



2017/0158(COD)

27.2.2018

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on International Trade and the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council
on the import of cultural goods
(COM(2017)0375 – C8-0227/2017 – 2017/0158(COD))

Rapporteur for opinion: Santiago Fisas Ayxelà

(*) Associated committee – Rule 54 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

I, as Rapporteur, welcome the proposal's objective of tackling money laundering and the alternative sources of terrorism financing, including the looting and smuggling of antiquities, always bearing in mind that the protection of the cultural heritage must be the ultimate purpose, specially this current year 2018 being the European Year of Cultural Heritage.

In this regard, it should be noted that there must be a balance between the measures to be adopted for the protection of the cultural heritage and the measures to be taken in favour of the art market, this is, not to impede licit trade of cultural goods across the external border disproportionately.

As Rapporteur I am in favour of setting a 250 year minimum age threshold for all the categories of cultural goods since it seems an appropriate age limit in line with the goal of the proposal. Moreover, I agree upon the fact that certain categories of cultural goods which are exposed to an increased risk of pillage, loss or destruction require reinforced protection measures.

On the one hand, with regards to the measures to be adopted in favour of the art market, first and foremost, the legality of the export should be examined based on the laws and regulations of the export country instead of the source country since I believe that the obligation to provide documents that prove the licit export from the source country is an additional burden on the art market. Consequently, the distinction made between signatory and non signatory states of the 1970 UNESCO Convention regarding the obligation to prove licit export from the export country or the source country respectively must be removed, having all Member States the obligation to prove that the export from the third country was licit according to its own laws and regulations.

Secondly, although the term "holder of the goods" is defined in the proposal by making reference to Article 5(34) of Regulation (EU) No 952/2013, I believe it is relevant to be certain that the term does not imply ownership since who is willing to obtain an import license may not be the owner of the goods yet.

Thirdly, according to the proposal, the temporary admission of cultural goods for educational, scientific or academic research purposes should not be subject to the presentation of a licence or a statement and I believe that restoration purposes should also be included in this exception.

On the other hand, with regards to the measures to be adopted in favour of the protection of the cultural heritage, firstly I propose to increase the time period considered as "temporary" from one month to ten years for the categories of goods referred to in points (c), (d) and (h) of the Annex; and to one year for the rest of categories set in the Annex.

Secondly, I would like to emphasise that taking into account the special nature of the goods, the role of the cultural experts within the customs authorities is extremely relevant since they may, if deemed necessary, require additional information from the declarant and physically examine the cultural goods by conducting an expertise.

Thirdly, with regards to the storage of the cultural goods into the customs territory of the

Union in case of temporary retention, due to the special nature of the goods, there shall be minimum conservation guarantees.

In order to facilitate the adaptation to this new regime, I completely agree on the organization of training and building activities by the Member States for the authorities and the professionals concerned, as well as awareness-raising campaigns for the buyers. Moreover, I believe that information contact points should be made available in each Member State in order to assist the market actors to implement this Regulation. Last but not least, it is essential to reinforce the electronic administration by means of the use of appropriate electronic standardised forms to prepare the importer statements or to apply for import licences, which shall be electronically submitted and registered by attributing a serial number and a registration date to them; together with the development of a fully operative electronic system for the exchange of information between the authorities of the Member States, which will certainly contribute to the prevention of forum shopping.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on International Trade and on the Committee on the Internal Market and Consumer Protection, as the committees responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) The legality of export should be examined based on the laws and regulations of the country *where* the cultural goods were *discovered or created* ('source country'). *In order to avoid circumvention, when the cultural goods enter the Union from a different third country*, the person who seeks to introduce *them* into the customs territory of the Union should demonstrate that they were exported from there legally, *when the third country in question is a signatory State of the 1970 UNESCO Convention and thus a country committed to fighting against illicit trafficking of cultural property. In other cases, the person should prove lawful export from the source country.*

Amendment

(7) The legality of export should be examined based on the laws and regulations of the *last* country *in which* the cultural goods were *permanently held before their dispatch to the Union* ('export country'). The person who seeks to introduce *the cultural goods* into the customs territory of the Union should demonstrate that they were exported from there legally.

Or. en

Amendment 2

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) Since certain categories of cultural goods, namely archaeological objects, elements of monuments, rare manuscripts and incunabula are particularly vulnerable to pillage and destruction, it seems necessary to provide for a system of increased scrutiny before they may enter the customs territory of the Union. Such a system should require the presentation of a licence issued by the competent authority of the Member State of entry prior to the release for free circulation of those goods or their placement under a special customs procedure other than transit. Persons seeking to obtain such a licence should be able to prove licit export from the *source* country with the appropriate supportive documents and evidence, in particular, export certificates or licences *issued by the third country of export*, ownership titles, invoices, sales contracts, insurance documents, transport documents and experts appraisals. Based on complete and accurate applications, the competent authorities of the Member States should decide whether to issue a licence without undue delay.

Amendment

(10) Since certain categories of cultural goods, namely archaeological objects, elements of monuments, rare manuscripts and incunabula are particularly vulnerable to pillage and destruction, it seems necessary to provide for a system of increased scrutiny before they may enter the customs territory of the Union. Such a system should require the presentation of a licence issued by the competent authority of the Member State of entry prior to the release for free circulation of those goods or their placement under a special customs procedure other than transit. Persons seeking to obtain such a licence should be able to prove licit export from the *export* country with the appropriate supportive documents and evidence, in particular, export certificates or *export* licences, ownership titles, invoices, sales contracts, insurance documents, transport documents and experts appraisals. Based on complete and accurate applications, the competent authorities of the Member States should decide whether to issue a licence without undue delay.

Or. en

Amendment 3

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Taking into account the specific nature of the goods, the role of the cultural experts within the customs

authorities is extremely relevant since they should be able, where necessary, to require additional information from the declarant and to physically examine the cultural goods by conducting an expertise.

Or. en

Amendment 4

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) For other categories of cultural goods, the persons seeking to introduce them into the customs territory of the Union should, by means of *a* statement, certify and assume responsibility for their lawful export from the *third* country and should provide sufficient information for those goods to be identified by customs. In order to facilitate the procedure and for reasons of legal certainty, the information about the cultural good should be provided using *a* standardised document. The Object ID standard, recommended by UNESCO, should be used to describe the cultural goods. *Customs should register the entry of those cultural goods, keep the originals and give a copy of the relevant documents to the declarant*, in order to ensure traceability after the goods enter the internal market.

Amendment

(11) For other categories of cultural goods, the persons seeking to introduce them into the customs territory of the Union should, by means of *an electronic* statement, certify and assume responsibility for their lawful export from the *export* country and should provide sufficient information for those goods to be identified by customs. In order to facilitate the procedure and for reasons of legal certainty, the information about the cultural good should be provided using *an electronic* standardised document. The Object ID standard, recommended by UNESCO, should be used to describe the cultural goods. Those cultural goods *should be electronically registered and the declarant should be provided with* a copy of the *submitted* documents in order to ensure traceability after the goods enter the internal market.

Or. en

Amendment 5

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Temporary admission of cultural goods for educational, scientific or academic research purposes should not be subject to the presentation of a licence or of a statement.

Amendment

(12) Temporary admission of cultural goods for educational, scientific, **restoration** or academic research purposes should not be subject to the presentation of a licence or of a statement.

Or. en

Amendment 6

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt specific modalities for the temporary admission and storage of cultural goods into the customs territory of the Union, **the** templates for import licence applications and forms, as well as for importer statements and their accompanying documents, as well as further procedural rules on their submission and processing. Implementing powers should also be conferred on the Commission to make arrangements for the establishment of an electronic database for the storage and exchange of information between Member States. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁸.

Amendment

(15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt specific modalities for the temporary admission and storage of cultural goods into the customs territory of the Union, **which should be done while guaranteeing minimum conservation conditions, having due regard to the specific nature of the goods. Those modalities should also apply to the electronic standardised** templates for import licence applications and forms, as well as for **electronic** importer statements and their accompanying documents, as well as **to** further procedural rules on their **electronic** submission and processing. Implementing powers should also be conferred on the Commission to make arrangements for the establishment of an electronic database for the storage and exchange of information between Member States. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁸.

²⁸ Regulation (EU) No 182/2011 of the

²⁸ Regulation (EU) No 182/2011 of the

European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

Amendment 7

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) Relevant information on trade flows of cultural goods should be collected to support the efficient implementation of the Regulation and to provide the basis for its future evaluation. Trade flows of cultural goods cannot be efficiently monitored only by their value or weight since these two measurements can fluctuate. It is essential to collect information on the number of items declared. As no supplementary measurement unit is specified in the Combined Nomenclature for cultural goods, it is necessary to require that the number of items is declared.

Amendment

(16) Relevant information on trade flows of cultural goods should be collected to support the efficient implementation of the Regulation and to provide the basis for its future evaluation. Trade flows of cultural goods cannot be efficiently monitored only by their value or weight since these two measurements can fluctuate. It is essential to **electronically** collect information on the number of items declared. As no supplementary measurement unit is specified in the Combined Nomenclature for cultural goods, it is necessary to require that the number of items is declared.

Or. en

Amendment 8

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) The EU Strategy and Action Plan for customs Risk Management²⁹ aims – inter alia- to strengthen capacities of

Amendment

(17) The EU Strategy and Action Plan for customs Risk Management²⁹ aims – inter alia- to strengthen capacities **and**

customs authorities to increase the responsiveness to risks in the area of cultural goods. The common risk management framework laid down in Regulation (EU) No 952/2013 should be used and relevant risk information be exchanged between customs authorities.

²⁹ COM/2014/0527 final: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the EU Strategy and Action Plan for customs risk management.

training of customs authorities to increase the responsiveness to risks in the area of cultural goods. The common risk management framework laid down in Regulation (EU) No 952/2013 should be used and relevant risk information be exchanged between customs authorities.

²⁹ COM/2014/0527 final: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the EU Strategy and Action Plan for customs risk management.

Or. en

Amendment 9

Proposal for a regulation Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Since the trafficking of cultural objects can be a source of terrorism financing and money laundering, there is an urgent need to set up awareness-raising campaigns to sensitise in particular buyers of cultural goods; moreover, in order to assist the market actors to implement this Regulation, information, contact points should be made available in each Member State.

Or. en

Amendment 10

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) Sufficient time should be provided for the Commission to adopt rules implementing this Regulation, in particular those regarding the appropriate forms to use to apply for an import licence or to prepare an importer statement. Consequently, the application of this Regulation should be deferred.

Amendment

(19) Sufficient time should be provided for the Commission to adopt rules implementing this Regulation, in particular those regarding the appropriate ***electronic standardised*** forms to use to apply for an import licence or to prepare an importer statement. Consequently, the application of this Regulation should be deferred.

Or. en

Amendment 11

Proposal for a regulation

Article 1 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The entry into the customs territory of the Union of cultural goods which have been illegally exported from a third country is prohibited.

Or. en

Amendment 12

Proposal for a regulation

Article 2 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) 'source country' means the country in the current territory of which the cultural goods were created or discovered;

deleted

Or. en

Amendment 13

Proposal for a regulation

Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) 'permanently' means for a period of time of at least *one month* and for purposes other than temporary use, transit, export or dispatch;

Amendment

(d) 'permanently' means for a period of time of at least *ten years for the categories of cultural goods referred to in points (c), (d) and (h) of the Annex and one year for the rest of categories set in the Annex*, and for purposes other than temporary use, transit, export or dispatch;

Or. en

Amendment 14

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) the temporary admission, within the meaning of Article 250 of Regulation (EU) No 952/2013, in the customs territory of the Union of cultural goods for educational, scientific and academic research purposes;

Amendment

(a) the temporary admission, within the meaning of Article 250 of Regulation (EU) No 952/2013, in the customs territory of the Union of cultural goods for educational, scientific, *restoration* and academic research purposes;

Or. en

Amendment 15

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. The holder of the goods shall apply for an import licence to the competent authority of the Member State of entry. The application shall be accompanied by any supporting documents and information substantiating that the cultural goods in

Amendment

2. The holder of the goods shall apply for an import licence to the competent authority of the Member State of entry. The application shall be accompanied by any supporting documents and information substantiating that the cultural goods in

question have been exported from the *source* country in accordance with its laws and regulations. **However, where the export country is a Contracting Party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 14 November 1970 ('the 1970 UNESCO Convention'), the application shall be accompanied by any supporting documents and information substantiating that the cultural goods have been exported from that country in accordance with its laws and regulations.**

question have been exported from the **export** country in accordance with its laws and regulations.

Or. en

Amendment 16

Proposal for a regulation

Article 4 – paragraph 4 – point a

Text proposed by the Commission

(a) **where the export country is not a Contracting Party to the 1970 UNESCO Convention**, it is not demonstrated that the cultural goods were exported from the *source* country in accordance with its laws and regulations;

Amendment

(a) **when** it is not demonstrated that the cultural goods were exported from the **export** country in accordance with its laws and regulations;

Or. en

Amendment 17

Proposal for a regulation

Article 4 – paragraph 4 – point b

Text proposed by the Commission

(b) **where the export country is a Contracting Party to the 1970 UNESCO Convention, it is not demonstrated that the cultural goods were exported from the**

Amendment

deleted

export country in accordance with its laws and regulations;

Or. en

Amendment 18

Proposal for a regulation

Article 4 – paragraph 4 – point c

Text proposed by the Commission

(c) the competent authority has reasonable grounds to **believe** that the holder of the goods did not acquire them lawfully.

Amendment

(c) the competent authority has reasonable grounds to **affirm** that the holder of the goods did not acquire them lawfully.

Or. en

Amendment 19

Proposal for a regulation

Article 4 – paragraph 6

Text proposed by the Commission

6. The Commission **may** establish, by means of implementing acts, the template for the application for the import licence as well as the procedural rules on the submission and processing of such an application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.

Amendment

6. The Commission **shall** establish, by means of implementing acts, the **electronic standardised** template for the application for the import licence as well as the procedural rules on the **electronic** submission and processing of such an application **together with the relevant supporting documents, which shall be done by electronic means**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.

Or. en

Amendment 20

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

1. The release for free circulation and the placing under a special procedure other than transit in the Union of the cultural goods referred to in points (a), (b), (e), (f), (g), (i), (j), (k) and (l) of the Annex shall be subject to the submission of an importer statement to the customs authorities of the Member State of entry.

Amendment

1. The release for free circulation and the placing under a special procedure other than transit in the Union of the cultural goods referred to in points (a), (b), (e), (f), (g), (i), (j), (k) and (l) of the Annex shall be subject to the submission of an **electronic** importer statement to the customs authorities of the Member State of entry.

Or. en

Amendment 21

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The importer statement shall contain a declaration signed by the holder of the goods that the goods have been exported from the *source* country in accordance with its laws and regulations. **However, where the export country is a Contracting Party to the UNESCO Convention on Cultural Property, the importer statement shall contain a declaration signed by the holder of the goods that the goods have been exported from that country in accordance with its laws and regulations.**

Amendment

The importer statement **registered electronically** shall contain a declaration signed by the holder of the goods that the goods have been exported from the **export** country in accordance with its laws and regulations.

Or. en

Amendment 22

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The importer statement shall include a standardised document describing the cultural goods in question in sufficient detail for them to be identified by the customs authorities.

Amendment

The importer statement shall include a **electronic** standardised document describing the cultural goods in question in sufficient detail for them to be identified by the customs authorities.

Or. en

Amendment 23

Proposal for a regulation Article 5 – paragraph 3

Text proposed by the Commission

3. The Commission **may** adopt, by means of implementing acts, the template for the importer statement as well as the procedural rules on the submission and processing of the importer statement. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.

Amendment

3. The Commission **shall** adopt, by means of implementing acts, the **electronic standardised** template for the importer statement as well as the procedural rules on the **electronic** submission and processing of the importer statement. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.

Or. en

Amendment 24

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

1. The import licence referred to in Article 4 or the importer statement referred to in Article 5, as the case may be, shall be submitted to the customs office competent to release the cultural goods for free circulation or for placing them under a special procedure other than transit.

Amendment

1. The import licence referred to in Article 4 or the importer statement referred to in Article 5, as the case may be, shall be **electronically** submitted to the customs office competent to release the cultural goods for free circulation or for placing them under a special procedure other than transit.

Amendment 25**Proposal for a regulation****Article 6 – paragraph 2***Text proposed by the Commission*

2. With regard to cultural goods requiring the issue of an import licence to enter the customs territory of the Union, the customs authorities shall check whether the import licence corresponds to the goods presented. For that purpose, they may physically examine the cultural goods, ***including*** by conducting an expertise.

Amendment

2. With regard to cultural goods requiring the issue of an import licence to enter the customs territory of the Union, the customs authorities shall check whether the import licence corresponds to the goods presented. For that purpose, they may physically examine the cultural goods by conducting an expertise. ***The import license electronically registered shall be attributed a serial number and a registration date and, upon release of the goods, the declarant will be provided with a copy of the registered import license.***

Or. en

Amendment 26**Proposal for a regulation****Article 6 – paragraph 3***Text proposed by the Commission*

3. With regard to cultural goods requiring the submission of an importer statement to enter the customs territory of the Union, the customs authorities shall check whether the importer statement complies with the requirements provided for in or on the basis of Article 5 and corresponds to the goods presented. For that purpose, they may require additional information from the declarant and physically examine the cultural goods, ***including*** by conducting an expertise. ***They shall register*** the importer statement ***by attributing to it*** a serial number and a

Amendment

3. With regard to cultural goods requiring the submission of an importer statement to enter the customs territory of the Union, the customs authorities shall check whether the importer statement complies with the requirements provided for in or on the basis of Article 5 and corresponds to the goods presented. For that purpose, they may require additional information from the declarant and physically examine the cultural goods by conducting an expertise. The importer statement ***registered electronically shall be attributed*** a serial number and a

registration date and, upon release of the goods, **provide** the declarant with a copy of the registered importer statement.

registration date and, upon release of the goods, the declarant **will be provided** with a copy of the registered importer statement.

Or. en

Amendment 27

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. Customs authorities shall seize and temporarily retain cultural goods brought into the customs territory of the Union where the cultural goods in question entered the customs territory of the Union without the conditions laid down in paragraphs 1 and 2 of Article 3 being fulfilled.

Amendment

1. Customs authorities shall seize and temporarily retain cultural goods brought into the customs territory of the Union where the cultural goods in question entered the customs territory of the Union without the conditions laid down in paragraphs 1 and 2 of Article 3 being fulfilled. ***In the case of retention of cultural goods, there shall be minimum guarantees for the conservation of the cultural goods in storage, in accordance with the conditions and responsibilities for the temporary storage of goods as stated in Article 147 of Regulation (EU) No 952/2013, having due regard to the specific nature of the goods.***

Or. en

Amendment 28

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

2. An electronic system **may** be developed for the storage and the exchange of information between the authorities of the Member States, in particular regarding importer statements and import licences.

Amendment

2. An electronic system **shall** be developed for the storage and the exchange of information between the authorities of the Member States, in particular regarding importer statements and import licences.

Amendment 29

Proposal for a regulation

Article 9 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

The Commission **may** lay down, by means of implementing acts,

Amendment

The Commission **shall** lay down, by means of implementing acts,

Or. en

Amendment 30

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

Member States shall organise training and capacity building activities to ensure the effective implementation of this Regulation by the authorities concerned. They **may** also use awareness-raising campaigns to sensitise in particular buyers of cultural goods.

Amendment

Member States shall organise training and capacity building activities to ensure the effective implementation of this Regulation by the authorities **and the professionals** concerned. They **shall** also use awareness-raising campaigns to sensitise in particular buyers of cultural goods. **Moreover, in order to assist the market actors to implement this Regulation, information contact points should be made available in each Member State.**

Or. en

Amendment 31

Proposal for a regulation

Article 14 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(e) number of cases in which cultural

Amendment

(e) number of cases in which cultural

goods have been retained *and*

goods have been retained;

Or. en

Amendment 32

Proposal for a regulation

Article 14 – paragraph 1 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

(f) number of cases where cultural goods have been abandoned to the State in accordance with Article 199 of Regulation (EU) No 952/2013.

(f) number of cases where cultural goods have been abandoned to the State in accordance with Article 199 of Regulation (EU) No 952/2013 *and*

Or. en

Amendment 33

Proposal for a regulation

Article 14 – paragraph 1 – subparagraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the criminal penalties adopted in order to implement this Regulation.

Or. en