Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (Codified version)

COUNCIL REGULATION (EC) No 116/2009

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on the export of cultural goods

(Codified version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods[(1)] has been substantially amended several times[(2)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) In order to maintain the internal market, rules on trade with third countries are needed for the protection of cultural goods.

(3) It seems necessary to take measures in particular to ensure that exports of cultural goods are subject to uniform controls at the Community's external borders.

(4) Such a system should require the presentation of a licence issued by the competent Member State prior to the export of cultural goods covered by this Regulation. This necessitates a clear definition of the scope of such measures and the procedures for their implementation. The implementation of the system should be as simple and efficient as possible.

(5) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(3)].

(6) In view of the considerable experience of the Member States' authorities in the application of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters[(4)], the said Regulation should be applied to this matter.

(7) Annex I to this Regulation is aimed at making clear the categories of cultural goods which should be given particular protection in trade with third countries, but is not intended to prejudice the definition, by Member States, of national treasures within the meaning of Article 30 of the Treaty,

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 116/2009. 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*

HAS ADOPTED THIS REGULATION:

Article 1

Definition

Without prejudice to Member States' powers under Article 30 of the Treaty, the term ‘cultural goods’ shall refer, for the purposes of this Regulation, to the items listed in Annex I.

Article 2

Export licence

1 The export of cultural goods outside the customs territory of the Community shall be subject to the presentation of an export licence.

2 The export licence shall be issued at the request of the person concerned:

a by a competent authority of the Member State in whose territory the cultural object in question was lawfully and definitively located on 1 January 1993;

b or, thereafter, by a competent authority of the Member State in whose territory it is located following either lawful and definitive dispatch from another Member State, or importation from a third country, or re-importation from a third country after lawful dispatch from a Member State to that country.

However, without prejudice to paragraph 4, the Member State which is competent in accordance with points (a) or (b) of the first subparagraph is authorised not to require export licences for the cultural goods specified in the first and second indents of category A.1 of Annex I where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds or archaeological sites within a Member State, and that their presence on the market is lawful.

The export licence may be refused, for the purposes of this Regulation, where the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the Member State concerned.

Where necessary, the authority referred to in point (b) of the first subparagraph shall enter into contact with the competent authorities of the Member State from which the cultural object in question came, and in particular the competent authorities within the meaning of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State[(5)].

3 The export licence shall be valid throughout the Community.

4 Without prejudice to the provisions of paragraphs 1, 2 and 3, direct export from the customs territory of the Community of national treasures having artistic, historic or archaeological value which are not cultural goods within the meaning of this Regulation is subject to the national law of the Member State of export.

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Article 3

Competent authorities

1 Member States shall furnish the Commission with a list of the authorities empowered to issue export licences for cultural goods.

2 The Commission shall publish a list of the authorities and any amendment to that list in the 'C' series of the *Official Journal of the European Union*.

Article 4

Presentation of licence

The export licence shall be presented, in support of the export declaration, when the customs export formalities are carried out, at the customs office which is competent to accept that declaration.

Article 5

Limitation of competent customs offices

1 Member States may restrict the number of customs offices empowered to handle formalities for the export of cultural goods.

2 Member States availing themselves of the option afforded by paragraph 1 shall inform the Commission of the customs offices duly empowered.

The Commission shall publish this information in the 'C' series of the *Official Journal of the European Union*.

Article 6

Administrative cooperation

For the purposes of implementing this Regulation, the provisions of Regulation (EC) No 515/97, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

In addition to the cooperation provided for under the first paragraph, Member States shall take all necessary steps to establish, in the context of their mutual relations, cooperation between the customs authorities and the competent authorities referred to in Article 4 of Directive 93/7/EEC.

Article 7

Implementing measures

The measures necessary for the implementation of this Regulation, in particular those concerning the form to be used (for example, the model and technical properties) shall be adopted in accordance with the procedure referred to in Article 8(2).

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Article 8

Committee

1 The Commission shall be assisted by a committee.

2 Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

Article 9

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 10

Reporting

1 Each Member State shall inform the Commission of the measures taken pursuant to this Regulation.

The Commission shall pass on this information to the other Member States.

2 Every three years the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Regulation.

The Council, acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in Annex I, on the basis of economic and monetary indicators in the Community.

Article 11

Repeal

Regulation (EEC) No 3911/92, as amended by the Regulations listed in Annex II, is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 12

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 18 December 2008.

For the Council

The President

M. BARNIER