

COUNCIL REGULATION (EC) No 116/2009 of 18 December 2008 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 goods¹ has been substantially amended several times². 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 Commission³.
- (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 matters⁴, 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,

HAS ADOPTED THIS REGULATION:

¹ (Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory) REGULATIONS

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 sub-paragraph 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 State⁵.

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.

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).

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*.

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

ANNEX I

Categories of cultural objects covered by Article 1

A.		
1.	Archaeological objects more than 100 years old which are the products of:	9705 00 00
	– excavations and finds on land or under water	9706 00 00
	– archaeological sites	
	– archaeological collections	
2.	Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years	9705 00 00 9706 00 00
3.	Pictures and paintings, other than those included in categories 4 or 5, executed entirely by hand in any medium and on any material ⁶	9701
4.	Watercolours, gouaches and pastels executed entirely by hand on any material ⁶	9701
5.	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 material (1)	6914 9701
6.	Original engravings, prints, serigraphs and lithographs with their respective plates and original posters ⁶	Chapter 49 9702 00 00 8442 50 99
7.	Original sculptures or statuary and copies produced by the same process as the original (1), other than those in category 1	9703 00 00
8.	Photographs, films and negatives thereof ⁶	3704 3705 3706 4911 91 80
9.	Incunabula and manuscripts, including maps and musical scores, singly or in collections ⁶	9702 00 00 9706 00 00 4901 10 00 4901 99 00 4904 00 00 4905 91 00 4905 99 00 4906 00 00
10.	Books more than 100 years old, singly or in collections	9705 00 00 9706 00 00
11.	Printed maps more than 200 years old	9706 00 00
12.	Archives, and any elements thereof, of any kind or any medium which are more than 50 years old	3704 3705 3706 4901

	4906
	9705 00 00
	9706 00 00
13. a) Collections ⁷ and specimens from zoological, botanical, mineralogical or anatomical collections;	9705 00 00
(b) Collections ⁷ of historical, palaeontological, ethno-graphic or numismatic interest	9705 00 00
14. Means of transport more than 75 years old	9705 00 00
	Chapters 86–89
15. Any other antique items not included in categories A.1 to A.14	
(a) between 50 and 100 years old	
toys, games	Chapter 95
glassware	7013
articles of goldsmiths' or silversmiths' wares	7114
furniture	Chapter 94
optical, photographic or cinematographic apparatus	Chapter 90
musical instruments	Chapter 92
clocks and watches and parts thereof	Chapter 91
articles of wood	Chapter 44
pottery	Chapter 69
tapestries	5805 00 00
carpets	Chapter 57
wallpaper	4814
arms	Chapter 93
(b) more than 100 years old	9706 00 00

The cultural objects in categories A.1 to A.15 are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds under B.

B. Financial thresholds applicable to certain categories under A (in euro)

Value:

Whatever the value

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 9 (Incunabula and manuscripts)
- 12 (Archives)

15 000

- 5 (Mosaics and drawings)
- 6 (Engravings)
- 8 (Photographs)
- 11 (Printed maps)

30 000

- 4 (Watercolours, gouaches and pastels)

50 000

- 7 (Statuary)

- 10 (Books)
 - 13 (Collections)
 - 14 (Means of transport)
 - 15 (Any other object)
- 150 000
- 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export licence is submitted. The financial value is that of the cultural object in the Member State referred to in Article 2(2).

For the Member States which do not have the euro as their currency, the values expressed in euro in Annex I shall be converted and expressed in national currencies at the rate of exchange on 31 December 2001 published in the *Official Journal of the European Communities*. This countervalue in national currencies shall be reviewed every two years with effect from 31 December 2001. Calculation of this countervalue shall be based on the average daily value of those currencies, expressed in euro, during the 24 months ending on the last day of August preceding the revision which takes effect on 31 December. This method of calculation shall be reviewed, on a proposal from the Commission, by the Advisory Committee on Cultural Goods, in principle two years after the first application. For each revision, the values expressed in euro and their countervalues in national currency shall be published periodically in the *Official Journal of the European Union* in the first days of the month of November preceding the date on which the revision takes effect.

ANNEX II

Repealed Regulation with its successive amendments

- Council Regulation (EEC) No 3911/92 (OJ L 395, 31.12.1992, p. 1)
- Council Regulation (EC) No 2469/96 (OJ L 335, 24.12.1996, p. 9)
- Council Regulation (EC) No 974/2001 (OJ L 137, 19.5.2001, p. 10)
- Council Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1) Annex I, point 2 only

ANNEX III

CORRELATION TABLE

<i>Regulation (EEC) No 3911/92</i>	<i>This Regulation</i>
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2), first subparagraph, introductory wording	Article 2(2), first subparagraph, introductory wording

Article 2(2), first subparagraph,
first indent

Article 2(2), first subparagraph,
second indent

Article 2(2), second subparagraph

Article 2(2), third subparagraph

Article 2(2), fourth subparagraph

Article 2(3)

Article 2(4)

Articles 3 to 9

Article 10, first paragraph

Article 10, second paragraph

Article 10, third paragraph

Article 10, fourth paragraph

Article 10, fifth paragraph

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Article 11

Annex, points A.1, A.2 and A.3

Annex, point A.3A

Annex, point A.4

Annex, point A.5

Annex, point A.6

Annex, point A.7

Annex, point A.8

Annex, point A.9

Annex, point A.10

Annex, point A.11

Annex, point A.12

Annex, point A.13

Annex, point A.14

Annex, point B

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Article 2(2), first subparagraph,
point (a)

Article 2(2), first subparagraph,
point (b)

Article 2(2), second subparagraph

Article 2(2), third subparagraph

Article 2(2), fourth subparagraph

Article 2(3)

Article 2(4)

Articles 3 to 9

Article 10(1), first subparagraph

Article 10(1), second subparagraph

Article 10(2), first subparagraph

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Article 10(2), second subparagraph

Article 11

Article 12

Annex I, points A.1, A.2 and A.3

Annex I, point A.4

Annex I, point A.5

Annex I, point A.6

Annex I, point A.7

Annex I, point A.8

Annex I, point A.9

Annex I, point A.10

Annex I, point A.11

Annex I, point A.12

Annex I, point A.13

Annex I, point A.14

Annex I, point A.15

Annex I, point B

Annex II

Annex III

ENDNOTES

1. OJ L 395, 31.12.1992, p. 1.
2. See Annex II.
3. OJ L 184, 17.7.1999, p. 23.
4. OJ L 82, 22.3.1997, p. 1
5. OJ L 74, 27.3.1993, p. 74.
6. Which are more than 50 years old and do not belong to their originators.
7. As defined by the Court of Justice in its judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading No 97.05 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'.