The present collection of questions and answers aims to inform and raise awareness among stakeholders about the EU legislation on the import of cultural goods. Any case examples given are purely fictional and any views expressed are not legally binding. Only the European Court of Justice is competent to deliver a binding interpretation of Union legislation. Neither the European Commission nor any person acting on behalf of the Commission is responsible for the use which might be made of the information contained in this document.

Questions & Answers on the EU legislation on the introduction and the import of cultural goods (Regulation (EU) 2019/880)

General note: the major part of the practical questions answered here were submitted by the art market via public consultations or directly in correspondence or meetings. However, in order to provide also a complete picture of the legislation to the reader – who might be a different type of stakeholder, those questions are interspersed with others which attempt to cover all relevant legal angles. Therefore the guidance contains both information on the legislation, as well as answers to practical questions and 'case' examples on how it is foreseen to apply. This is the first edition of this Q&A compilation; it might be enriched in the future with more questions that may arise at the implementation phase.

1. What was the main inspiration for Regulation (EU) 2019/880 on the introduction and the import of cultural goods?

A: The main inspiration was:

- the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,
- the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
- the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

and, to a lesser extent:

- the 2017 Council of Europe Convention on Offences relating to Cultural Property (Nicosia Convention) and
- the 1983 US Convention on Cultural Property Implementation Act (CCPIA or CPIA).

2. What are the goods covered by the Regulation (material scope)?

A: For the purposes of that Regulation, cultural goods are objects that were **created or discovered in a third country,** which are **of importance for archaeology, prehistory, history, literature, art or science** and which **belong to the categories listed in its Annex**.

3. How and who determines if an object is 'of importance for archaeology, prehistory, history, literature, art or science' or not?

It is the laws and regulations of the third country that determine whether a good is 'of importance' to them.

4. What is the so-called 'general prohibition rule'?

A: It is the basic premise of the Regulation, laid down in its Article 3(1), according to which it is **prohibited to introduce into the Union cultural goods that were illegally removed from the third country where they were created and/or discovered**.

5. What is meant by "introduction" of cultural goods?

Introduction is to be understood as **the physical entry by any means of a cultural good into the Union customs territory**. In particular, the term introduction would cover goods in transit through the Union's territory.

This is important because transit is not among the customs procedures that are defined as 'import' in the Regulation and goods in transit will not be subject to the presentation of import licences nor importer statements to customs. In other words, **the scope of 'introduction' is wider than that of 'import'**.

6. How to determine if a cultural good was exported illegally from a third country?

The law that determines whether a cultural good has exited illegally the third country where it was created or discovered – and therefore cannot be introduced in the Union – is **the law of that third country**.

For example, if the export of archaeological objects from China is prohibited based on Chinese law, then their introduction in Member State X would be prohibited as well, even if the laws of Member State X do not prohibit or restrict trade in Chinese archaeological objects.

7. Which cultural goods are subject to the general prohibition?

The general prohibition rule applies to all categories of cultural goods that are listed in Part A of the Annex to the Regulation. Part A includes all the categories that are listed in Article 1 of the 1970 UNESCO Convention[1].

Unlike Parts B and C[2] of the Annex to the Regulation, its Part A sets no minimum age or value limits, with the exception of antiquities, such as inscriptions, coins or seals, and of old furniture (>100 years).

That does not mean however that age and/or value limits do not apply at all. These are determined in each case based on the law of the third country.

[1] The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, signed in Paris in 1970, has been the main source of inspiration for Regulation 2019/880, as it is the most ratified international instrument against illicit trade in cultural goods and considering that the scope of the Regulation targets all third countries.

[2] Parts B and C of the Annex to the Regulation are subsets of Part A of that Annex, with the difference that they contain age and value thresholds for the categories of cultural goods listed.

For example, if the export of a Costa Rican archaeological object which is more than 100 years old is prohibited based on Costa Rican law, then its introduction into the Union would also be prohibited, even if Union law and/or the law of the Member State where it was introduced would only restrict trade in such cultural goods of more than 250 years of age.

On the other hand, the scope of Part A is not entirely open either, in the sense that, if a third country prohibited under its heritage protection laws the export from its territory of other categories of goods which are **not** listed in Part A, their introduction in the Union would be legal.

8. What measures should Member States take to implement the general prohibition rule?

The implementation of the general prohibition rule **does not require from Member States to perform systematic controls of cultural goods entering the Union customs territory**.

On the other hand, if customs or other authorities of the Member States happen to come across a suspicious shipment, for example, during a random check or on account of intelligence received e.g. from a third country authority or from INTERPOL, the general prohibition rule would require them to **take all appropriate measures** to intercept that shipment.

9. What is the ICG system and how will it operate?

A: Import licences and importer statements will be managed centrally by a modern electronic management system hosted centrally by the Commission and accessible to all competent cultural authorities and customs authorities of the EU and operators applying for import licences or submitting importer statements.
The system will be paperless, and licences will be applied for, processed and e-signed and statements drawn up and submitted to customs through TRACES NT, a platform currently used by Directorate General SANTE of the Commission for the certification process of agricultural products.
The system will be compatible with the existing EU Single Window CERTEX System. It is scheduled to become operational by 28 June 2025.

10. What does 'import' mean in the context of Regulation 2019/880?

A: For the purposes of Regulation 2019/880, 'import' means the **release of cultural goods for free circulation** or the placing of cultural goods under the special customs procedures of storage (comprising storage in **customs warehouses** and **free zones**), specific use (comprising **temporary admission** and **end-use**) and **inward processing**.

Depending on the cultural good, the importer has to obtain an import licence or submit an importer statement to the customs authority of the Member State where the cultural good is placed **for the first time** under one of the above-mentioned customs procedures.

The Regulation **exempts** from the requirement to obtain an import licence or to submit and importer statement in the following cases:

- where the cultural goods in question are **returning Union goods**;
- when the goods are **temporarily admitted for educational, scientific or research purposes**;
- when they are cultural goods **sent by a public authority of a third country to an EU refuge** to prevent their imminent destruction; and
- when they are temporarily admitted **to be offered for sale in a commercial art fair** (in this last case they have to provide an importer statement).

11. What is the difference between an import licence and an importer statement?

A: An import licence is an authorisation allowing the import of cultural goods listed in Part B of the Annex to the Regulation (archaeological objects and parts of monuments that have been dismembered, which are more than 250 years of age) into the Union. The licence may be obtained by applying to a designated authority in the Member State where the goods are to be imported and should be made available to the customs authorities upon presentation of the goods.
Import licence applications may be granted/rejected based on evidence provided by applicants as per Article 4 of the Regulation.

For the cultural goods listed in Part C of the Annex to the Regulation an importer statement is to be submitted to customs. As outlined in Article 5, this is comprised of a signed declaration of the holder on the legal export of the cultural goods from the third country and a standardised part describing the cultural goods in detail. Supporting documents – if needed, such as export permits from the third country - do not need to be uploaded in the system for importer statements, but they need to be in the possession of the holder of the goods in case they are asked at customs to demonstrate legal export.

12. What can I do if the country where the object was made or found is not known or if it left that country a very long time ago and finding provenance evidence is difficult?

The legality of export is determined on the basis of the rules and regulations of the country where the object was created and/or discovered.

Exceptionally, when the country where the good was created and/or discovered cannot be determined with certainty, or when the country is known but the cultural good was exported from there before 24 April 1972 (date of entry into force of the 1970 UNESCO Convention), the **importer has the option** to prove instead legal export from the last country where the good was permanently located for at least 5 years, before its dispatch to the Union.

13. What if there was no third country where it stayed for at least 5 years, while it is impossible to identify when it left the country of origin/discovery?

In other words, we have a cultural good for which there is no evidence that it left the country of origin/discovery legally – since the time when it left is very often determinant of the legality of that export (i.e. before or after the entry into force of export restrictions/prohibitions), while, even if we assumed that it left before 24 April 1972 - that is, more than half a century ago - the importer

or rather the person who sold the item to them, cannot show where it has been all this time and they don't have any evidence neither of its stay anywhere for more than 5 years.

Considering that evidence of legal export from the third country is primarily required in order to obtain an import licence and that import licences are required for archaeological objects and parts of dismembered monuments – cultural heritage for which almost all countries have prohibitions and restrictions at export – the notable lack of [licit] provenance information in such a case could very well be indicative of a stolen object and/or a product of clandestine excavation. It would not be prudent for someone to buy such an object.

In any case, considering the above, there would be no way for the importer then to *"[provide] evidence that the cultural goods in question have been exported from the country where they were created or discovered in accordance with the laws and regulations of that country or [provide] evidence of the absence of such laws and regulations at the time they were taken out of its territory*", as the Regulation requires in its Article 4(4), for the competent authority to grant an import licence.

14. What types of documents can be used to support an import licence application?

A: Literally, any means of proof of legal export are admissible. The seller of the object should be able to provide you with provenance information. If they cannot, the origin of the object might be suspect.

For third countries which have an export certification/licence/permit, etc. requirement, the applicant is expected to upload that document with their import licence application. If for whatever (licit) reason they are unable to, they will have the possibility to explain why they don't have this document (e.g. the good left the third country before the export certification law came into force) and it will be up to the competent authority which received the application to decide, on a case-by-case basis and based on other corroborating evidence provided, if the licence can be granted in spite of the absence of an export certificate.

The applicant must also provide photographs of the cultural good (see Annex I of the Commission Implementing Regulation 2021/1079 of 24 June 2021).

The import licence application must also include a signed declaration by which the applicant explicitly assumes responsibility for the veracity of all statements made in the application and states that they have exercised all due diligence to ensure that the cultural good they intend to import has been exported legally from the country of interest.

Other types of documents to submit in support of an import licence application may be, **but are not limited to** the following:

(i) customs documentation providing evidence as to past movements of the cultural good;
(ii) sales invoices;
(iii) insurance documents;

(iv) transport documents;
(v) condition reports;
(vi) property titles, including notarised wills or handwritten testaments declared valid under the laws of the country were they were established;
(vii) declarations under oath of the exporter, the seller or other third party, which were made in a third country and in accordance with its laws, testifying as to the date on which the cultural good has left the third country where it was created or discovered or other events supporting its licit export from there;
(viii) expert appraisals;
(ix) publications of museums, exhibition catalogues; articles in related periodicals;
(x) auction catalogues, advertisements and other promotional sales material;
(xi) photographic or cinematographic evidence, which supports the legality of export of the cultural good from the country of interest or allows to determine when it was located there or when it exited its territory.

15. Who will issue the import licences and importer statements?

A: Competent authorities – such as those dealing with cultural affairs – of the Member State where the cultural good is to be imported for the first time will receive applications for and issue import licences, in accordance with Article 4(2).

An importer statement is to be drawn up in the ICG system (online) by the person who seeks to import cultural goods from third countries into the Union and it is submitted to EU customs (customs electronic systems can verify its existence in the ICG via the Single Window-CERTEX interconnection).

16. What is the procedure for applying for an import licence?

A: The person who seeks to import archaeological objects and parts of monuments that are more than 250 years old from a third country into the Union has to apply for an import licence to the competent authority of the Member State where the cultural goods are to be placed for the first time under a customs procedure allowing their entry into the Union, except transit.

The evidence provided with the application is examined by the competent authority, and an import licence is issued or the application is rejected. A rejection is notified to the competent authorities of the other Member States (via ICG alert). The competent authority can request further information or documents from the importer within 21 days from the submission of the application. There can be more than one request for additional information within that 21-days period. The applicant must provide the additional information requested within 40 days, otherwise the application is rejected as incomplete. When all the necessary information is brought by the applicant, the competent authority has 90 days to make their decision.

Once a licence is issued, the cultural good may be imported into the Union. The licence should be available in the ICG system and a respective licence-number reference will have to be indicated in the customs declaration when the latter is submitted.

17. What is the procedure for submitting an importer statement?

A: The importer has to draw up the statement in the ICG electronic system and thus make it available to customs (via the Single Window-CERTEX interconnection), prior to the import of the cultural goods, together with the customs declaration.

The customs authorities have to ensure that the goods to be imported are the same with those described in the importer statement and that a reference to that statement is made in the customs declaration. Where cultural goods are placed under the free zone procedure, reference to the importer statement has to be made upon presentation of the goods to customs.

18. Does an object bought abroad on vacation outside the European Union need an import licence or an importer statement?

A: Yes. Any object corresponding to the description of goods listed in Part B and C of the Annex to Regulation (EU) 2019/880 requires an import licence to be issued by a competent authority or an importer statement to be drawn up for it and submitted to customs, whether the importer is a professional of the art market or an occasional buyer/collector of art.

It is to be noted also that, in the case of importer statements, the person making the statement has to have in their possession the required supportive documentation, in case customs select the consignment for control and request to see the documentary evidence.

19. Is there an administrative fee involved in procuring an import licence?

A: It is up to the competent authority of each Member State to decide whether to charge a fee for the issuance of an import license. Regardless of this, the applicant has to bear all costs related to their application and import formalities and procedures, e.g. temporary storage fees, translation of supportive documents submitted, experts appraisals, etc.

20. For how long will import licences be valid?

A: Until the object is **released for free circulation** (i.e. after payment of any import duties and charges, the application of any commercial policy measures and the completion of any other formalities, a good originating in a non-Union country becomes a 'Union good', is cleared by customs and is released to the importer) **or until it is re-exported** out of the Union.

Consequently, if the good is placed successively under different customs procedures in the Union other than release for free circulation, it does not need a new licence for each procedure, only for the first customs procedure that is defined as 'import' by the Regulation (see Q&A 10).

21. How long will the procedure to get a licence take?

A: As per Article 4(7) the competent authority has 90 days from the moment they receive sufficient information from the applicant (a 'complete application') to decide whether or not to grant a licence.

If the information provided with the application is not sufficient to determine whether the cultural good was legally exported from the third country, the competent authority has 21 days from receipt of the application to request additional or missing information or documentation. The applicant has 40 days to provide the additional information requested. In this case, the 90 days period does not start until the applicant brings the requested additional information. If the 40 days expire without the applicant having brought the requested information, the application is rejected as incomplete.

22. Can challenges/appeals be made against the decision of the competent authority?

A: Yes, as is common to all administrative systems of the Member States, the recipient of an unfavourable administrative decision may appeal against it, following the procedures of the relevant legislation of the Member State in question.

A decision of the competent authority which rejects an application for an import licence must indicate the grounds for the rejection and the available means of appeal (based on the national provisions and administrative practices).

23. Is an import licence proof of legal ownership or provenance?

A: It is not. As per Article 4(3), an import licence issued by the competent authority of a Member State does not constitute proof of legal ownership or provenance. It **only authorises the import of the object** in the customs territory of the Union. Furthermore, an import licence **can be revoked at any moment** if the information on the basis of which it was granted turns out to be erroneous or false.

24. Will an import licence (or importer statement) be required for an item that has left the EU and is now returning into the EU?

A: Not if the cultural good was either created or discovered in the customs territory of the Union or it is - irrespective of its geographical origin – a returned good as per Article 203 of the Union Customs Code (i.e. it returns in the EU territory within a period of three years under the conditions provided for in that Article).

25. I am a citizen of Member State A but entering the Union through Member State B. Can I apply for an import licence through my own Member State?

A: The licence must be applied for in the **Member State where the good is to be imported for the first time**. The Regulation defines as 'import': either the release for free circulation in the Union, or placing the object under a special customs procedure such as storage in a customs warehouse or free zone, temporary admission, end-use or inward processing. The transit procedure is not considered/defined as 'import'.

Therefore, a person may choose to import the good in Member State B, or place it in transit until it is dispatched to Member State A and import it there. Depending on the choice, the authority of Member State A or B will be competent to examine the application and issue the licence.

26. I am importing an object for a temporary exhibition lasting a finite amount of time before leaving the Union again; do I still need an import licence?

A: Any object admitted in the Union temporarily for educational, scientific, conservation, restoration, exhibition, digitisation, performing arts or research purposes by a museum, academic or similar institution does not need an import licence or importer statement as per article 3(4) (c) of the Regulation. The **institution should however be registered in the ICG system** to benefit from the exemption (a type of permanent licence for temporary admissions to which EU customs have access).

To note: this exemption only applies for cultural goods placed under the customs procedure of **temporary admission**.

27. Will cultural goods being imported for commercial art fairs need a licence?

A: As per Article 3(5) of the Regulation, an import licence is not immediately required; instead, an importer statement can be submitted to customs for cultural goods that have been placed under temporary admission to be presented and offered for sale at a commercial art fair.

However, if the cultural goods are to remain in the Union after the end of the commercial art fair (e.g. because they were sold to a person established in the Union), an import licence will then be required. The application for that import licence will have to be submitted to the Member State where the art fair took place (as the temporary admission procedure counts as the first 'import').

28. Do I have to leave my cultural goods with a competent authority for the duration of the licence application/approval process?

A: No. The physical presence of cultural goods in the Union is not always required for the holder to apply and obtain an import licence. However, the competent authority may request from the applicant to make the goods available to them for a **physical inspection**. The applicant will have to bring them into the Union and place them in temporary storage at customs or in other premises within the competent authority's jurisdiction, where the competent authority will be able to inspect them.

In case the cultural goods have arrived in the EU before an import licence has been issued for them, they cannot be released for free circulation or placed under other customs procedures because the import licence would be missing. That is why the goods have to remain in temporary storage until the licence is granted (they can remain there for a maximum of 90 days, after which the importer will have to re-export them or abandon them to customs).

For this reason, if in a particular case there are doubts whether an import licence will be granted (e.g. the applicant has very little or no information about the provenance of the object) **it is advisable to apply for the import licence ahead of shipping the goods**. At the discretion of the competent authority and if deemed necessary, the physical inspection may be carried out using a **remote video connection** (Art. 6(3) implementing regulation (EU) 2021/1079).

Depending on the Member State, there may be additional storage or administration fees involved where the cultural goods are deposited before release for free circulation.

29. I am unsure of the legal ownership history of my cultural good, if I apply for a licence do I risk having the object seized?

A: If it turns out that the cultural good has been removed from the territory of the country where it was created or discovered in breach of the applicable legislation or if the object was stolen from its rightful owner, the competent authority or the customs authorities will have to take the appropriate measures based on the relevant EU and national legislation, such as their criminal law provisions (e.g. laws against theft, fraud, accepting or selling proceeds of crime, etc.).

30. What if the licence application has been rejected? Will the object be seized?

A: It **depends on the reason for rejection**. Article 4(7) lists four main reasons for which an import licence application may be rejected, the first, third and fourth of which may also require that EU authorities take appropriate follow-up measures, including the confiscation of the object; namely, if it turns out that it was illegally exported (smuggled) out of the third country, if it was taken from its rightful owner by theft or fraud or if there are pending claims by the country of origin for the return of the object.

If however the reason for rejection was that there was insufficient information provided by the applicant (incomplete application), without the competent authority having any grounds to suspect that it was exported illegally or that it is the product of crime, there would be no reason to seize the object.

Lastly, it goes without saying but, the issue of confiscation or seizure would only arise if the object is physically present in the Union customs territory.

31. How can an applicant prove their object came from the EU originally?

A: Cultural goods which were created or discovered in a Member State do not need an import licence or importer statement. If this is contested at the moment of import at customs, any evidence proving European origin (i.e. previous export licences; ownership documents; customs, insurance or transport documents, etc.) can be used to prove the object is from the EU**.**

32. The country I am importing from does not have an export licence requirement or system, what else can I use to support my application?

A: The applicant only needs to indicate that no permit or licence or certificate is required to take the object out of the country of export.

33. Can I apply for and import licence or submit an importer's statement at the border?

A: In principle, an application for an import licence can be submitted at any moment. So it is possible for an operator to choose to apply for an import licence only after the cultural goods in question have arrived in the Union.

In such a case, it has to be taken into consideration that the goods can only remain at customs in temporary storage for 90 days. If during this time they are not declared for placement under a customs procedure (for which they need to have the licence), they will have to be re-exported or abandoned to customs.
It is possible that the competent authority may request additional information from the applicant in which case the procedure for the issue of the licence may last longer than 90 days. Also, the importer should be fairly certain about the success of their application for an import licence before they ship the cultural goods, because if it is rejected they will have to re-export the goods.
For these reasons it is generally advised to apply for an import licence ahead of shipping.

34. As a new owner of a cultural object, can I use the licence issued to a previous owner? How can I know that for a specific object a licence has already been issued?

A: For future import licence applications, reference can be made to previous licences issued in order to speed up the process.

Information on previous licences can be obtained from previous owners. Customs and competent authorities are not in a position to match a physical item with a previously issued import licence. Normally the seller would have such information and can give access to the new importer/owner to the previous licence online.

A new licence will be needed in any case. The new import licence can be issued after the competent authority has verified that the object has left the Union after the previous licence was issued and that it is the same object for which the subsequent import licence is applied.

35. Is there a special procedure for the import of cultural objects before the electronic system becomes operational?

A: There is not. Articles 3 (2) to (5), (7) and (8), Article 4(1) to (10), Article 5(1) and (2) and Article 8(1) of Regulation 2019/880 will only apply from the date on which the electronic system becomes operational or at the latest from 28 June 2025.

36. I bought at an auction in a third country an object – a 100 year old sword with a value of 300 EUR and I would like to import it in the EU. Do I need to make an importer's statement?

A: No. Part C of the Annex to the Regulation provides for an age threshold of at least 200 years and a financial threshold (based on the value declared at customs) of at least €18,000 per item.

Additionally, for the sword to be within the scope of the Regulation, it would have to be of historical or ethnological interest.

37. How many cultural goods can be imported per licence? If there is more than one item per licence, will cultural goods of the same category use the same licence or is it for the importer to decide? And when an entire collection is being imported, considering that afterwards it can be dismembered and some of the items sold individually?

A: With respect to how many objects can be covered per licence, the decision will be up to the competent authority, after request by the applicant. This is to be appreciated and decided on a case by case basis, depending on the specific objects and the relevant risks involved in grouping more than one object under a single licence.
Note also that **an importer statement can cover only one cultural object**, except in the case of similar denomination **coins** (category (e)).

38. What is provenance?

A: The Regulation does not define provenance, but makes reference to other resources, including ICOM.
ICOM's International Observatory on Illicit Traffic in Cultural Goods defines provenance as "The full 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."
More definitions can be found here: https://www.obs-traffic.museum/glossary

39. What is due diligence?

A: The Regulation does not define due diligence, but the recitals make reference to definitions in the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

For the 1995 UNIDROIT Convention, the process of due diligence is all required endeavours to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before acquiring it.

In determining whether due diligence has been exercised, all the circumstances of the acquisition are considered, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which they could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.
More definitions can be found here: https://www.obs-traffic.museum/glossary

40. What means are available to identify and recover stolen cultural goods?

A: The ICOM Red Lists, published for certain countries or whole regions and illustrating objects from there, which are at high risk from pillaging and theft; the Interpol Stolen Works of Art database, listing with photographs of stolen cultural property; the Art Loss Register, which

performs research by art experts to make sure a cultural good is not stolen. Moreover, there are in place also numerous national and regional relevant databases.

41. Is an ICOM Red List a list of stolen objects?

A: No, a Red List is not a list of actual stolen objects. The cultural goods depicted are inventoried objects within the collections of recognised institutions. They serve to illustrate the categories of cultural goods most vulnerable to trafficking.
More information on the ICOM Red Lists here:
https://icom.museum/en/resources/red-lists/

42. What is the Interpol Stolen Works of Art database?

A: The Stolen Works of Art database is the main tool used by Interpol to tackle the illegal traffic in cultural property. It is a database of stolen works of art that combines descriptions and pictures of more than 50,000 items. It is the only database at the international level with certified police information on stolen and missing objects of art.
More information on the Interpol Stolen Works of Art database can be found here:
https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database

43. Is there a list of national legislation on the protection of cultural heritage?

A: Yes, UNESCO maintains a National Cultural Heritage Laws list here:
https://en.unesco.org/cultnatlaws/list
The ICG system will also comprise a 'Library' feature with concise third country export requirements and legislation profiles.

NB: The following are some further questions on hypothetical cases prepared by art market representatives that we answered together with Member State competent authorities for the purpose of facilitating the understanding and the future implementation of the Regulation.

Scenario 1

Our client is a French resident and he has just inherited his uncle living in Miami, Florida. Among other objects belonging to his uncle he finds a magnificent medallion of jade and he sends photos to specialists. On the basis of these photos the specialists believe that it is a Mayan object, dating back to 250 BC – 250 AD. They estimate its value at 70 000 to 100 000 EUR.

The medallion is most probably from the Izapa archaeological site in the south of Mexico, which extends along the Pacific coast down to Guatemala and Belize.

Question 1: Is the auction house expert's opinion enough to establish the age or place of origin of an object, even in the absence of an appraisal by an independent expert?

A: The appraisal by the auction house expert of the value, age and origin of the object would be in principle sufficient, provided that it is formal enough to engage the responsibility of its author. Unless there are reasonable doubts about its conclusions, there should be no need for an independent expertise.

Our client has no information about the provenance of this medallion ; he has no idea from whom his uncle bought it, when it was imported in the US or when it had been exported from its country of origin.

The object has never been photographed or exhibited. Our client asked friends of his uncle who can attest seeing it in his library at least since the 1980s.

Question 2 : is this medallion a 'cultural good' within the meaning of the Import Regulation ? If yes, what is the category to which it belongs and why?

A: If the object was considered as a work of art that belongs in Part C of the Annex to the Regulation, it would be subject to an importer statement.

In that case, to sell this object in the Union your client would have to sign a declaration in accordance with Art. 5 that the medallion has been exported from the country in which it was created and/or discovered in accordance with its laws and regulations at the moment when it exited its territory. Taking into consideration the knowledge he has – or in this case, doesn't have – about the object, he couldn't sign such a declaration.

Also, the country where it was made could be Mexico, but also Guatemala or Belize.

The medallion is a cultural good in the sense of the Import Regulation. Izapa is an archaeological site, therefore this work of art is an archaeological object.

After June 2025, the medallion will be subject to an import licence (Part B of the Annex to the Regulation) and not to an importer statement.

Therefore, before its import a licence must be obtained by the competent authority of the Member State where your client intends to import via the electronic system established for this purpose (the ICG system). This document would be controlled by customs at the accomplishment of the import customs formalities.

Until the provisions on the import licence become applicable, the medallion is already subject to the so-called 'general prohibition rule' of Article 3(1) (which applies to Part A of the Annex to the Regulation). If the consignment in question is selected for control at import, the holder must be in a position to demonstrate the licit export from the country where it was created and/or discovered.

Question 3 : What evidence can he provide to be able to import the object into the Union? How can he demonstrate that the country of origin cannot be determined reliably, so he can then prove instead legal export from the last country where the object remained for more than 5 years (the US)?

The experts have now identified other elements allowing them to believe that the medallion is coming from the current territory of Mexico.

Question 4 : What kind of evidence should be provided for this? Would a certificate or a letter from an expert from the auction house be sufficient?

A: 1. Case in which Mexico is the country of creation and/or discovery

In the context of an application for an import licence, after June 2025, as in the context of the general prohibition rule, which already applies, an auction house expert's appraisal with the appropriate justification and form and engaging the responsibility of its author would be sufficient to designate Mexico as the country of creation and/or discovery.

2. Case in which the country of creation and/or discovery cannot be reliably determined

After June 2025, in the context of an import licence application, an auction house expert's appraisal with the appropriate justification would be sufficient to allow the applicant to benefit from the derogation permitting to consider as 'country of interest' the last country where the good remained for more than 5 years, from which the licit export must be proven.

Currently the general prohibition rule would not apply if an expert from the auction house explained in a substantiated report that engages the responsibility of its author that the country of creation and/or discovery cannot be reliably determined and, that report is not contested by an expertise of the competent authority or, as the case may be, by an opinion of the cultural affairs authorities of the potentially concerned third countries.

Our client has no information concerning the date or the circumstances of the initial export from Mexico.

Question 5 : Which date will be used as date of export from Mexico ? (1980 cannot be used because the good may have left its country well before that time).

A: If the only date known to the importer is 1980, it will be that date that will be considered. That does not mean however that the export is illegal. The Mexican authorities could be asked to make a verification. The conclusion of that verification must be objectively considered by the competent authority. If the reply of the Mexican authorities is not invoking an export prohibition for the object in question, the competent authority would in principle grant the licence (after June 2025) and the object would not be seized (today, in the context of the general prohibition rule).

Question 6 : In such case, could our client export in accordance with the export rules of the US, country in which the good remained for at least 5 years?

A: After June 2025, in the context of an application for an import licence, the US would be considered as the country of interest to determine the legality of export if it was established that it is impossible to identify reliably the country of creation and/or discovery. Therefore, the legal provenance would be examined vis-à-vis the heritage legislation of the United States.

Today, **in the context of the general prohibition rule, the only reference to determine legal provenance would be the country of creation and/or discovery**. If that country cannot be reliably determined, the prohibition rule couldn't apply.

Question 7 : What kind of evidence would be admissible to demonstrate that the object was in the possession of the uncle (and therefore out of the country of creation) at least from 1980 onwards? Would signed declarations made by the uncle's friends or family, who declare having seen the object at that time in his library, be sufficient ?

A: The implementing act (Regulation (EU) 2021/1079) lists among other possible pieces of evidence "declarations under oath of the exporter, the seller or other third party, which were made in a third country and in accordance with its laws, testifying as to the date on which the cultural good has left the third country where it was created or discovered or other events supporting its licit provenance" (Article 8 and 12).

Consequently, such declarations or affidavits could be submitted as evidence, provided that they are sufficiently formal and that they engage the legal responsibility of the signatory.

Question 8 : If the year 1980 is retained and the legality of the export (and the import) is to be examined on the basis of the Mexican laws of that time, how could we determine in practice what were the export requirements at that date? What to do if a lawyer of that country cannot provide a clear answer ?

All the laws and regulations provide a date of entry into force. As previously explained, if the reply of the authority of the country of creation/discovery is not clear with regard to the existence of an export prohibition, the object should not be seized (in the context of the general prohibition rule)

and the Member State competent authority should not refuse the licence on that sole reason (after June 2025).

Question 9 : What would happen if, in case of control, the customs and the competent authority do not agree with our interpretation of the Mexican legislation?

In case of difference of opinion between the administration and an economic operator, an injunction could be requested against the order to seize the object (in the context of the general prohibition rule) or the rejection of an import licence application by the competent authority (after June 2025) and the case would be decided in the end by the court.

Scenario 2

Our client is a private person living in Switzerland. He has inherited from his parents a collection of Asian works of art. His parents were serious collectors who acquired objects from art galleries or public auctions, so their collection is known to many experts. On the other hand, his parents were very private persons and they seldom loaned objects from their collection for exhibition, that's why there is very few catalogues that mention it.

Our client wishes to sell several objects of that collection to pay high inheritance taxes.

One of these objects is a Yangcai porcelain dish from China, attributed to the Qing dynasty, most probably from the Qianlong era (1736-1795), according to specialists. The value of this rare object is estimated at 150 000 – 200 000 euro.

Question 1: Is this object a cultural good within the meaning of the Regulation? If yes, to which category of Part C does it belong and why?

A: The dish is a cultural good within the meaning of the Regulation. Currently it is subject to the general prohibition rule (Part A of the Annex to the Regulation). After June 2025, its import in the Union would be subject to an importer statement (Part C of the Annex), as it exceeds both the age and value thresholds over which an importer statement is required (200 years and 18 000 euro).

Assuming that the good is within the scope of the Regulation and is subject to an importer statement.

Our client found among the papers of his parents an invoice from an art gallery in New York, dated 1989, entitled « Turquoise Dish, China », without any more details and without a photo of the object. The art gallery is now closed and its owner is deceased. Our client also has an insurance policy from 2005 which indicates « collection of Chinese art objects » of a global value of 300 000 EUR, without a list of the objects covered by the contract.

Question 2 : Would the invoice be enough to establish that the object was out of China at least since 1989? Can the insurance policy establish that the object was out of China at least since 2005 ?

If NOT: does this mean that our client cannot import his dish in the EU?

If YES: Our client cannot ascertain when the object left China. Therefore he cannot sign the importer statement declaring that the object was exported in accordance with the laws and regulations (i) of China (ii) at the time when it left its territory (since he cannot know of that date). He could only claim that the dish was out of China in 1989.

Question 3 : What could our client do since he cannot demonstrate when the object left the country of creation? Using the date of 1989 does not seem correct, since the object must have left the country several years before.

A: Answer to questions 2 et 3

In principle, invoices and insurance policies can constitute evidence of provenance (articles 8 and 12 of the implementing act 2021/1079). However, if they do not describe the object in enough detail for it to be identified they are not admissible.

In the improbable case, where the operator would only have as evidence of legal export an invoice and an insurance policy which do not permit to identify the object in question and no other means to investigate the provenance are possible, the import of that dish in the Union territory should be prohibited.

It is however more probable that the operator can bring other elements of proof. For instance, the operator could bring a notarised declaration of the insurer, engaging his responsibility, and stating that the object was the only dish in the "collection of Asian art" covered by the 2005 insurance policy.

We advised our client to include this object in an exceptional exhibition of several other objects that will be put up for sale next year in Paris. This exhibition will take place in China and will last several weeks before the objects are sent to Paris.

Question 4 : Can you confirm that after this temporary exhibition, when the object is sent from China to France, the applicable law remains that that was in force at the time of the initial export of the object (and not the current law in force in China) ?

Can you also confirm that the reply remains the same, even if the dispatch of the object to China for the exhibition was made directly from Switzerland, where its owner resides, without the object having transited through France ?

If the export of the object in question is prohibited by the Chinese heritage protection legislation currently in force, the dish will not be able in any case to leave China. It will be blocked there by the Chinese authorities, regardless of any European laws or any action taken by the French authorities.

If the export of the good is not prohibited by the Chinese legislation, the dish could exit China freely and its provenance would be legal vis-à-vis the Import Regulation.

Therefore, the legislation to be taken into consideration would that applicable in the country of creation and/or discovery at the moment of the last export.

Scenario 3

One of our clients wishes to sell a wooden mask from Gabon of the 19th century, of an estimated value of a million euro.

He obtained this mask from an auction in 2011 in London, the catalogue of which indicated its provenance as « Collection of Mr. And Mrs Pierre, New York, acquired before 1958 through inheritance". Our client has obviously no information from the previous owners.

Question 1 : Is this a cultural good within the meaning of the Regulation? If yes, to which category does it belong and why?

A: The mask is a cultural object within the meaning of the Regulation and currently it is only subject to the general prohibition rule (part A of the Annex to the Regulation, category (f) or (g)).

After June 2025, it would most probably require an importer statement (Part C of the Annex, category (f) or (g ii), unless the age of the object is less than 200 years. The '19th century' dating is not precise enough to determine that.

Assuming that the good is within the scope of the Regulation:

Question 2 : The object was located in 2011 in the UK which at that time was part of the EU. Can it not be considered as already having been imported once in the Union?

A: The fact that the object has been imported once into the Union is without incidence on the legality of its provenance. In fact, in 2011, the Union to which the UK was a Member State, did not have yet any legislation on the protection of cultural heritage of third countries. Therefore, no verification or control of the licit provenance of the object had been made at the time.

Question 3 : Could we consider the description of the auction catalogue as sufficient proof that the good was indeed out of Gabon at least since 1958?

If NOT, and only the date of 2011 can be considered:
Our client does not have any information on the date of the initial exit of the mask from Gabon.

Question 4 : How should he proceed? Is the only way to import a good that he legally purchased at auction to prove that Gabon did not have a law prohibiting the export of such cultural goods in 2011?

A: Reply to questions 3 et 4 :

Auction catalogues are admissible pieces of evidence to demonstrate legal provenance (Article 8 and 12 of the implementing act Reg. 2021/1079). In the present case, if the good is sufficiently identified in the catalogue, the date « before 1958 » could be accepted.