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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the import of cultural goods

{SWD(2017) 262 final}

{SWD(2017) 263 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In the framework of the 2015 European Agenda on Security¹ and of the 2016 Action Plan to step up the fight against the financing of terrorism² the Commission announced that it would prepare a legislative proposal against illicit trade in cultural goods. The European Parliament and the Council welcomed the European Agenda on Security³ and the Action Plan and requested further intensification of work⁴. On 15 March 2017 the Directive on combating terrorism was adopted, including provisions on criminal sanctions for individuals or entities who provide material support to terrorism⁵.

The intention to prepare a legislative proposal was also announced in the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy Joint Communication to the European Parliament and the Council 'Towards an EU strategy for international cultural relations'.⁶

At the global level, this proposal should also be seen in the light of the declaration of G20 Leaders of 8 July 2017⁷, in which they affirmed their commitment to tackle the alternative sources of financing of terrorism, including the looting and smuggling of antiquities.

The Regulation and the actions described below also respond to the European Parliament Resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh, which called, inter alia, for strong actions to disrupt the illegal trade of cultural goods and the development of European training programmes for judges, police and customs officers, government administrations and market players more generally, as well as for awareness-raising campaigns in order to discourage the purchase and sale of cultural goods coming from illicit trade.

The Council, in its Conclusions of 12 February 2016, recalled the importance of urgently enhancing the fight against the illicit trade in cultural goods and called on the Commission to propose legislative measures on this matter as soon as possible.

On 24 March 2017, with Resolution 2347 (2017)⁸, the Security Council of the United Nations requested Member States to take steps to counter the illicit trade and trafficking in cultural property in particular when originating from a context of armed conflict and conducted by terrorist groups. Also in March 2017, the Culture ministers of the G7 group have invited all States to prohibit the trade in looted cultural property trafficked across borders while stressing

¹ COM (2015) 185 final, 28 April 2015

² Commission Communication the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing [COM(2016) 50 final], 2 February 2016

³ European Parliament resolution of 9 July 2015 on the European Agenda on Security (2015/2697(RSP))

⁴ European Council Conclusions of 18 December 2015

⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; OJ L 88, 31.3.2017, p.6-21

⁶ JOIN(2016) 29 final

⁷ <https://www.g20.org/gipfeldokumente/G20-leaders-declaration.pdf>

⁸ <http://unscr.com/en/resolutions/doc/2347>

the importance of closer cooperation among international judicial and law enforcement authorities⁹.

In the Rome Declaration of 25 March 2017, the Leaders of 27 Member States and of EU institutions have also re-affirmed their commitment to the protection of cultural heritage and cultural diversity. The fight against the illicit trade in cultural goods will be a key European action in the course of the 2018 European Year of Cultural Heritage

The initiative aims to prevent the import and storage in the EU of cultural goods illicitly exported from a third country, thereby reducing trafficking in cultural goods, combatting terrorism financing and protecting cultural heritage, especially archaeological objects in source countries affected by armed conflict. For this purpose it proposes to: establish a common definition for cultural goods at import; ensure importers exercise diligence when buying cultural goods from third countries; determine standardised information to certify the goods are legal; provide for effective deterrents to trafficking; and promote the active involvement of stakeholders in protecting cultural heritage.

The proposal is not linked to REFIT.

- **Consistency with existing policy provisions in the policy area**

Currently, there are no common rules regarding the import of cultural goods from third countries, except Council Regulation (EC) No 1210/2003¹⁰ of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and Council Regulation (EU) No 36/2012¹¹ concerning restrictive measures in view of the situation in Syria, which provide for a prohibition of trade in cultural goods with these countries. The initiative aims to complement those two measures and also the existing EU legislation on the export of cultural goods (Regulation (EC) No 116/2009¹²).

- **Consistency with other Union policies**

The proposed Regulation completes the EU legal framework on trade in cultural goods, which has included until now only legislation on the export of cultural goods¹³ and on the return of cultural objects unlawfully removed from the territory of a Member State¹⁴. As for imports, it was limited to restrictive measures on trade in cultural goods from Iraq and Syria.

The implementation of the provisions in the Regulation will be accompanied by a series of EU actions – ongoing or about to be launched – addressing the factors driving both the supply of and the demand for illicitly traded cultural goods, such as the uneven level of preparedness and application of due diligence standards in the Member States, and the weak capacity in certain countries at the origin of the traffic, particularly in fragile contexts.

Combating the trafficking of cultural property is part of the EU fight against organised crime. Following the decision of the Justice and Home Affairs Council of 18 May 2017¹⁵, enhanced

⁹ http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1490881204940_DECLARATION-Dichiarazione.pdf

¹⁰ OJ L 169, 8.7.2003, p. 6.

¹¹ OJ L 16, 19.1.2012, p. 1.

¹² Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods; OJ L 39, 10.2.2009, p. 1.

¹³ OJ L 324, 22.11.2012, p. 1.

¹⁴ Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast); OJ L 159, 28.5.2014, p. 1–10.

¹⁵ <http://data.consilium.europa.eu/doc/document/ST-8654-2017-INIT/en/pdf>

operational cooperation between law enforcement authorities will continue under the **EU Policy Cycle on serious and organised crime** for 2018-2021.

Through a Pilot Project in 2017-18 the EU will team up with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) to design **training modules on the trafficking of cultural goods for the relevant professional groups, including police officers**. The same Pilot project will also fund a comprehensive **study on the dimensions of illicit trade in cultural goods** focused on routes, volumes and operational modes of the trafficking and on the use of new technologies to combat it.

Capacity building of law enforcement authorities is also provided through the **Technical Assistance and Information Exchange instrument (TAIEX) of the EU**. Several workshops on combating the illicit trade in cultural goods have been organised in recent years: for instance in the Former Yugoslav Republic of Macedonia, Turkey, Kosovo, Bosnia and Herzegovina, and Serbia. Once available only in the countries belonging to the Neighbourhood, TAIEX assistance can now be deployed also elsewhere in the world.

Experts in cultural heritage increasingly participate in joint **Post Disaster Needs Assessments and Recovery and Peace-Building Assessments** missions of the EU, the UN and the World Bank to help assess damages and risks to cultural heritage, including trafficking.

This list of initiatives is not exhaustive. Additional measures aimed at facilitating implementation of the proposed regulation and supporting its objectives will be put in place in the near future.

The proposal is also in line with and contributes to other Union policies, notably:

- the *European Agenda on Security*¹⁶, which emphasises the importance of the fight against terrorism and organised crime;
- the *Action Plan for strengthening the fight against terrorist financing*, which lists a number of policy and legal initiatives (including this proposal) to be taken as part of a comprehensive approach in this area; and
- the Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism, which includes provisions on criminal sanctions for individuals or entities who provide material support to terrorism.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The EU has exclusive competence for commercial policy and for customs legislation, such as customs controls measures at import, under Articles 3 and 207 of the Treaty on the Functioning of the EU (TFEU).

Article 207 TFEU empowers the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, to adopt the measures defining the framework for implementing the common commercial policy. Such is, for instance, the case of Regulation (EC) No 116/2009 on the export of cultural goods, which was adopted on the basis of Article 207 TFEU.

¹⁶ COM (2015) 185 final

- **Subsidiarity (for non-exclusive competence)**

N/A

- **Proportionality**

The preferred policy choice combines regulatory and non-regulatory policy options. The scope of the proposed regulatory measure covers a wide typology of cultural goods without impeding legitimate trade, thanks to a 250-years minimum age limit for these goods. This age limit represents a balanced approach in line with the rules in place in some other jurisdictions and will help ensuring a coherent approach at the international level. Moreover, the level of scrutiny before entry in the Union's customs territory is differentiated, based on the perceived risk from pillage for certain categories of cultural goods, such as archaeological finds or parts of monuments.

See reference to proportionality considerations in the Impact Assessment report, in particular, sections 7.3.5 and 7.4.4 thereof.

- **Choice of the instrument**

A European Parliament and Council Regulation is the appropriate instrument in this case, in accordance with Article 207 TFEU, which is the legal basis of the proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Currently there is no existing EU legislation covering the import of cultural goods, therefore the present proposal is unrelated to ex-post evaluations or fitness checks.

- **Stakeholder consultations**

The Commission organised the following stakeholder consultations:

1. An Open Public Consultation¹⁷ on the Europa server, which was open for contributions to all stakeholders from 23 October 2016 to 23 January 2017. The questionnaire was designed to capture the views and opinions of the following categories of stakeholders: citizens, enterprises, professional associations and interests representatives, NGOs and civil society, public authorities. It was targeting the issue of illicit trafficking in cultural goods; the actions to take regarding the import of cultural goods in order to fight illicit trade and terrorist financing, the impact and parameters of possible legislative measures. The Commission received 305 contributions in total.

While there is strong support for the Union adopting customs rules at import, opinion is more divided on whether such measures would contribute against organised crime and terrorist financing; enterprises mostly considering that they wouldn't. Difficulty to determine licit provenance is considered a weakness of the current system. Rarity, historical/educational value, age and whether a cultural good originates in a conflict zone are considered the main criteria for defining the goods which should be subject to a measure. Enterprises seem to favour action to be taken primarily by the exporting countries to protect their heritage –with help from the EU, whereas public authorities and civil society strongly favour Union legislation empowering customs to prevent the entry of illicit cultural goods in the EU.

¹⁷ For the synopsis report of the consultation, see: https://ec.europa.eu/info/consultations_en

Regarding documentation requirements for proving licit provenance, enterprises seem to favour mostly a form of self-certification (affidavit), whereas public authorities favour export certificates (in fact, from written submissions it appears that they would prefer to issue import licences on the basis of export certificates).

2. The Commission has also held three meetings of the Expert Group on customs issues related to cultural goods (representatives from customs and cultural authorities from the Member States), where the initiative was presented, followed by an in-depth exchange of opinions and a discussion on the various challenges and objectives. The Member States delegates were also invited to submit position statements in writing on the various options and several of them did. While all Member States agree that action should be taken at importation, there was differing support for the specific choice of measures. A large group of Member States said they are in favour of import licences for a limited number of categories of cultural goods, namely, those that are most at risk in the current geopolitical context.

3. Member States customs and cultural authorities were also surveyed with regard to potential or expected impact of various regulatory options to administrations (cost or other burden).

Of the 16 replies received, 12 provided partial information on how much time would be needed to accomplish formalities related to the regulatory policy options. Most Member States were not able to provide any estimates, stating that the structure of their current system and procedures does not permit it. The results (replies extrapolated using the Standard Cost Model) were largely inconclusive as the estimates provided covered only some policy options and not others.

4. A survey was also conducted by an external contractor in the framework of the study titled 'Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU'¹⁸. Detailed questionnaires were addressed to businesses, associations, public authorities and international organisations. The conclusions of the survey, as included in the study were used in the Impact Assessment report, mostly those relating to experience with implementing the EU regulation on the export of cultural goods and the two sanctions Regulations on Iraq and Syria.

• **Impact assessment**

An impact assessment has been conducted¹⁹ and the Regulatory Scrutiny Board has delivered initially a negative opinion²⁰, then a positive opinion²¹ on resubmission, after revising the problem definition and the identified objectives and providing a clearer and more structured presentation and content of the policy options considered.

The options that have been selected to tackle the problems identified are compatible and would prevent the import and storage in the EU of cultural goods illicitly exported from a third country; thereby reducing trafficking in cultural goods, combatting terrorism financing and protecting cultural heritage, in particular in source countries affected by armed conflict. This main objective is expected to be achieved without creating unnecessary administrative burdens. In particular, it would be done through:

1. Raising awareness of potential buyers, in particular tourists and travellers, and of customs and other law enforcement authorities.

¹⁸ Not published yet.

¹⁹ See: <http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>

²⁰ See: <http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>

²¹ See: <http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>

2. A Regulation providing for customs controls measures applying to cultural goods declared for release for free circulation or placement under other special customs procedures (such as placement in a free zone) with the exception of goods in transit. The controls concern cultural goods, as those are defined in the 1995 International institute for the unification of private law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects, of a minimum age of 250 years. For these cultural goods, the person who seeks to introduce them into the Union's customs territory must provide the following documents in order to prove licit provenance, i.e. legality of export from the source country:

- for archaeological objects, parts of monuments that have been dismembered and for rare manuscripts and incunabula, the person must apply to the competent authority designated for this purpose by the Member State of entry for an import licence, by providing proof of licit export of the goods from the source country;

- for all other cultural goods, the person must submit to customs a signed statement (affidavit) certifying that the goods were legally exported from the source country, accompanied by a standard Object ID document, describing the object in detail. Customs register and keep a copy of these documents.

The selected policy options are expected to achieve the main objective stated above, as well as a number of specific objectives as follows:

By choosing the 1995 UNIDROIT Convention definition for cultural goods, together with a minimum age of 250 years the option establishes a common definition of cultural goods in the context of importation which is proportional to the protection needed (wide typology of goods) without impeding legitimate trade. The requirement to provide information on the cultural good and its provenance either by applying for an import licence or by filling in a standard Object ID form ensures that EU buyers and importers exercise diligence regarding the legality of cultural goods brought into the EU. At the same time, standardised documentation requirements at import regarding the identity of cultural goods brought into the EU facilitate greatly customs controls. The provision of penalties for infringements (enacted by Member States) provide for more effective deterrents to trafficking in cultural goods.

The choice of this policy option is fully coherent with the identified need for a robust response to the increased risk for certain categories of cultural goods which, by their nature, are directly exposed to loss or dispersion, namely archaeological heritage. As it happens, these are also the very cultural goods that are targeted by terrorists and other warring factions for the purposes of financing their activities. From the point of view of compliance cost, there might be some costs involved in the preparation of an application for an import licence for these goods, but they represent only a very small fraction²² of the cultural goods imports.

This option would be proportional to the objectives set since it organises import certification requirements in line with the relative risks and is readily adaptable to changing circumstances and trafficking profiles.

²² Due to the lack of detailed subheadings in the customs nomenclature for cultural goods, available statistical, and thus quantitative, data are limited and lack the desirable precision. Chapter 97 of the Harmonised System covering 'works of art, collectors' pieces and antiques' does not contain enough subdivisions to allow the collection of trade data for specific categories of cultural goods. As a result, the assessment performed is mostly qualitative.

Lastly, organising awareness-raising campaigns for potential buyers and for customs and other law enforcement will promote the active involvement of stakeholders in reducing trafficking.

- **Fundamental rights**

The envisaged measures are likely to impact the following rights which are enshrined in the following Articles of the Charter of fundamental Rights of the EU ('CFREU'):

- the freedom to conduct a business (Article 16 CFREU); and
- the right to property (Article 17 CFREU).

In cases of suspected false statements in relation to the cultural goods, authorities may decide to retain the goods temporarily, thereby impacting the right to property and freedom to conduct a business.

Article 52 CFREU specifies that any limitation of the recognised rights and freedoms must be provided for by law, respect the essence of the rights and freedoms, meet objectives of general interest recognised by the Union and be proportionate.

The measures strike a careful balance between the relevant rights and the legitimate interests of society by taking an approach that is efficient (achieves the objective) but affects the rights as little as possible.

4. BUDGETARY IMPLICATIONS

The proposal has no significant implications for the budget of the European Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will be empowered to adopt implementing acts in order to provide for the specific forms to use (e.g. licences forms, application forms, affidavit text, etc.) and the relevant procedural details.

The Commission will monitor the performance of the legal instrument and its implementing provisions in close cooperation with the Member States. Monitoring in a continuous and systematic way would allow identifying whether the policy proposal is applied as expected and addressing implementation problems in a timely manner.

Collection of factual data by the Member States will provide the basis for the future evaluation of the Regulation and will be guided by the following monitoring indicators:

- statistical information to the Commission on importer's statements registered;
- controls carried out in cases where an importer's statement was made and there were doubts as to its accuracy;
- numbers of import licence applications submitted and numbers of those refused;
- relevant statistical information on cultural goods trade flows (e.g. countries from where cultural goods are mostly dispatched to the EU);
- numbers of cases where cultural goods have been detained for further controls, including expertise; and
- penalties established and imposed by the Member States.

The development in the future²³ of appropriate subdivisions in the customs nomenclature will permit to monitor more accurately trade flows and to collect more specific statistical data on the number and kind of cultural goods that are entering the Union's customs territory.

An evaluation report would be prepared by the Commission on the basis of information provided by the Member States and submitted to the European Parliament and the Council three years after the date of application of the Regulation and every five years thereafter. The evaluation of the Regulation should assess the extent to which the objectives have been met. The evaluation results could be communicated to other European Institutions in the form of a report.

The effectiveness of the non-legislative, accompanying initiatives will be assessed by *ex post* evaluation of the awareness-raising campaigns and trainings.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 enunciates the subject matter of the Regulation and its scope of application.

Article 2 provides for a series of definitions of terms used for the purposes of the Regulation.

Article 3 enunciates the principle according to which the entry of cultural goods into the customs territory of the Union is only permitted when an import licence has been obtained for them or an importer statement is submitted. Cultural goods can still enter temporarily for exhibitions or academic and scientific research, or in cases where they need a temporary refuge from destruction and loss, when the source country is affected by armed conflict or is suffering a natural disaster.

Article 4 provides for the cases where an import licence is required, the person who has to apply for it, the conditions and modalities and from which Member State authority it can be obtained. In order to avoid circumvention, when the exporting country is not the one where the object was discovered or created ('source country'), a differentiation is made depending on whether the exporting country is a signatory State of the 1970 UNESCO Convention or not. When it is a signatory and thus a country committed to fighting against illicit trafficking of cultural property, the applicant has to demonstrate lawful export from that country; if not, the applicant has to demonstrate lawful export from the source country.

Article 5 provides for the cases where an importer statement will be required and for the standardised document describing the goods. The standardised document will be an Object ID, which is an international standard for describing cultural objects. It is being promoted by major law enforcement agencies, museums, cultural heritage organisations, art trade and art appraisal organisations, and insurance companies. It has also been endorsed by UNESCO as the international standard for recording minimal data on movable cultural property. The Object ID is known and used by many Member States for cataloguing objects in digital databases by their specialised police units, as a rapid means to communicate information and for setting minimum information requirements for museums. A similar distinction is made, as in Article 4, between exporting countries which are signatory States of the 1970 UNESCO Convention and those which are not.

Article 6 refers to control and verification actions by customs.

²³

First at EU tariff nomenclature level by creating appropriate TARIC (Integrated Tariff of the European Communities) subdivisions for the purposes of applying EU customs measures and later on, at international level, by the World Customs Organisation which has clearly stated their intention to amend Chapter 97 of the Harmonised System and create in it more subdivisions.

Article 7 provides for the periodic publication by the Commission of the lists of competent customs offices designated by the Member States for the purposes of the Regulation. This publication is considered necessary for informing economic operators.

Article 8 provides for the case where cultural goods may be retained by customs because it cannot be demonstrated that the cultural goods in question have been legally exported from the source country.

Article 9 calls on Member States to organise cooperation between their competent authorities and provides for the future development of an electronic database to facilitate the storage and exchange of information, in particular importer statements and importer licences issued.

Article 10 requires from Member States to foresee penalties for infringements to this Regulation in accordance with their internal legal systems.

Article 11 calls on Member States to organise appropriate training sessions for the authorities that they have designated for the implementation of the Regulation, as well as awareness-raising campaigns in order to inform potential buyers about the legal framework and dissuade them from buying unprovenanced cultural goods from third countries.

Article 12 provides for the power to adopt delegated acts by the Commission. This empowerment will allow the Commission to adapt, if necessary, the minimum age threshold or the categories of cultural goods subject to import licence (for reasons of changing circumstances and based on experience gained). As the World Customs Organisation has declared a clear intention to add more subdivisions to the Harmonised System (HS) Chapter 97 (where the grand majority of cultural goods are classified for tariff and statistical purposes) in the future, the Commission needs to be able to update the relevant tariff codes in the Annex to the Regulation accordingly.

Article 13 provides for the designation of a committee that will assist the Commission with the implementation of the Regulation. For reasons of coherence and efficiency, it is appropriate to designate for this purpose the committee which is already assisting the Commission in the context of Regulation (EC) No 116/2009 on the export of cultural goods.

Article 14 covers reporting and evaluation. The Commission will periodically gather information from the Member States on the implementation and performance of the Regulation, based on a number of indicators. Appropriate questionnaires will be addressed to the Member States in order to gather the same type of information, based on which the Commission will establish a report to the European Parliament and the Council. The first report will be submitted three years after the starting date of implementation of this Regulation.

Article 15 provides for the entry into force of the Regulation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the import of cultural goods

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In the light of the Council Conclusions of 12 February 2016 on the fight against the financing of terrorism, the Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing²⁴ and the Directive on combating terrorism²⁵, common rules on trade with third countries should be enacted so as to ensure the effective protection against the loss of cultural goods, the preservation of humanity's cultural heritage and the prevention of terrorist financing through the selling of looted cultural heritage to buyers in the Union.
- (2) Cultural heritage constitutes one of the basic elements of civilisation, it enriches the cultural life of all peoples and it should therefore be protected from unlawful appropriation and pillage. The Union should accordingly prohibit the entry in the customs territory of the Union of cultural goods unlawfully exported from third countries.
- (3) In view of different rules applying in the Member States regarding the entry of cultural goods into the customs territory of the Union, measures should be taken in particular to ensure that imports of cultural goods are subject to uniform controls upon their entry.
- (4) The common rules should cover the customs treatment of non-Union cultural goods entering the customs territory of the Union, i.e. both their release for free circulation as well as their placement under a special customs procedure other than transit.
- (5) Given the known potential of free zones (and so-called "free ports") for the purpose of storing cultural goods, the control measures to be put in place should have as broad a scope as possible in terms of customs procedures concerned. Those control measures should therefore not only concern goods released for free circulation but also goods

²⁴ COM(2016) 50 final.

²⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; OJ L 88, 31.3.2017, p.6-21

placed under a special customs procedure. However, such a broad scope should not go against the principle of freedom of transit of goods nor go beyond the objective of preventing illicitly exported cultural goods from entering the customs territory of the Union. Accordingly, while encompassing special customs procedures under which goods entering the customs territory of the Union may be placed, control measures should exclude transit.

- (6) The definitions based on those used in 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 and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects signed in Rome on 24 June 1995, to which a significant number of Member States are a party, should be used in the Regulation, considering the familiarity of many third countries and most Member States with their provisions.
- (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.
- (8) In order not to impede trade with goods across the external border disproportionately, this Regulation should only apply to goods meeting a certain age limit. For that purpose, it seems appropriate to set a 250 year minimum age threshold for all categories of cultural goods. That minimum age threshold will ensure that the measures provided for in this Regulation focus on cultural goods most likely to be targeted by looters in conflict areas, without excluding other goods the control of which is necessary for ensuring protection of cultural heritage.
- (9) Trafficking in looted artefacts and antiques has been identified as a possible source for terrorist financing and money laundering activities in the context of the supranational risk assessment on money laundering and terrorist financing risks affecting the internal market²⁶.
- (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.

²⁶

Commission Communication COM (2017) 340

- (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.
- (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.
- (13) Storage of cultural goods from countries affected by armed conflict or suffering a natural disaster should also be permitted without the presentation of a licence or a statement in order to ensure their safety and preservation.
- (14) In order to take account of experience with the implementation of this Regulation and of changing geopolitical and other circumstances which place cultural goods at risk, while not impeding trade with third countries disproportionately, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of modifications to the minimum age threshold criterion for the different categories of cultural goods. That delegation should also allow the Commission to update the Annex following amendments to the Combined Nomenclature. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016²⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (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.
- (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

²⁷ OJ L 123, 12.5.2016, p. 1.

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).

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.

- (17) The EU Strategy and Action Plan for customs Risk Management²⁹ aims –*inter alia*– to strengthen capacities 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.
- (18) Member States should introduce effective, proportionate and dissuasive penalties for failing to comply with the provisions of this Regulation and communicate those penalties to 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.
- (20) In accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (21) This Regulation respects the fundamental rights and observes the principles recognised in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Title II thereof,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation sets out the conditions and procedure for the entry of cultural goods into the customs territory of the Union.

This Regulation does not apply to cultural goods which are in transit through the customs territory of the Union.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

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.

(a) 'cultural goods' means any object which is of importance for archaeology, prehistory, history, literature, art or science and which belongs to the categories listed in the table in Annex and meets the minimum age threshold specified therein;

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

(c) 'export country' means the last country in which the cultural goods were permanently held in accordance with that country's laws and regulations before their dispatch to the Union;

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

(e) 'release for free circulation' means the customs procedure referred to in Article 201 of Regulation (EU) No 952/2013;

(f) 'placing under a special procedure other than transit' means the placing of goods under one of the special customs procedures referred to in points (b), (c) or (d) of Article 210 of Regulation (EU) No 952/2013;

(g) 'holder of the goods' means the person referred to in Article 5(34) of Regulation (EU) No 952/2013;

(h) 'declarant' means the person referred to in Article 5(15) of Regulation (EU) No 952/2013.

2. The Commission is empowered to adopt delegated acts in accordance with Article 12 in order to amend the second column of the table in the Annex following amendments in the Combined Nomenclature and to amend the minimum age threshold in the third column of the table in the Annex in the light of experience gathered during the implementation of this Regulation.

Article 3

Cultural goods entering the customs territory of the Union

1. The release of cultural goods for free circulation and the placing of cultural goods under a special procedure other than transit shall only be permitted upon the presentation of an import licence issued in accordance with Article 4 or of an importer statement made out in accordance with Article 5.

2. Paragraph 1 shall not apply to:

(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;

(b) the storage, within the meaning of Article 237 of Regulation (EU) No 952/2013, of cultural goods for the express purpose of ensuring their preservation by, or under the supervision of, a public authority.

3. The Commission may adopt, by means of implementing acts, the specific modalities for the temporary admission or storage of cultural goods referred to in paragraph 2. Those

implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13.

4. Paragraph 1 shall be without prejudice to other measures adopted by the Union in accordance with Article 215 of the Treaty on the Functioning of the European Union.

Article 4

Import licence

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 (c), (d) and (h) of the Annex shall be subject to the presentation of an import licence to the customs authorities.

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.

3. The competent authority of the Member State of entry shall verify whether the application is complete. It shall request any missing information or document from the applicant within 30 days of receipt of the application.

4. The competent authority shall, within 90 days of the submission of the complete application, examine the application and decide to issue the import licence or reject the application. It may reject the application on the following grounds:

(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;

(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 export country in accordance with its laws and regulations;

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

5. Member States shall designate the public authorities competent to issue import licenses in accordance with this Article. They shall communicate the details of those authorities as well as any changes in that respect to the Commission.

The Commission shall publish the details of those competent authorities and any changes thereto in the 'C' series of the *Official Journal of the European Union*.

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.

Article 5

Importer statement

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.

2. 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.

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.

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.

Article 6

Customs control and verification

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.

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.

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

4. When submitting a declaration for the release of cultural goods for free circulation or for placing them under a special procedure other than transit, the quantity of the products shall be indicated using the supplementary unit set out in the Annex.

Article 7

Competent customs offices

Where Member States restrict the number of customs offices competent to release cultural goods for free circulation or to place them under a special procedure other than transit, they shall communicate the details of those customs offices as well as any changes in that respect to the Commission.

The Commission shall publish the details of the competent customs offices and any changes thereto in the 'C' series of the *Official Journal of the European Union*.

Article 8

Temporary retention by customs authorities

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.

2. The administrative decision referred to in paragraph 1 shall be accompanied by a statement of reasons, be communicated to the declarant and shall be subject to an effective remedy in accordance with procedures provided for in national law.

3. The period of temporary retention shall be strictly limited to the time required for the customs authorities or other law enforcement authorities to determine whether the circumstances of the case warrant retention under other provisions of Union or national law. The maximum period of temporary retention under this Article shall be 6 months. If no determination is made regarding further retention of the cultural goods within that period or if a determination is made that the circumstances of the case do not warrant further retention, the cultural goods shall be made available to the declarant.

Article 9

Administrative co-operation

1. For the purposes of implementing this Regulation, Member States shall ensure co-operation between their competent authorities referred to in Article 3(4).

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.

3. The Commission may lay down, by means of implementing acts,

- a) the arrangements for the deployment, operation and maintenance of the electronic system referred to in paragraph 2;
- b) the detailed rules regarding the storage and exchange of information between the authorities of the Member States by means of the electronic system referred to in paragraph 2.

Those implementing acts shall be adopted in accordance with the procedure referred to in Article 13.

Article 10

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of Articles 3, 4 and 5 and in particular, to the making of false statements and the submission of false information to obtain entry of cultural goods into the customs territory of the Union, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and of those measures within 18 months of the entry into force of the Regulation and shall notify it, without delay, of any subsequent amendment affecting them.

Article 11

Training, capacity building and awareness raising

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.

Article 12

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 2(2) shall be conferred on the Commission for an indeterminate period of time from ... [Publications Office is to fill in the date of entry into force of this Act].
3. The delegation of power referred to in Article 2(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 2(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 13

Committee procedure

1. The Commission shall be assisted by the committee established by Article 8 of Council Regulation (EC) No 116/2009³⁰.

2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 14

Reporting and Evaluation

1. Member States shall provide information to the Commission on the implementation of this Regulation. In particular, that information shall include:

- (a) statistical information on importer statements registered;
- (b) information on infringements of this Regulation;
- (c) the numbers of import licence applications submitted and of import licence applications refused;
- (d) relevant statistical information on trade in cultural goods;
- (e) number of cases in which cultural goods have been retained and
- (f) number of cases where cultural goods have been abandoned to the State in accordance with Article 199 of Regulation (EU) No 952/2013.

³⁰ Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L 39, 10.2.2009, p. 1).

For this purpose, the Commission shall address relevant questionnaires to the Member States. Member States shall have 6 months to communicate the requested information to the Commission.

2. The Commission shall present a report to the European Parliament and the Council on the implementation of this Regulation three years after the date of application of this Regulation and, after that, every five years.

Article 15

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President