore, according to Foëx, Art. 934 para. 1^{bis} CC should be interpreted as providing that the one-year period runs from the moment the claimant becomes aware of the afore- 40 mentioned facts. The purpose of this *lex specialis* is to protect the former possessor against international trafficking in cultural property.

41 Cultural property listed in the federal inventory is even better protected, since Art. 3 para. 2(b) LTBC provides that the action for recovery is **not subject to a limitation period**. This effect must be understood to mean that "the limitation of the action for recovery is not an exception that the defendant can invoke to paralyze the plaintiff's right ." The imprescriptibility of the action for recovery of property for items listed in the federal inventory is of no use with regard to the action under Art. 641 para. 2 CC, since this is already, by its nature, imprescriptible. *Conversely*, as explained above, it is fully relevant to the action for movable property under Art. 934 CC. It should also be noted that these two actions exist in parallel and may be combined, provided that the plaintiff has standing to bring both. The plaintiff must then be both the owner of the property and the previous possessor who was dispossessed against his will. In practice, the action for movable property under Article 934 CC allows the claimant to recover the claimed property more easily than the action for recovery under Article 641(2) CC, since in the former case the claimant does not have to prove his or her right of ownership of the property. It therefore seems more appropriate to bring an action for the recovery of cultural property on the basis of Article 934(1^{bis}) CC.

D. Implicit effect relating to the inalienability of cultural property (*res extra commercium)*

42 In principle, an owner has the power to dispose freely of his property under Art. 641 para. 1 CC. However, when it comes to property that is part of a State's cultural heritage, other issues must be taken into account. The various effects mentioned above affect cultural property listed in the inventory precisely because of their special status. The characteristics attributed to them allow them to be classified as *res extra commercium*, i.e., **things not subject to trade**. They are therefore considered inalienable property whose ownership cannot be transferred. The Confederation cannot therefore sell its property as long as it remains listed in the federal inventory. This inalienability is not explicitly provided for in the law but derives from the effects of Art. 3 para. 2 lit. a and b LTBC relating to property rights. The classification as *res extra commercium* also means that they can be claimed at any time from any holder. Inalienability is relative in the sense that for an asset to be classified as

such, it must meet certain conditions (namely those that allow it to be included in the inventory).

Like property listed in the federal inventory, **natural curiosities and antiques** cannot be acquired by prescription or in good faith, and the right to claim them is imprescriptible (Art. 724 para. 1^{bis} phr. 2 and 3 CC). However, unlike assets listed in the inventory, which are completely inalienable, natural curiosities and antiques may be disposed of subject to obtaining authorization from the competent cantonal authorities (Art. 724 para. 1^{bis} sentence 1 CC) and in compliance with the administrative procedure applicable in the canton concerned. They therefore constitute a special category of *res extra commercium*. Their unlawful appropriation constitutes a criminal offense punishable under Art. 24 para. 1 let. b LTBC. 43

E. Effect of the permanent ban on export from Switzerland (Art. 3 para. 2 let. c LTBC)

In accordance with the preamble to the 1970 UNESCO Convention, the exchange of cultural property between nations serves to deepen knowledge of human civilization, enrich the cultural life of all peoples, and foster mutual respect and understanding between nations. The lawful circulation of cultural property appears, *a priori*, to be encouraged. Nevertheless, Art. 3 para. 2 let. c LTBC provides that the **permanent export** from Switzerland of goods listed in the inventory is prohibited. Indeed, cultural property listed in the inventory has a special significance for the national cultural heritage, and its permanent export would constitute a significant loss for Switzerland. 44

In order to qualify this prohibition, **temporary export** is possible under certain conditions. According to Articles 5 para. 1 LTBC and 24 para. 1 OTBC, anyone wishing to export cultural property listed in the inventory must obtain authorization from the specialized service. This authorization is granted on two conditions: the export must be temporary (Art. 5 para. 2 let. a LTBC) and must be for the purposes of research, conservation, exhibition or other similar reasons (Art. 5 para. 2 let. b LTBC). The deadline for submitting the application for authorization is no later than 30 days before the planned date of export (Art. 3 para. 1 OTBC). It must indicate the purpose and date of the temporary export and the date of return of the object to Switzerland and be accompanied by a description of the cultural object concerned and its number in the federal inventory (Art. 3 para. 2 and 3 OTBC). In addition to the above 45 authorization, a customs declaration must be provided indicating the type of object and its place of manufacture (Art. 4a LTBC *cum* Art. 25 para. 1 lit. a and b OTBC). These documents must be submitted to the customs authorities responsible for checking the transfer of goods at the border (Art. 19 para. 1 LTBC and Art. 25 para. 3 OTBC).

46 In the event of the **unlawful export** of cultural property listed in the federal inventory, the Federal Council has a right of return to be exercised vis-à-vis the other States party to the 1970 UNESCO Convention (Art. 6 para. 1 LTBC). This action may take various forms: legal action, diplomatic proceedings or a request for international mutual assistance in criminal matters. Requests for restitution made to states that are not signatories to the 1970 UNESCO Convention are subject to the conditions laid down in the domestic law of that state, which may give rise to certain difficulties. Illegal export means a situation where an object "has left its territory of origin [*in casu*, Switzerland] in violation of national legislation on the protection of cultural heritage [*in casu*, the LTBC and/or Art. 724 CC], regardless of whether this was done by its rightful owner or another person." In the case of temporary export of an item listed in the inventory, it is considered illegal if the item leaves Swiss territory without authorization (Art. 5 LTBC). In addition to having to return the cultural property pursuant to Art. 6 para. 1 LTBC, the perpetrator of the unlawful export is also liable to criminal penalties (Art. 24 para. 1 let. d LTBC).

47 There are other measures that a state can put in place to protect its cultural property and control its movement, such as introducing a state **right of first refusal** in the event of sale. This is notably the case in France, where, under Art. L123-1 of the Heritage Code, the State may exercise a right of preemption in any public or private sale of cultural property carried out under the conditions set out in Art. L321-9 of the Commercial Code relating to voluntary sales of movable property at public auction. While other States have similar mechanisms for protecting cultural heritage, Switzerland has ruled out this possibility, in particular because of the rules on the division of powers between the cantons and the Confederation.

V. THE PROCEDURE FOR REMOVAL FROM THE INVENTORY

The list of items included in the inventory is not definitive, as Art. 3 para. 3 LTBC provides for **three cases** in which an item may be removed: if it no longer has significant importance for cultural heritage (letter a), if its incorporation into a larger entity justifies its removal (letter b), and if the Confederation loses its ownership rights or renounces them (letter c). 48

A. The property is no longer of significant importance to cultural heritage (Art. 3 para. 3 letter a LTBC)

This refers to the possibility that the third condition of Art. 3 para. 1 LTBC, which is necessary for the inclusion of an asset in the inventory, is no longer met (*supra* para. 11-16). In such a case, it is justified that the asset be removed from the inventory since it no longer meets the criteria for inclusion. Since the significant importance of an asset for cultural heritage is an indeterminate concept, it may vary over time. It is therefore possible that an item may **lose its special significance** at a given point in time. This would be the case, for example, if new discoveries called into question its value by proving that it was in fact a fake, or if other cultural property of the same type were acquired by the Confederation, thereby reducing the value of the item listed in the inventory. 49

B. Incorporation of the property into a whole justifying its removal from the inventory (Art. 3 para. 3 let. b LTBC)

This second scenario relates to cases where the reintegration of the cultural property into its original context, for example a religious building, another collection, a building or other structure, requires its **disposal**. As the property is considered inalienable due to its inclusion in the inventory (*supra* para. 42), its removal from the inventory is therefore necessary. 50

C. The Confederation loses its ownership rights to the property or renounces them (Art. 3 para. 3 let. c LTBC)

This last situation corresponds to the case where the second condition of Art. 3 para. 1 LTBC necessary for the inclusion of an object in the inventory is no 51 longer met (*supra* para. 28). As in the case of loss of significant importance for cultural heritage, it is consistent to remove the registered object from the inventory, as it no longer meets the conditions for inclusion.

52 The Confederation may **lose its right of ownership** over the cultural property if "a third party asserts a legitimate right [to the listed property], for example by proving that it was stolen from them." This loss may also occur if the cultural property listed in the inventory is destroyed. However, the Confederation does not lose its right of ownership in the event of sale or involuntary disposal.

53 With regard to the **waiver of ownership**, this may occur if the Confederation discovers that the provenance of its property is ethically questionable (theft or looting) and voluntarily decides to return it. Such a case could arise, for example, in the case of property whose provenance, , as a result of new research, a risk of spoliation during the period 1933–1945 or in connection with colonial contexts. The Confederation may also waive its right of ownership if the cultural property has been removed from the federal inventory due to its loss of significance for the national cultural heritage. However, in such a case, it is the loss of significant importance that leads to the removal of the object from the inventory and not the decision to waive ownership, which will then be taken at a later stage.

54 The **removal procedure** is set out in Art. 8 OIBC. Where one of the circumstances referred to in Art. 3 para. 3 LTBC applies, the federal institution that owns the property may request the specialized service to remove it from the inventory, provided that the request is duly justified (Art. 8 para. 1 OIBC). If the request is approved by the specialized service, it shall effectively remove the property from the electronic database (Art. 8 para. 2 OIBC). In practice, cases of removal of property from the inventory are relatively rare.

VI. FORM OF THE INVENTORY AND RESPONSIBILITY FOR MAINTAINING IT

55 Pursuant to Articles 3(4) LTBC and 18(g) LTBC, the **specialized service** is the **body responsible for maintaining the federal inventory**. It is naturally also responsible for deciding on the inclusion and removal of cultural property from the inventory (Art. 5 para. 2 OIBC). Finally, as mentioned above, the same service is also authorized to grant temporary export permits for items

included in the inventory (Art. 5 para. 1 LTBC). Pursuant to Articles 22 para. 1 OTBC and 5 para. 1 OIBC, it is attached to the OFC and is called the "International Transfer of Cultural Property" specialist service of the Federal Office of Culture.

Art. 3 para. 4 LTBC also provides that the federal inventory shall be established in the form of an **electronic database** and shall be published. It must be published on the website of the Federal Office of Culture (Art. 5 para. 1 OIBC). Under Art. 9 OIBC, access to the inventory is free of charge. The aim of this solution is to facilitate consultation and enable widespread dissemination in Switzerland and abroad. In practice, the federal inventory is kept in the form of an electronic database within the specialized service and is then made available to the public in PDF format for download on the website of the Federal Office of Culture. This seems to be the most appropriate approach, as it is easier to download and consult a PDF than an electronic database, which requires a good internet connection and some computer skills. 56

The inventory is also available to customs authorities, one of whose tasks is to control exports. This enables them to check whether the cultural property in question is listed in the federal inventory and would therefore be subject to export restrictions. 57

In accordance with Articles 30(2) LTBC and 21(1 OTBC, the processing of **personal data** carried out in connection with the inventory must comply with the Federal Act on Data Protection of September 25, 2020 (RS 235.1; hereinafter: LPD). 58

VII. OTHER INVENTORIES UNDER THE LTBC

There are **two other inventories or registers established** ***through*** **the LTBC**. These are, on the one hand, the register kept by art dealers and auctioneers and, on the other hand, the inventory kept by free ports. 59

The **register kept by art dealers and auctioneers** is based directly on the LTBC, which implements the commitment made in Art. 10(a) of the 1970 UNESCO Convention. Art. 16(2)(c) LTBC therefore provides that art dealers and auctioneers are required to keep a register of acquisitions of cultural property. This register must contain the following information: a description of the cultural property (as defined in Art. 1(a) OTBC), the origin of the cultural property if known, details of the identity of the seller or supplier, the date of transfer, 60 the purchase price or estimated value of the cultural property (Art. 16 para. 2 let. c LTBC *cum* Art. 19 para. 1 and 17 para. 1 let. a and b OTBC). This register must be kept for 30 years (Art. 16 para. 3 LTBC) and must be available for inspection on request (Art. 19 para. 2 OTBC). The aim is to ensure the traceability of the various transactions carried out. It may also serve as evidence in criminal proceedings.

61 The specialized service monitors, among other things, **compliance with the obligation** to keep the register and reports any suspected violations to the competent criminal prosecution authority (Art. 17 LTBC). In the event of non-compliance with the obligation under Art. 16 para. 2 let. c LTBC, art dealers and auctioneers are liable to a fine of up to CHF 20,000 under Art. 25 para. 1 let. a LTBC. In civil law, a breach of this obligation does not render the contract between the art dealer or auctioneer and the seller or supplier null and void.

In practice, it appears that art dealers and auctioneers comply fairly well with their legal obligations by checking the goods transferred more effectively. Various trade unions and associations have also adopted codes of conduct, i.e. legally non-binding instruments aimed at establishing standards of conduct for persons professionally involved in the trade in cultural goods. This self-regulation by peers thus reinforces the legal provisions in that failure to comply with the code of conduct by one of the members of the association may lead to its exclusion.

62 The **inventory kept by free ports** is based on the Customs Act of March 18, 2005 (RS 630.1; hereinafter referred to as LD). Free ports are "parts of Swiss territory that are separated from the rest of the customs territory and are under customs supervision." Under Art. 19 para. 3 LTBC, the storage of cultural property in a free port is treated as an import within the meaning of the law. Consequently, it is also subject to the customs declaration requirement provided for in Art. 4a LTBC *cum* Art. 25 para. 1 lit. a and b OTBC. Under section 14 of Annex 2 to the Customs Ordinance of November 1, 2006 (RS 631.01; hereinafter: OD), cultural property within the meaning of Art. 2 para. 1 LTBC is deemed to be sensitive goods within the meaning of the LD. As such, the warehouse keeper or depositary is required to keep an inventory of all cultural property in storage (Art. 56 and 66 LD, Art. 182 para. 2 to 185 OD and Art. 47 and 48 of the Federal Customs Ordinance of April 4, 2007 (RS 631.013; hereinafter: OD-OFDF). In order to facilitate inspection by the customs au-

thorities, the warehouse keeper or depositary must immediately present their inventory upon request. This measure aims to ensure the transparency of free ports and to combat possible abuse, in particular by preventing cultural property of dubious origin from being stored in free ports without attracting the attention of the authorities.

VIII. OTHER FEDERAL INVENTORIES RELATING TO THE PROTECTION OF CULTURAL HERITAGE

There are four **other federal inventories** of importance for the protection of Swiss cultural heritage. Their provisions have been enacted primarily with regard to the State and its various administrative authorities. Private individuals are only very rarely affected by them. 63

The first is the Swiss inventory of cultural property of national and regional significance (**PBC Inventory**), the provisions of which are set out in Art. 4(d) of the Federal Act on the Protection of Cultural Property in the Event of Armed Conflict, Catastrophes or Emergencies of June 20, 2014 (RS 520.3; hereinafter: LPBC). It lists cultural property that must be protected as a priority in order to prevent its partial or total loss. The Federal Office for Civil Protection (FOCP) is responsible for compiling and maintaining the inventory in accordance with Article 2(1) of the Ordinance on the Protection of Cultural Property in the Event of Armed Conflict, Catastrophes or Emergencies of October 29, 2014 (RS 520.31; hereinafter: PBC). This inventory lists two types of property: property of national importance (objects A), which are listed in bold, and property of regional importance (objects B) (Art. 1 para. 1 lit. a and b PBC *cum* Art. 2 para. 1 PBC). Objects A are also reproduced on the federal geoportal, which is managed by the Federal Office of Topography, to facilitate their geolocation. The assets listed in the PBC inventory are classified by canton. In the first half of 2025, the fourth edition of the inventory, updated in 2021, will be available to the public in PDF format on the website of the Federal Office for Civil Protection. 64

The second is the federal inventory of built sites of national importance to be protected in Switzerland (**ISOS inventory**). It is based on Art. 5 para. 1 of the Federal Act on Nature and Landscape Protection of July 1, 1966 (RS 451; hereinafter: LPN), which stipulates that the Federal Council shall draw up inventories of objects of national importance. The ISOS inventory is not exhaustive 65 and must be updated regularly (Art. 5 para. 2 LPN). The relevant ordinance, namely the Ordinance on the Federal Inventory of Built Sites to be Protected in Switzerland of November 13, 2019 (RS 451; hereinafter: OISOS), entered into force on January 1, 2020. Like the federal inventory under Art. 3 LTBC, it is compiled by the Federal Office of Culture (FOC) (Art. 1 para. 2 OISOS) and includes all the objects listed in Annex 1 (Art. 1 para. 1 OISOS). Its purpose is to list built sites in Switzerland that require special protection, particularly with regard to spatial planning. The criteria for determining whether a site is valuable enough to be included in the inventory are listed in Art. 8 OISOS. Like the "A objects" in the PBC inventory, the sites listed in the ISOS inventory are included in the federal geoportal, where they can be viewed free of charge (Art. 2 para. 2 OISOS).

66 The third is the federal inventory of landscapes, sites and natural monuments of national importance (**Inventory IFP**). Like the ISOS inventory, it is based on Art. 5 LPN. The Ordinance on the Federal Inventory of Landscapes, Sites and Natural Monuments of 29 March 2017 (RS 45.11; hereinafter: OIFP) entered into force on June 1, 2017. Like the ISOS inventory, it includes all objects listed in Annex 1 (Art. 1 para. 1 OIFP). It can be consulted free of charge at the Federal Office for the Environment (FOEN) (Art. 2 para. 2 OIFP). This instrument thus enables "the characteristic appearance of the landscape and localities, sites of historical interest, natural features and monuments of the country to be preserved and protected, and their conservation and maintenance to be promoted" in accordance with the provisions of Art. 1(a) LPN. Art. 5 para. 1 OIFP stipulates that the natural and cultural landscape features and the distinctive elements of the listed objects must be preserved intact. The built heritage listed in the IFP inventory is also accessible on the federal geoportal.

67 Finally, the last inventory is the federal inventory of historic transport routes in Switzerland (**IVS inventory**). Like the two previous inventories, it focuses on the protection of built heritage and is based on Art. 5 LPN. The relevant standards can be found in the Ordinance on the Federal Inventory of Historic Transport Routes in Switzerland of April 14, 2010 (RS 451.13; hereinafter: OIVS), which entered into force on July 1, 2010. The IVS inventory is compiled by the Federal Roads Office (FEDRO) (Art. 3 para. 2 OIVS). It is available online on the federal geoportal and can be consulted free of charge at FEDRO (Art. 4 OIVS). Its purpose is to identify historic transport routes in Switzerland

that are worthy of protection so that they can be preserved and maintained as well as possible.

Under Swiss law, a distinction can be made between **two types of listings based on their effects**: constitutive listings and declaratory listings. The state of research in this area in the context of inventories relating to the protection of cultural heritage (whether the federal inventory under Art. 3 LTBC or the four other inventories mentioned above) is relatively undeveloped. It would therefore be possible to refer, by analogy, to the doctrine relating to the various existing registers, in particular the commercial register and the land register. Like the inventory, both are administrative law instruments whose purpose is to record and publish various information. However, these two tools also show certain differences, which means that the analogy applied can be considered relatively bold. 68

An entry has a **constitutive effect** when it is a necessary condition for the creation of a legal relationship (in the context of the commercial register) or for the creation or acquisition of a right in rem (in the context of the land register). *Conversely*, in the absence of an entry, the company or right in rem is deemed not to exist. The constitutive effect of registration in company law is enshrined in Art. 52 para. 1 CC, which provides that "corporately organized companies [...] acquire legal personality [enabling them to enjoy and exercise civil rights] upon registration in the commercial register." This principle is also mentioned several times in the provisions of the CO relating to capital companies and partnerships. Art. 971 para. 1 CC, relating to rights in rem, provides that "any right whose creation [i.e. origin] is legally subject to registration in the land register shall only exist [...] if such registration takes place."

In contrast, an **entry is said to be declaratory** when it is not necessary for the creation of the legal relationship or the right in rem, since these exist *de lege* outside the registers (*extra tabulas*). Since entry in the commercial register has no legal consequences, it is limited to recording the existence of the corporate relationship and making it public. It thus fulfills the "very purpose of the register, which is to publish certain legally relevant facts and guarantee legal certainty [...]". Art. 52 para. 2 CC, relating to company law, provides, for example, that profit-making associations are exempt from this formality (i.e., registration). As for declaratory registration in the land register, this is done, on the one hand, to ensure that the register reflects the legal reality and, on the other hand, to make the right in rem enforceable against third parties and to legitimize the right of its holder to dispose of it. There are various cases where the law allows a real right to arise without prior registration.

It should be noted that the classification of registration as constitutive or declaratory has no bearing on whether it is mandatory or optional.

69 With regard to cultural property, registration in the federal inventory under Art. 3 LTBC appears to be constitutive in the sense that it is a necessary condition for the property to then benefit from the various effects provided for in Art. 3 para. 2 LTBC. The listing of movable or immovable property in one of the other federal inventories for the protection of cultural heritage could also be considered constitutive, since it subjects them to a special protection regime. *A priori*, considering them constitutive does not exclude the possibility that they could also be declaratory.

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COMMENTARY ON

Art. 4 CPTA

A commentary by Margaux Rod

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Art. 4 Cantonal registers

1 In order to simplify border controls, cantons that regulate the export of cultural property on their territories may link the following to the federal database:

a. registers of their cultural property;

b. registers of privately-owned cultural property, provided the owners have given their consent thereto.

2 The cantons may declare that cultural property in their registers may neither be acquired by adverse possession nor acquired in good faith and that the right to recovery is not subject to a statute of limitations.

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I. GENERAL

As Switzerland is a federal state, it needs a system for dividing **powers** between its different political levels. The distribution of powers between the cantons and the Confederation is laid down in Art. 3 of the Federal Constitution of the Swiss Confederation of April 18, 1999 (RS 101; hereinafter referred to as the Federal Constitution), which stipulates that the cantons are competent insofar as their sovereignty is not limited by the Constitution and that they therefore exercise all rights that are not delegated to the Confederation. Consequently, under Article 42 of the Federal Constitution, the Confederation performs only those tasks expressly assigned to it by the Constitution. It has what is known as subsidiary competence. 1

In the field of **culture**, Article 69(1) of the Federal Constitution provides that this is the responsibility of the cantons. However, paragraph 2 of the same article qualifies this principle by stating that the Confederation may "promote cultural activities of national interest and encourage artistic and musical expression, in particular through the promotion of education." This federal power "is not limited to financial support but also extends to the preservation of cultural heritage." It was on the basis of this provision, among others, that the Federal Assembly adopted the Federal Act on the International Transfer of Cultural Property of June 20, 2003 (RS 444.1; Law on the Transfer of Cultural Property, hereinafter referred to as LTBC). 2

The **protection of nature and heritage** is also one of the prerogatives of the cantons (Art. 78 para. 1 of the Federal Constitution). However, the Confederation must take into account the objectives of nature and heritage protection in the performance of its tasks (Art. 78 para. 2 of the Federal Constitution). 3

Foreign affairs fall within the competence of the Confederation under Art. 54 para. 1 of the Federal Constitution. It may therefore conclude international treaties with various states. Nevertheless, it must take into account the powers of the cantons and safeguard their interests (Art. 54 para. 3 of the Federal Constitution). Thus, even if the Confederation could in principle conclude treaties on matters falling within the competence of the cantons, the utmost caution is required. 4

Although the Federal Assembly was able to adopt the LTBC on the basis of the various constitutional provisions mentioned above, there is no formal le- 5 gal basis expressly establishing the division of powers between the cantons and the Confederation in the area of **cultural property transfers**. It is generally accepted that the cantons have the power to legislate on exports, with the exception of objects in the federal collections and objects of national importance, for which the Confederation is responsible for regulating exports. It should be noted that this exception does not affect the parallel competence of the cantons, which cannot be subject to any restrictions on their ability to legislate on the export of cultural property outside their territory, provided that they comply with higher federal law in accordance with the general principle of the hierarchy of norms.

As a result of this division of powers, the LTBC has “very limited scope with regard to cultural property belonging to the cantons,” since the latter are in fact empowered “to determine for themselves how they intend to protect the cultural heritage located on their territory.” It is precisely in order to preserve these cantonal powers that the federal inventory under Art. 3 LTBC includes only property belonging to the Confederation. Art. 4 LTBC was introduced so that cantons that regulate the export of their cultural property and have cantonal inventories can link them to the federal inventory. According to some authors, Art. 4 LTBC would also allow the cantons to create such inventories, which could then be linked. This interpretation seems questionable, since this power lies exclusively with the cantons. Some cantons had already legislated on this measure before the LTBC came into force.

6 Art. 4 LTBC constitutes an **incentive measure** aimed specifically at the cantons, to the exclusion of the municipalities, which Bandle, Gabus and Renold consider regrettable "because municipalities are often the main owners of cultural property ." Nevertheless, cantonal law may still provide for the establishment of inventories for property belonging to municipalities. However, these inventories may not be linked to the federal inventory under Art. 4 para. 1 LTBC.

II. THE POSSIBILITY OF LINKING CANTONAL INVENTORIES TO THE FEDERAL INVENTORY

7 Art. 4 para. 1 LTBC provides that "in order to facilitate border controls, cantons that regulate the export of cultural property located on their territory may link the following to the federal database [i.e. the federal inventory]:

a. their inventories of cultural property;

b. inventories of cultural property in private ownership, provided that the owners consent.".

This provision guarantees the cantons, provided they make use of it, better protection of movable cultural property located on their territory, in particular those that are freely accessible to the public and are often less secure. It makes it possible to strengthen border controls by facilitating access to cantonal inventories via the electronic link connecting them to the federal inventory. Consequently, although it is not an obligation, it seems particularly advisable for the cantons to make use of the opportunity offered by Art. 4 para. 1 LTBC.

Art. 2 para. 1 sentences 1 and 2 of the Ordinance on the International Transfer 8
of Cultural Property of April 13, 2005 (RS 444.11; Ordinance on the Transfer of Cultural Property, hereinafter referred to as OTBC) specifies that the aim is to create a **computer link** between the various inventories and not to integrate the content of the cantonal inventories into the federal inventory. In order to benefit from this, the cantons must therefore logically compile their inventories in electronic form. The implementation details are regulated by the Federal Office of Culture (FOC) (and not by the specialized service) in agreement with the cantons (Art. 2 para. 1 sentence 3 OTBC). However, the specialist service is required to cooperate with the cantonal authorities and advise them (Art. 18(b) LTBC). This obligation requires it, in particular, to "assist [...] them in drawing up and linking their inventories of cultural property." The link between the inventories is limited to the dissemination of information on the content of the cantonal inventories and has no legal effect as such. The various legal effects are dealt with in Art. 4 para. 2 LTBC and will be discussed below (*infra* para. 11 ff.).

In order for the mechanism of cross-referencing between inventories via electronic links to function properly, the Confederation must ensure that the cantonal inventories are freely accessible to the authorities and the public *via the* internet (Art. 2 para. 2 OTBC). In practice, information on the inventories of the cantons of St. Gallen, Basel-Landschaft, Fribourg, Vaud, and Ticino can be found on the website of the Federal Office of Culture (hereinafter: OFC). The only inventory directly accessible to the public via a link is that of the canton of St. Gallen. The others, which are not public, must be requested from the “contact persons” whose email addresses will be listed on the above-mentioned website in the first half of 2025.

9 In accordance with Art. 4 para. 1 LTBC, cantonal inventories that may be linked to the TBC inventory may contain **two types of cultural property**: those owned by the canton itself and those belonging to private individuals.

No special precautions need to be taken with regard to property owned by the canton, as it belongs to the canton and the canton may dispose of it freely under Art. 641 para. 1 CC. The situation is somewhat different for privately owned property. Cantons that decide to link their cantonal inventories of cultural property belonging to private individuals must first obtain the consent of the owners (Art. 4 para. 1 let. b LTBC). The inclusion of cultural property in the cantonal inventory and the digital reference to the federal inventory must therefore be voluntary. In this regard, Gabus and Renold emphasize that “this is a service offered to the public, which is not accompanied by any obligation.” It should be noted, however, that this appears to be the only way for a private individual to ensure real protection of their property by allowing them to attach various restrictive effects (in particular those provided for in Art. 4 para. 2 LTBC). In practice, the Confederation cannot require an export license or prohibit the permanent export of cultural property belonging to private individuals if the owner refuses to give their consent. During the consultation process, many voices were raised in favor of not including cultural property belonging to private individuals in cantonal inventories. However, as this is a matter falling within the exclusive competence of the cantons, the LTBC cannot provide a concrete answer.

10 According to Art. 2 para. 3 OTBC, the content of inventories is the responsibility of the cantons. The same applies to the procedure for listing and removing cultural property. Consequently, the LTBC and its implementing ordinances do not contain any rules on this subject and reference should be made to the relevant cantonal legislation. In addition, cantonal legislation may provide for the possibility of drawing up inventories for property belonging to municipalities (*supra* para. 6). However, as these are not mentioned in Art. 4 para. 1 LTBC, they cannot be linked to the federal inventory.

III. THE EFFECTS OF LISTING CULTURAL PROPERTY IN CANTONAL INVENTORIES

Art. 4 para. 2 LTBC deals with the **legal effects** of the inclusion of cultural property in one of the cantonal inventories. It provides that “the cantons may declare that cultural property listed in their inventories cannot be acquired by prescription or in good faith and that the right to restitution is not subject to prescription.”. These effects are identical to those of the federal inventory under Art. 3 para. 2 LTBC, with the exception of the export from Switzerland of cultural property listed in cantonal inventories, which is not dealt with in Art. 4 para. 2 LTBC but in Art. 24 para. 2 OTBC. The aim is to produce “an effect of symmetry with the property of the Confederation, allowing for greater transparency for important cultural property.” 11

It is up to the canton to determine, *through* its legislation, the various effects of inclusion in the inventory of cantonal property and in the inventory of privately owned property. These may therefore vary depending on the choices made by the cantons. It should be noted that the effects of the cantonal inventory of cultural property belonging to private individuals may be identical or different from those of the cantonal inventory of property owned by the canton. According to Gabus and Renold, it would seem appropriate for them to be identical in order to avoid any confusion. However, in practice, this is not the case.

In addition, the cantons must also determine in their legislation the various consequences of the unlawful export from the canton and/or Switzerland of cultural property listed in one of the inventories.

A. Effect relating to the impossibility of acquisition by adverse possession (Art. 4 para. 2 LTBC)

This effect is identical to that provided for in Art. 3 para. 2 let. a LTBC relating to the federal inventory. 12

Art. 728 para. 1 CC provides that anyone who has possessed another person's property peacefully and without interruption for a specified period of time becomes the owner by prescription, provided that they possessed it in good faith and as the owner. When all these conditions are met, the **acquisition of** 13

ownership by prescription results in the automatic extinction of the previous owner's right of ownership.

14 Cultural property listed in cantonal inventories may, by virtue of the effect introduced by Art. 4 para. 2 LTBC, enjoy additional protection, provided that cantonal law so provides. If this is the case, they cannot be subject to acquisitive prescription even if the statutory period has expired and the acquisition of ownership by prescription would normally occur.

B. Effect relating to the impossibility of acquisition in good faith (Art. 4 para. 2 LTBC)

15 This effect allows cultural property listed in cantonal inventories to benefit from the same protection, with regard to **acquisition in good faith**, as property listed in the federal inventory.

16 Art. 714 para. 2 CC provides that "anyone who, in good faith, is put in possession of movable property as owner acquires ownership of it, even if the transferor was not entitled to transfer it; ownership is acquired as soon as the transferee is protected under the rules on possession [i.e. Art. 933 to 935 CC] ."

17 If cantonal law provides in its legislation that acquisition in good faith is not possible, then the purchaser in good faith will not be able to acquire ownership of property transferred to them, even if they should, in principle, be protected by law.

C. Effect on the imprescriptibility of the action for restitution (Art. 4 para. 2 LTBC)

18 This effect is identical to that provided for in Art. 3 para. 2 let. b LTBC for cultural property listed in the federal inventory.

19 In principle, the right to bring an **action by the previous possessor** under Art. 934 para. 1^{bis} CC, which is aimed at the restitution of the property, expires within 30 years of the involuntary dispossession (absolute time limit) and one year from the moment when the claimant became aware of the location of the property and the identity of the current possessor (relative time limit).

However, if cantonal legislation so provides, cultural property listed in cantonal inventories may enjoy greater protection in that the action becomes, in accordance with Art. 4 para. 2 LTBC, **imprescriptible**. The claimant may therefore bring the action at any time, even if the statutory time limit under Art. 934 para. 1^{bis} CC has expired, since *in this case* the cantonal legislation on inventories would introduce an exception. 20

D. Effect on the export of cultural property outside Switzerland (Art. 24 para. 2 OTBC)

As mentioned above, each canton decides for itself whether and, if so, how it wishes to regulate the **export** of cultural property from its territory and what the consequences of illegal export are. 21

Under Art. 24 para. 2 OTBC, cultural property listed in one of the cantonal inventories may only be exported from Switzerland with the **authorization** of the competent cantonal authorities, provided that this is required by the legislation of the canton concerned. It is up to the canton to designate the authorities competent to decide on applications for export authorizations. *Conversely*, cultural property whose export is not regulated by the canton does not require such authorization. 22

The cantons must exercise caution when subjecting privately owned goods located on their territory to export authorization, as such a measure is likely to restrict the rights of the owner. **Ownership** is a fundamental right guaranteed by the Federal Constitution, and any expropriation or restriction that amounts to expropriation must be fully compensated (Art. 26 para. 1 and 2 of the Federal Constitution). In principle, the owner may freely dispose of his property within the limits of the law (Art. 641 para. 1 of the Civil Code). Making the export of property subject to authorization therefore restricts the right to dispose of it freely. Thus, an owner who decides, for example, to sell their property or to settle permanently in another canton or abroad must apply to the competent authorities of the canton concerned for authorization to export the property listed in the inventory. In this regard, the Federal Court ruled in the “Balli” case that an absolute prohibition on exporting cultural property belonging to a private individual outside the canton constitutes a serious restriction of their right of ownership. As such, it amounts to material expropriation, which must be compensated in accordance with Art. 26 para. 2 of the Federal Constitution. However, "this pitfall can be avoided by the can- 23 ton by requiring the owner's consent for the inclusion of private cultural property in the inventory ." Indeed, the owner's consent as a condition for the listing of the property would allow the owner to remove their property from the inventory in the event of sale or export. This would mean that as soon as the owner revoked their consent to the listing of the property, it would have to be removed from the cantonal inventory. In various cantons, notably Vaud, Bern, and St. Gallen, the registration of privately owned property is subject to the conclusion of an agreement with the owner, which can of course be terminated subject to the notice period specified in the agreement. The possibility of termination is thus provided for upon registration, thereby allowing the various effects mentioned above to be lifted. The property could thus be sold or exported freely.

24 The possibility offered to the cantons by Art. 4 para. 1 LTBC to link their inventories to that of the Confederation strengthens the control of the transfer of property at the border (*supra* para. 7). It also guarantees better legal protection in the event of the **unlawful transfer** of cultural property abroad. This system of cooperation makes it possible to compensate for the lack of effectiveness of cantonal legislation, which, on the one hand, only protects property located within their territory and, on the other hand, can easily be circumvented by moving the property from one canton to another, where export from Switzerland would not be restricted. It should be noted that export abroad is considered illegal when a protected cultural property is first transferred to another canton with no export regulations and then abroad. As cross-border control is the exclusive responsibility of the Confederation, the latter will only take cantonal export restrictions into account if the object is included in a cantonal inventory linked to its own.

25 In the event of the **unlawful export** of cultural property listed in a cantonal inventory, the canton concerned may request the Federal Council to take return action with the other States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, export and transfer of ownership of cultural property of November 17, 1970 (RS 0.444.1; hereinafter: 1970 UNESCO Convention) under Art. 6 para. 2 LTBC. This is the same option available to the Confederation for items listed in the federal inventory. This action may take various forms, namely: traditional legal action, diplomatic proceedings, enforcement proceedings or a request for international mutual assistance in criminal matters. Illegal export is defined as a situation where an object

"has been removed from its territory of origin in violation of national legislation on the protection of cultural heritage [*in casu*, the legislation of the canton concerned] [...]".

IV. PRACTICE IN THE VARIOUS CANTONS (COMPARATIVE CANTONAL LAW)

The aim of this **summary presentation** is to illustrate, *through* their respective legislation, the different choices made by the cantons with regard to the protection of movable cultural heritage. The sample of cantonal legislation covered is intended to be representative and focuses mainly on the cantons of Geneva, Vaud, Fribourg, Bern, St. Gallen and Ticino. 26

A. Geneva legislation

As the cantonal legislature has given priority to built heritage and nature, the canton of Geneva has enacted little legislation on the protection of movable cultural property. However, two texts do provide some information on this subject. These are the Geneva Law on the Protection of Monuments, Nature and Sites of June 4, 1976 (LPMNS/GE; RS/GE L 4 05) and the Regulations for the Implementation of the Law on the Protection of Monuments, Nature and Sites of March 29, 2023 (in its revised version) (RPMNS/GE; RS/GE L 4 05.1). In line with cantonal policy, the scope of application mainly covers built heritage and natural sites (Art. 1(a) and (b) and Art. 4 LPMNS/GE). However, the law and its regulations also apply to a limited category of cultural property, namely movable antiques located or found in the canton (Art. 1(a) LPMNS/GE). 27

In terms of heritage protection proper, Geneva legislation provides for **two major measures**: inventory and classification. 28

1. Inventory (Art. 7 to 9 LPMNS/GE and Art. 11 to 15 RPMNS/GE)

Art. 7 para. 1 LPMNS/GE provides for the establishment of an inventory of buildings worthy of protection within the meaning of Art. 4 LPMNS/GE. This inventory therefore only concerns immovable property, excluding movable cultural property, which is the subject of our study. Most of the effects of the inventory relate to the obligation to preserve the listed building (Art. 9 LPMNS/GE). 29

2. Classification (Art. 10 to 23 LPMNS/GE and Art. 16 to 21 RPMNS/GE)

30 This legal mechanism applies to real estate (Art. 10 para. 1 LPMNS/GE) and, by analogy, to **movable objects**, in accordance with Art. 26 para. 1 LPMNS/GE.

31 The **request or proposal for classification** of an asset may come from various private or public entities but, *a priori*, not from the owner themselves (Art. 16 RPMNS/GE). The latter is informed of the initiation of the classification procedure for their property and is invited to submit their comments within 30 days (Art. 12 para. 1 and 2 LPMNS/GE and Art. 17 para. 2 RPMNS/GE).

32 The **effects** of classification, as provided for in Articles 13, 15, and 16 LPMNS/GE, are dominated in their wording by a certain idea of monumentality. However, the reference in Art. 26 para. 1 LPMNS/GE implies similar effects with regard to the preservation of movable property. Thus, a classified movable property should not undergo any “change to its original state” (Art. 13 para. 1 LPMNS/GE), nor be destroyed (Art. 15 para. 1 LPMNS/GE). The State Council may also lay down obligations regarding public access (Art. 16 LPMNS/GE). In addition, movable objects covered by the law, i.e. those "of aesthetic, artistic, historical or scientific interest, found or located in the canton “ (Art. 26 para. 1 LPMNS/GE) and which have been classified, may not be disposed of without notifying the competent authority and providing ”the surname, first names and address of the new owner or holder" (Art. 26 para. 2 LPMNS/GE).

33 However, the legislation currently in force in the canton of Geneva does not provide for any specific mechanisms for claiming or returning such objects. Furthermore, as the movement of classified movable property is not subject to authorization but only to notification of the competent authority, no **link** with the federal inventory is currently planned.

B. Legislation in Vaud

34 The canton of Vaud has specific regulations on the protection of movable cultural property through the Law on Movable and Intangible Heritage of April 8, 2014 (LPMI/VD; RS/VD 446.12) and the Implementing Regulations for the Law on Movable and Intangible Heritage of April 1, 2015 (RLPMI/VD; RS/VD 446.12.1). The LPMI/VD applies, among other things, to movable cultural her-

itage located in the canton of Vaud and aims to preserve, conserve, and enhance it (Art. 2 para. 1 let. a LPMI/VD *cum* Art. 1 para. 1 let. a LPMI/VD).

The law provides for two main **safeguarding measures**, namely registration and inventory. 35

1. Registration (Art. 9 LPMI/VD and Art. 5 RLPMI/VD)

This is essentially a measure introduced to establish, in the form of a **list**, the movable cultural property of interest to the canton (Art. 9 para. 1 LPMI/VD). 36

Unlike the inventory, the inclusion of movable cultural property in the census has **no effect**, in that it does not create any rights or obligations for its owner (Art. 5 para. 1 RLPMI/VD). 37

2. The inventory (Art. 10 to 24 LPMI/VD and Art. 6 RLPMI/VD)

In accordance with Art. 11 para. 1 LPMI/VD, in order to be included in the inventory, movable cultural property must satisfy two **conditions**, namely: 1. it must have a significant connection with the canton of Vaud (letter a) and 2. it must be of significant interest to the collections of cantonal heritage institutions, the population or visitors to the canton (letter b). Paragraph 2 of the same article specifies that cultural property owned by the state that is part of the collections of cantonal heritage institutions is, in principle, automatically included in the inventory. 38

Pursuant to Art. 12 para. 1 LPMI/VD, the **content** of an inventory entry includes a description of the cultural property, its significance and, where applicable, the dangers threatening it (letter a), various photographs or reproductions of the property (letter b), a description of the protective measures already taken (letter c) and a list of necessary or desirable protective measures (letter d). 39

As mentioned above, cultural property belonging to the canton is automatically included in the inventory (Art. 11 para. 2 and 21 para. 2 LPMI/VD).. Cultural property owned by private individuals may only be entered in the inventory with their prior consent (Art. 21 para. 3 LPMI/VD). The **procedure for** registering such cultural property may be initiated by the department or by the owner themselves (Art. 22 para. 1 (a) and (b) LPMI/VD). When the procedure is initiated by the department, the latter must, as far as possible, request the owner's comments (Art. 22 para. 2 LPMI/VD). Furthermore, in accordance 40 with Art. 23 para. 1 LPMI/VD, the registration of an object belonging to a private individual is subject to the conclusion of an agreement between the owner and the canton.

41 Registration in the inventory has various **effects**, which are regulated in Articles 15 to 19 LPMI/VD. Cultural property owned by the canton is, in principle, inalienable and may not be permanently exported from the canton (Art. 15 para. 1 LPMI/VD).. However, Art. 15 para. 2 LPMI/VD provides for an exception, as the department may authorize disposal under certain conditions. These effects apply only to property owned by the canton, to the exclusion of cultural property belonging to private individuals. Art. 16 para. 1 and 2 LPMI/VD provides for other effects applicable to both cantonal property and property belonging to private individuals. These include the impossibility of acquiring such property by acquisitive prescription or in good faith, and the imprescriptibility of the right to restitution. These effects are precisely those that the cantons may provide for under Art. 4 para. 2 LTBC. The State also has a **right of first refusal** on movable cultural property listed in the inventory in the event of sale by its owner (Art. 26 para. 1 LPMI/VD). This measure naturally applies only to cultural property in private hands. Under Vaud legislation, therefore, the effects of listing an item in the inventory do not actually limit the owner's right to dispose of it, since the owner retains full power to sell or export it.

42 The establishment of the inventory and the registration of cultural property are the **responsibility of** the department (Art. 10 para. 1 and 21 para. 1 LPMI/VD). According to Articles 13 para. 1 and 14 para. 1 LPMI/VD, the inventory must be public and linked to the federal inventory in accordance with Art. 4 para. 1 LTBC. In practice, the Vaud cantonal inventory is not immediately available on the website of the Federal Office of Culture (OFC) and it is necessary to contact the Movable and Intangible Heritage Unit of the Directorate General for Culture to consult it.

C. Legislation in Fribourg

43 The canton of Fribourg regulates the **protection** of movable and immovable cultural property located on its territory *through* the Law on the Protection of Cultural Property of November 7, 1991 (LPBC/FR; RS/FR 482.1) and the Implementing Regulations of the Law on the Protection of Cultural Property of August 17, 1993 (RELPBC/FR; RS/FR 482.11).

The LPBC/FR governs the protection of cultural property within the meaning of the LTBC as well as cultural property protected by the Federal Act on the Protection of Cultural Property in the Event of Armed Conflict, Catastrophes or Emergencies of June 20, 2014 (RS 520.3; hereinafter: LPBC). It therefore provides for various **measures** applicable in times of peace (Art. 19 to 31 and Art. 44 to 48 LPBC/FR) and in times of conflict (Art. 32 to 25 LPBC/FR). With regard to measures relating to the protection of cultural property in times of peace, the Fribourg law provides for three main measures: registration, protection and inventory. 44

1. Registration (Art. 44 to 47 LPBC/FR and Art. 47 to 53 RELPBC/FR)

Art. 44 para. 1 LPBC/FR provides that the State shall establish a **register**, in the form of a descriptive list, of the cultural property referred to in Art. 19 that are of interest to the canton. Art. 19 para. 1 let. b LPBC/FR mentions in particular movable cultural property belonging to legal entities governed by public law or canon law (ch. 1) as well as those belonging to private individuals insofar as they are of exceptional importance to the cultural heritage of Fribourg or whose protection is requested by the owner (section 2). 45

It contains **information** on the value of the object as cultural property and on its state of preservation (art. 47 para. 1 RELPBC/FR). In accordance with Art. 50 para. 1 RELPBC/FR, separate inventories are drawn up for cultural property belonging to the State (letter a), that belonging to legal entities governed by public law and canon law (letter b), that belonging to private individuals (letter c) and archaeological cultural property (letter d). 46

This measure is intended to inform the owner, the authorities and the public (Art. 45 para. 1 LPBC/FR). The aim is to bring to their **attention** the various cultural property located within the territory of the canton. To this end, Art. 52 para. 1 RELPBC/FR provides that "the descriptive inventory of the cultural property listed and the related documentation may be consulted by the owners concerned and by any person who can demonstrate a legitimate interest." The inventory also serves as a database for possible additional protective measures (*see below* para. 49). *In principle*, as is the case in the canton of Vaud, the inclusion of a cultural property in the inventory has no legal effect on the owner (*see above* para. 37). 47

2. Placing under protection (Art. 19 to 24 LPBC/FR and Art. 17 to 25 RELPBC/FR)

48 Under Art. 19 para. 1 let. b LPBC/FR, movable cultural property belonging to a legal entity governed by public law or canon law (ch. 1) and movable cultural property belonging to a private individual may be placed under protection if it is of exceptional **importance** to the cultural heritage of Fribourg or if its protection is requested by the owner (para. 2). The wording of this provision implies that movable cultural property of exceptional importance to the cultural heritage of Fribourg may be placed under protection without the consent of its owner.

49 Art. 17 para. 1 RELPBC/FR provides that the protection of movable cultural property falls within the competence of the Directorate. The **procedure** may be initiated by the subcommittee for movable cultural property or by the owner. The subcommittee may propose to the Directorate that items listed in the inventory be placed under protection (Art. 18 para. 1 RELPBC/FR). It is therefore on the basis of the inventory that the latter proposes various items requiring additional protection (*supra* para. 45–47). In such a case, the Directorate notifies the owner and sets a deadline for them to decide (Art. 18 para. 2 RELPBC/FR). The owner may also request that their movable cultural property be placed under protection by submitting a request to the subcommittee (Art. 19 para. 1 RELPBC/FR). In accordance with Art. 21 para. 1 RELPBC/FR, movable cultural property is placed under protection by decision or by contract. In either case, the decision or contract must expressly mention the various effects of the protection (Art. 21 para. 2 RELPBC/FR).

50 The first **effect**, of a general nature, relates to the obligation of the owner to preserve the object (Art. 23 para. 1 LPBC/FR).

In the case of property owned by legal entities governed by public or canon law, such property may not be disposed of without the authorization of the Directorate (Art. 24 para. 1 LPBC/FR).

A priori, according to the law, the disposal of privately owned property is not subject to authorization. However, the State and the municipality have a right of preemption on cultural property that is of exceptional importance to the cultural heritage of the canton (Art. 25 para. 1 LPBC/FR). Individuals selling their property must therefore notify the competent authorities (Art. 26 para. 2 LPBC/FR and Art. 26 para. 1 RELPBC/FR). The period granted to the public authority – the state and the municipality, with priority given to the state – to exercise its right of preemption is three months from the date on which it becomes aware of the sale (relative deadline) and, in all cases, five years from the date of disposal (absolute deadline) (Art. 26 para. 1 LPBC/FR).

The placing of property under protection also has the effect of making the restoration of cultural property of exceptional importance to the canton subject to authorization by the Cultural Property Service (Art. 30 para. 2 LPBC/FR and Art. 29 para. 1 RELPBC/FR).

Finally, in accordance with Art. 31 para. 1 LPBC/FR, trade in protected property may "be subject to conditions or restrictions necessary for its protection or for the suppression of illicit trafficking.". In practice, traders are therefore required to take the necessary measures to ensure the proper preservation of the goods and to record in a register the various transactions relating to cultural property of exceptional importance to the canton (Art. 30 para. 1 and 2 RELPBC/FR).

3. The inventory (Art. 48 LPBC/FR and Art. 54 RELPBC/FR)

Art. 48 LPBC/FR provides for the establishment of a **cantonal inventory** of 51 protected movable cultural property, i.e. cultural property that is subject to protection in accordance with the above provisions. Neither the law nor its implementing regulations contain any provisions on its effects.

The inventory is maintained by the various **departments** of the Directorate, 52 namely the Cultural Property Department and the Archaeological Department (Art. 48 para. 2 LPBC/FR *cum* Art. 55 para. 1, 56 para. 3 let. f and 57 para. 3 let. f RELPBC/FR). According to Art. 54 para. 3 RELPBC/FR, it may be published. In practice, as in the canton of Vaud, it is not freely accessible on the website of the Federal Office of Culture (OFC) and must be requested from the Fribourg Cultural Heritage Service (SBC).

D. Bernese legislation

Since January 1, 2001, the canton of Bern has regulated the protection of her- 53 itage located within its territory through the following two legal texts: the Heritage Protection Act of September 8, 1999 (RS/BE 426.41; hereinafter referred to as LPat/BE) and the Heritage Protection Ordinance of October 25, 2000 (RS/BE 426.411; hereinafter referred to as OPat/BE). The purpose of these legislative **instruments** is to regulate “the inventory, conservation and protection of movable and immovable heritage in the canton of Bern” (Art. 1 para. 1 LPat/BE).

54 Various **protective measures** are provided for, including: inventory, a list of movable heritage, and classification and a list of classified heritage assets.

1. Inventory (Art. 7 LPat/BE and Art. 3 OPat/BE)

55 Art. 7 LPat/BE provides that “owners of an object must allow the authorities to inventory and examine it.” They are required to cooperate in accordance with Art. 3 para. 1 LPat/BE. In the event of damage caused by the authorities during the inventory, the **owners**, provided they are private individuals, may claim compensation (Art. 7 para. 2 LPat/BE and Art. 3 para. 2 OPat/BE).

56 As in the two previous cantons, the inclusion of an item in the inventory does not, *a priori*, have any legal **consequences for** its owner.

2. The list of movable heritage (Art. 11 LPat/BE and Art. 6 to 11 OPat/BE)

57 According to Art. 11 para. 1 LPat/BE, the canton may draw up a **list** of movable heritage assets, provided that they are part of the **public domain**. This list includes only property belonging to the canton, its public institutions, public-law corporations or institutions jointly managed or largely co-financed by the canton or the municipalities (Art. 6 para. 1 and 2 OPat/BE). Consequently, privately owned property is not included.

58 The registration of an asset has the following **effects**: the asset is considered inalienable (Art. 11 para. 2 LPat/BE), it may only be permanently exported from the canton with the consent of the competent authority or the State Chancellery (Art. 11 para. 2 LPat/BE and Art. 10 OPat/BE) and must be kept and maintained in accordance with best practice (Art. 11 para. 3 LPat/BE). Since these effects do not apply to cultural property owned by private individuals, the question of possible material expropriation within the meaning of the “Balli” judgment does not arise (*supra* para. 23). This may explain the canton's rather restrictive position.

59 The competent **authorities** of the canton, listed in Art. 7 para. 1 OPat/BE, are each required to draw up a list of the movable heritage assets assigned to

them (Art. 8 para. 1 OPat/BE). In accordance with Art. 8 para. 2 OPat/BE, these lists are public, subject to data protection legislation.

It should be noted that Art. 10 LPat/BE provides for the establishment of an **inventory** (and not simply a list) for immovable heritage. This reflects the fact that the canton of Bern does not appear to attach the same importance to immovable and movable property. The list is, in fact, *a priori* and by its effects, a less formal instrument than the inventory. 60

3. Classification and list of classified heritage assets (Art. 12 and 20 to 22 LPat/BE and Art. 17 to 18 OPat/BE)

Pursuant to Articles 20(1) LPat/BE and 12(1) *cum* Art. 17 OPat/BE, movable heritage assets belonging to private individuals may be classified *by means of* a public law contract between the owner and the canton, provided that the intact and long-term preservation of the asset is in the public interest. The contract must specify the scope of protection and the effects of classification (Art. 20 para. 1 LPat/BE). This is a **voluntary classification** in the sense that it only takes effect with the consent of the owner. 61

In accordance with Art. 21 para. 1 LPat/BE, classified cultural property is entered in the **list of classified heritage property**, provided that this is expressly stipulated in the contract concluded between the owner and the canton. Here again, the owner's consent is required. Neither the law nor the ordinance contain any provisions on the effects of the inclusion of movable cultural property in the list of classified heritage. 62

The **competence** to draw up this list lies with the Office of Culture (Art. 12 para. 1 LPat/BE and Art. 18 para. 1 OPat/BE). The list is public and can be consulted at the cantonal specialist service and the municipalities (Art. 12 para. 2 LPat/BE). It is not linked to the federal inventory. 63

E. Legislation in St. Gallen

The two pieces of legislation in the canton of St. Gallen relating to the protection of its cultural heritage are the Cultural Heritage Act of 15 August 2017 (Kulturerbegesetz, hereinafter KEG/SG; RS/SG 277.1) and the Cultural Heritage Ordinance of June 18, 2019 (Kulturerbeverordnung, hereinafter KEV/SG; RS/SG 277.12). The aim is to regulate the preservation and transmission of 64 movable, immovable and intangible cultural property that forms part of the cantonal cultural heritage (Art. 1 para. 1 KEG/SG).

65 The canton has only one **means of protecting** its movable cultural heritage, namely placing the property under protection, which then leads to its inclusion in the cantonal inventory (Art. 8 to 20 KEG/SG and Art. 5 to 6 KEV/SG).

66 In accordance with Art. 8 KEG/SG, there are two ways of initiating the procedure for placing movable cultural property under protection: either by the owner or by the competent cantonal authority. In concrete terms, the protection of the property is effected either *through* an agreement between the owner and the competent department or by a decision of the government when the cultural property belongs to the canton, an institution or an autonomous foundation under public law (Art. 9 para. 1 KEG/SG). In accordance with Art. 5 para. 1 KEV/SG, the agreement between the owner and the Department of the Interior shall at least specify the object of the protection (letter a), the obligations of the owner and the other effects of the protection within the meaning of Art. 11 to 18 KEG/SG (letter b), as well as the duration of the contract and the conditions for its termination (letter c).

67 Art. 11 para. 1 KEG/SG provides that a cultural object placed under protection, whose owner has been dispossessed against his will, cannot be acquired in good faith and that the right to restitution is not subject to a statute of limitations. These **effects** are among those that the cantons may provide for under Art. 4 para. 2 LTBC.

The owner or possessor is also required to comply with various obligations relating to cooperation with the cantonal authorities and the preservation of the property (Art. 12 KEG/SG). In accordance with Art. 41 para. 1 let. a KEG/SG, anyone who fails to comply with these obligations is liable to a fine of up to CHF 30,000.

Art. 13 KEG/SG provides for a general prohibition on the permanent export of cultural property placed under protection abroad (letter a) and, in another canton, only if the property is of identity significance for the cantonal population (letter b). Where export restrictions constitute a restriction of ownership rights equivalent to expropriation, the private owner is entitled to compensation (Art. 14 para. 1 KEG/SG). This article is likely to be a consequence of the "Balli" judgment (*supra* para. 23).. Temporary export abroad is subject to authorization by the competent cantonal authority (Art. 15 para. 1 KEG/SG).

Paragraph 3 of the same article specifies that the said authority may issue a general export authorization to certain institutions if they offer a guarantee that they will continue to fulfill the conditions set out in paragraph 2 letter b of this provision. b of this provision. In accordance with Art. 41 para. 1 let. b KEG/SG, anyone who illegally exports a protected cultural object is liable to a fine of up to CHF 30,000.

The disposal of property belonging to the canton and placed under protection requires the consent of the government (Art. 18 KEG/SG).

Pursuant to Art. 10 para. 1 KEG/SG, movable cultural property placed under protection (within the meaning of Art. 9 KEG/SG) shall be entered in the cultural property **inventory**. Art. 6 para. 1 KEV/SG regulates, for each item of movable cultural property entered in the inventory, the information that must be included in the inventory, insofar as this is known or can be established at reasonable cost. An item shall be removed from the inventory when it no longer constitutes part of the movable cultural heritage within the meaning of Articles 3 and 4 of the law (Art. 10 para. 1 KEG/SG). 68

The **maintenance** of the inventory is the responsibility of the competent cantonal authority, which must publish it on the internet. However, data enabling the owner (if a private individual) to be identified and the location where the object is kept are not published (Art. 10 para. 2 KEG/SG). Art. 10 para. 3 KEG/SG specifies that the competent cantonal authority is responsible for linking the cantonal inventory with that of the Confederation in accordance with Art. 4 LTBC. In practice, the inventory of the canton of St. Gallen is the only one that is public and directly accessible *via* the link provided for this purpose on the website of the Federal Office of Culture (OFC). 69

F. Legislation in Ticino

Ticino regulates the protection of movable and immovable heritage located on its territory *through* two pieces of legislation, namely: the Law on the Protection of Cultural Property of May 13, 1997 (Legge sulla protezione dei beni culturali, hereinafter: " the Law“; RS/TI 445.100) and the Regulation on the Protection of Cultural Property of April 6, 2004 (Regolamento sulla protezione dei beni culturali, hereinafter referred to as ”the Regulation"; RS/TI 445.110). 70

71 In order to protect cultural property located within the cantonal territory, the law provides for **three instruments**: registration, protection of property, and inventory.

1. The census (Articles 31 and 33 of the Regulation)

72 Pursuant to Article 31 of the Regulation, the Office for Cultural Property (UBC) collects, in the form of a regularly updated **census**, all information relating to movable cultural property.

73 With regard to access to **data**, Art. 43 para. 2 of the law applies by analogy (Art. 33 of the regulations). According to this, access to administrative data requires a legitimate interest, while other data is open to the public.

2. Protection (Articles 19 to 31 of the Act and Articles 17 to 24 of the Regulations)

74 Under Article 21(1) of the Act, **movable cultural property** belonging to recognized cultural institutions is protected ipso jure. Cultural property belonging to private individuals is only placed under protection if it is of exceptional importance to Ticino culture (Art. 19 para. 2 of the law).

75 In accordance with Art. 17 of the regulations, the **procedure for** placing movable property in private hands under protection may be initiated by the Cultural Property Office (UBC) or by the owner. In practice, protection is granted *by means of* an administrative decision by the State Council (Art. 21 para. 2 of the Act) or the conclusion of an administrative contract (Art. 18 para. 1 of the Regulations). Both the decision and the contract may be amended if necessary (Art. 18 para. 2 of the Regulations).

76 Placing cultural property under protection has various **effects** for the owner. One of these is the obligation to preserve the substance of the property by maintaining it regularly (Art. 23 of the Act).

The owner of a cultural property placed under protection is also required to obtain the authorization of the State Council before carrying out any intervention likely to alter the appearance or substance of the property (Art. 24 para. 1 of the Act). This obligation applies only to private owners. Recognized cultural institutions do not need to seek authorization to carry out any work on their property (Article 24(3) of the Act).

With regard to the possibility of **disposing of** protected property, Articles 26(1) of the Act and 21(2) and (3) of the Regulations stipulate that owners who wish to do so must immediately inform the Council of State, the Office for Cultural Property (UBC) and their municipality of residence. Anyone who intentionally fails to give this notification is liable to criminal penalties (Art. 49 para. 1(c) and para. 2 of the Act). The owner therefore has the option of disposing of his property freely, provided that he informs the competent cantonal authorities. The canton and the municipality then have a right of first refusal (Art. 31 para. 1 and 2 of the Act). The period for exercising this right is three months from notification of the sale (relative time limit) and expires at the latest two years after the disposal (absolute time limit) (Art. 31 para. 3 of the Act). 77

The disposal of protected movable property belonging to public bodies is subject to prior authorization by the Council of State (Art. 27 para. 1 of the law). Any disposal without authorization shall be considered null and void pursuant to Art. 27 para. 4 of the Act. In the event of an unlawful sale, the public entity is also liable to criminal penalties (Art. 49 para. 1 let. c and para. 2 of the Act).

Any change in the **location** of protected property within the cantonal borders must be reported without delay to the State Council and the Office for Cultural Property (UBC), with the proviso that recognized cultural institutions are exempt from this obligation (Art. 28 para. 1 and 2 of the Act and Art. 23 para. 1 of the Regulations). 78

Export outside the canton is subject to prior authorization by the State Council, in accordance with Art. 29 para. 1 of the law. This authorization requirement applies to both permanent and temporary exports. However, recognized cultural institutions are authorized by law to temporarily export their protected property (Art. 29 para. c3 of the law). Anyone who intentionally exports protected cultural property without authorization is liable to criminal penalties (Art. 49 para. 1 let. c of the law).

3. The inventory (Articles 42 to 43 of the Act and Article 32 of the Ordinance)

The Act provides for the creation of an **inventory** of movable cultural property placed under protection. The Office for Cultural Property (Office des bi- 79 ens culturels, UBC) is responsible for compiling and updating this inventory. (UBC). The latter must also distinguish between movable cultural property placed under protection and cultural property to be protected in the event of armed conflict or disaster within the meaning of the LPBC (Art. 42 of the Act and Art. 32 para. 1 of the Ordinance).

80 Art. 43 para. 1 of the Act specifies that the inventory shall include information **sheets** for each protected cultural property. In accordance with Art. 32 para. 2 of the Ordinance, these must at least indicate the name of the property (letter a), its location (letter b), ownership (letter c) and a description, the reason for and the scope of protection (letter d).

81 With regard to **publication**, access to administrative data is subject to a legitimate interest, while other data is open to the public (Art. 43 para. 2 of the Act). The website of the Federal Office of Culture (FOC) refers to a cantonal inventory in Ticino which is not directly accessible to the public and for which it is necessary to contact the UBC.

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