Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods

REGULATION (EU) 2019/880 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

on the introduction and 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(2) 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[(1)],

Whereas:

(1) In 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 of 2 February 2016 on an Action Plan for strengthening the fight against terrorist financing and Directive (EU) 2017/541 of the European Parliament and of the Council[(2)], common rules on trade with third countries should be adopted so as to ensure the effective protection against illicit trade in cultural goods and against their loss or destruction, the preservation of humanity's cultural heritage and the prevention of terrorist financing and money laundering through the sale of pillaged cultural goods to buyers in the Union.

(2) The exploitation of peoples and territories can lead to the illicit trade in cultural goods, in particular when such illicit trade originates from a context of armed conflict. In this respect, this Regulation should take into account regional and local characteristics of peoples and territories, rather than the market value of cultural goods.

(3) Cultural goods are a part of cultural heritage and are often of major cultural, artistic, historical and scientific importance. Cultural heritage constitutes one of the basic elements of civilisation having, inter alia, symbolic value, and forming part of the cultural memory of humankind. It enriches the cultural life of all peoples and unites people through shared memory, knowledge and development of civilisation. It should therefore be protected from unlawful appropriation and pillage. Pillaging of archaeological sites has always happened, but has now reached an industrial scale and, together with trade in illegally excavated cultural goods, is a serious crime that causes significant suffering to those directly or indirectly affected. The illicit trade in cultural goods in many cases contributes to forceful cultural homogenisation or forceful loss of cultural identity, while the pillage of cultural goods leads, inter alia, to the disintegration

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2019/880 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

of cultures. As long as it is possible to engage in lucrative trade in illegally excavated cultural goods and to profit therefrom without any notable risk, such excavations and pillaging will continue. Due to the economic and artistic value of cultural goods they are in high demand on the international market. The absence of strong international legal measures and the ineffective enforcement of any measures that do exist, lead to the transfer of such goods to the shadow economy. The Union should accordingly prohibit the introduction into the customs territory of the Union of cultural goods unlawfully exported from third countries, with particular emphasis on cultural goods from third countries affected by armed conflict, in particular where such cultural goods have been illicitly traded by terrorist or other criminal organisations. While that general prohibition should not entail systematic controls, Member States should be allowed to intervene when receiving intelligence regarding suspicious shipments and to take all appropriate measures to intercept illicitly exported cultural goods.

(4) In view of different rules applying in Member States regarding the import of cultural goods into the customs territory of the Union, measures should be taken in particular to ensure that certain imports of cultural goods are subject to uniform controls upon their entry into the customs territory of the Union, on the basis of existing processes, procedures and administrative tools aiming to achieve a uniform implementation of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(3)].

(5) The protection of cultural goods which are considered national treasures of the Member States is already covered by Council Regulation (EC) No 116/2009[(4)] and Directive 2014/60/EU of the European Parliament and of the Council[(5)]. Consequently, this Regulation should not apply to cultural goods which were created or discovered in the customs territory of the Union. The common rules introduced by this Regulation should cover the customs treatment of non-Union cultural goods entering the customs territory of the Union. For the purposes of this Regulation, the relevant customs territory should be the customs territory of the Union at the time of import.

(6) Control measures to be put in place regarding free zones and so-called ‘free ports’ should have as broad a scope as possible in terms of the customs procedures concerned in order to prevent circumvention of this Regulation through the exploitation of those free zones, which have the potential to be used for the continued proliferation of illicit trade. Those control measures should therefore not only concern cultural goods released for free circulation but also cultural goods placed under a special customs procedure. However, the scope should not go beyond the objective of preventing illicitly exported cultural goods from entering the customs territory of the Union. Accordingly, while encompassing the release for free circulation and some of the special customs procedures under which goods entering the customs territory of the Union may be placed, systematic control measures should exclude transit.

(7) Many third countries and most Member States are familiar with the definitions 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 (‘the 1970 Unesco Convention’) to which a significant number of Member States are a party, and in the UNIDROIT Convention on Stolen or Illegally Exported Cultural

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2019/880 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Objects signed in Rome on 24 June 1995. For that reason the definitions used in this Regulation are based on those definitions.

(8) The legality of export of cultural goods should be primarily examined based on the laws and regulations of the country where those cultural goods were created or discovered. However, in order not to impede legitimate trade unreasonably, a person who seeks to import cultural goods into the customs territory of the Union should, in certain cases, be exceptionally allowed to demonstrate instead the licit export from a different third country where the cultural goods were located before their dispatch to the Union. That exception should apply in cases where the country in which the cultural goods were created or discovered cannot be reliably determined or when the export of the cultural goods in question took place before the 1970 Unesco Convention entered into force, namely 24 April 1972. In order to prevent circumvention of this Regulation by simply sending illicitly exported cultural goods to another third country prior to importing them into the Union, the exceptions should be applicable where the cultural goods have been located in a third country for a period of more than five years for purposes other than temporary use, transit, re-export or transhipment. Where those conditions are fulfilled for more than one country, the relevant country should be the last of those countries before the introduction of the cultural goods into the customs territory of the Union.

(9) Article 5 of the 1970 Unesco Convention calls on the States Parties to establish one or more national services for the protection of cultural goods against illicit import, export and transfer of ownership. Such national services should be equipped with qualified staff sufficient in number to ensure that protection in accordance with that Convention, and should also enable the necessary active collaboration between the competent authorities of Member States which are Parties to that Convention in the area of security and in the fight against the illegal import of cultural goods, especially from areas affected by armed conflict.

(10) In order not to disproportionately impede trade in cultural goods across the Union's external border, this Regulation should only apply to cultural goods above a certain age limit, which is established by this Regulation. It also seems appropriate to set a financial threshold in order to exclude cultural goods of lower value from the application of the conditions and procedures for import into the customs territory of the Union. Those thresholds will ensure that the measures provided for in this Regulation focus on those cultural goods most likely to be targeted by pillagers in conflict areas, without excluding other goods the control of which is necessary for ensuring the protection of cultural heritage.

(11) Illicit trade in pillaged cultural goods has been identified as a possible source of terrorist financing and money laundering activities in the context of the supranational risk assessment on money laundering and terrorist financing risks affecting the internal market.

(12) Since certain categories of cultural goods, namely archaeological objects and elements of monuments, are particularly vulnerable to pillage and destruction, it seems necessary to provide for a system of increased scrutiny before they are permitted to enter the customs territory of the Union. Such a system should require the presentation

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2019/880 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

of an import licence issued by the competent authority of a Member State prior to the release for free circulation of those cultural goods into the Union 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 country where the cultural goods were created or discovered with the appropriate supportive documents and evidence, such as export certificates, 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. All import licences should be stored in an electronic system.

(13) An icon is any representation of a religious figure or a religious event. It can be produced in various media and sizes and can be monumental or portable. In cases where an icon was once part, for example, of the interior of a church, a monastery, a chapel, either free-standing or as part of architectural furniture, for example an iconostasis or icon stand, it is a vital and inseparable part of divine worship and liturgical life, and should be considered as forming an integral part of a religious monument which has been dismembered. Even in cases where the specific monument that the icon belonged to is unknown, but where there is evidence that it once formed an integral part of a monument, in particular when there are signs or elements present which indicate that it was once part of an iconostasis or an icon stand, the icon should still be covered by the category ‘elements of artistic or historical monuments or archaeological sites which have been dismembered’ listed in the Annex.

(14) Taking into account the particular nature of the cultural goods, the role of the customs authorities is extremely relevant and they should be able, where necessary, to require additional information from the declarant and to analyse the cultural goods by means of a physical examination.

(15) For categories of cultural goods the import of which does not require an import licence, the persons seeking to import such goods 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 cultural goods to be identified by the customs authorities. In order to facilitate the procedure and for reasons of legal certainty, the information about the cultural goods should be provided using a standardised document. The Object ID standard, recommended by Unesco, could be used to describe the cultural goods. The holder of the goods should register those details in an electronic system, in order to facilitate identification by the customs authorities, to allow for risk analysis and targeted controls and to ensure traceability after the cultural goods enter the internal market.

(16) In the context of the EU Single Window environment for customs, the Commission should be responsible for the establishment of a centralised electronic system for the submission of applications for import licences and of importer statements, as well as the storage and the exchange of information between the authorities of the Member States, in particular regarding importer statements and import licences.

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2019/880 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(17) It should be possible for the processing of data under this Regulation to also cover personal data and such processing should be carried out in accordance with Union law. Member States and the Commission should process personal data only for the purposes of this Regulation or in duly justified circumstances for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Any collection, disclosure, transmission, communication and other processing of personal data within the scope of this Regulation should be subject to the requirements of Regulations (EU) 2016/679[(6)] and (EU) 2018/1725[(7)] of the European Parliament and of the Council. The processing of personal data for the purposes of this Regulation should also respect the right to respect for private and family life recognised by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, as well as the right to respect for private and family life, and the right to the protection of personal data recognised, respectively, by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

(18) Cultural goods which were not created or discovered in the customs territory of the Union but which have been exported as Union goods should not be subject to the presentation of an import licence or of an importer statement when they are returned to that territory as returned goods within the meaning of Regulation (EU) No 952/2013.

(19) The temporary admission of cultural goods for the purpose of education, science, conservation, restoration, exhibition, digitisation, performing arts, research conducted by academic institutions or cooperation between museums or similar institutions should not be subject to the presentation of an import licence or of an importer statement.

(20) The storage of cultural goods from countries affected by armed conflict or a natural disaster for the exclusive purpose of ensuring their safe keeping and preservation by, or under the supervision of, a public authority should not be subject to the presentation of an import licence or an importer statement.

(21) In order to facilitate the presentation of cultural goods at commercial art fairs, an import licence should not be necessary where the cultural goods are under temporary admission, within the meaning of Article 250 of Regulation (EU) No 952/2013, and where an importer statement has been provided instead of the import licence. However, the presentation of an import licence should be required where such cultural goods are to remain in the Union after the art fair.

(22) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt detailed arrangements for: cultural goods that are returned goods or, the temporary admission of cultural goods into the customs territory of the Union and their safe keeping, the templates for import licence applications and for import licence forms, the templates for importer statements and their accompanying documents, and 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 system for the submission of applications for import licences and importer statements and for the storage of information and the exchange of information between Member States.