EUROPEAN
COMMISSION

Brussels, 26.8.2022
COM(2022) 424 final

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 2018 to 31 December 2020

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1. EXECUTIVE SUMMARY

This report reviews the implementation of the export licencing system for cultural goods established by Regulation (EC) 116/2009 on the export of cultural goods and Commission Implementing Regulation (EU) 1081/2012.[1]

The report is based mostly on data provided by the Member States[2] in response to a questionnaire covering all aspects of implementation of the export licencing system. It covers the period from 2018 to 2020 included. The figures reported in annex relate to three types of export licences: standard licences, specific open licences (repeated temporary exports by private persons) and general open licences (repeated temporary exports by museums and similar institutions).

The report also provides information on current initiatives and challenges for the future, such as improving the cooperation between Member States authorities involved in the implementation of the Regulation, promoting a common understanding of the Regulation's provisions by the Member States, identifying best practices for competent authorities and customs in investigating the provenance of cultural goods, and exploring the technical, financial and legal possibilities to use electronic means for the issue and control of export licences, such as the development or link to a centralised electronic system which would interface with national customs clearance systems.

[1] Article 10 of Regulation (EC) No 116/2009 requires the Commission to periodically present a report on the implementation of the Regulation to the European Parliament, the Council and the European Economic and Social Committee.

[2] As it covers a period ending on 31 December 2020, this reports includes statistics from the United Kingdom among those of EU Member States. As of 1 January 2021, EU law ceased to apply in the United Kingdom, except in respect of Northern Ireland. For that reason, reports covering future periods will only include statistics of the 27 EU Member States and the United Kingdom in respect of Northern Ireland.

2. INTRODUCTION

Council Regulation (EC) No 116/2009 on the export of cultural goods[3] (hereafter 'the Regulation') subjects the export of certain cultural goods outside the Union's customs territory to the presentation of an export licence and ensures that exports of those goods undergo uniform controls at the Union's external borders. Annex I defines the material scope of the Regulation by listing the categories of cultural goods to which it applies, as well as by setting age and/or value thresholds for the majority of the categories listed.

The objective of the Regulation is to reconcile the fundamental principle of free movement of goods with that of the protection of national treasures within the historical framework of the creation in 1993 of the Internal Market, which abolished all internal borders between Member States.

Export licences are issued by the competent authority of the last Member State in the territory of which the cultural object was "*definitively and lawfully located*"[4]. The export licence is granted or refused on the basis of the laws and regulations of that Member State. Customs controls then ensure that cultural goods can only leave the Union's customs territory if they are accompanied by a valid export licence.

In order to ensure that the export licences are uniform, it was necessary to lay down rules governing the drawing up, issuing and use of the licence form. The Implementing Regulation (EU) No 1081/2012[5] provides for three types of export licences (standard licence, specific open licence and general open licence) and sets out the rules for their application. In certain Member States – but not all – the applicant is required to pay a fee to obtain an export licence. Certain Member States' laws impose additional restrictions, such as the requirement to obtain a national licence – as well as an EU export licence - for the lawful movement of objects designated as 'national treasures' out of the national territory.

The updated lists of Member States competent authorities empowered to issue export licences are published in the Official Journal, as well as the list of customs offices empowered to handle export formalities[6].

In accordance with Article 10 of the Regulation, the Commission is required periodically to present a report on the implementation of the Regulation to the European Parliament, the Council and the European Economic and Social Committee.

The present report draws on information, including statistical data on the use of licences, provided by Member States in response to a questionnaire covering all aspects of implementation of the export licencing system, and on discussions at the Cultural Goods Committee or the Expert Group on customs issues related to cultural goods.

As it covers a period ending on 31 December 2020, this reports includes statistics from the United Kingdom among those of EU Member States. As of 1 January 2021, EU law ceased to apply in the United Kingdom, except in respect of Northern Ireland. For that reason, reports covering future periods will only include statistics of the 27 EU Member States and the United Kingdom in respect of Northern Ireland.

[3] Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L 39, 10.2.2009, p. 1).
[4] Article 2(2).
[5] Commission Implementing Regulation (EU) No 1081/2012 of 9 November 2012 for the purposes of Council Regulation (EC) No 116/2009 on the export of cultural goods (OJ L 324, 22.11.2012, p. 1).
[6] The most recent publication of these references can be found in the OJ C 71, 24.2.2018, p. 5. and OJ C 184, 12.5.2021, p. 13

3. CONTEXT OF THE REGULATION

3.1 European context

The system introduced at EU level by the Regulation is complementary to other instruments and initiatives aiming at the protection of cultural property. The most relevant of those is Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State[7]. The Directive allows the return of any cultural object identified by a Member State as a national treasure possessing artistic, historic or archaeological value. For this purpose, the central authorities in charge of the Directive in Member States are required to cooperate and exchange information on unlawfully removed cultural objects by making use of the Internal Market Information system (IMI).

Another important complement to the Regulation is the European Parliament and Council Regulation (EU) 2019/880 on the introduction and the import of cultural goods[8]. This new instrument lays down the rules and conditions for the temporary or permanent import in the Union of cultural goods which were created or discovered in third countries. Due to its external trade dimension, the typology of Regulation (EU) No 2019/880 was primarily inspired by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[9].

The Import Regulation was recently complemented by the adoption of implementing provisions[10] laying down detailed arrangements for import licences and importer statements and for the development, operation, maintenance and use of a centralised electronic system (the 'ICG system') for the storage and exchange of information between Member State authorities and the accomplishment of formalities by operators in a paperless environment. The ICG system is to become operational for import purposes by 28 June 2025 at the latest.

Lastly, two related *ad hoc* Union measures, Council Regulation (EC) No 1210/2003[11] and Council Regulation (EU) No 36/2012[12], prohibit trade in cultural goods with Iraq and Syria.

3.2 International context

At international level the most relevant instrument with regard to the export of cultural goods is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illegal Import, Export and Transfer of Ownership of Cultural Property. To date, the Convention numbers 141 states-Parties and has been ratified by 26 EU Member States.

[7] 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) (OJ L 159, 28.5.2014, p. 1).
[8] European Parliament and Council Regulation (EU) No 2019/880 of 17 April 2019 on the introduction and the import of cultural goods (OJ L 151, 7.6.2019, p. 1).
[9] Paris, 14 November 1970.
[10] Commission Implementing Regulation (EU) 2021/1079 of 24 June 2021 laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods (OJ L 234 of 2.7.2021, p. 67).
[11] 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).
[12] Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ L 16, 19.1.2012, p. 1).

4. IMPLEMENTATION OF THE REGULATION

4.1 Objectives and Performance

Overall, Member States consider that the Regulation has achieved its objectives. However, areas for improvement have also been identified.

In particular regarding the fight against the illicit trade in cultural goods, the Regulation has performed quite well. As reported by a Member State, an important effect of the Regulation has been the growing awareness with heritage institutions, as well as with the legitimate art trade and collectors, of the importance of having sufficient provenance information before acquiring or placing a cultural good on the market. Objects which were exported without an EU licence – although this was required – suffer market value loss and are more difficult to trade via the legitimate art trade.

According to the same Member State, the legal art market is still reticent to provide full provenance information to the competent authorities for cultural goods which they previously sold to an applicant for an export licence.

A few Member States point out that their national heritage legislation has a wider scope than the Regulation and thus leaves certain types of cultural goods unprotected. On that it has to be noted that, while the material scope of the Regulation was conceived at the time as the common denominator of national provisions and might be narrower than certain Member States' range of protected goods, the Regulation provides an additional protection for cultural goods which national laws are not in a position to offer.

Specifically, in the absence of internal borders in the Union, goods from one Member State could exit its territory, in spite of national prohibitions, and be exported legally from the Union via the territory of a different Member State, where the prohibitions of the first Member State do not apply. So the material scope of certain national heritage laws may be more comprehensive, but these laws cannot protect the cultural goods of a Member State that are taken outside its territory in the way the Regulation can.

On a related issue, certain Member States expressed the opinion that the Regulation does not ensure sufficiently the uniformity of heritage protection rules across the Union. National legislation forms the basis on which export licences are granted or not. In that sense, the export of cultural goods belonging to a given category of Annex I may be allowed in Member State A – so the licence would be granted there - but not in Member State B – where the licence would be refused. This is normal and cannot be changed, as cultural affairs matters are of the exclusive competence of the Member States. Consequently, the Union could not harmonise such provisions and dictate which cultural goods they should designate as "*national treasures, possessing artistic, historic or archaeological value*"[13].

The issue of value thresholds has also been mentioned as a potential means to improve the effectiveness of the Regulation by a number of Member States (on this *see* Section 4.4 below).

In this round of consultations, Member States reiterated the need for more information on each other's national heritage legislation, so competent authorities in charge of issuing licences would be able to fight illicit trade more effectively. However, it is to be noted that quite a few Member States do not have their legislation available online, which has so far

[13] Article 36 TFEU.

prevented the Commission services from creating an online compendium with hyperlinks to that legislation for the use of other Member States administrations and for exporters.

In the context of the future extension of the ICG system which will digitalise also export licences under Regulation (EC) 116/2009, a compendium could be added with basic information on the national provisions of the Member States, as will be the case for the laws and regulations of third countries. In the meantime, the Commission services could attempt to enrich the cultural goods webpage on the Europa server with information on Member States legislation (if not published online at national level, a PDF file with the legal text).

Other means identified by Member States to improve the overall performance of the Regulation include guidance for understanding the terms 'definitively and lawfully located' which determine the Member State which is competent to issue the export licence[14]. This would prevent unscrupulous operators from temporarily moving a cultural good to a different Member State only for the purposes of applying for a licence in a Member State other than the one which designates and protects the object as a national treasure. Until now there have not been any cases[15] that reached the European Court of Justice which is the sole competent to provide an authentic interpretation of these terms, so differences persist in the way they are understood and applied by administrations and stakeholders.

The Project Group that was created in 2017 with the aim to examine the Member States working methods used for the purpose of investigating the provenance of cultural goods and to identify best practices and develop practical advice for issuing licences and customs controls has completed its work successfully and delivered its report and guidance documents to the Expert Group for customs issues related to cultural goods in 2020.

Among the issues examined, the Group attempted to define the concept of 'provenance', i.e. the information elements that a competent authority should request from an applicant about the object to be exported, in order to make a decision on granting the licence. In this context, the Group concluded that the provenance of a cultural good can be defined as "the history and ownership of an item from the time of its discovery or creation to the present day, through which authenticity and ownership are determined".

4.2 Definition of cultural goods

The Regulation does not define what is a cultural good. Instead, it lists in its Annex I 15 categories of objects, which are those falling within its scope. Most of the categories listed

[14] There have been no related cases that have ever reached the European Court of Justice, and as a result there is no specific definition of these two terms.

[15] While there has been no ECJ jurisprudence on the matter, a case reached recently the United Kingdom Supreme Court. The Court was called to pronounce itself on whether a painting had been "lawfully" dispatched to the United Kingdom from another Member State (Italy), and therefore whether Arts Council England (ACE) was competent to grant the Claimant a licence to remove it from the European Union within the meaning of Article 2(2)(b) of the Regulation. ACE had refused to issue an export licence for the painting to leave the EU in 2015.
The case was first heard in 2018 before Mrs Justice Carr DBE who upheld ACE's refusal and found that:
(i) The concept of "lawful" was to "be judged by reference to the law of the Member State of dispatch, here Italy" (at [64]), in light of the language, structure and purpose of the EU coordinating rules (at [57]-[63]);
(ii) This requirement of Italian law did not fall foul of the EU law on the free movement of goods, which recognised a substantial discretion for Member States to protect their national treasures ([87]-[94]).
http://www.bailii.org/ew/cases/EWHC/Admin/2018/1822.html
Leave to appeal was given and the Court of Appeal dismissed the case in 2020:
https://www.blackstonechambers.com/documents/883/R_Simonis_v_Arts_Council_England.docx
An application was then made to the Supreme Court but that too was rejected:
http://www.supremecourt.uk/docs/permission-to-appeal-2021-01-2021-02.pdf (*see* page 3).

are accompanied by age and value thresholds. In general, it is considered that Annex I provides an adequate framework.

With regard to understanding the exact scope of the categories listed in Annex I, particular difficulties with uniform reading by Member States have been identified in this consultation round – as have been in previous reports - with certain types of cultural goods:

- ancient coins;
- the coverage of collections of items as opposed to single specimens in category 13.b;
- the classification of liturgical icons as paintings or as parts of monuments[16];
- whether the listing of certain types of goods in category 15.a is exhaustive or indicative;
- the matching of a specific category with the appropriate tariff classification (CN code).

The Commission services have consistently promoted dialogue and exchange of opinions among the Member States on those issues, including within the Project Group 'Interpretation of Categories' composed by Member States representatives (from 2013 to 2017), which was tasked with compiling the prevailing opinions on how to read the different categories of cultural goods and has identified the main differences between Member States on the above issues.

It should be also noted that, in particular with regard to the classification of liturgical icons, the clarifications brought by the new Regulation (EU) No 2019/880 on the import of cultural goods are expected to settle the matter (liturgical icons and statues are parts of religious monuments).

With regard to matching a specific category of cultural goods with the appropriate tariff classification, there seem to be two kinds of problems.

The first concerns cultural goods which are classified under Chapter 97 of the EU Combined Nomenclature. That Chapter contains very few subdivisions and lumps together under the same tariff heading several distinct categories of cultural goods. This makes difficult to determine the applicable tariff code in each case and, therefore, the category under which a cultural good should be classified for the purposes of the Regulation and/or the tariff classification under which it should be declared at customs. The World Customs Organisation (WCO) which is in charge of tariff nomenclature at international level, has recently announced the intention to create more subdivisions for Chapter 97 and this will hopefully resolve the issue.

Another problem results from the periodic amendments of the Harmonised Commodity Description and Coding System (the 'HS') – on which the EU Combined Nomenclature is based - at international level. Since the Regulation entered into force in 1993, there have been many successive amendments of the HS and, as a result, certain tariff codes that are listed in Annex I to the Regulation have been modified in the meantime and it is sometimes difficult, depending only on the category description given in that annex, to find which is the appropriate one for a given category of cultural goods.

[16] The main practical difference is that paintings (category 3) has a value threshold of 150,000 euro, whereas parts of monuments (category 2) would require an export licence regardless of market value. It should be noted however that, in particular with regard to the classification of liturgical icons, the clarifications brought by the new Regulation (EU) No 2019/880 on the import of cultural goods are expected to settle the matter (liturgical icons and statues are parts of religious monuments).

With regard to producing guidelines for the interpretation of categories, even if such guidelines were agreed by the Member States – which has not always been the case – they would still not be legally binding and therefore they would not be able to provide legal certainty to stakeholders. Only the European Court of Justice can interpret EU law and, as previously mentioned, the Court has not had the opportunity so far to rule on any of those questions. That been said, the considerable amount of work carried out by the Group 'Interpretation of Categories' could still be of use, according to Member States, e.g. its analysis and conclusions could be taken into consideration in a future revision of the Regulation and its Annex I.

4.3 Age thresholds

The **age thresholds** set by the Regulation for certain categories of cultural goods are considered adequate by the majority of the Member States.

A few Member States are of the opinion that the age thresholds are too high to cover and protect the entirety of the objects which are designated as 'national treasures' within their own territory. On the other hand, certain other Member States consider the age thresholds too low, especially for the categories without a value threshold (e.g. archives; manuscripts), where customs and competent authorities may be called to handle massive numbers of serially-produced, contemporary objects which, although technically within the scope of the Regulation and therefore subject to licencing, they would not be generally perceived as "*important for archaeology, prehistory, history, literature, art or science*"[17].

In the absence of a definition of cultural goods in the Regulation – such as the one provided for in Article 1 of the 1970 UNESCO Convention – any object which fulfils the technical criteria of age and/or value, regardless of whether it has an actual cultural significance, may fall within the scope of the Regulation and must be issued an export licence to exit lawfully the Union territory.

4.4 Financial thresholds

With regard to the **value thresholds** for cultural goods set out in Annex I.B to the Regulation, these are considered rather high by a significant number of Member States, while a small minority of Member States consider that they should be further raised.

One Member State – in favour of increasing the value thresholds in Annex I.B – pointed out that the minimum values have not been revised since the original Regulation was adopted (apart from the addition of a separate monetary threshold for watercolours, gouaches and pastels in 1996) and suggested that they should be reviewed on the basis of Article 10(2), 2nd subparagraph, in order to take account of inflation.

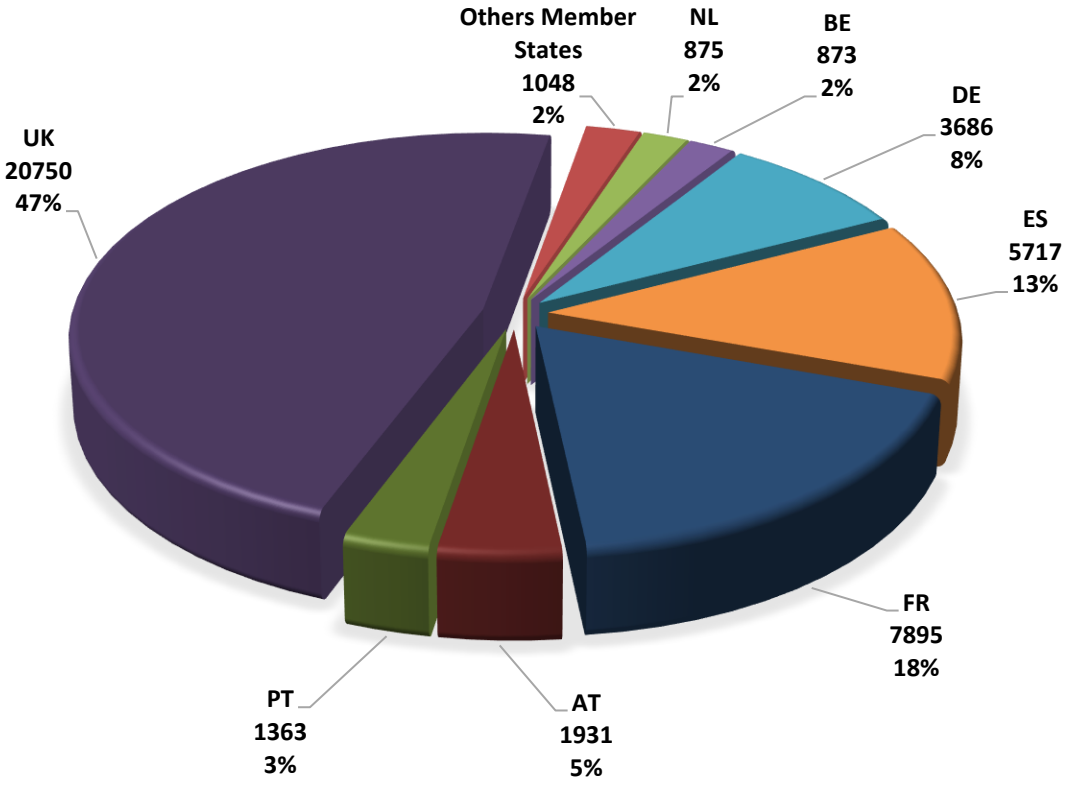
Other Member States – in favour of decreasing the thresholds – recommend the use of an adjustment mechanism, to take into account monetary fluctuations, and a 'country coefficient', in order to take into consideration the differences between Member States art market selling prices. As one of these Member States points out, numerous objects which are exhibited and form part of permanent collections in their museums would not come within the scope of the Regulation solely because of its high value thresholds - in spite of the fact that the objects in question are clearly designated as national treasures with historical and cultural significance.

[17] Definition of cultural property in the 1970 UNESCO Convention, Article 1.

4.5 Standard export licence figures

The number of standard licences issued by Member States during the period 2018 to 2020 was 44,138 (see also Table 1 in annex for yearly data).

Standard licences by Member State 2018-2020



In descending order, the main categories for which licence applications were received during the reporting period were: works of art (paintings, mosaics, watercolours and gouaches, engravings, sculptures), archaeological goods (mostly temporary export for exhibitions); incunabula, manuscripts and maps; objects of numismatic interest (coins), followed by various types of antiques of category 15 such as jewellery, musical instruments, furniture, clocks, arms, toys, carpets, etc. (mostly for definitive export). Several Member States reported a significant drop in the number of exports for certain categories (e.g. paintings) during the year 2020, which they attribute to the Covid-19 pandemic. However, according again to Member States, significant increase was observed in the number of national ('free movement') licences during the same period which indicates an increase in demand within the Union market.

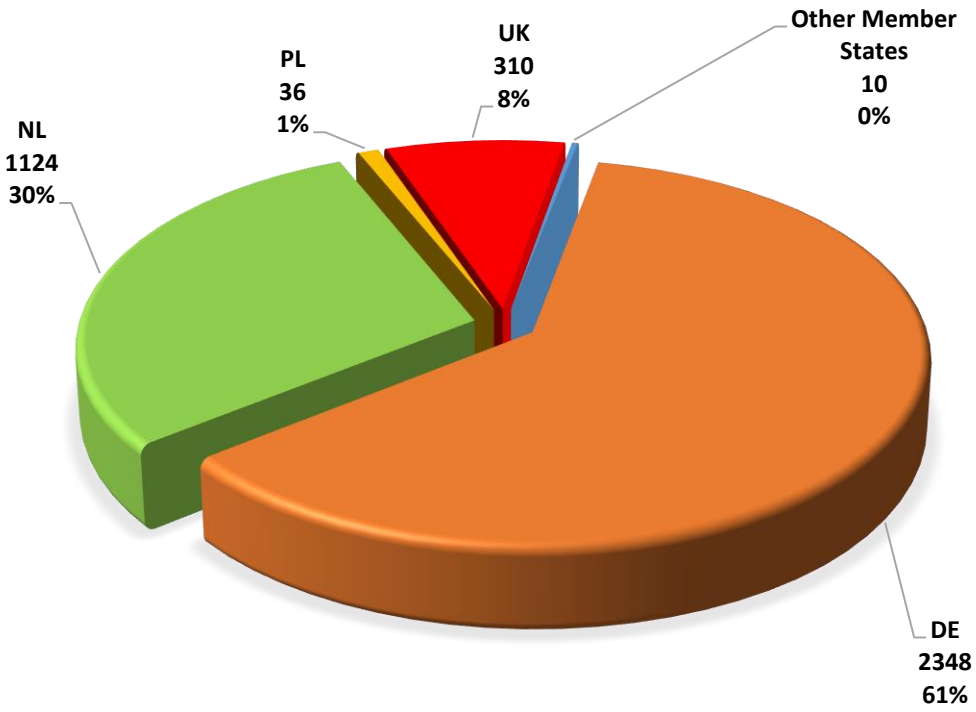
4.6 Specific and general open licences

Specific open licences may be issued for a specific cultural good **temporarily exported on a regular basis by a private person** (Art. 10 of the Implementing Regulation). During the period 2018-2020, the number of specific open licences issued was 3,828 (see also Table 2 in annex for yearly data). About half of the Member States report that they do not provide for

the issue of such licences. The Member States which issue specific open licences do so mostly for musical instruments exported for artistic performances or for antique means of transport exported for exhibitions.

Apart from two Member States, all the others have issued relatively low numbers of such licences within the reporting period.

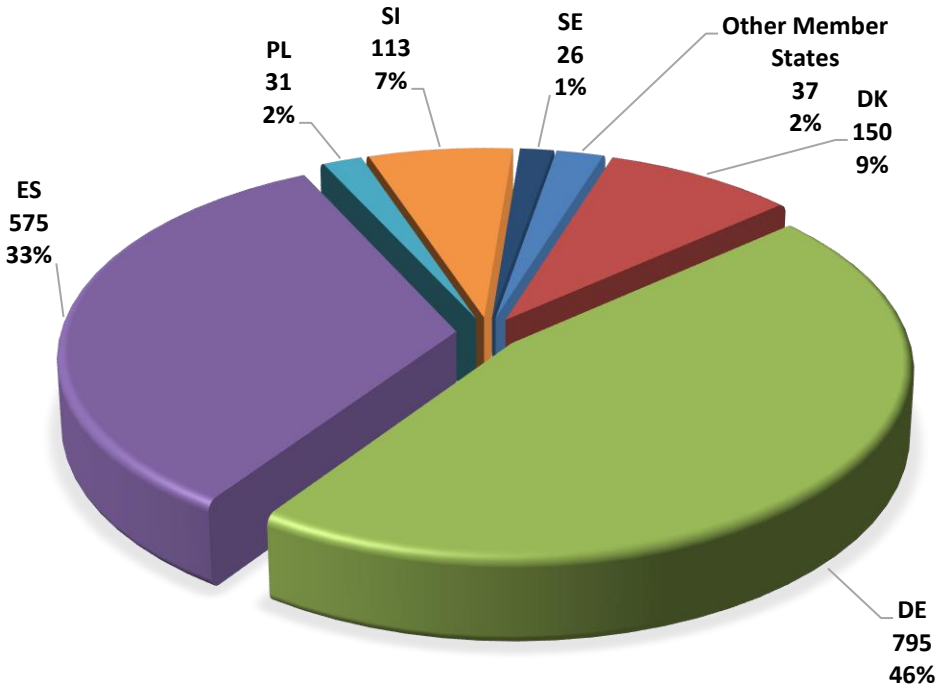
Specific Open Licences in circulation by Member State 2018 – 2020



The maximum period of validity of specific open licences is set by the Implementing Regulation at five years. The majority of the Member States who issue such licences apply that limit; however, some exceptions exist where the maximum length of validity is either unspecified or shorter (1-3 years). During the validity period, the repeated export of the objects concerned is allowed.

General open licences (Art. 13 of the Implementing Regulation) allow for the temporary export on a regular basis of cultural goods by **museums and similar institutions**. During the period 2018-2020 the number of general open licences issued was 1,727 (see also Table 3 in annex for yearly data). The maximum period of validity of such licences is also set at five years. The majority of the Member States which issue such licences apply a shorter limit. The length generally depends on the insurance coverage or the needs for the loan or exhibition.

General Open Licences in circulation by Member State 2018-2020



4.7 Exemption from the export licence requirement

This exemption, based on Article 2(2) of the Regulation, allows Member States not to require an export licence for items of category 1, 1st and 2nd indents, when such items are considered of limited archaeological or scientific interest.

In previous reporting periods, only one Member State had reported that they had made use of this provision. However, during the present reporting period, two additional Member States reported that they have exempted archaeological objects of limited interest from the licencing requirement. It appears that the criterion employed to determine 'limited interest' is based on the type of items, in particular, whether they are objects which were produced in great numbers in the past and are *quasi*-identical (e.g. ancient coins) or whether they are items which have been 'in display' for many years and, therefore, they can no longer be considered to be '*the **direct** product of excavations*'.

4.8 Reasons for rejecting a licence application

As in previous reporting periods, cases of rejection of an export licence application are quite rare. With the exception of the United Kingdom which represents two thirds of the EU art market and which reported 14 rejections, the majority of the other Member States have rejected on average less than one application/year of the reporting period. Several Member States report that they have not rejected any applications during the reporting period and two Member States even report that they have never rejected a licence application.

As for the grounds on which applications were rejected, apart from the designation of the object as a national treasure the export of which is prohibited, the grounds more often invoked are that the operator did not submit the application to the correct Member State competent authority; that the applicant refused or otherwise failed to provide the requested licit provenance information; that the object is a fake; that the object does not fall within the scope of the Regulation; or that the applicant failed to obtain the required national free-movement licence.

With regard to the last grounds for rejection, certain Member States legislation requires that, additionally to the EU export licence, an exporter needs also to obtain a national 'free-movement' licence, which authorises the exit of the cultural good from the national territory. In the case of certain Member States laws which provide for national 'free-movement' licences, the EU export licence must be applied for, either simultaneously or within a set amount of time after the national 'free-movement' licence is issued, i.e. obtaining a national licence is a precondition and the basis for granting the EU export licence.

4.9 Licence issues

Photographs. The inclusion of photographs in the licence application is a very important element, as it allows to identify the object by customs when controlling the export licence. All Member States require photographs when it comes to definitive exports, with particular emphasis on the export of collections covered under a single licence. Some exceptions are made by certain Member States in cases of temporary exportation or low value/interest objects (e.g. collections of books or objects lacking identifiable markings).

Return of Sheet N° 3. The Implementing Regulation provides in its Article 5 that Sheet N° 3[18] of the export licence form should be returned by the customs office of exit to the issuing competent authority to confirm that the export has indeed taken place and that the licence was used. However, Member States report that this is not done in all cases.

Only two Member States which have developed and are using an electronic system for issuing export licences can verify whether all the licences have been used, as their system is connected to customs. Even in these cases, the verification is difficult when the cultural goods exit the Union via the territory of a different Member State. The use of a centralised e-licencing system with interface to customs IT systems - such as the one currently in development for the purposes of the Import Regulation - is generally seen by the Member States as the ideal solution to this problem.

4.10 Cancellation or revocation of licences

About half of the Member States have legislation providing for the revocation or cancellation of licences after they have been issued, either by specific provisions related to cultural goods or on the basis of general administrative law which calls for the revocation of an administrative act when it is based on misleading or false information. During the reporting period, only one Member State has revoked export licences (one). Another Member State reported that they have revoked 13 national 'free-movement' licences, which are a precondition in that Member State for granting an EU export licence.

[18] The form comprises three sheets : No 1 constitutes the application, No 2 is for the holder of the licence and No 3 is to be returned to the issuing authority, once the cultural good has exited the Union.

4.11 Use of electronic systems/databases

As stated above (*see* Section 3.1), the Commission services are in the process of developing a centralised electronic system for the accomplishment of formalities and for administrative cooperation in the context of Regulation 2019/880, the so-called 'ICG system' for the import of cultural goods. As this system is expected to facilitate controls and contribute to combatting illicit trade in cultural goods originating in third countries, it was deemed appropriate that the same effort should be made and an equal protection should be afforded for cultural goods of European origin. The Commission services took therefore care to design the ICG system in such a way that it may be also used in the future – with the necessary adaptations – for the purposes of the Union export licencing system.

A growing number of Member States have digitalised or are currently in the process of digitalising their export licencing system. In certain Member States the application can be filled in and submitted electronically (e.g. by filling in an active PDF file online) but then the export licence itself is still signed and issued on paper. This is due to the provisions of the implementing act, which imposes the use of a paper licence.

In this context it has to be noted also that, national legislation in several Member States, currently provides for the right of citizens to be able to submit applications to public authorities in a digital format, online. This concerns all types of applications - not only those related to the export of cultural goods - and creates the corresponding obligation for the administration to develop the appropriate IT platforms and systems in order to digitalise their procedures and to be able to receive electronic applications from applicant citizens. Consequently, several Member States have developed such national electronic systems, to handle both Union export licences and national free movement licences, i.e. licences for intra-Union movement of cultural goods.

The benefits of a digital EU system for export licences are numerous, as well as self-evident: better cooperation and communication between customs and cultural competent authorities at national and also at Union level; better monitoring of the use of licences, especially when the customs office of exit is in a different Member State than the one which issued the licence; interface to customs IT systems via the European Single Window environment for customs; trade facilitation for exporters; greater uniformity in implementing the Regulation; faster accomplishment of formalities in a paperless environment and effective prevention of forgeries - to name but a few, so the vast majority of the Member States are strongly in favour of digitalisation. Two Member States however have expressed certain concerns regarding the use of a centralised electronic system of the same type as the one that is currently being developed for the purposes of import.

Specifically, the Member States in question have pointed out that the national systems or databases they are currently using are adapted to their specificities, in particular when their legislation provides for national licences that must be obtained additionally to the Union export licence or when the national licence is a precondition for the issue of the Union export licence. Additionally, in view of the investment made, it might seem counter-productive to completely scrap their national systems to replace them by a centralised EU system.

For this reason, the Commission services launched a feasibility study which will analyse and examine - among other digitalisation aspects - the business case of developing a 'hybrid' extension of the ICG system for export purposes, which would centralise the functionalities that provide the advantages of digitalisation, while leaving other elements that are better dealt at Member State level to the national systems (with possibility to interface).

The digitalisation of the export licences system will require an amendment of the Regulation's implementing provisions (Regulation (EU) 1081/2012). The same instrument should also determine the relation between export and import licences, in order to ensure legal certainty and avoid duplication of documentary requirements[19].

4.12 Material and human resources

The needs in personnel and resources for the implementation of the Regulation have remained stable in the majority of the Member States during the reporting period. In three Member States human resources have increased in response to increasing policy and administrative needs and in another two Member States needs have increased but they are yet unmatched by hiring the necessary resources (one of these Member States referred to the Covid-19 pandemic as being the reason for the delay in hiring additional personnel). Three Member States reported that their needs have decreased because of lower export licences numbers (Covid-19 was stated again as the cause of the decrease).

5. CONCLUSIONS AND OUTSTANDING ISSUES

Based on the feedback received from Member States for the reporting period 2018-2020, the Regulation seems to be performing well in terms of achieving its objectives and is perceived by them as a very important legal instrument for combatting the illicit trade in cultural goods.

As was the case in previous reports, the administrative co-operation and communication between the authorities in charge of applying the Regulation across the Union is identified as one of the main aspects where implementation can be improved.

The differences in understanding certain provisions of the Regulation and, in particular, the scope of categories of cultural goods and the key term of [where the goods are] '*definitively located*' – which determines which Member State has competence to issue the export licence - are also identified as possible obstacles to the uniform implementation of the Regulation.

Several Member States also point out that the value thresholds are not well adapted to local prices and markets and, by being too high, they exclude from the scope and the protection offered by the Regulation many cultural objects which are designated by their laws as national treasures.

Finally, Member States reaffirmed their willingness to move from a system of paper export licences to an electronic, paperless system. They consider that the digitalisation of the export licences will facilitate the accomplishment of formalities by operators; will speed up the treatment of applications; improve the verification of provenance by competent authorities; and improve the effectiveness and efficiency of customs controls.

[19] In fact, in two Member States, national import licences or certificates can be granted on request (for temporary imports), so importers of cultural goods would be exempted from having to obtain and present an EU export licence at customs when the goods in question are returning to the third country of origin.

6. ANNEXES

Table 1. Standard Licences issued by Member States

Member State	Year			2018 - 2020	Share of total in %
	2018	2019	2020		
BE	340	352	181	873	1,98%
BG	0	1	0	1	0,00%
CZ	12	96	2	110	0,25%
DK	59	61	24	144	0,33%
DE	1368	1387	931	3686	8,35%
EE	0	0	0	0	0,00%
IE	16	17	11	44	0,10%
EL	0	0	0	0	0,00%
ES	1694	1838	2185	5717	12,95%
FR	3064	2990	1841	7895	17,89%
HR	19	9	14	42	0,10%
IT (1)	67	99	87	253	0,57%
CY	2	5	2	9	0,02%
LV	0	1	0	1	0,00%
LT (2)					0,00%
LU	6	3	1	10	0,02%
HU	4	9	1	14	0,03%
MT	0	19	7	26	0,06%
NL	368	289	218	875	1,98%
AT	858	702	371	1931	4,37%
PL	58	9	2	69	0,16%
PT	385	396	582	1363	3,09%
RO	0	0	0	0	0,00%
SI	16	16	20	52	0,12%
SK	11	12	5	28	0,06%
FI	7	1	0	8	0,02%
SE	134	70	33	237	0,54%
UK	8351	8177	4222	20750	47,01%
Total	**16839**	**16559**	**10740**	44138	100,00%

(1)

2018	2019	2020
Permanent export licences 64 Temporary export licences 3	Permanent export licences 94 Temporary export licences 5	Permanent export licences 85 Temporary export licences 2

(2) No statistical data provided

Table 2. Specific Open Licences in circulation

Member State	Year			2018 - 2020	Share of total in %
	2018	2019	2020		
BE	0	0	0	0	0,00%
BG	0	0	0	0	0,00%
CZ	0	0	0	0	0,00%
DK	0	0	0	0	0,00%
DE	555	965	828	2348	61,34%
EE	0	0	0	0	0,00%
IE	0	0	0	0	0,00%
EL	0	0	0	0	0,00%
ES	0	0	0	0	0,00%
FR	4	1	2	7	0,18%
HR	0	0	1	1	0,03%
IT	0	0	0	0	0,00%
CY	0	0	0	0	0,00%
LV	0	0	0	0	0,00%
LT (1)				0	0,00%
LU	0	0	0	0	0,00%
HU	0	0	0	0	0,00%
MT	0	0	0	0	0,00%
NL	336	394	394	1124	29,36%
AT	0	0	1	1	0,03%
PL	6	15	15	36	0,94%
PT	0	0	0	0	0,00%
RO	0	0	0	0	0,00%
SI	0	0	1	1	0,03%
SK	0	0	0	0	0,00%
FI	-	-	-	0	0,00%
SE	0	0	0	0	0,00%
UK	146	142	22	310	8,10%
Total	1047	1517	1264	3828	100,00%

(1) No statistical data provided

Table 3. General Open Licences in circulation

Member State	Year			2018 - 2020	Share of total in %
	2018	2019	2020		
BE	0	0	0	0	0,00%
BG	4	1	0	5	0,29%
CZ	0	0	0	0	0,00%
DK	50	50	50	150	8,69%
DE	228	286	281	795	46,03%
EE	0	0	0	0	0,00%
IE	0	0	0	0	0,00%
EL	2	10	2	14	0,81%
ES	233	252	90	575	33,29%
FR	**0**	0	0	0	0,00%
HR	3	0	0	3	0,17%
IT	0	0	0	0	0,00%
CY	0	0	0	0	0,00%
LV	0	0	0	0	0,00%
LT (1)	0	0	0	0	0,00%
LU	0	0	0	0	0,00%
HU	14	1	0	15	0,87%
MT	0	0	0	0	0,00%
NL	0	0	0	0	0,00%
AT	0	0	0	0	0,00%
PL	12	11	8	31	1,80%
PT	0	0	0	0	0,00%
RO	0	0	0	0	0,00%
SI	38	38	37	113	6,54%
SK	0	0	0	0	0,00%
FI	0	0	0	0	0,00%
SE	9	9	8	26	1,51%
UK	0	0	0	0	0,00%
Total	**593**	**658**	**476**	**1727**	**100,00%**

(1) No statistical data provided

Table 4. Applications for Standard Licences refused

Member State	Year			2018 - 2020	Share of total in %
	2018	2019	2020		
BE	0	2	0	2	0,46%
BG	0	0	0	0	0,00%
CZ	2	1	0	3	0,69%
DK	0	0	0	0	0,00%
DE	0	0	0	0	0,00%
EE	0	0	0	0	0,00%
IE	0	0	0	0	0,00%
EL	0	0	0	0	0,00%
ES	82	72	116	270	61,93%
FR	**0**	0	0	0	0,00%
HR	0	0	0	0	0,00%
IT	0	0	0	0	0,00%
CY	0	0	0	0	0,00%
LV	0	0	0	0	0,00%
LT (1)				0	0,00%
LU	0	0	0	0	0,00%
HU	50	41	42	133	30,50%
MT	2	0	2	4	0,92%
NL	0	0	1	1	0,23%
AT	1	1	3	5	1,15%
PL	**0**	**0**	**0**	0	0,00%
PT	0	0	0	0	0,00%
RO	0	0	0	0	0,00%
SI	0	1	1	2	0,46%
SK	0	0	0	0	0,00%
FI	0	0	0	0	0,00%
SE	0	0	0	0	0,00%
UK	7	7	2	16	3,67%
Total	**144**	**125**	**167**	436	100,00%

(1) No statistical data provided

Table 5. Infringement/non-compliance cases

Year	Number of MS with seizures	Total infringement cases
2018 (1)	12	117
2019 (2)	12	84
2020 (2)	8	52
Total		**253**

(1) 1 Member State did not provide data
(2) 2 Member States did not provide data