



## Customs Flash Belgium

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### **New European Commission rules aim to tackle illicit trafficking of artworks**

#### Introduction

On 13 July 2017, a new [European Commission proposal on the import of cultural goods](#) was published, and will soon thereafter be submitted to the European Parliament and the European Council for approval. The new rules could enter into force as early as 2019, and are part of a broader plan to fight terrorist financing.

For the art market and its different stakeholders, the new rules would bring consistency and clarity on the types of restrictions and control measures proposed by the European Commission in tackling illicitly traded cultural objects. Imports of cultural objects older than 250 years into the EU will be forbidden if they are illegally exported from the source country.

#### Background

Antiques trading has been thriving since the 1970s. Europe is the largest trading continent for art exports, totalling USD 14.59 billion, and is the second largest in terms of imports after the Americas, with USD 11.5 billion of art and antique imports into and between European countries. The European market for classical antiques and ancient art represented a total value of USD 66.7 million in 2016, whereas the auction market for other antiques generated USD 807.5 million in

auction sales. The average price of lots consigned in Continental Europe surged to USD 43,109 in 2016 from USD 13,168 in 2015, according to the [2017 Tefaf Art Market report](#).

In Europe, imports of artworks, collector pieces and antiques represent around 54% of global trade in the sector. [Eurostat data](#) indicates that the legitimate import of antiques into the EU represented EUR 11.8 million in 2015.

In parallel, the illicit trafficking of cultural artefacts (sometimes referred to as 'blood antiques') has also grown. Despite increased awareness around the issue, the looting of historic art sites and illegal excavations currently continues in Iraq, Syria and in areas stretching the Mediterranean Basin, Africa, and beyond. This activity is currently playing a crucial role in the financing of terrorism.

Similarly, illegally exported cultural objects continue to be offered and sold on the European art market through traditional channels and e-commerce platforms. Serious cases of illegally traded antiquities, such as the *Becchini* or the *Symes* cases, continue to plague the art industry. In the US, the [recent discovery](#) of illegal artefact imports by the arts and crafts chain Hobby Lobby has brought the matter under the spotlight.

Customs administration seizures of goods illegally imported into the EU have been frequent of late. One recent example is the French customs' [2016 seizure](#) of two bas-relief pieces obtained through the looting of Syrian cultural heritage.

The lack of artwork provenance and origin certification continues to complicate the daily business of legitimate art dealers, auction houses and buyers.

## Which other countries have regulations in place for cultural good imports?

In its current form, regulation on cultural good imports consists of different and fragmented instruments across international, EU and national levels. 2017 has so far seen a patchwork of measures covering the movement of cultural property (i.e. import, transfer and export).

At EU level, there have so far been two ad hoc measures in place for Iraq (since 2003 - Regulation No 1210/2003) and Syria (since 2012 - Regulation No 36/2012), placing specific restrictions (prohibitions) on the movement of cultural property from these areas (with some exceptions). In practice however, only a limited number of seizures under these ad hoc measures have been detailed, inter alia by British, German, French and Dutch tax authorities and other pending cases. For example, the German criminal police [seized a Sumerian clay cuneiform tablet](#) of Iraqi origin, dating from 2049 B.C. and which was put up for public auction. The artefact was returned to Iraq in 2012.

Based on experiences with the current ad hoc measures in place, it is clear that customs administrations are currently facing a challenging task. They often find themselves going

beyond the resources available to establish provenance, age and legitimate owner after seizing artefacts.

At national level, the past 3 years brought new legislation to combat illicit trade in cultural goods being moved through different countries, whether inside the EU (Germany, France, Austria, Netherlands) or outside it (the United States and Switzerland in particular). Consequently, an export certificate from the source country is required to allow entry of cultural goods into France and Germany, with additional due diligence obligations on buyers of these goods (attesting legitimate provenance). In Austria and the Netherlands, the import of cultural goods that have been illegally exported out of their country of origin is forbidden.

Since 2005, Switzerland required persons importing or placing cultural property in transit to provide information on the customs declaration about the object type, a description of its place of origin and a declaration that the export of cultural property from the source country is not subject to a permit under local laws. Additional measures were imposed in 2016 for all imports into Swiss Freeports, requiring an official audit for every archaeological object offered for storage.

Together, these measures have shown to lack consistency, efficiency and effectiveness, especially within the context of needed harmonised action under the EU Customs Union.

Under the currently scattered regulatory framework, the risk of uneven treatment of cultural good imports across EU Member States is real. This can potentially harm the protection of cultural goods in source countries and allow the continued financing of terrorism through illegally traded cultural goods.

## What does the EU propose in the new regulation on cultural good imports?

The European Commission's 13 July 2017 proposal acknowledges the importance of protecting cultural goods from two different angles.

From a national perspective, the EU's proposed new rules acknowledge the importance of cultural goods to national heritage, as well as the artistic, historical and archaeological value to their country of origin.

From an international perspective, the EU proposal emphasises the negative effects and risks of illegal trades in the art market, where valuable artworks, sculptures and archaeological artefacts are often illegally obtained, sold and imported into the EU from conflict-zones. This illicit trafficking is believed to be linked to terrorism finance, tax avoidance and money laundering.

As a result of the proposed rules on the import of cultural goods, a strong incentive is given for the art market to exercise due diligence regarding the legality of cultural goods imported into the EU.

While the new rules would add additional burden on the side of EU importers of antiquities, they seem relatively straightforward in terms of proposed scope and control mechanisms.

The **geographical coverage** is global. In contrast to the ad hoc measures for Syria and Iraq, the new Regulation applies to all source countries. The laws of the exporting country (whether source or intermediate) will prevail in determining the legality of import into the EU.

In terms of **product coverage**, the proposed Regulation only applies to artworks listed in the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. The [annex to the EU Proposal](#) provides a list of all categories in scope. Unlike UNIDROIT, an additional age threshold is added, meaning that from the listed categories, only objects older than 250 years upon their import are in scope. To prevent artefact seizure, importers of antiquities are therefore pushed towards additional prudence, especially regarding age determination.

In terms of **documentary requirements**, the EU proposal introduces a new licensing mechanism. The proposed Regulation requires the importer to prove that the good was legally exported from the source country. The proposal distinguishes between two categories of cultural goods, imposing different documentary requirements on the person planning to import them:

- An import license is required for archaeological objects, parts of monuments and rare manuscripts and incunabula, providing proof of the goods' legal export from the source country
- A signed importer statement together with an Object ID (in a standardised format), certifying that the goods were legally exported out of the source country, are required for all other goods within the proposed Regulation's scope

While the same legislative framework on cultural good imports will apply to all EU Member States, it is important to recognise that penalties resulting from infringements are likely to differ across EU Member States, as these remain a national competency.

## What does it mean for you?

Although the entry into force of the proposed EU Regulation on import of cultural goods is pending European Parliament and Council approval, the proposal's text paves the way for improved monitoring and combat against illicit trafficking of cultural goods.

For the art market, the proposed EU Regulation brings convergence, additional clarity and transparency in a regulatory landscape that was already moving towards increased (national) regulation, with tightened import requirements on cultural goods. Generally, the Regulation and the control mechanism compliance it introduces may improve the European art market's reputation and credibility.

Looking at the on-going Brexit negotiations, the question is whether the new rules would apply in the United Kingdom,

which currently stands as the primary importer of antiques into the EU (over half of EU imports came into the UK, which according to the [2017 TEFAF Art Market Report](#), imports USD 6.275 billion in art, collector pieces and antiques). As it currently stands, the rules will likely become applicable in the UK until the exit agreement enters into force. It remains uncertain whether the UK Government will thereafter decide to transpose these EU rules to the new post-Brexit legislative framework.

The actual implementation and enforcement of the new rules on cultural good imports will to a large extent depend on the competent authorities in EU member states. Controls will require specific (cultural goods) expertise and sanctions will need to be determined. In the meantime, the Proposal incentivises both buyers and sellers to exercise due diligence and act prudently with respect to the provenance of a cultural object.

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