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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

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

1 January 2011 – 31 December 2013

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1. EXECUTIVE SUMMARY

This report on the implementation of Regulation (EC) No 116/2009 on the export of cultural goods ('Basic Regulation') provides information on the use of the export licences for cultural goods under the framework created by the Basic Regulation and the Commission Implementing Regulation (EU) No 1081/2012. The report is based on data provided by the Member States in reply to a questionnaire on the use of the export licences. It covers the period from 2011 to 2013, with some developments from early 2014.

The figures reported relate to three types of export licences: standard licences, specific open licences and general open licences.

The total number of standard licences granted during the period 2011-2013 was 24 564. The main issuers of this type of licences were the United Kingdom and Italy.

Specific open licences are granted for the repeated temporary export of a specific cultural good by a particular person or organisation. During the period under review, 946 specific open licences were granted to a total of 588 persons or organisations. More than 90% of these licences were issued by the United Kingdom, the Netherlands and Poland.

General open licences cover any temporary export of cultural goods that form part of the permanent collection of a museum or other institutions. In the period under review, such licences were granted a total of 472 times by five Member States, with Spain accounting for 84% of the total.

The granting of a standard licence was refused 318 times, the most common reason being that the cultural good in question was considered a 'national treasure'. 147 non-compliant consignments were detected during the period, the vast majority by France and the Netherlands (93% of the total).

The report also provides information on current initiatives and challenges for the future, such as the possible introduction of an online database of issued export licences which would interface with national customs clearance systems, the interpretation of problematic categories of cultural goods listed in Annex I to the Basic Regulation, the cooperation between authorities, the adequacy of the financial thresholds and the absence of control at the importation of cultural goods.

2. INTRODUCTION

Council Regulation (EC) No 116/2009[1] of 18 December 2008 on the export of cultural goods (Codified version) (the 'Basic Regulation') subjects the export of certain cultural goods outside the European Union's ('EU') customs territory to the presentation of an export licence and ensures that exports of those goods are subject to uniform controls at the EU's external borders. Annex I contains information on the categories as well as the age and/or value requirements for cultural objects to be covered by the Basic Regulation.

Export licences are issued by a competent authority of the Member State in whose territory the cultural object is lawfully located. Customs controls ensure that cultural goods can only leave the EU's customs territory if they are accompanied by a valid export licence. This should ensure a high level of protection of cultural goods in the internal market.

The Basic Regulation requires the Commission to regularly present a report on its implementation to the European Parliament, the Council and the European Economic and Social Committee. A first report, under Council Regulation No 3911/92, was submitted in 2000[2], while a second report, pursuant to Article 10 of the Basic Regulation, was issued in 2011[3].

After roughly 20 years of experience in implementing the Regulations on the export of cultural goods, this report covers a 3-year period between 1 January 2011 and 31 December 2013, but includes also a few developments from early 2014.

The report draws on information provided by Member States in reply to a questionnaire, including statistical data on the use of licences[4]. It reflects the considerable work conducted in cooperation with Member States during the said period.

3. CONTEXT OF THE REGULATION

3.1. European context

The system introduced at the EU level by Council Regulation (EC) No 116/2009 with regard to the export of cultural goods is complementary to other instruments and initiatives aiming at the protection of cultural property. A few examples of related actions at EU level are highligted below.

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1 Council Regulation (EC) No 116/2009, of 18 December 2008, on the export of cultural goods (Codified version) (OJ L 39, 10.2.2009, p. 1). This Regulation replaced Council Regulation (EEC) No 3911/92 of 9 December 1992, on the export of cultural goods (OJ L 395, 31.12.1992, p. 1), which had been in application since 30 March 1993.

2 Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation (EEC) n° 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2000)325 of 25.5.2000).

3 Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, 1 January 2000 – 31 December 2010 (COM(2011)382 of 27.6.2011).

4 Submissions received from 26 Member States (BE, BG, CZ, DK, DE, IE, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE, UK).

Return of Cultural Objects

In 2009 the Commission set up an *ad hoc* working group within the Committee on the export and return of cultural goods (the 'Committee') which aimed at identifying problems in the application of Council Directive 93/7/EEC[5] and suggesting solutions. In 2011 the group concluded that the Directive should be revised in order to make it a more effective instrument for the return of national treasures. It also concluded that mechanisms should be put in place to improve administrative cooperation and consultation between the central authorities. These conclusions were confirmed by the fourth Commission report reviewing the application of Directive 93/7/EEC[6].

Following a public consultation and an impact assessment, a Commission proposal for the recast of Directive 93/7/EEC was presented on 30 May 2013[7]. This led to the adoption of Directive 2014/60/EU on 15 May 2014.[8] The new provisions will apply from 19 December 2015.

The new Directive will allow the return of any cultural object[9] identified by a Member State as a national treasure possessing artistic, historic or archaeological value, thus seeking a more effective protection of Member States' cultural heritage. For this purpose, the central authorities in charge of the Directive in Member States will be required to cooperate and exchange information on unlawfully removed cultural objects by making use of the Internal Market Information System (IMI)[10].

Mobility of Collections

A Working Group on Mobility of Collections was set up in March 2011 under the Council Work Plan for Culture 2011-2014[11], within the context of the implementation of the European Agenda for Culture[12]. In September 2012 the Working Group produced a report and a toolkit on practical ways to reduce the cost of lending and borrowing of cultural objects among Member States.

Trafficking in Cultural Goods

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5 Council Directive 93/7/EEC, of 15 March 1993, on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, 27.3.1993, p. 74), as amended by Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997 (OJ L 60, 1.3.1997, p. 59) and by Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 (OJ L 187, 10.7.2001, p. 43). This Directive has meanwhile been replaced by Directive 2014/60/EU (OJ L 159, 28.5.2014, p. 1). See also footnote 8 below.

6 For further details see the Fourth Report on the Application of Council Directive 93/7/EEC, COM(2013)310 of 30.5.2013.

7 COM(2013)311 of 30.5.2013.

8 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). See also footnote 5 above.

9 Directive 93/7/EEC included an annex listing categories of cultural objects which was identical to Annex I to the Basic Regulation; this annex no longer exists in the new Directive.

10 IMI was formally established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council, of 25 October 2012, on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation').

11 OJ C 325, 2.12.2010, p. 1.

12 Resolution of the Council of 16 November 2007 on a European Agenda for Culture (OJ C 287, 29.11.2007, p. 1).

The Commission financed a study on *Preventing and Fighting Illicit Trafficking in Cultural Goods*[13] the final report of which was submitted in October 2011[14]. The report identified current legal and operational obstacles to preventing and combating illicit trafficking in cultural goods, such as the difficulty of sharing information between Member States and the need for special training for customs officials in order to identify suspect goods. The report recommended that the Commission could create a coordination department which would be responsible for facilitating contact between concerned authorities and organising trainings for officials.

In December 2011, Council Conclusions on preventing and combating crime against cultural goods[15] recommended, *inter alia*, that the Member States strengthen cooperation between law enforcement officials, cultural authorities and private organisations.

Furthermore, in October 2012, a Council Resolution created an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET)[16]. The main objective of the network is to improve the exchange of information related to the prevention of illicit trafficking in cultural goods, such as identifying and sharing non-operational information on criminal networks suspected of being involved in illicit trafficking and information about obstacles to cross-border cooperation. Customs authorities were invited to participate in the network because of their competence in monitoring and controlling the movement of cultural goods across the external borders of the EU.

In November 2011, a Joint Customs Operation ('JCO') COLOSSEUM[17] was conducted by Italy, Malta, Greece and Cyprus, in cooperation with the World Customs Organisation's Regional Intelligence Liaison Office (RILO WE) and with the participation of 17 other countries[18]. During the 10-day operation, four Member States seized illicit cultural goods (Italy, Malta, Greece and the Netherlands one seizure each, with a total of 134 artefacts).

JCO ODYSSEUS, in the first half of 2014, has targetted cultural heritage fraud in the Mediterranean region. 19 Member States[19] were invited to participate in the operation. The two operational phases concentrated on collecting data related to detection and seizures of illegal consignments of cultural goods and on the reinforced controls. The final report will be published in March 2015.

In December 2013 the Council adopted a Regulation imposing restrictions on the movement of cultural goods removed from Syria[20]. The list of items subject to the restrictions is identical to the one included in the Basic Regulation.

The Commission also financed a project to set up an International Observatory on Illicit Traffic in Cultural Goods, presented by ICOM[21]. The Observatory was created

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13 The report was prepared for the Commission's DG Home Affairs under the contract HOME/2009/ISEC/PR/019-A2.

14 http://ec.europa.eu/home-affairs/doc_centre/crime/crime_prevention_en.htm.

15 17541/11 ENFOPOL 415 CULT 111 ENFOCUSTOM 143.

16 14232/12 ENFOPOL 292 CULT 116 ENFOCUSTOMS 93.

17 10515/1/12 REV 1 ENFOCUSTOMS 45 ENFOPOL 159.

18 BE, BG, CZ, DE, ES, IT, LU, HU, NL, AT, RO, SK, and Russia, Switzerland, Turkey, Ukraine and USA

19 BE, BG, CZ, DE, EL, ES, FR, HR, IT, CY, MT, HU, NL, AT, PL, PT, RO, SI, UK.

20 Council Regulation (EU) No 1332/2013, of 13 December 2013, amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 335, 14.12.2013, p. 3).

in response to the absence of centralised statistics and the lack of available valid information on illicit trafficking in cultural goods. The aim of the Observatory is to collect information from various sources and, eventually compile it in the first Global Report, which contributes to the exchange of information between Member States and increases knowledge among officials. The dedicated website was launched in April 2014[22].

3.2. International context

At international level, the most relevant instruments as regards the export of cultural goods are the 1970 UNESCO Convention[23] and the 1995 UNIDROIT Convention[24]. The 1970 UNESCO Convention has so far been ratified by 23 EU Member States; its membership to date reaches 127 States Parties. Only 14 EU Member States have ratified the 1995 UNIDROIT Convention.

A joint UNESCO-EU operation was launched in March 2014 to halt the on-going loss of cultural heritage in Syria. The *Emergency Safeguarding of the Syrian Heritage project*[25] aims at enhancing technical assistance and capacity-building for national stakeholders and beneficiaries, including training of police and customs officers in Syria and adjacent countries.

4. PRACTICAL DEVELOPMENTS REGARDING THE REGULATION

The original Implementing Regulation (EEC) No 752/93 was repealed by Commission Implementing Regulation (EU) No 1081/2012 (the 'Implementing Regulation'). This Regulation foresees three types of export licences (standard licence, specific open licence and general open licence) and sets out the rules for their application. In accordance with Articles 3(2) and 5(2) of the Basic Regulation, the most recent lists of authorities empowered to issue export licences[26] have been published in the Official Journal in March 2014 whereas the list of customs offices empowered to handle export formalities[27] was published one month earlier. Furthermore, the Committee on the export and return of cultural goods, established pursuant to Article 8 of the Basic Regulation, met three times in the period under review and once in early 2014.

5. STATISTICAL DATA ON IMPLEMENTATION BY MEMBER STATES

5.1. Use of the standard licence as laid down in Article 2(1) of the Implementing Regulation

A standard licence is normally used for each export subject to the Basic Regulation.

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21 HOME/2011/ISEC/AG/2607.

22 http://obs-traffic.museum/

23 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970; ratified by the following Member States: BE, BG, CZ, DK, DE, EE, EL, ES, FR, HR, IT, CY, LT, HU, NL, PL, PT, RO, SI, SK, FI, SE, UK.

24 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995; ratified by the following Member States: DK, EL, ES, HR, IT, CY, LT, HU, PT, RO, SI, SK, FI, SE.

25 http://www.unesco.org/new/en/safeguarding-syrian-cultural-heritage/international-initiatives/emergency-safeguarding-of-syria-heritage/

26 OJ C 72, 11.3.2014, p. 16 (the corrected Croatian version was published in OJ C 205, 2.7.2014, p. 27).

27 OJ C 40, 11.2.2014, p. 6.

Annex 1 gives an overview of the number of standard licences issued by Member States[28]. The total number increased from 21 498 in 2011 to 24 564 in 2013 (+ 14%). These yearly figures are also higher than the average reported for the previous period (2000–2010).

Annex 1 further shows the share in the total licences issued which is accounted for by the different Member States[28]. The figures reveal that the export of cultural goods from the EU is largely concentrated in two Member States: Italy with 37-40% and the United Kingdom with 33-36% of the share in 2011-2013. The top two are followed by France (12-13%), Germany (4-5%), Austria (2-3%) Spain (1-3%), Portugal, the Netherlands and Belgium (1% each).

5.2. Use of the specific open licence as laid down in Article 2(2) of the Implementing Regulation

A specific open licence covers the repeated temporary export of a specific cultural good by a particular person or organisation.

Annex 2 gives an overview of the number of specific open licences that were in circulation in the Member States[28] The total number increased from 261 in 2011 to 365 in 2013 (+ 40%). A clear trend cannot, however, be established as data for the previous period (2000–2010) indicate that yearly figures fluctuate considerably. In any case, numbers are relatively low.

The figures reveal that only seven Member States (France, Cyprus, Hungary, the Netherlands, Poland, Slovenia and the United Kingdom) have made use of this type of licence. Of these, the biggest users were the United Kingdom (33%), the Netherlands (30%) and Poland (28% of the share in 2011-2013).

Annex 3 shows the number of persons or organisations that were holding a specific open licence.

5.3. Use of the general open licence as laid down in article 2(3) of the Implementing Regulation

A general open licence covers any temporary export of any of those cultural goods that form part of the permanent collection of a museum or other institution.

Annex 4 gives an overview of the number of general open licences in circulation in the Member States[28]. The volume is relatively low (141 licences in 2011, 172 licences in 2012, and 159 licences in 2013).

The figures show that only five Member States (Bulgaria, Spain, Cyprus, Poland and Slovenia) have made use of this type of licence. Spain was by far the biggest user, accounting for 84% of the total.

5.4. Refusal to issue standard licences

Annex 5 gives an overview of the number of applications for standard licences which were refused by the competent authorities[28]. Only seven Member States reported any refusals, and of the total of 318 reported cases, 72% were in Italy and 25% in Spain.

[28] The figures include data submitted by 26 Member States, see footnote 4. However, the comparable figures from 2000-2010 do not indicate that the missing data would change the conclusions drawn for the period under review.

The main reason for refusing a licence was that the object to be exported was considered a national treasure in the Member State concerned.

The number of cases where an incomplete application was presented are not included in the reported figures, since such cases usually do not lead to a refusal, but the issuing authorities give applicants the possibility to provide the missing documentation.

The number of refused licences in the EU is very low when compared with the total number of licences issued (0.4%). A similar proportion was found for the previous period (2000–2010).

5.5. Consignments found in non-compliance with the rules

Annex 6 shows the number of consignments found to be in non-compliance with the applicable rules[29]. Member States reported a total of 147 cases for the 3-year period, a very low figure when compared to the total number of licences issued (representing 0.2% of the total number of licences). Two Member States (France and the Netherlands) accounted for most of the cases (136 out of a total of 147 cases).

Member States indicated that non-compliant consignments were generally detected by their customs authorities or the police. Depending on the circumstances of the case and on the applicable national legislation, follow-up is given by competent authorities, the police and judicial authorities.

6. CHALLENGES FOR THE FUTURE

During the period under review, in-depth discussions were held on a number of fundamental topics having a bearing on the future of the existing system. The meetings of the Committee offered a suitable platform for the exchange of ideas and triggering action.

6.1. Use of electronic systems

Applying for an export licence using electronic forms is still not possible in the large majority of Member States. With the exception of Spain, even in those Member States where electronic forms are available the actual application must be submitted on paper. Electronic licences are therefore also not available in all Member States bar Spain. In Spain, the licence obtained electronically must nevertheless be printed or downloaded for presentation to customs.

The possibility of developing an electronic system at EU level for issuing export licences was largely discussed during the period under review. In 2011 France proposed to look into the possible introduction of an online service which could interface with the national customs clearance systems. A meeting on the subject was held in 2012 with the participation of 8 Member States.

The Member States agreed that the possible future development of a common database could bring significant benefits, which clearly outweighed the identified potential problems. The absence of financing was however underlined.

[29] The figures include data of 25 Member States (BG, CZ, DK, DE, IE, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE, UK). .

Considering the existing limitations, the Commission concluded that the project was still not ripe, but invited France, Italy and the United Kingdom (the largest issuers of licences) to try to develop more concrete ideas. These Member States have worked together on the subject and should present their conclusions in the near future.

6.2. Interpretation of categories of cultural goods

It is not always easy to assign specific objects to one of the categories of cultural goods listed in Annex I to the Basic Regulation. Different Member States can make different decisions in that respect. The text describing each of the categories is sometimes unclear and thus open to diverging interpretations.

Following discussions at Committee meetings, it was agreed to set up a Working Group (the 'WG') on interpretation of categories which is composed of representatives from a number of Member States and the Commission. The WG was tasked with developing guidance for the interpretation of a few problematic categories, which would also cover specific types of objects posing particular difficulties of classification (coins, icons, fossils). The WG met twice in 2013; it also worked in subgroups and through written exchanges.

The WG has concluded that a common interpretation would not solve all the problems. Instead, the wording of some categories might need to be reviewed, one category be removed or a one new category added. Acknowledging the fact that amending Annex I would imply a revision of the whole Regulation, the WG agreed to pursue work on interpretation only and simply highlighted some aspects meriting a revision: classification of icons; classification of single coins and single paleontological objects; definition of ‘collections’; and coverage under Category 15.

6.3. Cooperation between authorities

The proper implementation of the Basic Regulation requires contributions from different authorities, not only from the cultural authorities and customs, but also from police. It is crucial that authorities cooperate openly and actively and that they understand each others’ point of view, constraints and needs.

This issue was given prominence in the discussions within the Committee. The initiative started with a presentation by Austria on relevant customs legislation. Examples of good cooperation between authorities at all levels were later presented by the Netherlands, Hungary and Italy. All Member States were invited to present their experiences, thereby contributing to a better understanding.

The presentations demonstrated that cooperation between authorities in the Netherlands, Hungary and Italy is based on framework or multilateral agreements between the competent ministries. Cooperation takes place in the form of special training for customs officials, exchanges of information with regard to risk indicators or risk profiles, participation in joint operations to detect illicit goods and assistance in identification of cultural goods.

This initiative will continue to be pursued in the future, possibly leading to the development of a set of best practices. A consensus has emerged around the need to also develop instruments enabling effective cooperation between competent authorities from the different Member States.

6.4. Adequacy of financial thresholds

Annex I to the Basic Regulation lays down the financial thresholds which are applicable to most of the categories[30] of cultural goods listed therein. For objects falling within those categories, an export licence is only required if their value reaches the applicable threshold.

For a majority of Member States the financial thresholds are too high and should be lowered. They claim that the Regulation does not play its role in the protection of their national heritage due to the high value thresholds. This partly explains the very limited use made of the Regulation in many Member States[31].

According to Article 10 of the Basic Regulation, the amounts indicated in Annex I should be subject to regular review and possibly updated on the basis of economic and monetary indicators. This provision is no longer adapted to the situation in the EU. Were the Regulation to be revised, a majority of Member States would be in favour of lowering the existing thresholds.

6.5. Import of cultural goods into the EU

In different fora, concerns were expressed about the absence of an instrument to control the importation of cultural goods into the EU, a matter which falls within the exclusive competence of the EU.

This being said, the EU has imposed restrictions on the import of cultural goods from Iraq[32] and Syria[33]. Regulation (EC) No 1210/2003 prohibits the import, export and dealing in Iraqi cultural property, where the goods have been illegally removed from Iraq without the consent of their legitimate owner or in breach of Iraqi legislation. Similarly, Regulation (EU) No 1332/2013 prohibits the import, export and transfer of Syrian cultural goods, where there are grounds to suspect that the goods have been removed without the consent of their legitimate owner or in breach of Syrian or international law. Categories of goods to which these Regulations apply have been listed in annexes to the Regulations, both of which correspond to Annex I of the Basic Regulation. On 12 October 2012, 13 archaeological objects from Iraq were seized by French customs officials.

7. CONCLUSIONS

The system initially designed for 12 Member States and introduced in 1993 for the control of the export of cultural goods at the EU's external borders has been used by Member States to varying degrees. The size and importance of each country's national heritage, as well as the relative development of its art market, have largely determined Member States' adherence.

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30 Except to Categories 1 (archaeological objects), 2 (dismembered monuments), 9 (incunabula and manuscripts) and 12 (archives).

31 Practically all Member States that have joined the EU since 2004 consider the financial thresholds too high.

32 Council Regulation (EC) No 1210/2003, of 7 July 2003, concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ L 169, 8.7.2003, p. 6).

33 See footnote 20 above.

While the large majority of Member States consider the existing legislation useful, they also see the need for practical improvements. A number of ongoing and future initiatives should contribute to a better functioning of the system. Good cooperation between all actors and at all levels is paramount to make that happen.

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The Commission invites the European Parliament, the Council and the European Economic and Social Committee to take note of this report