

Spain

NATIONAL LEGISLATION FOR THE PROTECTION OF CULTURAL HERITAGE

1 - National Regulations (publication references)

- Law 16/1985 on Spain's historical heritage, Official State Gazette (BOE) of 29 June 1985.
- Royal Decree 111/1986 implementing Law 16/1985 on Spain's historical heritage, BOE of 28 January 1986.
- Royal Decree 64/1994 partially amending Royal Decree 111/1986, BOE of 2 March 1994

2 - National cultural protection

2.1. - Framework of protection (nature and legal status of protected cultural goods)

Under Spanish law there are three categories of cultural property whose removal from Spanish territory is controlled by the Culture Ministry and the Customs Services:

- 1 Objects of cultural interest
- 2 Objects included in the General Inventory of Movable Property
- 3 Objects over 100 years old.

Framework

An authorisation is required for removal from Spanish territory to other EU countries. Its terms are similar to those of the definitive and temporary export licences required for third countries. It is compulsory for the goods in categories 2 and 3: General Inventory of Moveable Property and objects over 100 years old.

Legal status of cultural goods

Lawfully imported cultural goods can take up the possibility provided for in Law 16/1985, granting a 10-year period during which the Spanish State cannot declare them unexportable. This period can be extended for a further ten years.

A cultural object definitively imported into Spain and which is not covered by the above possibility, comes under the general provisions of Spanish legislation, and is therefore assumed to belong to the third category of goods of Spain's historical heritage, i.e. goods over 100 years old.

Inclusion in the two first categories of protection is voluntary for privately-owned property.

2.2. - Protection of cultural goods (procedure, document for leaving the country, modalities to issue and use)

Goods of cultural interest can only leave Spanish territory temporarily for a specific purpose (exhibitions, restoration, etc...) and a limited length of time. Their return is compulsory. The other categories of protection require an export licence for definitive and temporary export, with the possibility of sale.

The Community authorisation form provided for in Regulation EEC No 752/93 is used for export to third countries of the cultural objects listed in the Annex to Regulation EEC No 3911/92.

The Spanish authorisation form is used in the case of temporary export, temporary export with the possibility of sale, or definitive export to other Member States or to third countries, of goods protected by Spanish legislation but not deemed to be cultural goods under Community legislation.

The export authorisations are signed by the Director-General of Fine Arts and Cultural Goods, and certified by the Deputy Director-General for the Protection of Spain's Historical Heritage.

2.3. - Authority for the national protection and for objects of cultural interest

Ministerio de Educación, Cultura y Deporte

Dirección General de Bellas Artes y Bienes Culturales (Director General: Sr. Joaquín Puig de la Bellacasa)

Subdirección General de Protección del Patrimonio Histórico Español (Subdirector General: Sr. Luis Lafuente Batanero

Telephone 34.91.7017035

Plaza del Rey, nº 1

28071 Madrid – Spain

(contact point: Mrs Pilar Barraca de Ramos

telephone 34.91.7017040

fax 34.91 5229305)

3 – Protection of objects of cultural interest

3.1. - Definition of objects of cultural interest

In Spain, objects of cultural interest include:

- Objects belonging to public collections
- Privately-owned objects that have been, or are in the process of being, declared objects of cultural interest.

Objects of cultural interest can belong to public institutions and collections and private individuals.

3.2. - Nature of the protection (legal status, licence for exit or accompanying document)

In Spain, objects of cultural interest may not be definitively exported.

Their temporary export for restoration, expert opinion, participation in a cultural event or storage in a foreign public institution may be authorised for a limited period.

Temporary export of objects of cultural interest to another Member State or a third country requires the issuing of a temporary export authorisation. Their return is compulsory.

4 – Controls established to assure the protection of national cultural heritage

4.1. - Authority appointed for control of export (contact point)

Ministerio de Hacienda

Agencia Estatal de Administración Tributaria

Departamento de Aduanas e Impuestos Especiales

Av. Llano Castellano, nº 17

28071 Madrid

Contact point: Mrs María Dolores Gómez de Salazar,

telephone 34.91.7289888

fax 34-91-7292065 or 34-91-3583172

4.2.- Nature and legal basis for the control

- Article 46 of the 1978 Spanish Constitution (BOE of 29 December 1978).
- Organic Law 12/1995 of 12 December 1995 on combating smuggling.

- Law 14/2000 of 29 December 2000 on tax, administrative and social measures (BOE of 30 December 2000), as amended by Law 24/2001 (BOE of 31 December 2001).
- Royal Decree 1649/98 of 24 July 1998 implementing Title II of Law 12/1995
- Royal Decree 1631/92 of 29 December 1992, imposing restrictions on the movement of goods and merchandise.

4.3. - Modalities of control (particular powers):

Where the Courts find that the offence of smuggling has been committed or the Customs services find that an administrative infringement of smuggling has been committed, not only are the corresponding administrative penalties or sanctions applied but the goods are also seized.

The smuggled goods and the means used to smuggle them are confiscated, as are the proceeds of the smuggling, whatever transformations they have undergone.

The goods confiscated by final judgment are awarded to the State.

5 – Penalties

5.1. - Relating to Spain's national heritage

Common law penalties:

The penalty for the crime of smuggling is a prison sentence, a fine ranging from two to four times the value of the goods, and confiscation of the goods. The Judges or Courts will impose the maximum penalty in cases where the offence is committed by or for persons, entities or organisations whose nature or activity could have facilitated committing the offence.

The penalty for the administrative infringement of smuggling is a fine of up to three times the value of the goods.

According to Article 29 of Law 16/1985, unlawfully exported goods become the property of the Spanish State and it is up to the authorities to take the necessary steps for the full recovery of the goods.

6 – Other national specific regulations

6.1 – Existence of preemption right, condition of functioning

The request for a definitive or temporary export licence with the possibility of sale constitutes an irrevocable offer of sale to the State for the declared value of the cultural object in question.

6.2. - National taxation, particulars

Law 16/1985 sets rates on the values declared for definitive and temporary export with the possibility of sale to third countries.

6.3. - Any other particulars

Moveable property belonging to ecclesiastical institutions and included in the General Inventory may not be exported.

Objects belonging to the Spanish archaeological heritage may not be exported, as they have been declared public property by Article 44 of Law 16/85, and hence are inalienable.

7 – Sites (Internet or other) to access the previous information

The legal texts can be found at the following site:

www.mcu.es

The export application forms are available from:

Ministerio de Educación, Cultura y Deporte

Subdirección General de Protección del Patrimonio Histórico Español

Plaza del Rey, nº 1

28071 Madrid – Spain

(Contact point: Mrs Pilar Barraca de Ramos

telephone 34.91.7017040

fax 34.91 5229305)

Community legislation for the protection of cultural heritage
--

1. Council Directive No EEC/93/7 of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

1.1 Transposition texts (references)

Law 36/1994 of 23 December 1994 incorporating Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State into Spanish legislation (BOE of 24 December 1994).

Law 18/1998 of 15 June partially amending Law 36/1994 (BOE of 16 June 1998).

1.2 Central authority appointed in connection with the return of cultural goods

Ministerio de Educación, Cultura y Deporte

Dirección General de Bellas Artes y Bienes Culturales (Director General: Sr. Joaquín Puig de la Bellacasa)

Subdirección General de Protección del Patrimonio Histórico Español (Subdirector General: Sr. Luis Lafuente Batanero

Telephone 34.91 7017035)

Plaza del Rey, nº 1

28071 Madrid – Spain

(Contact point: Pilar Barraca de Ramos

telephone 34.91.7017040

fax 34.91 5229305)

2 Council Regulation EEC No 3911/92 of 9 December 1992 on the export of cultural goods

2.1 Competent authority for issuing the export licences of cultural goods

Ministerio de Educación, Cultura y Deporte

Dirección General de Bellas Artes y Bienes Culturales (Director General: Sr. Joaquín Puig de la Bellacasa)

Subdirección General de Protección del Patrimonio Histórico Español (Subdirector General: Sr. Luis Lafuente Batanero

Telephone 34.91 7017035)

Plaza del Rey, nº 1

28071 Madrid – Spain

Contact point: Pilar Barraca de Ramos

telephone 34.91.7017040

fax 34.91.5229305

2.2 Nature of the control

The export declaration (SAD), together with the export authorisation issued by the Culture Ministry, must be presented to the Customs offices empowered to carry out export formalities for cultural goods.

2.3 Penalties

Article 2.1 of Law 12/1995 on combating smuggling defines the crime of smuggling, which includes unlawful export of goods with a value of over EUR 18 000. Article 3.1 lays down the penalties for this type of offence, which can include prison sentences and fines.

2.4 List of customs offices empowered to handle formalities for the export of cultural goods

PROVINCIAL CUSTOMS DEPARTMENTS	HANDLING OFFICES
DPA e II. EE. de SEVILLA	<ul style="list-style-type: none">• Sevilla.
DPA e II. EE. de CADIZ	<ul style="list-style-type: none">• Algeciras• Cádiz
DPA e II. EE. de MÁLAGA	<ul style="list-style-type: none">• Aeropuerto de Málaga.• Málaga
DPA e II. EE. de ZARAGOZA	<ul style="list-style-type: none">• Aeropuerto de Zaragoza.
DPA e II. EE. de BALEARES	<ul style="list-style-type: none">• Aeropuerto de Palma de Mallorca.• Edificio Aduana –Palma de Mallorca
DPA e II. EE. de LAS PALMAS	<ul style="list-style-type: none">• Aeropuerto de Las Palmas• Muelle
DPA e II. EE. de SANTA CRUZ DE TENERIFE	<ul style="list-style-type: none">• Aeropuerto de Santa Cruz de Tenerife – Reina Sofía.• Aeropuerto de Santa Cruz de Tenerife – Los Rodeos.• Santa Cruz de Tenerife
DPA e II. EE. de BARCELONA	<ul style="list-style-type: none">• Barcelona Edificio Aduana• Barcelona – Marítima.• Barcelona – Carretera• Aeropuerto de Barcelona – El Prat.
DPA e II. EE. de LA CORUÑA	<ul style="list-style-type: none">• Aeropuerto de Santiago de Compostela.• Coruña Edificio Aduana
DPA e II. EE. de MADRID	<ul style="list-style-type: none">• Central Guzmán el Bueno• Madrid – Carretera• Aeropuerto de Madrid – Barajas.• Madrid – Ferrocarril
DPA e II. EE. de ALICANTE	<ul style="list-style-type: none">• Aeropuerto de Alicante.• Muelle
DPA e II. EE. de VALENCIA	<ul style="list-style-type: none">• Valencia – Muelle de Aduana• Valencia – Marítima.• Aeropuerto de Manises.
DPA e II. EE. de VIZCAYA	<ul style="list-style-type: none">• Edificio Aduana• Bilbao – Marítima.• Aeropuerto de Bilbao.• Bilbao – Carretera Aparcabisa

2.5 Competent authority to implement controls (contact point)

Ministerio de Hacienda
Agencia Estatal de Administración Tributaria
Departamento de Aduanas e Impuestos Especiales
Av. Llano Castellano, 17
28071 Madrid
Contact point: María Dolores Gómez de Salazar

telephone: 34.91.7289888
Fax 34.91.7292065 and 34.91.3583172

2.6 Sites (Internet or others) to access previous information

Information on the role of the customs (legislation, documentation and procedure, customs agents, forms, commercial operations, characteristics of the goods, customs administrations, etc...) can be found at the following site:

www.aeat.es

International Conventions

1- Accession to International Conventions

Instrument of Ratification of the UNESCO Convention (BOE of 5 February 1982) on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, done at Paris on 17 November 1970.

2- Responsible authority appointed for the implementation of conventions (contact point)

Ministerio de Educación, Cultura y Deporte

Dirección General de Bellas Artes y Bienes Culturales (Director General: Sr. Joaquín Puig de la Bellacasa)

Subdirección General de Protección del Patrimonio Histórico Español (Subdirector General: Sr. Luis Lafuente Bataner

Plaza del Rey, nº 1

28071 Madrid – Spain

Telephone 34.91 7017035)

(Contact point: Pilar Barraca de Ramos

telephone 34.91.7017040

fax 34.91 5229305)

3- Framework of the UNESCO Convention, in case of accession

Spain complies with Article 1 of the 1970 Paris Convention.

4- Other international conventions

UNIDROIT Convention, ratified in May 2002.

5- Sites to access previous information:

The relevant legal information can be found at the following sites: www.mcu.es and www.boe.es