

PRELIMINARY REMARKS

Cultural goods : the administrative co-operation between competent authorities

The Council Regulation (EEC) No 3911/92 on the export of cultural goods states that co-operation between the customs administrations and the competent authorities is an important element in the protection of cultural goods.

The Advisory Committee on Cultural Goods, created by this Regulation, has proposed guidelines to improve and reinforce this administrative co-operation. These guidelines, in addition to the recommendations on the best method for their implementation, provide also useful information on the applicable legislation and on the authorities in charge of the protection of cultural goods.

Please find below the guidelines and the other information on the contact points in the Member States.

Protection of cultural goods in the Community

GUIDELINES

FOR

ADMINISTRATIVE CO-OPERATION

BETWEEN

THE COMPETENT AUTHORITIES

Index

1. Introduction
2. Community legislation
3. Definition of cultural goods: categories covered by Community legislation
4. Export authorisation
5. Formalities to be completed
6. The return of cultural goods within the Community
7. Administrative co-operation

Annexes

Annex I: list of categories of cultural goods covered by Community legislation

Annex II: list of national texts applicable to the cultural goods

Annex III: list of authorities in charge of the protection of cultural goods

Annex IV: list of sites in the Member States

1. Introduction. Aim of the guidelines

The aim of these guidelines is to:

- remind interested persons and institutions of the existence of Community acts governing the exportation of cultural goods to non-Community countries and the return of goods which have unlawfully left the territory of another Member State;
- provide such persons and institutions with lists of the various authorities that may act to implement Community legislation;
- provide the competent authorities with all the information they need –categories of goods, legislation and national procedures, lists of competent authorities- to facilitate administrative co-operation both within the Member States and with their opposite numbers in the other Member States;
- provide recommendations on the best way of implementing and developing administrative co-operation between the various authorities and of exchanging information where necessary to protect cultural goods.

2. Community legislation

Article 30 of the Treaty of European Communities allows Member States to adopt measures to prohibit or restrict the free movement of the national treasures of artistic, historic or archaeological interest, justified by reasons of their protection. However, these measures may not entail internal border controls in the Community.

In order to preserve the principle of free movement and, at the same time, to protect the cultural heritage, a double safeguard has been adopted at Community level. It rests on two legislative acts, a Regulation and a Directive, and also a Regulation of implementation.

1. Council Regulation (EEC) No 3911/92¹, which covers the exportation of cultural goods, provides for uniform export controls for the cultural goods specified in it and requires a licence to be issued by the competent authorities. The licence must be presented together with the export declaration at the customs office where the export formalities are to be completed. For its implementation, Commission Regulation No 752/93² lays down the types of export licences that may be used, and the formalities for exporting such goods.
2. Council Directive 93/7/EEC³ sets up a mechanism for the return within the Community of cultural goods belonging to the national artistic, historical or archaeological heritage which have unlawfully left the territory of a Member State. One of the aims of the Directive is to create conditions for close collaboration between the Member States, particularly in investigating objects, which have been removed illegally.

3. Categories of goods covered by Community Regulations

The cultural goods covered by Community legislation – and for which an export licence is required under Regulation (EEC) No 3911/92 – are listed in the joint Annex to the two acts.

They are divided into 15 categories, according to their nature (corresponding as an indicative way to tariff headings in the Combined Nomenclature). The decisive criterion for being considered “cultural goods” is age (over 50, 75 or 100 years old, with exceptions for certain collections or for certain objects of particular interest). This criterion is also combined with minimum value (between 0 and EUR 150 000).

The list of these goods is set out in Annex I.

¹ Regulation (EEC) No 3911/92 of the Council, of 9 December 1992, on the export of cultural goods (OJ No L 395 of 31.12.1992. Modified by Regulation (EC) No 2469/96 of 16 December 1996 (OJ No L 335 of 24.12.1996 and by Regulation No 974/2001 of 14.5.2001 (OJ No L 137 of 19.5.2001)

² (OJ No L 77 du 31.3.1993). Modified by Regulation No 1526/98 of 16.7.1998 (OJ No L 201 of 17.7.1998)

³ Directive 93/7/EEC of the Council, of 15 March 1993, on the return of cultural objects unlawfully removed from the territory of a Member State (OJ No L 74 do 27.3.1993. Modified by Directive No 96/100/EC of 17.2.1996 (OJ No L 60 of 1.3.1996) and by Directive No 2001/38 of 5.6.2001 (OJ No L 187 of 10.7.2001)

4. Export licence

Any export of cultural goods, whether permanent or temporary, is governed by the above Regulation. As protection at the Community's external frontiers, the Regulation makes it compulsory to present a licence issued by to the relevant authority in the Member States – in most cases this one responsible for cultural matters. This licence, which is valid throughout the Community, must be presented, together with the cultural goods in question and the export declaration, to one of the customs offices empowered to carry out the export formalities.

The licence is needed for cultural goods listed in the Annex, whether or not they are national treasures (for example, the competent authorities may allow the temporary exportation of a national treasure as part of an exhibition, for repair or for expert appraisal). The export licence requirement may be waived for certain archaeological objects over 100 years old, which are of limited scientific or archaeological interest, provided that they are not the direct product of excavations, finds and archaeological sites within a Member State and that their presence on the market is lawful.⁴

If a national treasure does not fall within one of the categories listed in the Annex, a Community licence is not needed. In that case, it is national legislation, which applies, in accordance with Article 30 of the Treaty.

It is obvious that before issuing a licence the relevant authorities must ensure not only that the item to be exported has been identified as precisely as possible, but that there are no obstacles to that particular cultural item leaving the Community. They may obviously contact, and make the necessary approaches to, the authorities of another Member State in order to determine whether the goods left that country lawfully or may contact the competent authorities in order to be assured that the goods have not entered unlawfully.

5. Formalities to be completed

The implementing provisions contained in Regulation (EEC) No 752/93, as amended by Regulation (EEC) No 1526/98, define the three types of export licence introduced – “standard”, “specific open” and “general open” – and indicate the model form to be used in each case. The two types of “open” licences are used, respectively, to cover repeated temporary exports of cultural goods intended for a given person or organisation and temporary exports of cultural goods, which form part of the permanent collection of a museum.

The form for the standard export licence comprises three sheets (two sheets for the open licences): the application, the form for the holder/applicant, and the form to be given to the customs office. The Regulation also contains instructions for completing the form and the documentation which must accompany the application (invoices,

⁴ Most of the Member States don't use this possibility and require a licence, accompanied always by a photograph even in the case of an export of thousands of objets.

expert appraisals, photographs etc.); physical presentation of the goods may also be required.

Standard licences are valid for a maximum of 12 months from the time of issue, while open licences are valid for a period not exceeding five years.

6. The return of cultural good within the Community

In order to complete the overview of the situation regarding the movement of cultural goods, there follows a brief explanation of the substance of Directive 93/7/EEC.

The Directive's terms are narrower; it applies only to those cultural goods, which are included in a category of the Annex and classified as belonging to the national, artistic, historical or archaeological heritage or forming part of the public collections of museums, archives or libraries or religious institutions' inventories.

It provides for the return of these goods where they have unlawfully left the territory of one Member State for another Member State, in violation of national legislation on the protection of the national heritage. The request for return is made before the courts; the Directive also contains provisions on the expenses incurred, the burden of proof and the compensation to be paid.

In addition to the return procedure, another priority objective of the Directive is to create the conditions for close administrative co-operation among the Member States. The Directive includes collaboration activities, such as the search for goods reported missing, notification of the discovery of cultural goods, the adoption of interim measures and mediation between the possessor of goods and the requesting state.

7. Administrative cooperation

Close co-operation and information exchange between the various authorities of the Member States are crucial to the protection and defence of the cultural heritage of the Member States. The cultural authorities play a important part of responsibility in this area.

With regard to customs authorities, we have to ask whether the necessary formalities for exporting cultural goods, particularly the presentation and control at the customs offices of an export licence issued by the designated competent authorities, following prior verification of the legality of the item in question, constitute important filters to guarantee protection at the external frontiers.

This means that those two authorities, i.e. customs and the competent authorities for cultural heritage, plus other persons or entities with a role in defending cultural heritage (police, museums, and agencies directly involved) must set up the necessary mutual collaboration mechanisms.

Council Regulation (EEC) No 3911/92 provides for two types of administrative cooperation, which should be used as extensively as possible:

1. The first is mutual administrative assistance between the Member States' customs authorities pursuant to Council Regulation (EC) No 515/97. Member States may, through the competent authorities appointed under Article 2(2) of Regulation (EEC) No 515/97, exchange information likely to assist controls by the customs authorities to protect the cultural heritage.
2. The second involves establishing relations and fostering consultations between the customs authorities and the authorities responsible, under Article 4 of Council Directive 93/7/EEC, for applying that Directive on the return of cultural objects unlawfully removed from the territory of a Member State.

The aim is to create an interface between controls on legal exports and the detection of illegal exports.

Thus, the Member States may exchange any information likely to activate this interface between the application of "export" Regulation (EEC) No 3911/92 and "return" Directive 93/7/EEC through the competent authorities referred to in Article 4 of that Directive.

In other respects, it is recognised that all co-operation will be facilitated by actions, as for example:

- the reinforcement of systems to allow for improvement of the description of the goods and to enhance their traceability, for instance by an accompanying document;
- the establishment if possible of inventories of cultural goods to be protected;
- a wider knowledge of the different provisions applicable in the Member States

Unfortunately, since the entry into force of the Regulation and the Directive it has become apparent that there are serious problems with such co-operation.

In order to put an end to the obstacles linked to the:

- lack of previous consultation between the different actors and the partition of actions of each,
- insufficient knowledge of the correspondent of each operative sector,
- loss of efficiency of the working of the systems related to slowness and linguistic problems,

It is suitable to recommend the following actions, at national rather than Community level:

GUIDELINES

A. At national level :

1. The dissemination among the various authorities (culture, police, customs, etc.) of up-to-date, complete addresses, so that they can contact each other directly and pass on information on a periodic and regular basis concerning the movement and trade, both legal and illegal, in cultural goods. The list of these addresses could be disseminated, with restricted access, by Internet.
2. The formalisation of regular meetings between these authorities (at central level) to share useful information on the subject, as well as the latest information of mutual interest or events in progress or stated in the Member State in respect of the rules of confidentiality and professional secrecy.
3. The reinforcement of the collaboration at national level between the different authorities (police, customs, culture, etc..) through the formalisation of bilateral and multilateral protocol agreements.
4. The establishment of IT networks and systems for accessing databases supplied by all the services concerned, including the use of e-mail in order to optimise the access to information. The databases could refer to a list of national treasures of the Member State and of cultural goods prohibited to leave national territory or to a list, regularly updated, indicating the national treasures and cultural goods stolen).

B. In the intracommunity relations (at Community level)

1. The appointment by each Member State of a central authority responsible to co-ordinate and to collect available information. This authority could be this one provided in Article 4 of the Directive 93/7/EEC. Thanks to its contact with the central authorities of the other Member States, these central authorities would be charged with the dissemination, inside the Member States, of data from different authorities (culture, police, customs....) to the other Member States and of centralising the exchange of information between the authorities of the different Member States.
2. The definition and structuring of information to be exchanged: in this regard, the drafting of standard information and advice forms could be considered, for example the essential terms used by Interpol.

3. The future development of IT networks: the setting up of networks systems or the compilation at Community level of national information to establish a list of national treasures prohibited to leave the country or stolen could serve as a starting point.
4. In the framework of relations between customs authorities, a more intense and frequent use between authorities of the MA communications procedure stated by Regulation No 515/97 on mutual assistance⁵, in order to provide information on irregular operations or breaches of the Community legislation, according to Article 6 of Regulation No 3911/92.
5. As regards the relations between national cultural services, consideration could be given to the exchange of updated contact points, the communication of national legislation applicable to the intra Community movement of cultural goods, as well documents of the cultural goods and of national licences allowing them to leave national territory or all another information, in order to improving the traceability of cultural goods and the issuing export licences.
6. Finally, the formalisation of direct links between police authorities in the Member States responsible in the fight against the traffic in cultural goods, to allow them to work more quickly and with more efficiency in their action.⁶

⁵ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and co-operation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ No L 82 of 22.3.1997)

⁶ It should be stressed that EUROPOL has since the year 2002, within its competence, the investigation of the illegal traffic of cultural goods. At the international level, there is police co-operation through INTERPOL, but limited to the stealing of cultural objects, and not including the illegal exports.

ANNEX I

Categories of goods covered by Community legislation

A.1 Archaeological objects, whatever the value, more than 100 years old which are the product of :

- excavations and finds on land or under water (NC 9705 00 00)
- archaeological sites (NC 9706 00 00)
- archaeological collections

2. Elements forming an integral part of artistic, historical, archeological or religious monuments which have been dismembered, whatever the value, of an age exceeding 100 years (NC 9705 00 00 and 9706 00 00)

3. Pictures and paintings, other than those included in category 3A or 4, executed entirely by hand in any medium and on any material⁷, of a value equal to or more than €150.000

3A. Water-colours, gouaches and pastels executed entirely by hand on any material⁵ (NC 9701) of a value equal to or more than €30.000

4. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material⁵ (NC 6914 and 9701), of a value equal to or more than €15.000

5. Original engravings of a value equal to or more than €15.000, prints, serigraphs and lithographs with their respect plates and original posters (7) (Capter 49 - NC 9702 00 00 and 8442 50 99)

6. Original sculptures of a value equal to or more than €50.000 or statuary and copies produced by the same process as the original⁵, other than those in category 1 (NC 9703 00 00)

7. Photographs of a value equal to or more than €15.000, films and negatives thereof (7) (NC 3704, 3705, 3706, 4911 91 80)

8. Incunabula and manuscripts, including maps and musical scores, singly or in collections⁹ whatever the value (NC 9702 00 00, 9706 00 00, 4901 10 00, 4901 99 00, 4904 00 00, 4905 91 00, 4905 99 00, 4906 00 00)

⁷ Which are more than years old and do not belong to their originators

⁹ As defined by the Court of Justice in its judgement in Case 252/84, as follows : « Collectors » pieces within the meaning of heading No 9705 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value ».

9. Books more than 100 years old, singly or in collections (NC 9705 00 00 and 9706 00 00) of a value equal to or more than €50.000

10. Printed maps more than 200 years old (NC 9706 00 00) of a value equal to or more than €15.000

11. Archives, and any elements thereof, of any kind, any medium or any value which are more than 50 years old (NC 3704, 3705, 3706, 4901, 4906, 9705 00 00, 9706 00 00)

12. (a) Collections (s) of a value equal to or more than €50.000 and specimens from zoological, botanical, mineralogical or anatomical collections (NC 9705 00 00)

(b) Collections⁶ of historical, palaeontological, ethnographic or numismatic interest (NC 9705 00 00) of a value equal to or more than €50.000

13. Means of transport more than 75 years old of a value equal to or more than €50.000 (NC 9705 00 00, Chapters 86-89)

14. Any other antique items not included in categories A.1 to A.13 (list non exhaustive) of a value equal to or more than €50.000

(a) between 50 and 100 years old :

- toys, games (Chapter 95)
- glassware (NC 7013)
- articles of goldsmiths' or silversmiths' wares (NC 7114)
- furniture (Chapter 94)
- optical, photographic or cinematographic apparatus (Chapter 90)
- musical instruments (Chapter 92)
- clocks and watches and thereof (Chapter 91)
- articles of wood (Chapter 44)
- pottery (Chapter 69)
- tapestries (NC 5805 00 00)
- carpets (Chapter 57)
- wallpaper (NC 4814)
- arms (Chapter 93)

(b) more than 100 years old (NC 9706 00 00)

ANNEX II

List of the national texts applicable to the cultural goods

Germany

Law of 8 July 1999 on protection of cultural goods listed in the inventories of valuable national cultural goods and valuable archives

Law of 15 October 1998 adapting the Community directives on restitution on cultural goods

Austria

Federal Law governing the protection of cultural goods of 19 August 1999

Belgium

Draft Law on the protection of cultural goods (entry in force foreseen in 2003)

Denmark

Law No 332 of 4 June 1986 on the protection of cultural goods

Spain

Law No 16/1985 of 25 June 1985 on Spain's historical heritage

Royal Decree No 111 of 10 January 1986 partially applying the Law

Decree No 1631/1992 on restrictions on the movement of certain goods

Law No 364/94 of 23 December 1994 on transposition of the Directive 93/7

Finland

Law No 115 of 5 February 1999/115 on restrictions on the export of cultural goods

Decree No 189 of 15 February 1999 on restrictions on the export of cultural goods

France

Law No 92-1477 of 31 December 1992 on goods subject to movement restrictions and on the complementary between policy, the force of gendarmes and customs services, modified by Law No 2000-643 of 10 July 2000 on protection of national treasures

Ireland

National Acts on documents of 1945 and on cultural institutes of 1997

Italy

Decree No. 490 of 29 October 1999 adopting the Text Unique on Cultural and Environmental Goods.

Luxembourg

Laws of 21 March 1966 and 18 July 1983

Netherlands

National Cultural Heritage Act of 1 February 1984

Cultural Heritage Decree of 13 March 1985 on provisions of implementation

Portugal

Law No 107/2001 of 8 September on the basis of the policy and procedure of protection and valuation of the cultural heritage

Decree-Law No 16/93 on archives and heritage of protected archives

Decree-Law No 164/97 on the heritage of sub-aquatic culture

United Kingdom

Import, Export and Customs Powers (Defence) Act 1939 as amended by the Import, Export and Control Act 1990

Decret of 1992 on export of cultural goods

Sweden

Cultural Monuments Act 950 of 1988

Cultural Monuments Ordinance 1188 of 1988

ANNEX III

List of authorities in charge of the protection of cultural goods

Austria

Bundesdenkmalamt
Abteilung für Ausfuhrangelegenheiten
Hofburg, Säulensiege
1010 Wien
phone.:+ 43 (0)1/534 15 – 0
Fax: + 43 (0)1/534 15 -5107
e-mail: ausfuhr@bda.at

archives:

Österreichisches Staatsarchiv
Nottendorferstraße 2
1030 Wien
phone.:+ 43 (0)1/795 40 251
Fax: + 43 (0)1/795 40 109
e-mail: adrpost@oesta.gv.at

Belgium

Communauté Flamande

Ministerie van de Vlaamse Gemeenschap
Administratie Cultuur
Afdeling Beeldende Kunst en Musea
Parochiaansstraat 15
1000 Brussel
Hans Feys
phone. 02 553 68 26
hans.feys@wvc.vlaanderen.be
Bea Menschaert
phone. 02 553 68 26
bea.menschaert@wvc.vlaanderen.be

Communauté Française

Ministère de la culture de la Communauté française
Direction générale de la culture et de la communication
Administration du patrimoine culturel, des arts plastiques et de l'artisanat de création
Boulevard Léopold II, 44
1080 Bruxelles

Communauté Allemande

Ministerium der Deutschsprachigen Gemeinschaft
Zabteilung Kulturelle Angelegenheiten
Gospertstrasse 1 bis 5
4700 Eupen
phone. 087 59 63 00
fax. 087 55 6476

Denmark

Kulturværdisudvalget
Kulturarvsstyrelsen
Slotsholmsgade 1, 3. sal
1216 København K
phone: (45) 72 26 51 85
Fax: (45) 72 26 51 01
E-mail: eaj@kuas.dk / tro@kuas.dk

Finland

National Board of Antiquities
Nervanderinkatu 13
00100 Helsinki
09-40501

France

Direction des Musées de France
Bureau du mouvement des œuvres et de l'inventaire (point de contact : Madame M. Bourlet)
6, rue des Pyramides
75001 Paris téléphone : 33 1 40 15 34 66

Germany

Die Beauftragte der Bundesregierung für Kultur und Medien
Graurheindorfer Straße 198
53117 Bonn
phone: 0049 1888 681 -0-
contact:
BKM Referat K 24
Ministerialrat Gerd Friedrich Trautmann

phone: 0049 1888 681 3504
fax: 0049 1888 681 5 3504
e-mail: GerdFriedrich.Trautmann@bkm.bmi.bund.de

Ireland

Department of Arts, Sport and Tourism
Cultural Institutions Division
Frederick Buildings
South Frederick Street
Dublin 2

phone: 353 1 613 3800
e-mail: sylvialynam@dast.gov.ie

Italy

Ministero per i beni e le attività culturali
Segretariato Generale
Servizio I
Via del Collegio Romano, 27
00186 Roma

phone: 39 06 6723592
Fax: 39 06 6723458
e-mail: ambuzzi@beniculturali.it

Luxembourg

Ministère de la Culture, de l'Enseignement supérieur et de la Recherche
20, montée de la Pétrusse
L-2912 Luxembourg

Netherlands

Inspectorate of Cultural Heritage
Prins Willem Alexanderhof 28
P.O. Box 11583
2502 AN DEN HAAG
The Netherlands
phone: 31 70 3028120
Fax: 31 70 3651914
E-mail: vanrappard@cultuurbezit.nl

Portugal

Ministério da Cultura
Instituto Português de Museus
Palácio Nacional da Ajuda
Calçada da Ajuda, n. 118
1300-018 Lisboa
contact: Manuel Bairrão Oleiro
phone: 35-1-21-3650800
fax: 35-1-21-3647827
Site <http://www.ipmuseus.pt>

Spain

Ministerio de Educación, Cultura y Deporte
Dirección General de Bellas Artes y Bienes Culturales (Director General: Sr. Joaquín Puig de la Bellacasa)
Subdirección General de Protección del Patrimonio Histórico Español (Subdirector General: Sr. Luis Lafuente Batanero)
phone 34 91 7017035
Plaza del Rey, nº 1
28071 Madrid – España
(contact: Sra. Pilar Barraca de Ramos
phone 34 91 7017040
Fax 34 91 5229305)

Sweden

Riksantikvarieämbetet
Box 5405
S-114 84 Stockholm
phone.: +46 8 5191 80 00
e-mail: riksant@raa.se

Kungliga biblioteket

Box 5039
S-102 41 Stockholm
phone.: +46 8 463 40 00
e-mail: kungl.biblioteket@kb.se

Riksarkivet
Box 12541
S-102 29 Stockholm
phone.: +46 87376350
e-mail: riksarkivet@ra.se

Nationalmuseum
Box 161 76
S-103 24 Stockholm
phone.: +46 851954300

Nordiska museet
Box 27820
S-115 93 Stockholm
Phone : +46 851956000
e-mail: nordiska@nordm.se

United Kingdom

Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH
phone: (44) 20 7211 6166/6168
fax: (44) 20 7211 6170
e-mail: exportlicensing@culture.gsi.gov.uk

ANNEX IV

Sites Internet in the Member States

Austria

www.bda.at
www.bmbwk.gv.at
www.oesta.gv.at

Denmark

www.kulturwaerdier.dk
www.kum.dk

Finland

www.nba.fi

France

www.legifrance.gouv.fr
ww.cerfa.gouv.fr
www.culture.gouv.fr
www.service-public.fr

Germany

www.bundesregierung.de
[www.zoll-
d.de/b0_zoll_und_steuern/d0_verbote_und_beschraenkungen/g0_kulturgut/index.html](http://www.zoll-
d.de/b0_zoll_und_steuern/d0_verbote_und_beschraenkungen/g0_kulturgut/index.html)

Ireland

www.gov.ie
www.dast.gov.ie

Netherlands

www.cultinsp.minocw.nl

Portugal

www.ipmuseus.pt

www.parlamento.pt

www.policiajudiciaria.pt

www.dgaiec.min-financas.pt/sitedgaiecineternet/index.html

Spain

www.mcu.es

Sweden

www.raa.se

www.sweden.gov.se

United Kingdom

www.culture.gov.uk