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**Entire text of the Monument Protection Act, version as at 16.11.2015**

**Complete title**

Federal Act on the Protection of Monuments Due to Their Historic, Artistic or Other Cultural Significance (Monument Protection Act – MPA)

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**Preamble/promulgation clause**

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## **Text**

### **Section 1 General Provisions**

#### **Definitions, Scope of Application**

**§ 1.** (1) The provisions of this Federal Act apply to man-made immovable and movable objects (including remains and traces of creative human intervention and artificially constructed or moulded ground formations) of historic, artistic or other cultural significance (“monuments”), if, due to this significance, their preservation is in the public interest. This significance may be due to the objects *per se*, but may also arise due to their relationship to, or location in relation to, other objects. “Preservation” means protection from destruction, alteration or being dispatched abroad.

(2) Preservation is in the public interest if, from a supraregional or, for the time being, only a regional (local) point of view, the monument is a cultural good, the loss of which would amount to an impairment of the stock of Austrian cultural goods as a whole with respect to quality as well as sufficient abundance, diversity and distribution. Furthermore, it is fundamental whether (and to what extent) the preservation of the monument would enable historic documentation.

(3) Groups of immovable objects (ensembles) and collections of movable objects may, due to their historic, artistic or other cultural context (including their location), form a homogenous whole and their preservation as a unit may, due to this context, be in the public interest. Groups of immovable or movable monuments, which, due to their original or later planning and/or execution, were produced to exist within a context (such as palace, court or housing complexes with main- and outbuildings of all kinds, sets of furniture of a homogenous style etc.), are considered individual monuments. Housing complexes also include adjoining open spaces which are directly connected to the housing complex and which are surfaced or otherwise included architecturally.

(4) The public interest in preservation within the meaning of para. 1 (monument protection) gains effect by virtue of legal presumption (§ 2), by regulation of the Federal Monuments Authority (§ 2a) or by decree of the Federal Monuments Authority (§ 3) or by regulation of the Austrian State Archive (§ 25a). In the case of ensembles and collections, public interest in their preservation as a unit can only gain effect by decree of the Federal Monuments Authority.

(5) Taking into account the results of the relevant scientific research, it is incumbent upon the Federal Monuments Authority to decide whether there is a public interest in the preservation of an individual monument, an ensemble or a collection as well as whether (or to what extent) it should (also) be considered a unit to be preserved as a whole. The valuation contained in the lists of monuments which are kept and produced by the Federal Monuments Authority must be taken into account when selecting objects to be placed under monument protection. Generally recognised international valuation criteria may be used as part of this evaluation. If research into monuments – in particular in the case of archaeological monuments which have not yet been excavated – has not yet been completed to a sufficient extent, a determination of whether there is a public interest in the preservation of the monuments is only permitted if scientific research documents show that it is at least probable that the requirements for placing the objects under monument protection will be met and failing to do so would endanger the preservation of the monuments in an intact state; such a placement under protection may also be limited in duration.

(6) The determination of a public interest in the preservation of a monument must be based on the condition of the monument at the point when the monument protection becomes legally effective.

(7) To the extent that this Federal Act does not contain special rules (§§ 1 para. 4 final sentence, 2 para. 1 nr. 3, 4 para. 1 nr. 1 as well as 6 para. 5), the provisions concerning individual monuments also apply to ensembles and collections.

(8) If only parts of a monument are protected (partial monument protection), this protection also covers the remaining parts to the extent that this is necessary for the proper preservation of the parts which have actually been placed under monument protection.

(9) The protection conferred upon a monument covers all its constituent parts and appurtenances as well as all those parts connected to the monument which influence its historic or historically evolved appearance on the interior or exterior or which affect the volume (substance). This includes fixtures and fittings of the monument which have a particular special purpose, as long as they were included permanently.

(10) Preservation of a monument cannot be in the public interest if, at the point at which it is placed under protection, the monument is in such a static or other physical condition that restoration is no longer possible or would result in such large alterations to the substance that, after the restoration, the monument would no longer have sufficient documentation value and therefore significance as a monument. This does not apply to monuments which are significant in the abovementioned sense as ruins.

(11) The definitions „monument“ and „cultural good“ have the same meaning, as do „public interest“ and „national interest“.

(12) **(Constitutional provision)** Parks and gardens which are listed in Annex 2 to this Federal Act are also monuments with respect to parts which consisting of landscaped nature and are therefore matters of monument protection within the meaning of Art. 10 para. 1 nr. 13 of the Federal Constitutional Law.

## **Section 2 Protection from Destruction or Alteration**

### **Preliminary Monument Protection by Virtue of Legal Presumption**

**§ 2.** (1) 1. In case of monuments pursuant to § 1 para. 1 and 3 which are owned solely or predominantly by the State, a federal province or by other public law entities, agencies, funds or legally recognised churches or religious communities, including their institutions (as well as in case of

monuments to which the provisions of § 6 para. 1 second and third sentences apply), the public interest in their preservation is deemed to exist (and they remain under monument protection) for as long as the Federal Monuments Authority does not pass a decision in the form of a decree on the existence in fact of the public interest (monument protection by virtue of legal presumption), either upon the request of a party (§ 26 f.) for determination whether preservation is in fact in the public interest or not, or *ex officio* (para. 2). This legal presumption also applies if the sole or predominant ownership of legal persons pursuant to the first sentence is merely the result of a majority of the co-ownership shares of such legal persons.

2. The presumption does not apply to utility articles which were produced in large quantities, either industrially or by hand, and are less than 100 years old, unless these are protected as constitutive parts of, or appurtenances to, an object under monument protection within the meaning of § 1 para. 9. This legal presumption does not apply to parks and gardens pursuant to § 1 para. 12 with respect to parts thereof which consist of landscaped nature.

3. The legal presumption pursuant to this paragraph does not supersede any decree issued by the Federal Monuments Authority pursuant to § 1 para. 4 and 5 with respect to the existence of a homogenous unit of several immovable (ensembles) or movable monuments (collections).

4. Reference is made to the special provisions for archive materials (§§ 24 ff.).

(2) The Federal Monuments Authority may determine *ex officio* whether the preservation of such a monument is in fact in the public interest.

(3) Decrees determining the existence of a public interest in the preservation of a monument pursuant to the above paragraphs 1 and 2, pursuant to § 2a para. 5 and 6, § 4 para. 2 (in the versions prior to the amendment of Federal Gazette Nr. 167/1978), § 6 para. 2 and 5, § 9 para. 3 as well as § 25a bring about (also in cases where, at the same time, it is determined that a homogenous unit exists) all the legal consequences, without any limitations in duration, of decrees pursuant to § 3 (Monument Protection by Decree), including those consequences which result from ensembles or collections being declared a homogenous unit.

(4) In case of immovable monuments (including those parts covered pursuant to § 1 para. 9), the legal presumption pursuant to para. 1, and therefore the placement under monument protection merely by virtue of legal presumption, will end on 31st December 2009. This also applies to cases of placement under protection pursuant to § 6 para. 1.

### **Preliminary Monument Protection by Regulation**

**§ 2a.** (1) The Federal Monuments Authority is empowered to bring immovable monuments, which are protected as monuments by virtue of legal presumption pursuant to § 2 or § 6 para. 1, under the provisions of this paragraph by means of regulation. Neither the termination of protection pursuant to § 2 para. 4 nor a restriction on alienation pursuant to § 6 para. 1 will apply to such monuments. The regulation must designate the monuments exactly and unmistakably and contain at least the topographical and land registry data of the monuments.

(2) The prerequisite for placement under monument protection on the basis of this paragraph is that the monument concerned can be considered significant in such a way that, in the event of an examination process pursuant to para. 5 or 6, it is probable that a decision will be made confirming the existence in fact of a public interest in its preservation. The provisions of § 1 on significance, inclusion, partial protection and suchlike apply in their full extent.

(3) Prior to enacting the regulation, the Federal Monuments Authority must, enclosing brief appraisal information on the significance of the individual monuments on the exterior and interior, inform the respective owners, the governor of the federal province and the mayor in whose jurisdiction the monuments are located and give such persons the opportunity to respond to the intended determinations within a period of at least six months (Reviewing Procedure).

(4) Regulations pursuant to para. 1 must be announced at least in the Regulation Gazette for the Areas of Duty of the Federal Ministries for Education and Cultural Matters/Science and Transport as well as in the Official Gazette of the *Wiener Zeitung*.

(5) After a monument has been placed under protection by regulation, all owners must be verifiably informed of the actual determination of the public interest which replaces the protection previously existing merely by virtue of legal presumption (§ 2). At the same time, the persons notified must be informed of their legal right to submit a request within the meaning of § 2 para. 1 and/or § 26 nr. 2 and 3 (in the same way as all other persons entitled to submit requests) for determination by decree whether the regulation wrongly assumed that there was a public interest in preservation or not. There is no restriction

on the time allowed for submitting this request. Decisions on requests within the meaning of this paragraph must be made within a period of two years.

(6) The Federal Monuments Authority may at any time make a determination *ex officio* within the meaning of § 2 para. 2 whether a public interest in the preservation of such a monument actually exists.

(7) The fact of placement under monument protection by regulation must be entered into the land registry within the meaning of § 3 para. 3. The notification of the court responsible for the land registry must be made by the Federal Monuments Authority within one year of the regulation entering into force. For the purposes of making an entry, the court responsible for the land registry must be informed of the result of procedures pursuant to para. 5 and 6 within six months of these decrees becoming legally effective.

### **Monument Protection by Decree**

**§ 3.** (1) In the case of monuments which are not under monument protection merely by virtue of legal presumption or by regulation, a public interest in their preservation will only be deemed to exist if this has been determined by the Federal Monuments Authority by decree (placement under monument protection by decree).

(2) If, in contravention of the provisions of this Federal Act, or by reason of the Act on the Prohibition on the Export of Cultural Goods (which is no longer in force), a movable monument is located outside of the federal territory of the Republic of Austria, illegally or legally on a temporary basis due to the consent of the Federal Monuments Authority, this does not hinder its placement under monument protection.

(3) The fact of immovable monuments (including ensembles as well as parks and gardens) being placed under monument protection by decree pursuant to para. 1, or decrees equal to such a decree in terms of their legal consequences (§ 2 para. 3), must be entered into the land registry (or railway registry) *ex officio* upon a notification by the Federal Monuments Authority. If the determined public interest in preservation is revoked by decree, the entry must be deleted *ex officio* upon a notification by the Federal Monuments Authority. The notification must be made within six months of the respective decrees becoming legally effective.

(4) The Federal Monuments Authority must enter those immovable monuments which have been placed under monument protection by a legally effective decree or by regulation into a list, which must include details contained in the decree. The list must be produced for the first time by 30<sup>th</sup> June 2010 with the key date of 1<sup>st</sup> January 2010 and must be updated by revision each year by 30<sup>th</sup> June of the respective calendar year at the latest with the key date of 1<sup>st</sup> of January of that year. The list must contain the exact and unmistakable topographical and land registry data as well as a core characterisation of the monuments. To the extent that legally effective monument protection has been extinguished by decree, this must be shown in the respective following year. The entire latest valid list must be made available to a sufficient extent for general inspection and, furthermore, must be made available for purchase by members of the public, both in its entirety as well as for each province. It may also be published in another, suitable form. The list is not legally binding.

(5) Parks and gardens, including their landscaped nature (§ 1 para. 12), may only be placed under monument protection by decree on the basis of the provisions of this paragraph. This must be preceded by the production of an appraisal concept on a scientific basis which – by mapping and description – must enable the clarification of the type and extent of the monument protection and contain the current status and the desired target status of the park or garden. The monument protection must be restricted to the part of the garden or park which is connected in a special artistic or historic way, as well as spatially, to an immovable object which has been placed under monument protection by decree. If gardens are not (by majority) owned by a territorial authority, monument protection may only be conferred in the extent to which the majority of the (co-) owners provide consent. The decree conferring monument protection must – in order to be valid – include the concept as an integral part.

### **Prohibition on the Destruction and Alteration of Monuments, Notifications of Minor Repair Works, Essential Safety Measures in Case of Danger**

**§ 4.** (1) The destruction of, or any alteration which may influence the condition (substance), historic (historically evolved) appearance or artistic effect of monuments under monument protection is prohibited unless permission has been granted pursuant to § 5 para. 1. In particular, the following rules apply:

1. The actual obliteration of a monument also constitutes its destruction, even if individual parts survive, but the significance of these parts is no longer such that the preservation of the remains would continue to be in the public interest. The destruction of individual monuments which have only been conferred monument protection as part of an ensemble which has been declared a unit pursuant to § 1 para. 4 and 5, or a collection which has been declared a unit (and not as individual monuments), will constitute only an alteration to the ensemble or the collection – even if the ensemble or collection loses its significance as a unit. The determination of whether destruction has occurred must be done as part of a procedure pursuant to § 5 para. 7. If only parts of an object are under monument protection, these provisions apply *mutatis mutandis* on the basis of § 1 para. 8.

2. A monument is also deemed destroyed if the owner or other person responsible for its maintenance omits to carry out the maintenance measures which are unconditionally necessary for the continued existence of the monument with the obvious intention of destroying it, even though the measures are altogether reasonable for the owner (responsible person), since the remedy requires no – or few – financial resources (for example the supplementation of individual broken roof tiles, sealing open windows and suchlike). To the extent that such measures exceptionally cannot be carried out by the aforementioned persons, they must inform the Federal Monuments Authority of this in writing within two weeks of becoming aware of this circumstance, providing the reasons why they are not able to take the measures.

3. A park or garden is deemed destroyed if

a) the destruction has reached the extent described in nr. 1 with regard to the parts which are built (including any sculptures and suchlike) or

b) if – in the case of parks or gardens where landscaped nature is (also) protected – the landscaped nature has been destroyed to such an extent that its restoration would be equal to its fresh construction and the monument protection must be revoked for this reason pursuant to § 5 para. 7. A deviation from the concept pursuant to § 3 para. 5 in the planting and adaptation of the park or garden constitutes an alteration requiring permission.

(2) In case of imminent danger, essential safety measures which constitute actions requiring permission within the meaning of para. 1 may be taken without the prior consent of the Federal Monuments Authority, although the latter must be notified simultaneously.

#### **Permission to Destroy or Alter Monuments Procedure for the Revocation of Monument Protection**

§ 5. (1) The destruction or alteration of a monument pursuant to § 4 para. 1 requires the permission of the Federal Monuments Authority, unless such measures are taken due to imminent danger (§ 4 para. 2). The onus of proof that the reasons put forward for the destruction or alteration are justified lies with the applicant. In case of requests for permission for alterations, the applicant must submit appropriate plans in a sufficient extent; this does not apply to requests pursuant to para. 2. The Federal Monuments Authority must weigh up all reasons put forward by the applicant, or which have been observed *ex officio*, which support the argument for destruction or alteration against those reasons which support the argument for preservation of the monument in an unaltered state. The Federal Monuments Authority may grant permission for parts of a request. If permission is requested for alterations which would, at the same time, secure the long term economic preservation of the object, this circumstance must be awarded special consideration. As far as the future economic preservation and use of a park or garden could be endangered or noticeably impaired, the requests must be granted, unless the alteration requested would result in the destruction of the park or garden *per se* or fundamental parts thereof.

(2) If maintenance or repair measures are carried out on an immovable monument to the usual necessary extent, requests pursuant to para. 1 may also be submitted to the Federal Monuments Authority orally or in writing in the form of a notice at least two months prior to the commencement of the work. This notification must contain an indication that the measures are measures within the meaning of the preceding sentence. The Federal Monuments Authority must make a decision within six weeks. If a decision is not made within this time limit, this may not be considered as permission.

(3) As part of a procedure pursuant to para. 1 due to requested alterations to a monument, the Federal Monuments Authority may, in a decree permitting the alterations, determine which detailed measures (on which a final decision can only be made in the course of conducting the work) require additional determinations by the Federal Monuments Authority.

(4) Without prejudice to the other provisions of this paragraph, requests for alteration of a monument (including secondary objects belonging to the same) devoted to the religious service of a legally

recognised church or religious community (including its institutions) must be permitted to the extent that the alteration is necessary for holding the religious service and the participation of the congregation according to the compulsory provisions of the legally recognised church or religious community, or at least those provisions which are generally applied. All provisions are deemed necessary, which – if they were not observed – would mean that the holding of regular religious services would not be permitted, as well as any circumstances which enable the congregation to participate in the regular religious service to a sufficient extent and in a reasonable and dignified manner. The type and extent of the necessity must, upon the request of the Federal Monuments Authority, be proven by the issue of a certificate by the competent supreme authority of the church or religious community concerned. In order enable the Federal Monuments Authority to make counterproposals, this certificate must also set out which consequences would result from the alterations not being made in the requested manner or extent, as well as an opinion on any counterproposals which have already been made by the Federal Monuments Authority.

(5) Prior to granting permission for the destruction of an immovable monument pursuant to para. 1, and unless there is imminent danger, the Monument Advisory Board (§ 15) must be heard. This provision does not apply to archaeological monuments (§ 8 para. 1).

(6) A permit for the destruction or alteration will expire if not made use of within a period of three years. Extensions up to a maximum of three additional years are possible and must be granted in cases where the delay is being, or has been caused, by other procedures of official bodies.

(7) Monuments (including ensembles and collections) which are under monument protection and have been destroyed or altered due to passage of time, accident or illegally without permission (§ 5 para. 1), or have lost any significance as a monument worthy of protection (for which reason it was placed under monument protection or was eligible for such monument protection) for other reasons, such as a new scientific evaluation, will remain under monument protection (also in the case of mere remains) until the Federal Monuments Authority determines by decree *ex officio* or upon request (§ 26f) that the public interest in its preservation no longer exists (or is now restricted to parts of it) (procedure for the revocation of monument protection). The onus of proof that the reasons put forward for the revocation of monument protection are justified lies with the applicant, unless these are obvious. There is no legal claim to either continuation of monument protection or the placement under monument protection. Similarly, if no remains of a monument exist, the Federal Monuments Authority must determine the fact of its extinction due to total destruction in a decree within six months of becoming aware of this circumstance.

(8) If procedures which – by reason of provisions of federal law – are carried out as concentrated procedures affect objects under monument protection in such a way that permission within the meaning of this Federal Act is required, experts nominated by the Federal Monuments Authority must be involved in the procedures, unless the Federal Monuments Authority waives its right of nomination or does not make a nomination within the period of time designated, such period being at least one week. The Federal Monuments Authority has party status in this procedure and has the right to raise a complaint pursuant to Art. 132 para. 5 of the Federal Constitutional Law and final complaints pursuant to Art 133 para. 8 of the Federal Constitutional Law.

#### **Alienation and Encumbrance of Monuments Homogeneity of Collections**

§ 6. (1) The voluntary alienation of monuments which are under monument protection solely by virtue of legal presumption (§ 2 para. 1) requires the permission of the Federal Monuments Authority. If such monuments are voluntarily alienated without the permission of the Federal Monuments Authority such that at least half of the monument is now in the ownership of persons not specified in § 2 para. 1 first sentence, they continue to be subject to the provisions of § 2 para. 1, including all legal consequences arising therefrom. To the extent that the voluntary alienation occurs by law, this continuation of protection ends five years after the transfer of ownership.

(2) Permission for alienation pursuant to para. 1 may only be granted if the acquiror is simultaneously identified as such. Prior to the decision whether to grant or deny permission for alienation to a person not specified in § 2, it must be determined pursuant to § 2 para. 2 whether a public interest in fact exists in the preservation of the monument. If it is determined that no such public interest exists, the procedure concerning the permission for alienation must be discontinued due to its redundancy.

(3) Permission pursuant to para. 1 will expire if it is not made use of within a period of five years.

(4) The alienation of monuments, the preservation of which has been determined to be in the public interest by regulation pursuant to § 2a or by decree pursuant to § 3 para. 1 or pursuant to another procedure specified in § 2 para. 3, or in respect of which a procedure for placement under monument

protection has been initiated (§ 16 para. 2), must be notified by the alienor (or other person authorised to dispose of the monument, such as the commission agent) to the Federal Monuments Authority within two weeks, simultaneously identifying the acquiror. The determination that a public interest exists is not affected by the change in ownership. Without prejudice to the provisions of § 2a para. 7 and § 3 para. 3, the alienor (or other person authorised to dispose of the monument) is obligated to inform the acquiror of such a monument that it is subject to the restrictions of this Federal Act or (if the acquiror is already aware of this), that a procedure for placement under monument protection has been initiated.

(5) The voluntary alienation or encumbrance of individual objects from a collection requires the written permission of the Federal Monuments Authority if the Federal Monuments Authority has placed this collection under monument protection as a unit (§ 1 para. 4 and 5). Voluntary alienation or encumbrance without such permission is prohibited and considered null and void pursuant to § 879 of the Austrian Civil Code. Any execution procedure conducted in relation to individual objects belonging to such a collection must be discontinued upon the request of the Federal Monuments Authority. If an execution procedure is being conducted in relation to all objects belonging to such a collection, these must be disposed of as a whole if the Federal Monuments Authority has informed the court in a timely manner that it is a collection in the abovementioned sense. The circumstance that objects belonging to a collection which has been declared a unit have, in the meantime, passed into the ownership (co-ownership) of several persons (for example by the devolution of an estate of a deceased person) does not affect the legal status of the collection as a unit. In such cases, the Federal Monuments Authority may *ex officio* issue a decree revoking the status of the collection as a unit or redefining the unit.

### **Protection of Surroundings**

§ 7. (1) In order to avoid any danger to, or impairment of, the existence or appearance of immovable monuments by way of alterations to their surroundings (for example, by erecting billboards, showcases, signs and suchlike), the district administrative authority must issue prohibitions either upon the request of the Federal Monuments Authority, or – in case of imminent danger – *ex officio*.

(2) If prohibitions and orders pursuant to para. 1 are addressed to an indeterminate group of persons, they must be issued in the form of a regulation; otherwise they must be issued in the form of a decree.

### **Chance Finds of Archaeological Monuments**

§ 8. (1) If objects are discovered beneath the surface of the earth or water (chance finds) which, as a consequence of their location, form or structure, could obviously be subject to the restrictions of this Federal Act (archaeological monuments), the Federal Monuments Authority must – due to the particular danger to archaeological monuments of being altered, destroyed or stolen - be notified immediately, or by the next working day following their discovery at the latest. The same applies for archaeological monuments which are uncovered by chance, either wholly or in part, by events such as rain, ploughing and suchlike. Within the abovementioned period, the discovery may also be reported to the district administrative authority competent for the area where the discovery was made, to the nearest police station, to the competent mayor or to a public museum belonging to a territorial authority; these authorities must inform the Federal Monuments Authority of the report without delay, such that the notification is presented to the Federal Monuments Authority on the third working day following the submission of the report at the latest.

(2) The following persons are obligated to make a report (depending on their knowledge): the finder, the owner of the land, any person holding building rights (if any), the tenant or lessee of the affected piece of land as well as (in the case of construction works being carried out on the land) the local responsible construction site manager. As soon as a proper report has been made, the other persons specified are released from the obligation to make a report.

### **Measures to Secure Archaeological Sites and Finds from Archaeological Monuments**

§ 9. (1) The condition of the archaeological site and the objects discovered (finds) must be left unchanged for a period of five working days following a report being submitted unless a body of the Federal Monuments Authority or a person commissioned by the Federal Monuments Authority revokes the restriction before the expiry of this period or permits the continuation of the works, unless there is imminent danger to human life or health or the preservation of the finds. To the extent that permission is granted in view of the fact that the interests of monument protection are not impaired, or not appreciably impaired, the taking of minutes is deemed sufficient.

(2) If there is a danger that movable finds could be lost, the finder must – contrary to the provisions of para. 1 – take them into safekeeping himself or hand them over for safekeeping, for example to one of

the authorities specified in § 8 para. 1. Otherwise, the Federal Monuments Authority or persons commissioned by it are entitled to recover the finds and to take all measures which are necessary to clarify the circumstances of the find and to secure further archaeological monuments which are (or which are presumed to be) on the land.

(3) The archaeological monuments found are subject to the restrictions of this Federal Act from the moment when they are found until the completion of the works described in para. 4, but for a maximum period of six weeks following the submission of the report on the find (§ 8 para. 1); for this period the provisions relating to placement under monument protection by decree (§ 3 para. 1) apply uniformly. By the end of this period, the Federal Monuments Authority must decide (also with respect to objects to which the provisions of § 2 para. 1 would apply) whether these archaeological monuments will continue to be subject to the restrictions of this Federal Act (in all cases according to the legal consequences of placement under monument protection by decree pursuant to § 3 para. 1); legal remedies against this decree do not have suspensive effect. To the extent that a public interest with respect to archaeological monuments has been determined by decree prior to their actual finding (excavation) pursuant to § 3 para. 1 or pursuant to another procedure specified in § 2 para. 3, no further decision by the Federal Monuments Authority by decree pursuant to this paragraph is necessary.

(4) Without prejudice to the provisions of § 30 para. 1, finders, owners, holders or real rights or direct possessors of the land where the find is made are obligated to make the movable objects which have been found thereupon available to the Federal Monuments Authority upon its request for a maximum of two years for the purposes of scientific evaluation and documentation.

(5) Regardless of all other legal consequences, the provisions of this paragraph also apply to excavations carried out in contravention of the excavation provisions of § 11.

#### **Acquisition of Co-Ownership Shares in Archaeological Monuments by Territorial Authorities**

**§ 10.** (1) If, in the course of excavations and other scientific investigations carried out by bodies of territorial authorities, including their museums, collections other scientific institutions, or which are carried out upon the order or request of such territorial authorities, movable objects are found or uncovered which have been hidden in the ground for so long that it is impossible to determine their owner and which are archaeological monuments, the territorial authority – in the interests of securing the safekeeping of the scientific collection of that territorial authority – has a right to acquire that ownership share which is allocated to the owner of the land pursuant to § 399 Austrian Civil Code; the territorial authority then owning one half of the find. The same applies in cases where the ownership share allocated to the finder transfers to the Federation pursuant to § 400 Austrian Civil Code due to prohibited acts by the finder. Regardless of their fair market value, movable archaeological monuments are deemed treasure.

(2) The right to purchase pursuant to para. 1 must be exercised in writing within a period of three years following the day when ownership in half of the find was acquired (or, in the case of the ownership transferring to the Federation pursuant to § 400 Austrian Civil Code, following this day). If the right to purchase is exercised fully or partially, the owner of the land is entitled to payment of a price usual considering recognised customs and practises in the amount of the anticipated highest selling price to final purchasers (including VAT) realisable on the domestic market (fair market value). The costs of excavation (investigation), cleaning and restoration which have arisen for the territorial authority or such persons who have lost ownership pursuant to § 400 Austrian Civil Code, may not be offset when calculating the price; on the other hand, increases in value which have resulted from restoration may not be enforced by the person or entity which did not bear the costs of restoration. If no agreement can be reached, the right to purchase must be enforced before the civil law courts; failure to do this results in the right to purchase expiring five years after ownership was acquired by finding (pursuant to the first sentence).

(3) The provisions of this paragraph also apply to finds from excavations carried out by third parties on land belonging to a territorial authority whereby the territorial authority becomes owner of half of the find as owner of the land.

#### **Permits and Obligations Relating to Excavations for Archaeological Monuments**

**§ 11.** (1) Investigations entailing alterations to the surface of the earth or ground under water (excavation) and other on-site investigations for the purposes of discovering and examining movable and immovable monuments beneath the surface of the earth or water may only be carried out with the permission of the Federal Monuments Authority, unless para. 2 and 9 provide otherwise (research excavation). Such permission may only be granted to persons who have completed a course of relevant university study. Permission may only be granted to natural persons and for concrete excavation plans,

which must be clearly defined in the decree granting permission (to which plans submitted by the person making the request must be attached). Permissions within the meaning of this paragraph may include restrictions, conditions and special rules (with regard to surface area and depth, manner of execution, reporting obligations, inspections etc.). There is no legal claim to the grant of permission for excavations under the provisions of this Federal Act.

(2) Excavations carried out *ex officio* by the Federal Monuments Authority do not require permission pursuant to this Federal Act.

(3) The persons authorised pursuant to para. 1 must notify the Federal Monuments Authority in writing of the commencement of excavations (as well as any preliminary investigations) on a piece of land, or on several connected pieces of land, without delay.

(4) In principle, finds must be notified according to the provisions of § 8. Permissions and notifications within the meaning of para. 1 and 3 do not supersede this notification obligation; however, in the case of excavations carried out according to the provisions of this paragraph, only the leader of the excavation, the finder and the person (if any) who commissioned the works are obligated to report the find. Further finds must be reported to the Federal Monuments Authority annually, or three months after the end of the year during which the find was made at the latest. With regard to their form and extent, reports must conform to scientific principles of research and documentation. The provisions of § 9 para. 3 and 4 as well as § 10 apply. However, the time limit stipulated in § 9 para. 3 expires six weeks after the reports are received by the Federal Monuments Authority.

(5) The persons authorised pursuant to para. 1 are permitted to alter or destroy archaeological monuments to the extent that this cannot be avoided as part of scientific excavation work and is therefore necessary. However, to the extent that a decree has been issued determining that the preservation of an archaeological monument is in the public interest pursuant to § 3 para. 1 or pursuant to another procedure specified in § 2 para. 3, the excavation requires the permission of the Federal Monuments Authority pursuant to § 5 para. 1 due to the alterations or destructions which are necessarily caused by it.

(6) Besides the reports pursuant to para. 3 and 4, comprehensive reports on excavations carried out must be submitted to the Federal Monuments Authority in regular intervals (at least three months after the end of each calendar year), together with all drawings, plans, photos and other documentation material which is necessary for a clear description.

(7) The Federal Monuments Authority must collate all notifications and reports it receives pursuant to §§ 8, 9 and 11 (including the results of finds made by the Federal Monuments Authority itself) from the entire area of the Federal Republic of Austria in an inventory of finds and – to the extent that they are of scientific relevance – summarise them in an annual publication in the form of a comprehensive overall documentation. The time which passes between the find and its documentation should not exceed five years.

(8) To the extent that a public interest in the preservation of archaeological monuments – whether these remain under the earth's surface or not – has been determined by a decree issued in a procedure pursuant to § 3 para. 1 or in another procedure specified in § 2 para. 3, the use of metal detectors or other detection devices on these pieces of land for any purpose whatsoever – apart from by persons specified in para. 1, 2 and 9 (as well as persons commissioned by them) within the scope of their excavation and investigation rights – require the permission of the Federal Monuments Authority, unless it is the objective of these activities to eliminate sudden and unexpected dangers which threaten human life, health or property. In such cases, the activities may be continued, provided that the authorities or institutions specified in § 8 para. are notified, which authorities or institutions must forward these notifications to the Federal Monuments Authority without delay.

(9) Excavations carried out on behalf of the Federal Minister for Education, Art and Culture, the Federal Administrative Court, an administrative court of the federal provinces or the governor of the respective federal province do not require the permission of the Federal Monuments Authority pursuant to §§ 5, 9 and 11 if they are carried out to the extent absolutely necessary within the scope of a complaint procedure or in discharge of a supervision obligation (§ 30 para. 1). The reporting obligations specified in §§ 8, 9 and 11 apply to the extent that the commencement of the excavations pursuant to para. 3 must be reported to the Federal Monuments Authority; furthermore, a report pursuant to para. 4 third sentence on any results of finds must be sent to the Federal Monuments Authority within six months of the termination of excavations.

### **Designation of Protected Monuments**

§ 12. For the information of the public, a sign (plaque, adhesive sticker, stamp etc.) may be affixed to movable and immovable objects under monument protection to indicate this fact. In any case, the sign must be designed in such a way that it shows the federal coat of arms as well as the insignia for “monument protection” pursuant to Annex 1: a part of a column enclosed within a circle. Detailed provisions concerning the form and issue of the sign, the obligation to tolerate the affixing of the sign etc. may be laid down by the Federal Minister for Education, Art and Culture by regulation.

### **Measures Pursuant to the Hague Convention**

§ 13. (1) Immovable monuments (including constitutive parts and appurtenances) as well as movable monuments, which are of great importance to the cultural heritage of every people within the meaning of Article 1 of the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention), Federal Gazette Nr. 58/1964, must be designated as such in a list to be produced by the Federal Monuments Authority. The list must also show those objects which, as repositories or locations within the abovementioned Article, also fall under the protection of the Convention.

(2) The prerequisite for inclusion in the list pursuant to para. 1 is the status as a monument of great importance for the stock of Austrian monuments. The usual international interpretation of the Hague Convention with regard to the significance which must be awarded to an object, is decisive.

(3) Monuments which must be included in the list, must already be under monument protection; otherwise a procedure for placement under protection must be initiated immediately.

(4) The Federal Minister of National Defence and Sport, the respective governors of the federal provinces, mayors and owners may raise objections to inclusions in the list to the effect that the object affected does not fall under the protection of the Hague Convention and request that the object is not included or is deleted from the list. The rejection of a request must be done by decree. The Federal Monuments Authority may delete objects from the list at any time if the prerequisites which led to its inclusion have changed.

(5) If possible, the inclusion in the lists should be made visible by affixing a prominent sign pursuant to the Hague Convention to the monuments. For this purpose, the Federal Monuments Authority must issue an appropriate certificate to the owner. Depending on the type and extent of the designation, the Federal Monuments Authority may order the owner or other person authorised to dispose over the monument by decree to carry out the designation. The Federal Monuments Authority may amend or revoke certificates and orders issued by decree at any time for the reasons set out in para. 4.

(6) Omission to carry out the designation pursuant to the Hague Convention as ordered by decree is prohibited, as is any improper manner of designation. Designation is improper if it is done in a manner which could lead to the mistaken assumption that it is a designation pursuant to the Hague Convention.

(7) The previous cultural goods protection lists, cultural goods protection inventories, certificates and entitlements to affix protection signs lose their validity on 31<sup>st</sup> December 2009 at the latest, unless this time limit is shortened by regulation pursuant to para. 8.

(8) Detailed rules on the procedure for producing the list and its form and publication (cultural goods protection lists), the type and form of the designation, the issue of certificates, the production of appropriate inventories (cultural goods protection inventories), the declaration on the invalidity of previous lists, certificates, entitlements or forms of designation, including the offer to substitute or remove them, and suchlike must be laid down by the Federal Minister for Education, Art and Culture by regulation.

### **Prizes, Other Forms of Recognition**

§ 14. Outstanding achievements in the fields of monument protection and monument care may be acknowledged by the Federal Minister for Education, Art and Culture by awarding medals and diplomas, but also by way of financial remuneration.

### **Monument Advisory Board**

§ 15. (1) The Monument Advisory Board is a body concerned with advising the Federal Monuments Authority (or, in cases pursuant to § 33, the Federal Minister for Education, Art and Culture) when answering questions of monument protection and monument care. The permanent members are appointed for a period of six years by the Federal Minister for Education, Art and Culture from among representatives of the respective scientific disciplines (art history, architecture, civil engineering, history,

archaeology, spatial planning, business management etc.). The Federal Minister of Economy, Family and Youth, the Federal Chamber of Engineers as well as the Art Senate may each delegate one permanent member. Depending on the type and location of the respective monument, a representative of each of the federal province and the municipality, tourism (Chamber of Commerce), in case of ecclesiastical property a representative of the relevant legally recognised church or religious community and finally – if possible – also representatives of societies concerned with the preservation of cultural goods (including those of local significance) must be consulted as non-permanent members. The Monument Advisory Board may also convene in committees.

(2) Upon the request of the Federal Minister for Education, Art and Culture and the Federal Monuments Authority, each permanent member of the Monument Advisory Board may be consulted for advisory purposes (as a consultant) or to provide an expert opinion (as an expert) as well as during complaint procedures upon the request of the Federal Administrative Court or an administrative court of the federal provinces to provide an expert opinion (as an expert).

(3) Members of the Monument Advisory Board are entitled to professional fees in the amount of fees paid to expert witnesses pursuant to the Fees Act of 1975 for the production of written expert opinions required for responses pursuant to the provisions of § 5 para. 5, as well as for written expert opinions due to requests pursuant to para. 2.

(4) If the Monument Advisory Board does not provide a response within three months in the cases specified in § 5 para. 5, or within six weeks in the cases specified in § 33 para. 4, it may be assumed that the Monument Advisory Board has no reservations regarding the planned measures.

(5) Detailed provisions on the composition and the tasks of the Monument Advisory Board as well as its internal rules of procedure must be laid down by the Federal Minister for Education, Art and Culture by regulation.

### **Section 3 Protection from Illegal Dispatch Abroad**

#### **Extent of the Protected Cultural Goods**

**§ 16.** (1) The dispatch of monuments (cultural goods) across the Austrian state border (export) without an export license (§§ 17, 19 and 22) or confirmation (§ 18) is not permitted, if this concerns

1. cultural goods which are under monument protection or with respect to which at least a procedure for placement under monument protection has been initiated by the Federal Monuments Authority (para. 2),
2. cultural goods which, pursuant to the regulation on the general demarcation of less significant cultural goods (para. 3), fall under that category of cultural goods requiring a license for export,
3. archive materials (§ 25).

(2) A procedure for placement under monument protection is deemed initiated if measures have been taken by the Federal Monuments Authority to find the owner of the monument.

(3) The Federal Minister for Education, Art and Culture is empowered to determine by regulation which categories of goods, according to their type and value, do not require a license for export, unless cultural goods within the meaning of para. 1 nr. 1 or 3 are concerned. In terms of their type and value, the groups of goods must correspond to the “categories” in the Annex (as amended) to the Council Regulation (EC) Nr. 116/2009 on the Export of Cultural Goods, Official Journal Nr. L 39 10.02.2009 p. 1. If this annex is amended, correspondence in the aforementioned sense must be restored within six months of the amendment entering into force.

(4) The works of living artists and such artists who have been dead for less than 20 years do not require a license to be exported, even if they would fall under the Regulation pursuant to para. 3 – the foregoing does not apply to cultural goods within the meaning of para. 1 nr. 1 or 3.

#### **Export Licenses**

**§ 17.** (1) 1. An export license from the Federal Monuments Authority is required in all cases specified in § 16 para. 1 nr. 1 and 3. Such an export license may only be granted in cases which are particularly worthy of consideration. A request for the grant of an export license also represents a request for the issue of a confirmation (§ 18) if such a request is necessary.

2. In the cases specified in § 16 para. 1 nr. 2, it must be first be evaluated whether keeping the objects in the Republic of Austria is in the national interest and whether a procedure for placement under monument protection must be initiated (if such a procedure has not yet been carried out or at least initiated). This must also be done in the cases specified in § 16 para. 1 nr. 3 if an export license is not granted pursuant to nr. 1 above.

(2) Cases worthy of consideration within the meaning of para. 1 are those in which, after weighing up the reasons put forward by the person submitting the request and those reasons which must be proven or observed *ex officio* against the existence of a public interest in retaining the cultural goods in the Republic of Austria (taking into account to what extent the abundance and diversity of the stock of Austrian cultural goods in the Republic of Austria will be impaired), the former reasons prevail. The fact that it is planned to (first) export the cultural good to another EU Member State is – in view of the fact that the future decision on its export beyond the customs borders of the European Union must be made by another state – irrelevant, if specific “*Austriaca*”<sup>1</sup> are concerned.

(3) The onus of proof that the reasons put forward for export are valid lies with the person submitting the request. The Federal Monuments Authority has no obligation to investigate reasons put forward by the person submitting the request if such reasons do not affect the latter, or the owner, or the acquirer. The decree granting the export license must expressly specify those persons entitled to export the object (either in their own name, or on behalf of another).

(4) To the extent that cultural goods are affected which are under monument protection but with respect to which the placement under monument protection has not yet been determined (evaluated) by decree (§ 2, §2a, § 6 and § 25a), an appropriate procedure for determination must be initiated without delay.

(5) In all cases where a procedure for placement under monument protection (or a determination procedure pursuant to § 2, § 2a, § 6 or § 25a) has not yet been concluded with legal effect, the procedure for the issue of an export license may be continued on a preliminary basis, as if a determination that a public interest exists had already been made. However, to the extent that the final decision would be a negative decision, it must be postponed until the conclusion of the determination procedure. The time limit for making a decision on the request for an export license (§ 73 para. 1 General Administrative Procedure Act) will be extended such that it expires two weeks after the conclusion of the procedure for the determination of monument protection.

(6) If the cultural good is under monument protection, or if a procedure for its placement under monument protection has at least been initiated (§ 16 para. 1 nr. 1), and the cultural good is alienated, the alienor or other person entitled to dispose of the cultural good to whom such facts are known is obligated to inform the acquirer of such facts and to notify the Federal Monuments Authority. For the remainder, § 6 para. 4 applies.

### Confirmations

**§ 18.** (1) The Federal Monuments Authority will determine that retaining a cultural good in the Republic of Austria is not in the national interest by issuing a confirmation. For the purposes of secure proof of legal export, a confirmation may also be issued in cases concerning objects which – while they cannot be awarded status as a monument – may be confused with monuments (e.g. copies).

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<sup>1</sup> Die erläuternden Bemerkungen zur Regierungsvorlage 1999 erklären „*Austriaca*“ folgendermaßen:

Als „*Austriaca*“ können etwa angesehen werden: Besonderer Bezug zu

- a. Werke von Künstlern und Schriftstücke von oder an Persönlichkeiten, die in Österreich geboren wurden, wirken oder gewirkt haben und hier gestorben sind;
- b. Darstellungen österreichischer Persönlichkeiten, die in Österreich geboren wurden, wirken oder gewirkt haben oder hier gestorben sind;
- c. Österreichische topographische Ansichten;
- d. Kulturgut, das auf österreichische historische Persönlichkeiten und/oder Begebenheiten Bezug hat (Begebenheiten in Österreich oder wesentlich für die Geschichte Österreichs);
- e. Kulturgut mit Bedeutung für sonstige österreichische Themen wie Brauchtum, Trachten, Pläne und Entwürfe österreichischer Firmen usw.;
- f. Kulturgut, das in Österreich hergestellt wurde;
- g. Kulturgut, das in Österreich gefunden (entdeckt) wurde (prähistorische und archäologische Funde).

Als für *Austriaca* maßgebendes Gebiet ist das Gebiet der heutigen Republik Österreich anzusehen.

(2) The request for the issue of a confirmation always contains an alternative request for the grant of an export license (§ 17) – even if this is not expressly specified therein.

(3) It is not permitted to refuse the issue of a confirmation for a cultural good which has not been placed under monument protection by decree without concluding a procedure for placement under monument protection or procedure for determination without delay, or initiating such procedures immediately.

(4) A confirmation must be issued within four weeks of a request being submitted at the latest. The rules set out in § 17 governing questions of placement under monument protection or the initiation of a procedure for placement under monument protection or a procedure for determination as well as the extension of the time limit for making a decision apply *mutatis mutandis*. The refusal to issue a confirmation must be done by decree.

### **Export and Temporary Import Across the Customs Borders of the European Union**

**§ 19.** (1) To the extent that the export of cultural goods across the customs borders of the European Union pursuant to the relevant provisions of European law requires a license, special licenses issued by the Federal Monuments Authority are required pursuant to the relevant regulations of the European Union. The same applies for special rules on temporary imports and exports.

(2) Each request for a license to export across the customs borders of the European Union also contains requests pursuant to §§ 17 and 18. The provisions of §§ 16 to 18 must also be observed when granting licenses for export beyond the customs borders of the European Union.

### **Substitute Purchase, Value**

**§ 20.** (1) If, in cases where a request for export (§§ 17 and 19) has been submitted, a person makes a legally binding declaration that he is willing to purchase the cultural good for the domestic value (or the value abroad, adjusted for costs and duties, if the resulting amount is higher), whereby payment will fall due two months after the agreement to purchase has been concluded at the latest, economic reasons may not be taken into consideration in the procedure concerning the export license. This declaration also represents a legally binding offer to the owner for purchase, which is valid for one year. The Federal Monuments Authority is not obligated to look for, or notify any persons who may be interested in purchasing the cultural good.

(2) Domestic value within the meaning of this Federal Act is in all cases deemed to be the anticipated highest selling price to final purchasers (including VAT) (fair market value).

### **Expiry of Export Licenses and Confirmations**

**§ 21.** Export licenses pursuant to § 17 as well as the validity of confirmations pursuant to § 18 expire five years after their respective issue. Extensions for a respective period of three years (whereby multiple extensions are possible) are possible upon the appropriate request (requests) being submitted.

### **License for Temporary Export and Re-Export after Temporary Import**

**§ 22.** (1) If objects which are subject to the prohibition contained in this Federal Act are to be exported on a temporary basis (on loan for exhibitions, for the purposes of restoration or scientific studies, for the personal needs of the owner in the case of temporary stays abroad etc.), the Federal Monuments Authority may grant a license for the temporary export (without weighing up the various interests), if (even from a conservative point of view) the return of the object intact to the Republic of Austria can be assumed with certainty. Such a license may be granted for a maximum period of five years (in the case of archive materials, one year); two extensions may be granted; each time for an additional five years (in the case of archive materials: one year).

(2) To the extent that a cultural good is not owned by the Federation or a federal province or a municipality and the owner is also the person submitting a request, the Federal Monuments Authority may, for the purposes of securing the return of the object, make the grant of the license for temporary export conditional upon the payment of a deposit of up to double the highest selling price for final purchasers (in the Republic of Austria or abroad), if – in the individual case – the secure return would otherwise appear not to be guaranteed. The return may also be secured by the imposition of other conditions. The return of the cultural good to the Republic of Austria must be proven to the Federal Monuments Authority within six weeks. If the cultural good for which a deposit was paid is not returned in a timely manner, the deposit may be declared forfeited, especially if the exporter cannot prove, or at

least make plausible, his lack of fault in failing to return the cultural good in a timely manner. Forfeited deposits fall to the Federation and will be appropriated for use in the Monuments Fund (§ 33).

(3) If objects which would be subject to the prohibition contained in this Federal Act in the Republic of Austria are imported to the Republic of Austria on a temporary basis for the reasons specified in para. 1 or due to their sale, the Federal Monuments Authority must grant a license for the future export of these objects. The license for re-export may also be limited to a certain period of time. This period must be a minimum of ten years, but a maximum of 50 years. It is possible to extend this period once (or several times). An export license within the meaning of the legal claim contained in this paragraph may only be granted if the appropriate request is submitted within three years of the object being imported to the Republic of Austria at the latest, if the person submitting the request can also prove that this object was located abroad until this time and there are no reasons to suspect that the object was dispatched abroad in contravention of the provisions of this Federal Act or was only taken abroad by reason of an export license pursuant to para. 1.

(4) Cultural goods which – according to provisions of customs law – have not been released into free circulation, but have been released for a shipping or customs warehouse procedure, or a procedure of active processing or for temporary use, are not subject to the export prohibition within the meaning of this Federal Act while such a procedure is ongoing (this period being limited to a maximum of five years after the cultural good is imported), unless the cultural good concerned was dispatched abroad in contravention of the provisions of this Federal Act, or on the basis of an export license pursuant to para. 1. The identity of the cultural goods to be exported with those imported must be secured at the time of export.

(5) In deviation from the provisions of para. 1 and 2, the Federal Monuments Authority may grant export licenses for extended or indefinite periods of time for the purposes of fitting out representation authorities of the Austrian state located abroad as well as culture institutes (including the residences of the Austrian civil servants working there), of representation authorities of other states and culture institutes located in the Republic of Austria as well as for museum purposes (including private museums and documentation centres) in the Republic of Austria or abroad. To the extent that such an export license cannot yet be granted for formal reasons, a legal claim may be granted to the future issue of an export license. The possibility of substitution as part of collecting activities may be provided for. In similar cases (such as international organisations, including their sub-organisations, Foreign Trade Offices of the Chamber of Commerce etc.), the Federal Minister for Education, Art and Culture is empowered to lay down by regulation that the institutions, persons and purposes concerned must be treated according to the provisions of this paragraph. The grant of an export license in such cases is not restricted to the time limit of three years as specified in para. 3.

(6) Libraries (collections of books) and collections of audiovisual media (collections of picture and recording media) which are owned by the Federation (as well as its institutions which have a restricted legal capacity to acquire), a federal province, a municipality or another body of public law do not require a license pursuant to para. 1 or 2 for the export of objects from these collections (excluding archive materials) within the scope of international lending, provided that the fact that it is a decree-exempt shipping transaction based on this provision is clearly noted by the sender on the item being sent or on the accompanying papers in a form which is clearly visible to the controlling bodies. The structure of this note must be such that the person responsible for this information can be determined. If the return of parts of a collection in an intact state could be endangered, or if there has been a violation of the provisions of this Act, the Federal Monuments Authority must issue an order by decree that these exceptional provisions for individual or all parts of a collection will not apply for a definite or indefinite period of time.

### **Exemptions from Restrictions on Export by Regulation**

§ 23. In order to answer questions more quickly and clearly concerning the export of cultural goods, the retention of which in the Republic of Austria is in the public interest by reason of this Federal Act, the Federal Minister for Education, Art and Culture may, by regulation, exempt certain objects qualifying as cultural goods (which must be precisely defined) from the restrictions on export contained in this Federal Act for general reasons of fairness as well as (in particular) other, higher national interests.

## **Section 4 Archive Materials**

### **Competent Authority**

§ 24. To the extent that monuments which are archive materials pursuant to § 25 para. 1 are concerned, the Austrian State Archive takes the place of the Federal Monuments Authority and the Federal Chancellor takes the place of the Federal Minister for Education, Art and Culture.

### **Archive Materials, Writings (Definitions)**

§ 25. (1) Archive materials are writings as well as picture, film, video and audio materials which have been produced for the purposes of documentation or for the information of the public and which have historic or artistic significance for the research and understanding of history and the present from a political, economic, social or cultural point of view as well as regarding legislation, case law, administration and the protection of general and particular civil rights. If such objects have not come to possess historical character of this kind, they do not qualify as archive materials within the meaning of this section – even if collections of this kind, such as collections of handwritten music, pieces of literary writing, collections of pictures and portraits and suchlike, are designated as archives.

(2) Writings are records which are written or saved on electronic information carriers of all kinds, such as letters and certificates, together with their associated inventories, plans, drawings, seals, stamps and attachments and including the programmes, inventories, orders and procedures required to evaluate the writings.

### **Preliminary Monument Protection of Archive Materials by Regulation**

§ 25a. In deviation from the provisions of § 2a, the Austrian State Archive (§ 24) is empowered to place certain archive materials under preliminary monument protection by regulation if they could be of significance for investigations which are in the public interest and which are carried out on the basis of a public assignment. This kind of protection may only be conferred upon archive materials which were produced by enterprises at a time in which these enterprises – by reason of the number and/or type of employees, or the scope and/or type of business activity or the commercial participation by the public sector – had particular political or economic significance and the existence of the facts required for placement under protection pursuant to § 1 is, based on the state of scientific knowledge, at least probable. The public interest in the preservation of these archive materials is deemed to exist on the basis of the regulation for as long as the Austrian State Archive, either upon the request of a party (§ 26) or *ex officio*, has not passed a decision in the form of a decree on the existence in fact of the public interest. For the remainder, the provisions of § 2a para. 2 as well as para. 5 and 6 as well as of § 17 para. 4 and 5 are applicable, whereby the regulation must be announced in the Official Gazette of the *Wiener Zeitung*.

## **Section 5 General Provisions, Sanctions, Concluding Provisions and Transitional Provisions**

### **Parties and Rights to Submit Requests**

§ 26. To the extent that this Federal Act does not lay down additional, specific detailed rules, the following rights of parties and rights to submit requests exist within the scope of this Federal Act:

1. Only the owner (§ 27), the governor of the federal province, the municipality and the mayor, and – if building rights exist – the person holding such building rights (§ 27) have status as parties in procedures pursuant to §§ 2 para. 1 and 2, 2a para. 5 and 6, 3 para. 1 and 5, 5 para. 7, 6 para. 2 and 9 para. 3 concerning the (positive or negative) determination of the public interest in the preservation of immovable monuments.
2. The owner, the governor of the federal province and – in the case of immovable monuments – the municipality and the mayor are entitled to submit requests pursuant to § 2 para. 1 nr. 1, § 2a para. 5 and § 25a for the determination of whether a public interest exists in fact; if building rights exist, the same applies to the person holding the building rights (§ 27 para. 1).
3. Furthermore, and with regard to all other monuments, the governor of the federal province is entitled to submit requests for the determination of whether a public interest exists in the preservation of monuments (including ensembles and collections).
4. Requests for the alteration or destruction of a monument (§ 5) may be made by all persons who qualify as parties within the meaning of § 8 General Administrative Procedure Act as well

as the governor of the federal province. Furthermore, the mayor also has status as a party in procedures concerning the destruction of a monument.

5. All (co-)owners as well as the governor of the federal province are entitled to submit requests for the carrying out of a procedure for the revocation of monument protection (§ 5 para. 7).

6. The acquiror also has the status of party in procedures pursuant to § 6 para. 2 concerning the determination of a public interest in the preservation of a monument.

7. The Federal Monuments Authority is entitled to submit requests to the district administrative authority in procedures pursuant to § 7 (Protection of Surroundings), § 31 (Measures to Secure) as well as § 36 (Restoration or Return of Monuments), has the status of party in such procedures and is also entitled to raise a complaint for illegality pursuant to Art. 132 para. 5 Federal Constitutional Law and final complaints pursuant to Art. 133 para. 8 Federal Constitutional Law. In procedures pursuant to § 31 para. 3, and apart from the Federal Monuments Authority, only that person has status as a party who is obviously the owner of the cultural goods; if ascertaining the identity of this person or their whereabouts would require further investigations, the person who has custody of the cultural goods will take their place.

8. Besides those persons who have party status pursuant to § 8 General Administrative Procedure Act, such persons who intend to sell the object as an authorised tradesman within the scope of a commercial trade (including as a commission agent) are also entitled to submit requests for the grant of export licenses and the issue of confirmations pursuant to §§ 17, 18, 19 and 22. However, only the owners (or co-owners) have status as parties in the procedure for the determination of the public interest by decree carried out within the scope of procedures the procedures mentioned in the preceding sentence.

9. The status as a party in the procedure for granting a license for the temporary export and the re-export after temporary import is governed by § 8 General Administrative Procedure Act.

#### **Owners of Immovable Monuments**

§ 27. (1) The owner of an immovable object within the meaning of this Federal Act is deemed to be the person entered into the land registry as the owner. The land registry within the meaning of this Federal Act also means the railway registry. The person holding building rights is deemed to be the person entered into that part of the land registry dealing with building rights.

(2) If persons who no longer exist are entered into the land registry as owners, the place of this person for these purposes will be taken either by the person who has acquired out-of-record ownership on the basis of special legal provisions or by the person whose claim to the entry of ownership rights is known; the foregoing does not apply to estates of deceased persons which have not yet been devolved.

#### **Form of Requests and Decrees**

§ 28. (1) All decrees which are issued on the basis of this Federal Act must be issued in writing and include the grounds for the respective decision, even in cases where requests are fully granted; § 58 para. 2 General Administrative Procedure Act does not apply with regard to a possible exemption from the obligation to provide grounds for a decision. The foregoing does not apply to decrees pursuant to § 5 para. 2 concerning repair measures as well as § 5 para. 3 concerning detailed measures, whereby these decrees may also be issued orally and must not include grounds for the decision in cases where requests are fully granted. The person submitting a request may request that a decree is issued in writing.

(2) The provision of para. 1 first sentence also applies to the licenses and confirmations issued pursuant to §§ 17, 18, 19 and 22.

(3) Decrees which grant permission for constructional alterations (§ 5 para. 1) must include, as attachments forming an integral part of the decree, a sufficient number of plans which must be provided by the person submitting the request. In the case of placement of parks and gardens under monument protection, including their landscaped nature (§ 3 para. 5), the basis concept must be attached to the decree as an integral part thereof.

(4) Oral decrees pursuant to para. 1 second sentence must be recorded in the form of a case note. This is deemed a set of minutes within the meaning of § 62 para. 2 General Administrative Procedure Act.

(5) In procedures pursuant to §§ 17, 18, 19 and 22, the cultural good must be described clearly and unmistakably (even in the request forms) in such a way that the description enables a simple and quick check to be performed by the relevant controlling bodies (customs bodies). The decrees (confirmations)

must therefore, in addition to a description of the object (including, as the case may be, the interior), also include – as far as possible – further distinguishing characteristics (e.g. by attaching photographs, a special mark made by the Federal Monuments Authority on the object itself). If confirmations are issued on the basis of written requests which already contain an accurate and sufficient description of the grounds for the confirmation, the Federal Monuments Authority may – upon making an indication of the correctness of these grounds – omit to provide further grounds for the decision.

(6) Detailed provisions, concerning (for example) the form of requests and the decrees and confirmations to be issued, the necessity of submitting or attaching photographs, the direct marking of the objects, type and extent of the necessary description in the decrees etc., must be laid down by the Federal Minister for Education, Art and Culture by regulation.

(7) Licenses and confirmations of the Federal Monuments Authority pursuant to §§ 17, 18, 19 and 22 qualify as documents required for the registration of cultural goods at the customs office for export clearance (§ 16 para. 1) within the meaning of the provisions of customs law.

### **Legal Remedies, Suspensive Effect**

**§ 29.** (1) The Federal Administrative Court decides on complaints against decrees issued by the Federal Monuments Authority; the administrative court of the relevant federal province decides on complaints against decrees issued by a district administrative authority.

(2) In a procedure for placement of a monument under monument protection, any circumstance is deemed to constitute imminent danger pursuant to § 57 para. 1 as well as § 64 para. 2 General Administrative Procedure Act, by reason of which it may be assumed that the possible destruction, alteration or dispatch of a monument (which monument does not have to be under monument protection already) could not otherwise be prevented in a timely manner.

(3) Complaints in procedures pursuant to § 31 do not have suspensive effect.

### **Obligation to Provide Information, Inspection Rights of the Federal Monuments Authority**

**§ 30.** (1) Everybody has an obligation to provide the Federal Monuments Authority and its bodies with all information required for finding monuments and for recording, supervising (controlling) and preserving (saving) existing stocks of monuments of the type set out in § 1 and to enable the Federal Monuments Authority and its bodies (together with any assistants) to view the monuments in question as well as presumed archaeological finds and subject these to scientific examination. This includes allowing test restorations, taking of photographs and carrying out of excavations. In procedures concerning the protection of surroundings (§ 7), the ordering of measures to secure (§ 31) as well as restoration and return (§ 36), the governor of the federal province as well as the district administrative authority and their bodies (and any assistants) are also entitled to perform the aforementioned actions if there is imminent danger; in the case of excavations, the special provisions of § 11 para. 9 must be observed in particular.

(2) Furthermore, everybody has an obligation, particularly in cases concerning the requested, attempted or executed export of objects subject to the prohibitions contained in this Federal Act, or in cases where it can be assumed that there is a danger that objects subject (or which could be subject) to the prohibitions contained in this Federal Act will be illegally exported, to provide the competent authorities with all information in the context of the particular case and to allow and enable the bodies of these authorities (including any assistants) to view the objects in question and subject them to scientific examination; this obligation also extends to any other movable or immovable objects which are associated with them or which are to be examined for the purposes of comparison.

(3) Owners or other persons responsible for the repair of protected movable and immovable monuments are obligated, upon being questioned by the Federal Monuments Authority, to state any damage to or defects in these monuments and to provide information about the cause. If there is a danger that the monument could be destroyed, such persons specified in the foregoing must voluntarily inform the Federal Monuments Authority of the emerging damage within a period of time short enough to be considered reasonable in view of the danger to the monument. No obligation to remedy the damage going beyond the provisions of § 4 para. 1 nr. 2 can be derived from this.

(4) The Federal Monuments Authority is entitled to conduct the expert supervision (or have such supervision carried out by authorised representatives) of all restorations, excavations and other measures which are subject to the provisions of this Federal Act.

(5) To the extent that this is possible under the other provisions of law, for example those concerning data protection, the Federal Monuments Authority is entitled to make the results of its research and

documentation available for scientific purposes or other purposes which are in the direct interest of monument protection or monument care.

### Measures to Secure

**§ 31.** (1) If there is a danger that monuments will be destroyed, altered or alienated (in particular in contravention of the provisions of §§ 4 to 6) and the interest in preserving the monument intact would thereby be fundamentally impaired, the competent district administrative authority must, upon the request of the Federal Monuments Authority or – in case of imminent danger - *ex officio*, take measures (including construction work) and issue orders and prohibitions suitable to avert this danger. To the extent that measures include maintenance or repair obligations not provided for in this Federal Act, these may only be imposed if the financing for the measures is made available to the person(s) responsible for taking the measures by a third party (by way of compensation payments or subsidies pursuant to § 32 as the case may be).

(2) If they are addressed to an indeterminate group of persons, measures, orders and prohibitions pursuant to para. 1 must be laid down by regulation; otherwise they must be laid down by decree.

(3) If there is a danger that objects that are subject to export restrictions will be exported illegally (§§ 16 *ff.*), the competent district administrative authority must, upon the request of the Federal Monuments Authority, order measures to avert the danger, in particular by listing the objects or forcibly placing them into the custody of a museum or other public collection which comes into consideration by reason of its scope of activities.

(4) If a danger of the type specified in para. 3 can be assumed, an obligation can be imposed upon owners, possessors and keepers of collections to notify the Federal Monuments Authority of any change in the stock, the place of safekeeping or ownership, possession or keeping structures in a timely manner.

### Subsidies and Compensation

**§ 32.** (1) Subsidies (including interest subsidies) may be granted within the framework of financial legislation for costs arising from the securing, preservation and research of monuments (including the surroundings which are important for such monuments) or which are caused by alterations made to achieve a condition and preservation appropriate for a monument. The significance of a monument and the economic problems of its proper restoration, but also the tax advantages for the owner which are associated with the monument must be given special consideration. Subsidies may be granted for all measures which allow – either directly or indirectly – monuments to be saved from alteration, destruction or being dispatched, and may also be granted as an incentive to an owner limited in his rights by the protection of a monument.

(2) If possible, subsidies may also be granted to owners of, and other persons holding real rights in, monuments as compensation for significant impairments which arise due to works carried out by the Federal Monuments Authority as part of the execution of this Federal Act (for example, by carrying out excavations of archaeological monuments).

(3) All details and guidelines for the granting of subsidies and compensation within the meaning of this paragraph must be laid down in a regulation to be issued by the Federal Minister for Education, Art and Culture, in agreement with the Federal Minister of Finance.

### Monuments Fund

**§ 33.** (1) For the additional financing of measures set out in § 32, in particular those to save movable and immovable objects which are under monument protection and which are under direct threat of becoming dilapidated or being dispatched abroad, a “Monuments Fund” must be established as an administration fund which is to be managed by the Federal Minister for Education, Art and Culture.

(2) The financial resources of the fund are constituted from donations, proceeds from events in favour of the fund, fines paid on the basis of this Federal Act (§ 37) as well as other income and contributions.

(3) *(Note: repealed by Federal Gazette I Nr. 92/2013)*

(4) The Federal Minister for Education, Art and Culture will distribute the financial resources for the purposes specified in para. 1 according to the guidelines specified in § 32. Unless there is imminent danger, the Monument Advisory Board (§ 15) must be heard prior to the distribution of financial resources for saving immovable monuments.

### **Transfer of Ownership in Cultural Goods**

**§ 34.** (1) If a cultural good is found, the owner of which is unknown and which – to all appearances – has been the object of a punishable offence according to the provisions of this Federal Act, ownership in this object transfers to the Federation upon its being found, unless the provisions concerning acquisition of ownership by finding apply.

(2) Objects in which ownership transfers to the Federation may not be alienated within 30 years of that transfer of ownership. Such objects must be surrendered to the Federal Monuments Authority. The latter must ensure that they kept in the appropriate custody of a museum or other public collection which comes into consideration by reason of its scope of activities during this 30 year period. After the expiry of this period, the Federal Monuments Authority must decide on the final mode of safekeeping.

(3) Within the 30 year period, the previous owner or his legal successor may submit a request to the Federal Monuments Authority for the retransfer of ownership in the objects concerned from the Federation. If it has not been proven that the object in question was involved in a punishable act pursuant to § 37 in which the previous owner was involved (either as a perpetrator or as an accessory), the ownership in the object must be retransferred to the owner. The Federal Minister of Finance must make a decision on the recognition or rejection of the claim. In cases where the request is rejected or no request is made, ownership rights may be enforced under civil law. If the request for retransfer is submitted to the Federal Monuments Authority within the 30 year period and if the enforcement under civil law is done within one year of the request for retransfer being rejected, it is not possible to invoke the objection of the statute of limitations if the 30 year period has already been exceeded.

(4) The criteria of proportionality and reasonableness must be considered when taking decisions pursuant to para. 3.

### **Seizure in Case of Suspicion of Illegal Export**

**§ 35.** (1) As part of the exercise of their duties, the customs administration bodies are authorised to seize goods if

1. there is a suspicion that objects are to be exported in contravention of this provisions of this Federal Act or the relevant provisions of European law (§ 19), or
2. objects are concerned which are threatened by dilapidation (§ 37) or have already been declared dilapidated or the ownership of which has transferred to the Federation (§§ 34, 36, 37).

(2) The provisions of customs law concerning the seizure of goods apply.

(3) A seizure pursuant to para. 1 must be revoked as soon as the license required for export (§§ 17, 19, 22) or a confirmation (§ 18) or a decree determining that there is no public interest in retention of the objects in the Republic of Austria is presented. The seizure must also be revoked if the Federal Monuments Authority (or its expert bodies or another expert engaged by the Federal Monuments Authority) has not conducted an examination of the objects within three working days of the objects being seized and a declaration of the Federal Monuments Authority has not been received by the customs authority within a further week to the effect that it can be assumed that a cultural good is concerned, the retention of which in the Republic of Austria is in fact in the public interest.

### **Order for Restoration and Retrieval**

**§ 36.** (1) In cases where monuments have been illegally altered or destroyed, the Federal Monuments Authority may request the competent district administrative authority to order the person culpable to restore the affected monument to the condition existing before the last, or earlier, illegal alteration or destruction for which he is culpable (if this is possible) at his own expense. However, this measure may only be ordered if carrying it out would result in recovering its earlier condition or at least its earlier appearance in a way which corresponds to the significance of the monument, even if this significance or extent is reduced but still worthy of protection, and justifies the continuation of the monument protection – at least in the form of partial monument protection (§ 1 para. 8). The effective placement under monument protection covers monuments which have been restored within the meaning of this paragraph, also in cases where this has been limited to partial monument protection by a procedure for the revocation of monument protection. Similarly, the person culpable for the illegal alienation of individual objects belonging to collection unit (§ 6 para. 5 final sentence) can be ordered to restore the situation existing prior to this illegal act or bear the costs of any repurchase which may have been made for the purposes of substitution.

(2) If a cultural good is dispatched abroad illegally (§§ 17 to 19) or remains there (§ 22), and to the extent that any compensation fine (§ 37) or forfeited deposits are not sufficient (§ 22 para. 2), the

competent district administrative authority may, upon the request of the Federal Monuments Authority and within 20 years of the cultural good being dispatched (or left) abroad illegally, order suitable measures for the retrieval of the objects (including their purchase), the costs of which must be borne by the culpable person (if there are several culpable persons, they are jointly and severally liable). To the extent that cultural goods are returned to the Republic of Austria on the basis of this provision, ownership in the same transfers to the Federation, unless the previous owner was not culpable for their illegal export. Otherwise, the provisions on transferral of ownership in cultural goods (§ 34) apply *mutatis mutandis*.

(3) To the extent that the provisions of the Federal Act implementing Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of an EU Country, Federal Gazette I Nr. 67/1998, as amended, are applicable to the retrieval of cultural goods from a Member State of the European Union, these provisions apply instead of the provisions of para. 2.

(4) The criteria of proportionality and reasonableness must be considered when issuing orders pursuant to para. 1 and 2.

### Sanctions

**§ 37.** (1) Whoever, in contravention of the provisions of § 4 para. 1 and § 5 para. 1, destroys an individual monument, or an ensemble which is under monument protection as a unit, or a collection which is under monument protection as a unit, will – if the offence is not punishable by the courts with a more severe sanction pursuant to another provision – be punished by the court with a fine of up to 360 daily units. Besides the fine, a compensation fine must also be imposed in cases where the restoration pursuant to § 36 is not ordered, or has been ordered, but intentionally has not been carried out in spite of a formal warning being given. Under these circumstances, a compensation fine will also be imposed if the act is punishable by the courts with a more severe sanction pursuant to another provision. The amount of the compensation fine must be equal to the costs which would have been incurred for the restoration or the production of an object of equal value, or the value of the additional benefit achieved by committing the offence. The compensation fine must be imposed on all persons involved in the commission of the offence on a *pro rata* basis under consideration of the principles of sanction determination (§§ 32 to 35 Austrian Criminal Code). The criminal prosecution must be carried out by the courts of first instance.

(2) 1. Whoever intentionally

- alters a monument in contravention of the provisions of § 4 para. 1 and 2 or § 5 para. 1 or
- dispatches cultural goods abroad illegally or leaves such cultural goods abroad illegally in contravention of the provisions of §§ 17, 18, 19 and 22 or in contravention of the Regulation (EC) Nr. 116/2009 and the Implementing Regulation (EU) Nr. 1081/2012 for the Purposes of Regulation (EC) Nr. 116/2009, Official Journal Nr. L 324 dated 22.11.2012 p. 1, or
- whoever prevents or attempts to impede measures ordered pursuant to §§ 31 or 36

will – unless the offence constitutes a criminal offence falling within the jurisdiction of the courts – be punished by the district administrative authority with a fine of up to EUR 50,800.

2. Whoever, in contravention of the provisions of § 6 para. 5, intentionally alienates, encumbers or acquires an object belonging to a collection, or, in contravention of the provisions of § 11 para. 1, carries out investigations (excavations) without the necessary permission, will – unless the offence constitutes a criminal offence falling within the jurisdiction of the courts – be punished with a fine of up to EUR 25,400. Furthermore, the objects from a collection pursuant to § 1 para. 5 final sentence which have been alienated without permission pursuant to § 6 para. 5 as well as objects which have been found during excavations may be declared forfeited.

3. The provisions of para. 1 concerning the imposition of a compensation fine apply *mutatis mutandis* to criminal prosecutions carried out on the basis of this paragraph.

(3) Whoever intentionally

1. omits to submit (or submits an incorrect) report pursuant to § 8 para. 1,
2. alters the condition of an archaeological site or the objects found in contravention of the provisions of § 9 para. 1,
3. omits to secure or recover finds or take other measures pursuant to § 9 para. 2 or attempts to render such measures ineffective,
4. omits to make objects found available in contravention of the provisions of § 9 para. 4,
5. prevents the enforcement of the right to acquire pursuant to § 10,
6. uses metal detector devices or other detection devices in contravention of the provisions of § 11 para. 8,
7. omits to submit (or submits incorrect) reports and notifications pursuant to § 11,

8. uses the designation as a protected monument (§ 12) or pursuant to the Hague Convention (§ 13 para. 6) in an improper way or omits to carry out designations ordered by decree,
9. omits to submit (or submits incorrect) information and reports specified in § 30,
10. attempts to obstruct or render ineffective the viewing and scientific research of monuments and presumed archaeological monuments as well as the specified supervision by the Federal Monuments Authority pursuant to § 30,

will – unless the offence constitutes a criminal offence falling within the jurisdiction of the courts – be punished by the district administrative authority with a fine of up to EUR 5,000. The provisions of para. 1 concerning the imposition of a compensation fine apply *mutatis mutandis* to criminal prosecutions carried out on the basis of this paragraph.

(4) Whoever intentionally

1. omits to submit a report on the impossibility of taking necessary minor repair measures pursuant to § 4 para. 1 nr. 2,
2. alienates a monument without a permit pursuant to § 6 para. 1,
3. omits to notify the Federal Monuments Authority pursuant to 6 para. 4 of the alienation of a monument or inform the acquiror of the fact that the monument is under monument protection or that a procedure for placement under monument protection has been initiated,

will be – unless the offence constitutes a criminal offence falling within the jurisdiction of the courts – punished by the district administrative authority with a fine of up to EUR 2,100. The provisions of para. 1 concerning the imposition of a compensation fine apply *mutatis mutandis* to criminal prosecutions carried out on this basis of this paragraph.

(5) The criteria of proportionality and reasonableness must be considered when taking decisions pursuant to para. 2 to 4.

(6) In cases where a criminal prosecution is being carried out, to the extent that the Federal Monuments Authority grants a permit retrospectively or determines by decree that no public interest exists (or existed) in the preservation of a monument, the prosecution must be discontinued.

(7) With regard to offences listed in para. 2 to 4, the statute of limitations pursuant to § 31 para. 2 Administrative Penal Act starts to run at the point when the Federal Monuments Authority becomes aware of the prohibited acts or omissions and the culpable person has been traced; in any case, the time limit ends five years after the completion of the offence.

(8) In criminal prosecutions pursuant to para. 1 and 4, responses of the Federal Monuments Authority must be obtained.

(9) The monies paid pursuant to § 37 transfer to the Federation and must be used to cover expenses associated with the Monument Fund.

#### **Exemption from Fees**

§ 38. Written documents which have been produced as a direct consequence of this Federal Act are exempted from stamp duties.

#### **Exemption from Duties, Costs**

§ 39. (1) Procedures carried out on the basis of this Federal Act are exempted from administrative duties. Costs within the meaning of §§ 75 General Administrative Procedure Act must be borne *ex officio* in all cases, unless such costs have been caused by culpable persons and their culpability has been determined by a decision under criminal law.

(2) Costs incurred by a party (person submitting a request) due to transport or the submission of documents (certificates, plans, photographs etc.) will not be compensated (refunded), even if they have been imposed *ex officio*.

#### **Appropriation of Financial Resources**

§ 40. Within the meaning of the Federal Budget Act 2013, Federal Gazette I Nr. 139/2009, as amended:

1. the financial resources of the Monument Fund must be used for the measures specified in § 33 para. 1,
2. the income of the Federal Monuments Authority in the areas of
  - a. “conservation and restoration”

b. “specialist further education”

must be used for the purposes of monument care (including the specialist further education and information in this field) as well as the fitting out of the Federal Monuments Authority for operative purposes.

**Execution**

**§ 41.** The Federal Minister for Education, Art and Culture is charged with the execution of this Federal Act; in cases concerning archive materials, the Federal Chancellor is charged with the execution of this Federal Act. The Federal Minister for Justice is charged with the execution of this Federal Act in cases of § 2 para. 3, § 2a para. 7 and § 3 para. 3 (to the extent that these concern matters of the land registry), as well as in cases of § 10 para. 2 final sentence and § 37 para. 1. In cases of §§ 28 para. 7, 34 para. 3, 35, 36 para. 2, 38 and 39 para. 1, the Federal Minister of Finance is charged with the execution of this Federal Act. In cases of § 32 para. 3, to the extent that these concern the issue of guidelines, the Federal Minister for Education, Art and Culture is charged with the execution of this Federal Act in agreement with the Federal Minister of Finance. In cases of § 34 para. 3, to the extent that these concern the enforcement of returns before the civil courts, the Federal Minister for Justice is charged with the execution of this Federal Act.

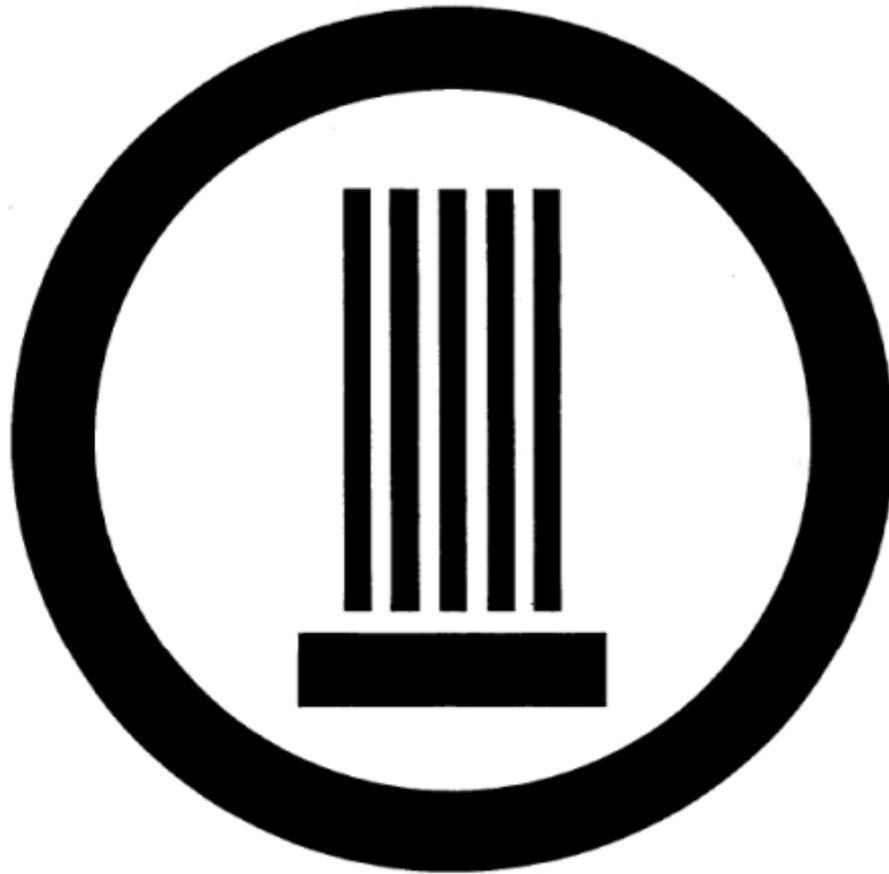
**Entry into Force**

**§ 42.** The following provisions enter into force as amended by the Federal Act promulgated in Federal Law Gazette I No. 92/2013:

1. The table of contents, § 2a para. 7, § 8 para. 1, § 12, § 13 para. 4 and 8, § 14, § 15 para. 1 and 5, § 16 para. 3, § 17 para. 2, the title of § 19, § 19 para. 1 and 2, § 22 para. 5, § 23, § 24, § 28 para. 6, § 32 para. 3, § 33 para. 1, § 33 para. 4, § 34 para. 3, § 35 para. 1 and § 36 para. 3, § 37 para. 2, 3 and 4, § 40, § 41 as well as the removal of § 33 para. 3 upon the day following the announcement of the Federal Act in Federal Gazette I Nr. 92/2013,
2. § 5 para. 8, § 11 para. 9, § 15 para. 2 and 3, § 26 nr. 7 and § 29 para. 1 and 3 on the 1<sup>st</sup> January 2014.

**Annex 1**

**Insignia of „Monument Protection“ pursuant to § 12**



**Note on the following provision**

Constitutional provision

**Annex 2**

**Constitutional Provision**

**Table of the Parks and Gardens pursuant to § 1 para. 12**

**Burgenland:**

1. Draßburg, palace park
2. Eisenstadt, palace park
3. Halbturn, palace park
4. Kittsee, palace park

**Carinthia:**

5. Damtschach, palace park
6. Rosegg, palace gardens
7. Wolfsberg, castle park
8. Zwischenwässern, bishop's residence gardens

**Lower Austria:**

9. Artstetten, castle
10. Bruck/Leitha, Prugg Palace
11. Ernstbrunn, castle gardens
12. Grafenegg, castle park
13. Hernstein, castle park
14. Kleinwetzdorf, castle park
15. Laxenburg, castle park
16. Melk, abbey gardens
17. Obersiebenbrunn, castle park
18. Pottendorf, castle park
19. Salaberg, castle park and zoo
20. Schlosshof, park
21. Schönau/Triesting, castle park
22. Schönborn, castle park
23. Seitenstetten, abbey gardens

**Upper Austria:**

24. Bad Ischl, Imperial Villa, park
25. Gmunden, Villa Toscana, park
26. Linz, Bauernberg Parks, park
27. Neuwartenburg, palace park

**Salzburg:**

28. Anif, palace park
29. Salzburg, Hellbrunn, palace park
30. Salzburg, Kleßheim, palace park
31. Salzburg, Leopoldskron, palace park
32. Salzburg, Mirabell, palace park (Mirabellgarten, core zone)

**Styria:**

33. Bad Gleichenberg, spa park
34. Brunsee, castle park
35. Graz-Eggenberg, palace park
36. Graz, Schlossberg and Stadtpark
37. Hollenegg, castle park

**Tyrol:**

38. Flauring, Riesgebäude, gardens
39. Innsbruck, Ambras Castle, palace park
40. Innsbruck, Hofgarten
41. Reith, Matzen Castle, park

**Vorarlberg:**

42. Bregenz, Palais Thurn und Taxis, gardens
43. Bregenz, Villa Raczinsky (Marienberg Abbey), gardens
44. Feldkirch, Villa Tschavoll, gardens
45. Dornbirn, ensemble of villa gardens Dr.-Waibel-Straße Nr. 11, 12 and 14

**Vienna:**

46. Palais Augarten, park
47. Belvedere Palace, palace park
48. Gardens of the Hofburg complex (Volksgarten, Burggarten, Heldenplatz, Maria-Theresien-Platz)
49. Neuwaldegg, palace park
50. Pötzleinsdorf, palace park
51. Villa Primavesi, park

- 52. Rathauspark
- 53. Schönbrunn Palace, park
- 54. Palais Schwarzenberg (3rd district of Vienna), park
- 55. Stadtpark
- 56. Türkenschanzpark

## Article II

*(Note: from Federal Gazette Nr. 170/1999, regarding §§ 5, 11 and 37, Federal Gazette Nr. 533/1923)*

*(1) (Note: determined to be no longer valid by Art. 2 § 2 para 2 nr. 73, Federal Gazette I Nr. 2/2008)*

(2) The following are abrogated upon this Federal Act entering into force:

- 1. The Act on the Prohibition on Export of Cultural Goods – “AusfVKG” as amended by Federal Gazette Nr. 391/1986.
- 2. The Regulation of the Austrian Federal Chancellery and the Federal Ministry for Education of 25th June 1924 on the Implementation of the Federal Act of 25<sup>th</sup> September 1923, Federal Gazette Nr. 533 (Monuments Protection Act), Federal Gazette Nr. 299/1924.
- 3. The Regulation of the Federal Ministry for Education in agreement with the Austrian Federal Chancellery of 19<sup>th</sup> January 1931 on the Protection of Historical Writings, Federal Gazette Nr. 56/1931.
- 4. The Regulation of the Federal Minister for Science and Research of 5<sup>th</sup> June 1986 on Cultural Goods whose Retention in the Country is not in the Public Interest, Federal Gazette Nr. 323/1986 as amended by Federal Gazette Nr. 998/1994.
- 5. Regulation of the Federal Minister for Science and Research of 13th June 1986 on the Detailed Provisions on the Procedure to Export Cultural Goods, Federal Gazette Nr. 324/1986.

(3) Excavation permits pursuant to § 11 para. 1 which were not granted to natural persons and for concrete excavation plans lose their legal effectiveness; the same applies to all entitlements to the issue of “certificates” pursuant to § 2 para. 4 AusfVKG.

(4) All legally effective decrees on the basis of AusfVKG remain legally effective in the extent and for the duration set out in the provisions of AusfVKG.

(5) To the extent that procedures under the previous version of the Monuments Protection Act or under the Act on the Prohibition on Export of Cultural Goods have not been concluded when this Federal Act enters into force, such procedures must be continued according to the provisions of this Federal Act.

(6) The time limit of six months for the determination by decree of the total destruction of a monument pursuant to § 5 para. 7 final sentence will apply only to those cases which become known to the Federal Monuments Authority after this Act has entered into force.

(7) The sanctions laid down by this Federal Act apply in Euros as of 1<sup>st</sup> January 2002 at the conversional rate of 13.7603 Schilling to 1 Euro, rounded up to the next 100.