

# COUNCIL REGULATION (EEC) N° 3911/92

of 9 December 1992

## On the export of cultural goods

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Whereas, in view of the completion of the internal market, rules on trade with third countries are needed for the protection of cultural goods;

Whereas, in the light of the conclusions of the Council meeting on 19 November 1990, 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;

Whereas 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; whereas this necessitates a clear definition of the scope of such measures and the procedures for their implementation; whereas the implementation of the system should be as simple and efficient as possible; whereas a Committee should be set up to assist the Commission in carrying out the responsibilities conferred on it by this Regulation;

Whereas, in view of the considerable experience of the Member States' authorities in the application of Council Regulation (EEC) No 1468/81 of 19 May 1981 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 or agricultural matters<sup>4</sup>, the said Regulation should be applied to this matter;

Whereas the Annex 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 36 of the Treaty,

HAS ADOPTED THIS REGULATION:

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<sup>1</sup> OJ N° C 53, 28. 2. 1992, p. 8.

<sup>2</sup> OJ N° C 176, 13. 7. 1992, p. 31.

<sup>3</sup> (3) OJ N° C 223, 31. 8. 1992, p. 10.

<sup>4</sup> OJ N° L 144, 2. 6. 1981, p. 1. Regulation as amended by Regulation (EEC) No 945/87 (OJ N° L 90, 2. 4. 1987, p. 3).

## **Article 1**

Without prejudice to Member States' powers under Article 36 of the Treaty, the term 'cultural goods' shall refer, for the purposes of this Regulation, to the items listed in the Annex.

# **TITLE 1**

## **Export licence**

### **Article 2**

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:

— 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,

— 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 reimportation 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 the two indents in the first subparagraph are authorized not to require export licences<sup>5</sup> for the cultural goods specified in the first and second indents of category A1 of the Annex where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful.

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 the second indent of the first subparagraph 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/. . ./EEC of . . . on the return of cultural objects unlawfully removed from the territory of a Member State<sup>6</sup>.

3. The export licence shall be valid throughout the Community.

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<sup>5</sup> Following Corrigendum to Council Regulation (EEC) No 3911/92, published in Official Journal L 267, 19/10/1996, P 0030.

<sup>6</sup> Not yet adopted at the time of this publication; in accordance with Article 11 below, the present Regulation will enter into force on the third day following that of publication of the Directive in the Official Journal of the European Communities.

4. Without prejudice to the provisions of this Article, 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**

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 these authorities and any amendment to that list in the 'C` series of the Official Journal of the European Communities.

### **Article 4**

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**

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 Communities.

## **TITLE 2**

### **Administrative cooperation**

#### **Article 6**

For the purposes of implementing this Regulation, the provisions of Regulation (EEC) No 1468/81, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

In addition to the cooperation provided for under the first subparagraph, 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/. . ./EEC.<sup>7</sup>

## **TITLE 3**

### **General and final provisions**

#### **Article 7**

The provisions necessary for the implementation of this Regulation, in particular those concerning the form to be used (for example, the model and technical

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<sup>7</sup> See footnote to Article 2 (2).

properties) shall be adopted in accordance with the procedure laid down in Article 8 (2).

### **Article 8**

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(3) shall apply.
3. The Committee shall adopt its Rules of Procedure.<sup>8</sup>

### **Article 9**

Each Member State shall determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

### **Article 10**

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.

Every three years the Commission shall present a report to the European Parliament, the Council and the Economic and Social Committee on the implementation of this Regulation.

The Council shall review the effectiveness of the Regulation after a period of application of three years and, acting on a proposal from the Commission, make any necessary adaptations.

In any event, the Council, acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the Annex, on the basis of economic and monetary indicators in the Community.

### **Article 11**

This Regulation shall enter into force on the third day following that of publication in the Official Journal of the European Communities of Directive 93/. . ./EEC<sup>9</sup>.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 December 1992.

For the Council  
The President

W. WALDEGRAVE

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<sup>8</sup> Article 8 was replaced by Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the Exercise of its implementing powers laid down in Council Instruments adopted in accordance with the consultation procedure (qualified majority) OJ L122 16/05/2003 P 0001 – 0035.

<sup>9</sup> (1) The Directive on the return of cultural objects unlawfully removed from the territory of a Member State, already referred to in Articles 2 (2) and 6, has not yet been adopted at the time of this publication.

## ANNEX

### CATEGORIES OF CULTURAL OBJECTS COVERED BY ARTICLE 1

A. 1. Archaeological objects more than 100 years old which are the products of:

— excavations and finds on land or under water

9705 00 00

— archaeological sites

9706 00 00

— 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 category 3A or 4, executed entirely by hand in any medium and on any material<sup>10; 11</sup>

9701

3A. Water-colours, gouaches and pastels executed entirely by hand on any material<sup>10 12</sup>.

4. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material<sup>10</sup>.

6914

9701

5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters<sup>10</sup>

Chapter 49

9702 00 00

8442 50 99

6. Original sculptures or statuary and copies produced by the same process as the original<sup>10</sup>, other than those in category 1

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<sup>10</sup> Which are more than 50 years old and do not belong to their originators.

<sup>11</sup> Inserted by Council Regulation (EEC) No 2469/96 of 16 December 1996 O J L 335, 24/12/1996 P. 0009 – 0009.

<sup>12</sup> Inserted by Council Regulation (EEC) No 2469/96 of 16 December 1996 O J L 335, 24/12/1996 P. 0009 – 0009.

9703 00 00

7. Photographs, films and negatives thereof<sup>10</sup>

3704

3705

3706

4911 91 80

8. Incunabula and manuscripts, including maps and musical scores, singly or in collections<sup>13</sup>

9702 00 00

9706 00 00

4901 10 00

4901 99 00

4904 00 00

4905 91 00

4905 99 00

4906 00 00

9. Books more than 100 years old, singly or in collections

9705 00 00

9706 00 00

10. Printed maps more than 200 years old

9706 00 00

11. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old

3704

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4906

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<sup>13</sup> Which are more than 50 years old and do not belong to their originators.

9705 00 00

9706 00 00

12. (a) Collections<sup>14</sup> (2) and specimens from zoological, botanical, mineralogical or anatomical collections;

9705 00 00

(b) Collections<sup>13</sup> of historical, palaeontological, ethnographic or numismatic interest

9705 00 00

13. Means of transport more than 75 years old

9705 00 00

Chapters

86-89

14. Any other antique items not included in categories A.1 to A.13

(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

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<sup>14</sup> As defined by the Court of Justice in its judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading N° 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.'

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.14 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 ecus)

Value: Whatever the value<sup>15</sup>

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 8 (Incunabula and manuscripts)
- 11 (Archives)

15 000

- 4 (Mosaics and drawings)
- 5 (Engravings)
- 7 (Photographs)

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<sup>15</sup> Amended from “Value: 0 (zero)” by Council Regulation (EC) No 974/2001 of 14 May 2001, OJ L 137, 19/05/2001 P. 0010 – 0011.



- 10 (Printed maps)
- 30,000
- 3A. (Water colours, gouaches and pastels)<sup>16</sup>
- 50 000
- 6 (Statuary)
- 9 (Books)
- 12 (Collections)
- 13 (Means of transport)
- 14 (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) of the Regulation.

For the Member States which do not have the euro as their currency, the values expressed in euro in the Annex 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 Communities in the first days of the month of November preceding the date on which the revision takes effect.<sup>17</sup>

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<sup>16</sup> Inserted by Council Regulation (EEC) No 2469/96 of 16 December 1996 O J L 335, 24/12/1996 P. 0009 – 0009.

<sup>17</sup> Amended by Council Regulation (EC) No 974/2001 of 14 May 2001, O J L 137, 19/5/2001 P 0010 – 0011.