

## **STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS**

**EM - 11272/17**

### **EU References**

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## **A PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE IMPORT OF CULTURAL GOODS**

Submitted by the Department for Digital, Culture, Media and Sport on

16/08/2017

### **SUBJECT MATTER**

1. The Commission's proposal for a Regulation on the import of cultural goods aims to regulate the import of a broad range of cultural goods over 250 years old into the European Union. The proposal's stated objective is to reduce trafficking in cultural goods illicitly exported from their country of origin, protect cultural heritage and combat the financing of terrorism.
2. The proposed Regulation consists of four main elements:
  - A common EU definition for 'cultural goods' at importation covering a broad range of objects which are at least 250 years old
  - The introduction of a new licensing system for the importation of cultural goods most at risk: archaeological objects, parts of monuments, ancient manuscripts and incunabula (early printed books)
  - The requirement of an importer statement for other categories of cultural goods, declaring the goods have been exported legally from a non-EU country.
  - Customs authorities would have a duty to seize and retain goods where importers cannot demonstrate that the goods in question have been legally exported from a non-EU country.
3. In addition to the main elements of the proposed Regulation, the Commission is also proposing a series of non-regulatory measures including the training of enforcement authorities, research into trafficking routes and operations and the involvement of cultural heritage experts in risk and damage assessment exercises

#### The Context of the Proposal

4. The context of the proposal is wider EU and international actions and declarations on countering illicit trade in cultural goods, protecting cultural heritage and disrupting the financing of terrorism.
5. A European Parliament Resolution in April 2015 on the destruction of cultural heritage by Daesh called for action to disrupt the illegal trade of cultural goods and for training and awareness raising campaigns amongst all bodies working in the area.

6. Under the framework of the 2015 European Agenda on Security and the 2016 Communications on strengthening the fight against Terrorist Financing and Security Union . The Commission announced their intention to propose regulation of the import of cultural goods in the Joint Communication of June 2016 *Towards an EU strategy for international cultural relations*. The Rome Declaration of 25 March 2017 reaffirmed the commitment of EU Member States and institutions to protecting cultural heritage.
7. Globally, the G20 Leaders' declaration on 8 July 2017 affirmed a commitment to tackling alternative forms of financing of terrorism, including looting and the smuggling of antiquities. This followed United Nations Resolution 2347 of 24 March 2017 requesting UN Member States to counter the illicit trafficking of cultural goods, particularly when this originated in the context of armed conflict and was conducted by terrorist groups. Also in March 2017, G7 culture ministers invited all states to prohibit the trade in looted cultural property trafficking across borders and emphasised the need for closer cooperation.
8. Currently there is no specific EU legislative framework for control of cultural goods entering the customs territory of the Union. There are two Council Regulations which prohibit the importation of and trade in cultural goods from Iraq and Syria. The export of cultural goods from the EU is also regulated by EU legislation. This proposal aims to complement these measures.

#### Consultations

9. The Commission organised a series of stakeholder consultations: a public consultation between October 2016 and January 2017, meetings of an expert group on customs issues relating to cultural goods, a survey by the Commission of Member States cultural and customs authorities and a survey by an external contractor on customs issues relating to illicit trafficking in cultural goods.
10. The public consultation results showed support for the introduction of import rules, but opinion was divided on how these would impact on illicit trafficking and terrorist financing. The expert group agreed that there should be action at the import stage but disagreed on measures. The Commission's survey of cultural and customs authorities on potential impact of regulatory options was inconclusive due to lack of evidence. The survey run by the external contractor was part of a study which has not yet been published, but the Commission state that its findings were used in the impact assessment report.

#### **SCRUTINY HISTORY**

11. The proposals for the regulation were published on 13 July, 2017. This is the first occasion on which they have been subject to scrutiny by Parliament.

## **MINISTERIAL RESPONSIBILITY**

12. The secretary of state for Digital, Culture, Media and Sport has primary responsibility for the control of the movement of cultural goods. The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues. Other Government Departments also have interests, particularly the Secretary of State for Foreign affairs. We have consulted Home Office and Border Force officials and have considered their views when drafting this Explanatory Memorandum

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

13. There are no comments from the Devolved Administrations, we will be keeping them apprised of developments. Export and Import controls are a reserved matter under all three devolution settlements.

## **LEGAL AND PROCEDURAL ISSUES**

### Legal basis

14. The proposal is based on Articles 3 and 207 of the Treaty on the Functioning of the EU (TFEU). Article 3 TFEU provides that the Union has exclusive competence for the customs union and for the common commercial policy. Article 207 TFEU concerns the common commercial policy and provides for the European Parliament and the Council to adopt measures defining the framework for implementing that policy.
15. The Government's assessment is that the proposal is clearly within the scope of those Articles. It is not considered that there is any Justice and Home Affairs (JHA) content.

### European Parliament Procedure

16. Ordinary legislative procedure.

### Voting procedure

17. Qualified Majority Voting.

### Impact on United Kingdom Law

18. There is currently no general regulation of the import of cultural goods into the UK.
19. The proposed Regulation would have direct effect in UK law under section 2(1) of the European Communities Act 1972. However, it is anticipated that some domestic implementing legislation will likely be necessary in two respects. Firstly, it will be necessary to ensure that customs officers have the necessary enforcement powers. Secondly, it will be necessary to prescribe penalties.

### Application to Gibraltar

20. Not applicable

## Fundamental rights analysis

21. The Commission considers that the following Articles of the Charter of Fundamental Rights of the EU are likely to be engaged:
- the freedom to conduct a business (Article 16);
  - the right to property (Article 17).
- However, it considers that the limitation of those rights by the proposed Regulation is justified because the measures meet an objective of general interest and are proportionate.
22. The Government agrees with that assessment. However, further information on the level of the trade in illicit goods entering the EU is needed in order to inform the proportionality assessment.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

23. Not applicable

## **SUBSIDIARITY**

24. The Government agrees with the assessment of the Commission that the principle of subsidiarity does not apply to this proposal because it is within the exclusive competence of the EU.
25. The EU has only supporting competence in culture, with the power to support, coordinate or supplement the actions of member states. However, the EU has exclusive competence in relation to the Customs Union and commercial policy under Article 3 of the Treaty on the Functioning of the European Union (TFEU). Therefore the EU has the exclusive right to legislate in this area and the principle of subsidiarity does not apply.

## **POLICY IMPLICATIONS**

26. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
27. Article 15 of the proposed Regulation states that it shall apply from 1 January 2019.
28. The proposal is part of wider international efforts to tackle illicit trade in cultural goods, which has been linked to terrorist financing, and to promote the protection of cultural heritage. The import of cultural goods from Iraq and Syria is already restricted under EU Regulations.
29. There is a measure of political support for the proposal amongst Member States, principally in context of strengthening the fight against terrorist financing and, ideologically, in supporting the protection of cultural heritage.

There are reservations about the additional requirements that the import rules would place on the customs authorities and stakeholder opinion is divided on whether import rules would contribute towards disrupting terrorist financing.

30. The UK is committed to combating illicit trade in cultural goods and to targeting terrorist financing. Further to the publication of this proposal, the Government will examine the Commission's proposal carefully to consider the expected disruption on terrorist financing and the expected administrative burdens.
31. The main issues relating to the proposal are:
  - The additional requirements that the proposed legislation will place on the functions undertaken by the Customs authorities
  - The effect of the proposals on the UK art market
  - The implications of Import licensing in terms of the burden on licensing authorities
  - The evidence base for the connection between illicit trade in antiquities and terrorist financing
32. Implementation of the proposal is likely to place a number of additional requirements on the functions undertaken by HM Revenue and Customs (HMRC) and Border Force. These will have corresponding additional costs and resource implications. In particular, the proposal will include:
  - A requirement to establish an import licensing processing function that can be integrated into and be compatible with HMRC's entry declaration processing system
  - The creation of processes for the receipt, scrutiny and registration of importer declarations for cultural goods over 250 years old
  - Costs and resources required to copy and return registered importer statements
  - The likelihood that there will be an obligation to undertake a greater number of physical examinations of goods, including where appropriate, the appointment or employment of technical experts to undertake those examinations and management of appeals
  - A requirement for further storage provisions, if Border Force assess that these are required for the proper examination or storage of cultural goods awaiting physical examination
  - Data storage and administrative costs in connection with the provision of information to the Commission and staff training and capacity-building activity costs associated with the implementation of the regulation measures
33. As a result of the measures, where goods are declared or assessed as possibly being within the scope of the regulation, it may extend the time required for routine border clearances.
34. There will be an additional administrative burden as a licensing authority will be required. This could be based on the current Export Licensing regime which involves different levels of scrutiny for different classes of goods.

### Impact on Devolved Administrations

35. Currently there are no observations from the Devolved Administrations on the impact of the proposed regulations. We will be keeping them apprised of developments and will take into account any further comments.

### Effect on the UK art market

36. The Commission's impact assessment states that Europe has the second largest art market in the world. This is primarily due to the UK art market, which has two-thirds of the EU market share and is the second largest market in the world in its own right. Based on market share, the UK would be impacted by the proposed import rules more than any other Member State.
37. The definition of cultural goods under the proposal covers a wide range of categories of goods over 250 years old. Import licensing requirements for cultural goods deemed to be particularly at risk would place an administrative burden on specific segments of the art market trading in antiquities, antiquarian books and manuscripts. The importer's responsibility for declaring the legal export of goods from a third country, which applies to all other categories of cultural goods under the proposal, is likely to involve a further administrative burden for a significant proportion of art market operators.

### Import licensing

38. Arrangements would need to be put in place for processing applications for cultural goods requiring import licences. This would involve scrutiny of applications and supporting documents and information substantiating legal export of cultural goods in accordance with third countries' laws and regulations. The proposal states that the Commission may establish procedural rules on the processing of import licence applications by means of implementing acts.

### The Connection between the illicit trade in antiquities and terrorist financing

39. The UK Government assessment is that while it is not possible to determine the value of the income ISIL derives from the sale of antiquities from areas under their control, indications are that the income derived from antiquities is small compared with other revenue streams such as oil.

## **CONSULTATION**

40. No consultation has occurred or is currently planned by the government with outside bodies

## **IMPACT ASSESSMENT**

41. The European Commission' considered several options, these were grouped as follows:
- i. **Grouping A** – "Soft law" options to raise awareness of stakeholders and capacity of enforcement authorities, such as endorsement of existing art market codes of conduct, campaigns and training

- ii. **Grouping B** – Regulations defining the scope of cultural goods covered by the initiative
  - iii. **Grouping C** – Regulations on the documentation needed to certify the legal export of the cultural goods
42. In the Commission's view, the options it has chosen achieve the objectives of the proposal without creating unnecessary administrative burdens. These are:
- i. Raising awareness of potential buyers and enforcement authorities
  - ii. A Regulation concerning import rules for cultural goods based on the definition set out in the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects with a minimum age of 250 years. For these cultural goods, the importer must provide the following documentation:
    - a. Importers of archaeological objects, parts of monuments, rare manuscripts and incunabula must apply for an import licence providing proof of licit export from the source country.
    - b. Importers of other cultural goods must submit a signed statement declaring that the goods were legally exported from the source country.
    - c. Where the export country is a Contracting Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, proof should be provided instead that it was lawfully exported from that country.
43. The Commission's view is that choice of the UNIDROIT definition of cultural goods with a minimum age of 250 years will establish a common definition that is proportionate to the aims of the legislation without impeding legitimate trade. The Commission's view is that the requirement for a licence or signed statement will ensure due diligence by the importers, standardised documentation will facilitate customs control, and penalties will act as a deterrent in trafficking goods.
44. The Commission mentions that the costs linked to import licensing requirements 'may be considerable' but it considers that only a small fraction of goods will require a licence and therefore such costs will be limited. It does not quantify this citing lack of data. The Commission considers that the requirement of an importer statement 'has no particular impact on diligent market operators'. The European Commission's Regulatory Scrutiny Board consider that the evidence underpinning the Commission's analysis of impacts remains insufficient.

## **FINANCIAL IMPLICATIONS**

45. To be considered when further information is available

## **TIMETABLE**

46. This legislation is due to come into force in January 2019.

## **OTHER OBSERVATIONS**

47. None

**MINISTERIAL NAME AND SIGNATURE AND DATE**

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