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Regulating imports of cultural goods

Currently, with the exception of two specific measures for Iraq and Syria, there is no EU legislation covering the import of cultural goods from third countries entering the EU. Moreover, the national legislation introduced by some Member States in this area is divergent.

By ensuring that imports of cultural goods are subject to uniform controls along all EU external borders, the legislative proposal tabled by the Commission in July 2017 aims to prevent the import and storage in the EU of cultural goods illegally removed from a third country, thereby combatting trafficking in cultural goods, depriving terrorists of an income source, and protecting cultural heritage.

In the European Parliament, the Committees on International Trade (INTA) and on Internal Market and Consumer Protection (IMCO) adopted a joint report on the proposed legislation on 27 September 2018. The report, which aims to ensure a balance between curbing the illegal import of cultural goods and avoiding a disproportionate burden for licit art market operators and customs authorities, is scheduled for debate in plenary in October.

Proposal for a regulation of the European Parliament and of the Council on the import of cultural goods

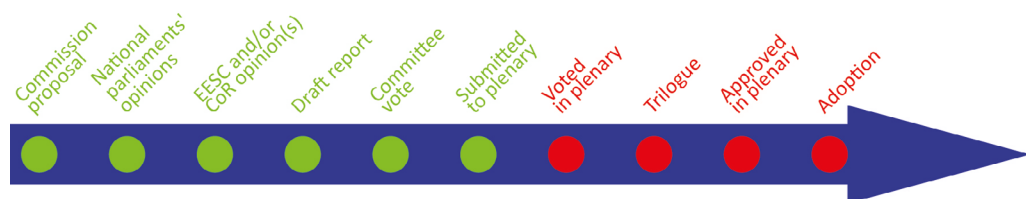
COM(2017) 375, 13.7.2017, 2017/0158(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committees responsible: (jointly under Rule 55)	International Trade (INTA) Internal Market and Consumer Protection (IMCO)
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Rapporteurs:	Alessia Maria Mosca (S&D, Italy) Daniel Dalton (ECR, United Kingdom)
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Next steps expected:	First-reading vote in plenary
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Second edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.





Introduction

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Introduction

Due to the lack of accurate statistics on the illegal trade in cultural goods,¹ it is difficult to estimate the financial extent of this activity. According to [Interpol](#), the profitability of the black market in art approaches the profitability of those for drugs, weapons and counterfeit goods. The United Nations Educational, Scientific and Cultural Organization ([Unesco](#)) has stated that, 'together with the trafficking in drugs and arms, the black market of antiquities and culture constitutes one of the most persistent illegal trades in the world'.

Several [external factors](#) contribute to the flourishing of the illicit market for cultural goods. These include the major technical advances used for plundering archaeological sites and historical monuments; the development of cross-border financial transactions and e-commerce; poverty, political instability and armed conflict in third countries; and finally, the high demand, concentrated mostly in Europe and North America, for cultural objects as, for example, investment opportunities.

There are also EU-related drivers for the problem of illegal imports of cultural goods² from third countries into the EU. The standard customs controls applied at EU borders are not able to adequately address the particularities of cultural artefacts. For example, in cases of illicit cultural goods from Iraq or Syria, where a false origin is declared by an importer, customs have to prove the Iraqi or Syrian provenance of these goods and that they are the products of looting or illegal excavations. This means that the burden of proof is placed on EU customs. Some Member States have introduced rules and requirements to combat the illicit import of cultural goods into their territory. However, individual efforts by Member States, in addition to being less effective than EU-level measures, result in an uneven treatment of items entering the EU. Moreover, these efforts bring uncertainty as to the applicable legislation within the EU regarding the licit provenance of goods.

The failure to halt the illegal import of cultural property into the EU has several consequences. Illicit trade in cultural goods encourages organised crime, terrorist financing, money laundering and tax evasion. It is detrimental to the cultural identity and heritage of source countries, and the uncertainty regarding the licit or illicit nature of imported cultural objects undermines the legal art and antiques market. Heavy administrative burden and costs for EU customs is also a consequence.

The legislative proposal is also very timely as the fight against the illicit trade in cultural goods has been defined as a key objective of the 2018 [European Year of Cultural Heritage](#).

- 1 On the Commission's webpage on the [fight against trafficking of cultural goods](#), illegal trade or trafficking of cultural goods is defined as follows: 'Trafficking of cultural goods is illicit import, export and transfer of ownership of cultural property, i.e. items being of importance for archaeology, prehistory, history, literature, art or science.'
- 2 The Commission's [factsheet](#) on the illegal import of cultural goods used to finance terrorism states: 'The import of cultural goods into the EU can be considered illicit when those goods have been exported from a non-EU country illegally, i.e. it is the laws of the exporting country that determine the licit or illicit character of the goods in question.'

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Existing situation

Over the years, several [measures](#) have been taken at international, EU and national levels to halt trafficking in cultural goods.³

The three main relevant international agreements relating to the trade in cultural goods and the protection of cultural heritage, i.e. the [1954 Hague Convention](#)⁴ and its protocols, the [1970 Unesco Convention](#)⁵ and the [1995 Unidroit Convention](#),⁶ establish certain general principles. [Twenty-six](#) EU Member States have ratified or acceded to the Hague Convention, [25](#) have ratified or acceded to the Unesco Convention and [14](#) ratified or acceded to the 1995 Unidroit Convention (two further Member States are signatories but did not ratify the Unidroit Convention).⁷

The EU applies common rules subjecting the export of EU cultural goods to prior authorisation ([Regulation \(EC\) No 116/2009](#)) and common rules on the return of cultural objects that were unlawfully removed from the territory of a Member State ([Directive 2014/60/EU](#)). However, there are no [common rules](#) for the import of cultural goods into the EU's customs territory from third countries, except Council Regulations ([EC\) No 1210/2003](#) and ([EU\) No 36/2012](#). These regulations provide for a prohibition of trade in cultural goods with Iraq and Syria, respectively. Cultural goods imported into the EU from third countries other than Iraq and Syria are [treated](#) like any other good, and a customs declaration requirement exists for such items.

All EU Member States regulate [trade in cultural goods](#). Most national legislation relates to the cultural heritage of the specific Member State. Since national definitions vary and may include cultural goods not covered by Regulation (EC) No 116/2009 on the export of cultural goods, Member States have introduced measures relating to the export and intra-Union movement of such goods. Only a small number of Member States have adopted specific legal provisions on the import of cultural goods. Greece is the only Member State where an import licence for certain cultural goods is required, whereas in Spain and in Italy, for instance, the use of import licences by operators is voluntary. In Germany and in France, an export certificate issued by authorities of the source country is required in order to allow the import of cultural goods into their territory. Austria and the Netherlands stress that it is prohibited to bring into the country cultural goods illegally exported from their countries of origin. Buyers of cultural goods are required by Austria and Germany to exercise due diligence to ensure the licit provenance of such objects.

According to the [TEFAF Art Market Report 2017](#), in 2015 Europe was the second largest trading area, with 41.25 % of art imports – just after the USA, with 41.5 % of global imports. The United Kingdom imported US\$6.275 billion worth of art, collectors' pieces and antiques, accounting for more than half of European art imports.

3 The 2017 [external study](#) carried out for the Commission states: 'The concept of cultural goods raises more controversy. Some goods are generally recognised to be cultural goods, nonetheless, there is a large grey zone with highly diverse interpretations of this concept. Different legal instruments provide for a different interpretation of the concept, causing disparities and corresponding difficulties with regard to enforcement of the existing legal frameworks in practice.'

4 Convention for the Protection of Cultural Property in the Event of an Armed Conflict.

5 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

6 Convention on Stolen or Illegally Exported Cultural Objects. This Convention was open for signature until 30 June 1996 (Article 11(2) of [the Convention](#)). Ratification is required of signatory states before the Convention can enter into force. Other states may accede to the Convention.

7 Data retrieved in February 2018.



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Parliament's starting position

The European Parliament, in its [resolution](#) of 30 April 2015 on the destruction of cultural sites by ISIL/Da'esh, suggested that the Commission focus on the fight against illicit trade in cultural goods. The Parliament also called for training programmes for judges, police and customs officers, government administrations and, more generally, for market players to be considered. Moreover, the Parliament wanted awareness-raising campaigns to be developed to discourage trafficking in cultural goods coming from war zones.

In its [resolution](#) of 11 June 2015 on Syria, the Parliament highlighted that joint efforts are needed by the international community to prevent illegal trade in cultural goods, which serves as a source of funds for terrorist groups. Furthermore, in its [recommendation](#) of 1 March 2018 on cutting the sources of income for jihadists, the Parliament welcomed the legislative proposal on the import of cultural goods and, among other things, called on the Commission to introduce a traceability certificate for artworks and antiques brought into the EU market, to enforce cooperation with international organisations, and to better support third countries' efforts to combat crime and trafficking as sources of funding for terrorist activities.

Council starting position

The proposed legislation also responds to the [Council conclusions](#) on the fight against the financing of terrorism of 12 February 2016. In its conclusions, the Council called on the Commission to propose legislative measures on the fight against the illicit trade in cultural goods as soon as possible.



Preparation of the proposal

The changes the proposal would bring

Proposal

Preparation of the proposal

Developments in Iraq and Syria, as well as the call for action from different international organisations, such as the World Customs Organization, the United Nations Security Council and the G7, have led to increased focus on the issue of illicit trade in cultural goods. In the context of its communication, [European agenda on security](#) of 2015 and [action plan to strengthen the fight against the financing of terrorism](#) of 2016, the European Commission announced plans for a legislative proposal to address financing of terrorism through illegal trade in cultural goods. The European Parliament and the Council welcomed the European agenda on security and the action plan, as did several national governments, and called for more efforts to curb the trafficking of cultural goods. The 2016 joint communication '[Towards an EU strategy for international cultural relations](#)', presented by the European Commission and the EU High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the European Commission, also announced the intention to prepare a legislative proposal to regulate the import into the EU of cultural goods.

In the preparation of the Commission proposal for a regulation, an [impact assessment](#) (IA) was conducted. The IA report, supported by an online [public consultation](#), was published on 13 July 2017. An [external study](#) on fighting illicit trafficking in cultural goods was carried out for the Commission, with the final report presented in June 2017. The European Parliamentary Research Service published an [initial appraisal](#) of the Commission's impact assessment in December 2017.

The changes the proposal would bring

The [legislative proposal](#) would provide for a common definition of cultural goods in the context of imports, introduce certain certification and documentation requirements at import, put in place effective deterrents to trafficking, ensure that EU importers exercise diligence when purchasing cultural goods from third countries, and strive for the active involvement of stakeholders in reducing trafficking. In addition to simplifying the work of EU customs authorities and providing legal certainty to trade operators and buyers, the proposed regulatory measure would also address the phenomenon known as 'port-shopping'⁸ at the EU's external borders.

The legislative proposal would offer an EU definition for cultural goods in the context of imports, based on the [definition](#) used by the 1995 Unidroit Convention, combined with a minimum age threshold of 250 years. Cultural goods of at least 250 years old have been shown to be [most at risk](#), and this age limit will contribute to reducing unnecessary administrative burdens for other objects. According to the proposed definition, the scope of the regulation would cover a wide range of objects, listed in the annex of the proposal.

8 'Port-shopping' refers to the practice whereby in order to avoid Member States with strict regulation, cultural goods are brought into the EU customs territory through Member States where no specific customs measures are in place, and can then benefit from the freedom of circulation of goods in the European Union to reach the final destination.



Preparation of the proposal

The changes the proposal would bring

New rules would also apply to the procedure by which importers would be able to introduce cultural goods into the EU, including storage in free zones.⁹ A new licensing system would be introduced for the import of certain categories of cultural goods at high risk from pillage and destruction, namely archaeological finds, parts of monuments or archaeological sites, ancient manuscripts and books. Importers in the EU would be required to apply for an import licence from the competent authorities in the Member State of entry, providing proof of licit export of the goods from the source country. The holder of the goods would have to present the licence to the customs authorities.

For all other categories of cultural goods, importers would have to submit to the customs authorities of the Member State of entry a signed declaration accompanied by a standardised document (standard Object ID form) describing the cultural goods in question. The aim of the declaration signed by the holder of the cultural goods would be to certify that the goods in question have been exported legally from the source country.

The proposal would also empower customs authorities to seize and temporarily retain goods when the licit provenance of the goods in question cannot be demonstrated.

Member States would be required to organise cooperation between their competent authorities, as well as training and capacity-building sessions for the law enforcement authorities designated by them for the implementation of the regulation. The aim would be to develop relevant expertise and to cooperate more effectively in deterring illicit trade. The proposed legislation would also provide for the creation of an electronic database to facilitate the storage and exchange of information.

Member States would also be called upon to organise awareness-raising campaigns, targeting in particular potential buyers of cultural goods to dissuade them from buying items from third countries when their licit provenance is in doubt. Finally, Member States would be required to introduce effective, proportionate and dissuasive penalties for infringements of the customs control measures at import.

⁹ According to the impact assessment report, 'Free zones are designated tax free areas where no customs duties are levied on imports or exports.'



Views

National parliaments

Falling under the EU's exclusive competence for commercial policy and customs legislation, this legislative proposal is not subject to a subsidiarity check. The proposal may nonetheless be [considered](#) by national parliaments in the context of informal political dialogue. Three contributions were submitted, by the Italian Chamber of Deputies, the Italian Senate and the Portuguese Parliament.

Stakeholders' views¹⁰

The Commission launched a [public consultation](#) targeting the issue of illicit trafficking in cultural goods, which ran from October 2016 until January 2017. More than 300 contributions were received from business and other interested sectors. While enterprises seemed to favour initiatives being taken primarily by the exporting countries, Member States' public authorities and civil society would rather have EU legislation empowering customs to halt the introduction of illicit cultural goods into the EU. As regards documentary requirements at import for proving the legality of export from the source country, enterprises mostly seemed to prefer forms of self-certification, whereas Member States' public authorities said they are in favour of export certificates.

Various dealers' associations operating in the international art market have expressed concerns about the negative impact of the proposed legislation on trade in cultural artefacts, pointing out, for instance, the increased administrative obligations and costs and, in the case of books, difficulties related to the identification of 'source countries'.

¹⁰ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

Legislative process

The Commission adopted the legislative proposal on 13 July 2017, and submitted it to the European Parliament and Council. The Conference of Presidents decided on 11 January 2018 that the Committee on International Trade (INTA) and the Committee on Internal Market and Consumer Protection (IMCO) would draw-up a joint report, under Rule 55, with the Committee on Culture and Education (CULT) associated under Rule 54. Alessia Maria Mosca (S&D, Italy) and Daniel Dalton (ECR, United Kingdom) were appointed as co-rapporteurs. Santiago Fisas Ayxelà (EPP, Spain) was appointed as rapporteur for opinion for the CULT committee, and Kostas Chrysogonos (GUE/NGL, Greece) for the LIBE committee.

The draft report was discussed at a joint meeting of the INTA and IMCO committees on 23 April 2018. On 27 September 2018, a joint meeting of the two committees approved the report with a majority of 56 votes in favour, 4 votes against and 3 abstentions.

Some key elements of the [report](#) are set out below:

Scope of the regulation. The legislative proposal included a minimum age limit of 250 years for all categories of goods to be covered, and no financial threshold was set. According to the report, however, the minimum age threshold would be applicable to most – not all – of the categories of goods, and a financial threshold for certain categories of goods would be introduced. For instance, for the categories of cultural objects listed in Annex I, the value thresholds range between €15 000 and €150 000. However, some categories of goods would be exempt from the value threshold (A1, A2, A9 and A12, namely archaeological objects; elements of dismembered monuments; incunabula and manuscripts; and archives). Annex I would list the categories of cultural objects to be covered by the regulation.

In addition to the minimum age limits and financial thresholds, the report recommends taking into account the ‘[Red Lists](#)’ of the International Council of Museums’ (ICOM). These lists include categories of cultural objects most endangered by illicit trade. The report recommends creating an Annex II based on those lists, which lists countries and object categories.

Documentation requirements – Import licences. The report recommends that for the import of objects referred to in points A1 and A2 of Annex I (archaeological objects and elements of dismembered monuments), import licences would only be required if these objects feature in Annex II. Import licences would also be required for objects only listed in Annex II. For categories A3–A14, as well as for objects not listed in Annex II but referred to in categories A1 and A2, the submission of an importer statement would be necessary.

Legality of export. Should an import licence or importer statement be required, importers have to prove the lawful export from the source country or, in exceptional cases, from a third country. The report also specifies the conditions that must be met in order for the export of cultural goods from a third country to be considered legal.

Transit. The regulation would also apply to goods in transit through the EU, in situations where the competent authorities have justified reason to believe that those goods had been exported illegally.



Other elements of the report. The report recommends that the submission and processing of import licence applications and importer statements should be done by electronic means, using standardised electronic forms; and import licences and importer statements should be registered electronically by the competent authorities. Micro-, small and medium-sized enterprises should obtain adequate assistance for effective implementation of the regulation. The deadline for submitting a report on the implementation of the regulation to the European Parliament was changed from three to two years, and the deadline for the subsequent reports from five to four years.

On 8 June 2018, the CULT committee's [opinion](#) on the legislative proposal was issued. It noted that the measures protecting cultural heritage and those in favour of the art market must be balanced, in order to prevent the licit trade of cultural goods across the external borders from being disproportionately impeded. Recommendations concerning both types of measures have also been put forward. The [opinion](#) prepared by the LIBE committee was issued on 4 July 2018.

The European Parliament is expected to hold a debate in plenary in the October II session 2018, and to vote on the proposal as well as on opening trilogue negotiations.

The legislative proposal has been discussed several times in the Council at working party level. For instance, the third and fourth compromise texts on the proposed legislation, prepared by the Bulgarian Presidency, were studied in ten meetings. The Council is aiming to agree on its mandate for trilogue under the Austrian Presidency.



References

EP supporting analysis

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