

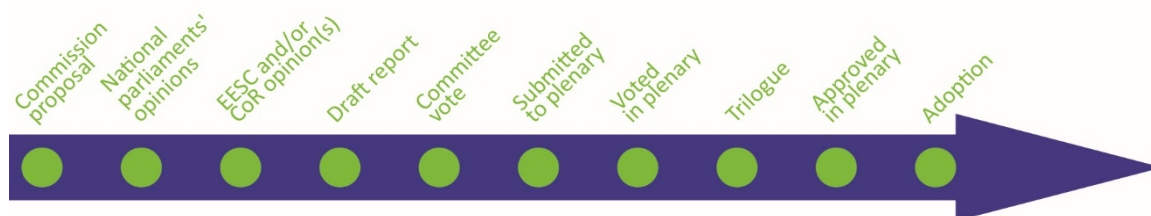
# Regulating imports of cultural goods

## OVERVIEW

Until now, with the exception of two specific measures for Iraq and Syria, there has been no EU legislation covering the import of cultural goods from non-EU countries entering the EU. By ensuring that these imports are subject to uniform controls along all EU external borders, the new regulation aims to prevent the introduction, import and storage in the EU of cultural goods illegally removed from a third country, thereby protecting cultural heritage and combatting illegal trade, in particular where it may serve as an income source for terrorist groups.

Both Parliament and Council agreed positions on the Commission' proposal in autumn 2018, and reached an agreement in trilogue negotiations in December that year. Adopted by both institutions in spring 2019, the new regulation lays down the conditions for the introduction, as well as the conditions and procedures for the import, of cultural goods from third countries. The regulation does not apply to cultural goods that have been created or discovered in the EU. To focus the measures established by the regulation on the goods considered most at risk of pillage in conflict areas and to avoid a disproportionate burden for licit trade, the new legislative act introduces age and value thresholds for certain goods categories. The regulation will apply at the latest six years after it comes into force, i.e. from June 2025.

<b>Proposal for a regulation of the European Parliament and of the Council on the import of cultural goods</b>		
<i>Committees responsible:</i> <i>(jointly under Rule 55)</i>	International Trade (INTA) Internal Market and Consumer Protection (IMCO)	COM(2017) 375 13.7.2017 2017/0158(COD)
<i>Rapporteurs:</i>	Alessia Maria Mosca (S&D, Italy) Daniel Dalton (ECR, United Kingdom)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	Regulation (EU) 2019/880 <a href="#">OJ L 151, 7.6.2019, pp. 1-14</a>	



## Introduction

It is difficult to estimate the financial value the illegal trade in cultural goods as there is a lack of accurate statistics.<sup>1</sup> 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'.

As set out in the Commission's 2017 [impact assessment](#), which accompanied the legislative proposal, several [external factors](#) contribute to the flourishing of the illicit market for cultural goods. These include 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, a 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 goods<sup>2</sup> from third countries into the EU. The standard customs controls applied at EU borders are not able to address the particularities of cultural artefacts adequately. 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. A heavy administrative burden and high costs for EU customs is also a consequence.

## Existing situation

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

The three main relevant international agreements relating to the trade in cultural goods and the protection of cultural heritage, namely the [1954 Hague Convention](#)<sup>4</sup> and its protocols, the [1970 Unesco Convention](#)<sup>5</sup> and the [1995 UNIDROIT Convention](#),<sup>6</sup> establish certain general principles. [27](#) EU Member States have ratified or acceded to the Hague Convention, [26](#) have ratified or acceded to the Unesco Convention and [15](#) have ratified or acceded to the UNIDROIT Convention (two further Member States are signatories but did not ratify the UNIDROIT Convention).<sup>7</sup>

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 have been 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.

## 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 responded 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

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 communications, [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 Commission adopted the [legislative proposal](#) on 13 July 2017. The proposal was designed to 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.

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.<sup>8</sup> 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 proposed legislation would also provide for the creation of an electronic database to facilitate the storage and exchange of information.

Member States would 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.

## National parliaments

Falling under the EU's exclusive competence for commercial policy and customs legislation, this legislative proposal was not subject to a subsidiarity check. The proposal was nonetheless [considered](#) by a number of 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' views

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 were in favour of export certificates.

During the legislative procedure, various dealers' associations operating in the international art market, such as the [International Association of Dealers in Ancient Art](#) (IADAA) and the [International Federation of Dealer Associations](#) (CINOA), expressed concerns about the negative impact of the prospective legislation on trade in cultural artefacts. [Concerns](#) raised in this context included the additional administrative obligations and costs for European art and antiques businesses, particularly for those exhibiting objects at fairs abroad, as well as delays in the import procedures; and, in the case of books, difficulties in establishing a source country. Following the interinstitutional

agreement on the new consolidated text in December 2018, IADAA and CINOA noted that although certain stakeholders' arguments had been accepted, for instance that new measures would only be feasible with an operational electronic system in place, concerns remained as regarded some issues, for instance the [lack of clarity](#) regarding certain definitions and the [difficulties](#) for importers when it came to presenting the necessary supporting documents, such as export licences.

## Legislative process

The Commission submitted the legislative proposal adopted on 13 July 2017 to the European Parliament and the Council. In the European Parliament, the Conference of Presidents decided in 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](#), and with the Committee on Civil Liberties, Justice and Home Affairs (LIBE) as the committee for opinion. Alessia Maria Mosca (S&D, Italy) and Daniel Dalton (ECR, United Kingdom) were appointed as co-rapporteurs. Appointed as rapporteur for opinion was Santiago Fisas Aixelà (EPP, Spain) for the CULT committee and Kostas Chrysogonos (GUE/NGL, Greece) for the LIBE committee.

The CULT committee's opinion on the legislative proposal was issued on 8 June 2018, the LIBE committee delivered its opinion on 4 July 2018.

On 27 September 2018, INTA and IMCO adopted a [joint report](#) on the proposal by 56 votes in favour, 4 votes against and 3 abstentions.

The European Parliament held a debate in plenary on 24 October 2018, and voted on the report the following day. The Parliament approved, by 513 votes to 57, with 33 abstentions, the [amendments](#) to the Commission proposal on the import of cultural goods, and the file was referred back to the INTA and IMCO joint committee, responsible for the interinstitutional negotiations.

On 7 November 2018, the Council [adopted](#) its position on the draft regulation. Subsequently, interinstitutional negotiations among the three European institutions to reach an agreement on the legislative proposal were launched, and on 11 December 2018 a provisional interinstitutional agreement was reached.

In the European Parliament, on 22 January 2019, the INTA and IMCO committees jointly approved the above-mentioned provisional interinstitutional agreement. The European Parliament adopted, by 590 votes to 58, with 13 abstentions, the new [consolidated text](#) on 12 March 2019, and the Council formally approved the Parliament's first reading position on [9 April 2019](#). Thus, the new legislative act was adopted. The regulation entered into force on 26 June 2019, 20 days after its publication in the [Official Journal](#) of the European Union.

Given the UK's position, in terms of value of sales, as the largest artwork market in Europe and the second largest globally ([2016](#)), the legislative procedure has been closely followed in the country, not least because of the legal implications for the UK trade in artworks in the context of Brexit. The February 2019 [assessment](#) of the UK's House of Commons European Scrutiny Committee noted that the 'full impact of the legislation on the UK after Brexit is still far from clear'.

### **Some key elements of the regulation are set out below:**

The new legislation provides for a **common definition of cultural goods**, according to which cultural goods are items 'of importance for archaeology, prehistory, history, literature, art or science as listed in the Annex' of the regulation. This Annex consists of three lists of cultural goods. Part A of the Annex includes categories of goods for which conditions for introduction into the EU have been established. Part B and Part C of the Annex list categories of goods, with Combined Nomenclature codes, to which the provisions regulating imports into the EU apply.

**Introduction of cultural goods into the EU's customs territory:** The regulation prohibits the introduction into the EU of cultural goods listed in **Part A of the Annex**, if these have been illicitly

removed from the territory of the country in which they were created or discovered. Although this general prohibition does not require systematic controls, Member States' competent authorities will have to intervene when there is an attempt to introduce illegally exported cultural goods. Part A includes categories such as products of archaeological excavations or of archaeological discoveries on land or underwater; elements of archaeological sites, or artistic or historical monuments that have been dismembered; antiquities, such as inscriptions, coins and engraved seals that are more than one hundred years old; and rare manuscripts and incunabula.

**Import of cultural goods into the EU's customs territory:** For the import of cultural goods referred to in **Part B of the Annex, import licences**, issued by the relevant Member State, will be required before the release of the goods for free circulation into the EU or their placement under a special customs procedure other than transit. An import licence is required only if these objects are older than 250 years, no matter what their value. To get the import licence, importers will have to prove either that the export has been carried out in compliance with the applicable legislation of the country where the object was created or discovered, or that there was no such legislation at the time when the object was removed from that country's territory. The lawful export will have to be demonstrated by appropriate supportive documents and evidence, for instance export certificates, if the given country had them when the export took place. The competent authority will have to decide within 90 days of the receipt of the application whether to issue the import licence. Two categories of cultural goods are covered by Part B of the Annex: a) products of archaeological excavations or of archaeological discoveries on land or underwater; and b) elements of artistic or historical monuments or archaeological sites that have been dismembered.

As for the import of cultural goods listed in **Part C of the Annex**, the submission of an **importer statement** will be necessary if these objects are more than 200 years old and their value is €18 000 or more per item. Importers will have to demonstrate, by means of a signed declaration, that the goods have been lawfully exported from the country of creation or discovery. Moreover, 'a standardised document describing the cultural goods in question in sufficient detail for them to be identified' will have to be attached to the declaration. Part C of the Annex covers categories such as rare manuscripts and incunabula; old books, documents and publications of specific interest; antiquities, such as inscriptions, coins and engraved seals; and objects of ethnological and artistic interest.

The regulation identifies certain exemptions from these rules, where **neither an import licence, nor an importer statement** is required. These are: returned cultural goods not created or discovered in the EU, but which have been previously exported as Union goods; cultural goods from countries impacted by armed conflict or a natural disaster, and stored in the EU exclusively for their safekeeping by a public authority; and temporarily admitted cultural goods for purposes such as education, conservation and exhibition. When goods are temporarily admitted into the EU to be presented at commercial art fairs, an importer statement has to be presented; however, in the event that these goods remain in the EU after the fair, an import licence will have to be provided.

The regulation also specifies exceptional cases when the **proof of licit export of cultural goods from a third country** other than the country of creation or discovery is allowed: when the country in which the object was created or discovered cannot be reliably established; or when the object's removal from the country of creation or discovery happened prior to 24 April 1972, the date of entry into force of the 1970 Unesco Convention. The regulation specifies the conditions that must be met in the above-mentioned cases: the imported cultural goods have to be kept in the exporting third country for more than five years for reasons other than temporary use, transit, re-export or transshipment.

The submission of import licence applications and importer statements, together with the supporting documents, will be carried out by electronic means through a **centralised electronic system**. Using the implementing act procedure, the Commission is responsible for establishing this electronic system, which will also be used for the storage and exchange of information between the

Member States. The electronic system will be operational no later than four years after the date of entry into force of the first implementing act. The Commission is also to develop the electronic standardised forms and the procedural rules relating to their submission and processing.

**Application:** The regulation applies from 27 June 2019. However, the application of some provisions is deferred to allow for the adoption of the necessary implementing measures. For instance, the prohibition on the introduction into the EU of illicitly exported cultural goods will apply 18 months after the date on which the regulation takes effect (i.e. on 28 December 2020), and the obligation to provide an import licence or an importer statement when importing cultural goods will apply from the date the centralised electronic system is operational, or at the latest six years after entry into force of the regulation (i.e. in December 2025).

**Reporting:** The deadline for submitting a Commission report on the implementation of the regulation to the European Parliament and to the Council is within three years of the date when the regulation is applied in its entirety, and every five years thereafter.

The Commission must ensure that **micro-, small- and medium-sized enterprises** obtain adequate technical assistance and facilitated access to information in order to implement the regulation effectively. The regulation also provides for an obligation for Member States to introduce **penalties** for infringements of the rules laid down in the act.

Many of the European Parliament's demands, aimed at striking a balance between curbing the illegal import of cultural goods and avoiding a disproportionate burden for licit art market operators and customs authorities, have been taken into account in the agreed text of the regulation. Parliament requested, for instance, the introduction of different minimal age thresholds depending on the categories of goods and the application of financial thresholds for certain categories of goods. Parliament also demanded that the submission and processing of import licence applications and importer statements should be carried out by electronic means, using standardised electronic forms; and that import licences and importer statements should be registered electronically. Moreover, it requested the establishment of a centralised electronic system for the storage and exchange of information between Member States' authorities. Other Parliament recommendations included a general prohibition on the introduction into the EU of unlawfully exported cultural goods and a facilitation concerning the certification obligations for goods to be presented at commercial art fairs. Another Parliament demand that was taken on board concerned the provision of adequate assistance for micro-, small and medium-sized enterprises to implement the regulation.

## EP SUPPORTING ANALYSES

- [Cross-border restitution claims of art looted in armed conflicts and wars and alternatives to court litigations](#), study for the JURI committee, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2016.
- Zandersone L., [Import of cultural goods](#), EPRS, European Parliament, December 2017.
- Zygierewicz A. with Méndez Juez, M., [Illicit trade in cultural goods \(Regulation EU 116/2009 and Directive 2014/60/EU\)](#), EPRS, European Parliament, July 2017.

## OTHER SOURCES

- European Commission, [Proposal for a regulation of the European Parliament and of the Council on the import of cultural goods](#), COM(2017) 375 final, July 2017.
- European Commission, Commission staff working document. [Impact assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods](#), SWD(2017) 262 final, July 2017.
- European Commission, [Inception impact assessment](#), November 2016.

- European Commission, DG TAXUD, [Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU](#), Final report, June 2017.
- European Commission, Fact Sheet, [Questions and answers on the illegal import of cultural goods used to finance terrorism](#), July 2017.
- [Import of cultural goods](#), Legislative Observatory (OEL), European Parliament.
- Official Journal of the European Union, [L 151](#), 7 June 2019.

## ENDNOTES

- <sup>1</sup> 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.'
- <sup>2</sup> 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.'
- <sup>3</sup> 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.'
- <sup>4</sup> Convention for the Protection of Cultural Property in the Event of an Armed Conflict.
- <sup>5</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
- <sup>6</sup> 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.
- <sup>7</sup> Data retrieved in April 2019.
- <sup>8</sup> According to the impact assessment report, 'Free zones are designated tax free areas where no customs duties are levied on imports or exports.'

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