

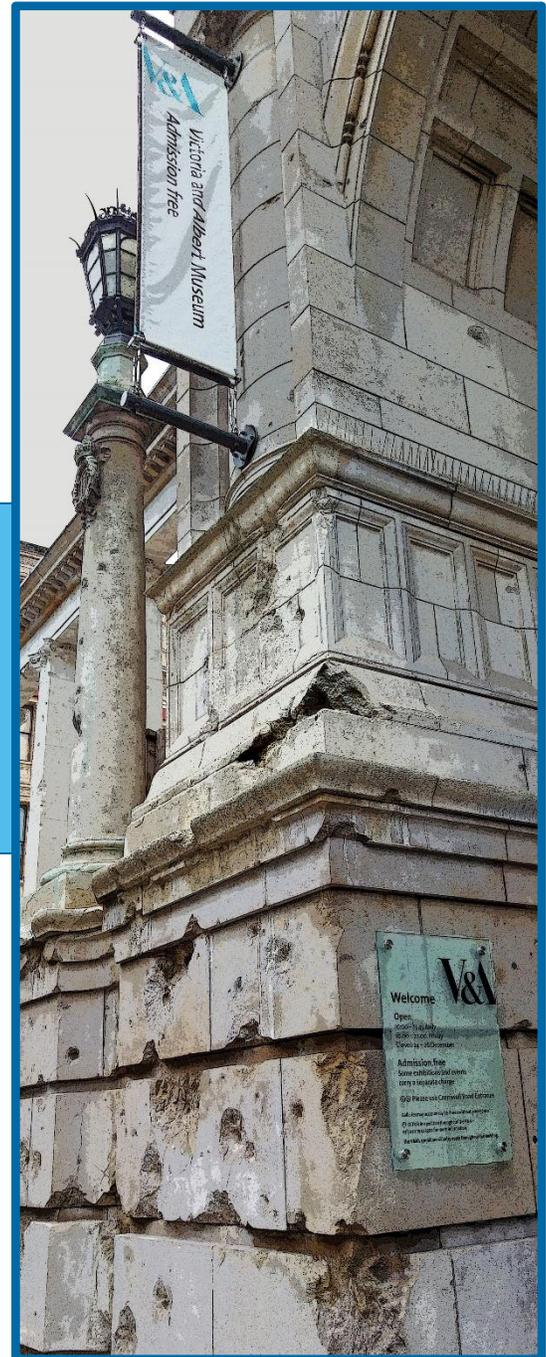


UK BLUE SHIELD

UK ADOPTION OF THE EU REGULATION ON THE IMPORT OF CULTURAL GOODS

POSITION PAPER

13 June 2018





1.0 Introduction

- 1.1 On July 13 of 2017, the European Commission proposed new rules to stop imports in the Union of cultural goods illicitly exported from their country of origin – the EU Regulation on the Import of Cultural Goods ('Proposed Regulations')¹. A vote is scheduled on the 10 of July, and – if successful – the new regulations are expected to apply across all EU Member States from 01 January 2019.
- 1.2 We recognise that the Proposed Regulations have an important and necessary objective: to prevent the import and storage in the EU of cultural goods illicitly exported from a third country, thereby reducing trafficking in cultural goods, combatting terrorism financing and protecting cultural heritage, especially archaeological objects in source countries affected by armed conflict (the 'Objective').
- 1.3 We particularly welcome the determination to set an international standard across all EU countries who have signed the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (the 1970 UNESCO Convention), including a common definition and a common standard for certification information (the Object ID Standard). The problems posed by illicit trafficking cross State borders: as such, an EU level approach to legislation fighting illicit trafficking can only be welcomed, given the current lack of standardisation. This legislation is also timely, given the high levels of destruction and looting seen across the world, and the multiple UN Security Council resolutions concerning the destruction and looting of cultural heritage, and its links to terrorist financing², implemented through EU Regulations 1210/2003 and 36/2012.
- 1.4 We welcome some of the proposed measures, which will undoubtedly make an effective contribution to the overall goal of the legislation. In particular, we welcome the proposal to create a registered database of import licences (see paragraph 3.1), and the proposal that the ANNEX shall be continually updated to reflect objects most at risk. We also note that 25 of 28 EU Member States have signed the 1970 UNESCO Convention (and 137 State Parties across the world), indicating a will to combat illicit trafficking, and the potential for wide enforcement of this legislation.

¹ The Proposed Regulations are available here, along with the Impact Assessment, and an Executive summary of the assessment: https://ec.europa.eu/taxation_customs/business/customs-controls/cultural-goods_en

² UNSCR 1373 (2001), UNSCR 1483 (2003), UNSCR 2199 (2015), UNSCR 2253 (2015) UNSCR 2347 (2017), UNSCR 2368 (2017).



- 1.5 UK Blue Shield looks forward to the “*series of EU actions [...] addressing the factors driving both the supply of and the demand for illicitly traded cultural goods, such as the uneven level of preparedness and application of due diligence standards in the Member States, and the weak capacity in certain countries at the origin of the traffic, particularly in fragile contexts*”³.
- 1.6 However, whilst recognising that there are some very positive and effective proposals in the Proposed Regulations, we have a number of concerns, which we express here. Ultimately, we feel the Proposed Regulations are insufficient to achieve their intended goals, but will impact the UK art market, and will have a particularly significant effect on our Borders and Customs Forces.
- 1.7 There are three fundamental flaws: the inadequacy of using the 1970 UNESCO Convention; the difficulties in establishing a source country; and the difficulty identifying items in the different Categories of cultural goods.
- 1.8 We also express a number of additional concerns which we do not consider to be fundamental but should be considered. We consider that many of these concerns, if implemented as drafted, could be further clarified through guidance prepared by the European Commission and DCMS.
- 1.9 We urge the UK Government address the concerns posed here in order to work towards comprehensive, pragmatic legislation.

2.0 Effective Measures: Database

- 2.1 UK Blue Shield welcomes the introduction of measures intended to achieve the aim of creating a minimum standard across the EU with uniform controls along EU borders – given that at present there are no common rules, this is much needed.
- 2.2 In addition to the creation of a common definition for the import of cultural goods, we particularly welcome the following measures, which will doubtless contribute to the goals of the legislation.
- 2.3 “Article 9 calls on Member States to organise cooperation between their competent authorities and provides for the future development of an electronic database to facilitate

³ European Commission. 2017. *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the import of cultural goods*. P3.
https://ec.europa.eu/taxation_customs/sites/taxation/files/cultural_goods_proposal_en.pdf



the storage and exchange of information, in particular importer statements and importer licences issued”.⁴

- 2.4 We consider that the aim of creating a database of import licences and applications for high risk objects using a common standard (the Object ID Standard) is a necessary measure to achieve the Objective. One of the difficulties in establishing a source country is the inconsistency in the stated country of origin on shipping documents, art loss certificates, invoices and the documentation marketed to a buyer.
- 2.5 For example, prior to the conflicts in Syria, it was relatively common to see *Syria* as a country of origin for Mesopotamian items (including those supposedly on the market for several decades)⁵. However, since the 2013 UN Security Council Resolution relating to Syria,⁶ more common origins are now *Turkey* or *Iran* (despite the objects having been on the market long before the recent conflicts in Syria). The same can be said for Bactrian items. It is now rare to see *Afghanistan* listed on import documents, instead seeing *Tajikistan* and *Uzbekistan*, but Afghanistan may have been listed on earlier (pre-conflict) documents. This is often explained away by reference to comparable objects which were previously unknown, or following new expert opinion, which is very difficult to challenge regardless of whether or not this belief is genuinely held. It would be extremely difficult to find an expert who could definitely confirm that a Bactrian item was from Uzbekistan and not Afghanistan.
- 2.6 Creating an electronic database of import information (provided all documentation relevant to the object was included) would therefore be a welcome and important step in the prevention of illegal import of high risk objects into the EU.

⁴ Article 9:

2. An electronic system may be developed for the storage and the exchange of information between the authorities of the Member States, in particular regarding importer statements and import licences.

3. The Commission may lay down, by means of implementing acts, EN 19 EN a) the arrangements for the deployment, operation and maintenance of the electronic system referred to in paragraph 2; b) the detailed rules regarding the storage and exchange of information between the authorities of the Member States by means of the electronic system referred to in paragraph 2.

⁵ For this, and other examples, see: Brodie, N. (2011), ‘The Market in Iraqi Antiquities 1980–2009 and Academic Involvement in the Marketing Process’, in S. Manacorda and D. Chappell (eds), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property* (New York: Springer), 117-133.

⁶ Resolution 2118 (2013) of the United Nations Security Council



3.0 Effective Measures: ANNEX Updates

- 3.1 The Proposed Regulations anticipate the Annex will be updated to reflect those objects most at risk.⁷ This is to be welcomed given the fluctuations in the Art market in at risk items.
- 3.2 Although this creates an obligation on the art market to keep up to date with the latest advice, we consider that the burden is proportionate to the aim of protecting the items most at risk of illicit trafficking. As an example, the art market and importers are well used to checking the Appendices⁸/Annexes⁹ to the CITES Regulations which are updated approximately every 2-3 years depending on risk to the particular species.
- 3.3 This will also result in additional resource and training of customs officials: however, UK customs are well versed in keeping themselves up to date of the latest high-risk items.

4.0 Fundamental Flaw (I): 1970 UNESCO Convention

- 4.1 *“Article 4 provides for the cases where an import licence is required, the person who has to apply for it, the conditions and modalities and from which Member State authority it can be obtained. In order to avoid circumvention, when the exporting country is not the one where the object was discovered or created ('source country'), a differentiation is made depending on whether the exporting country is a signatory State of the 1970 UNESCO Convention or not. When it is a signatory and thus a country committed to fighting against illicit trafficking of cultural property, the applicant has to demonstrate lawful export from that country; if not, the applicant has to demonstrate lawful export from the source country.”¹⁰*

⁷ The regulations' definitions state: 'cultural goods' means any object which is of importance for archaeology, prehistory, history, literature, art or science and which belongs to the categories listed in the table in Annex and meets the minimum age threshold specified therein.

Article 2:

2. The Commission is empowered to adopt delegated acts in accordance with Article 12 in order to amend the second column of the table in the Annex following amendments in the Combined Nomenclature and to amend the minimum age threshold in the third column of the table in the Annex in the light of experience gathered during the implementation of this Regulation.

⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973, Appendices I-III

⁹ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade herein, Annexes A-D

¹⁰ Article 4:

2. The holder of the goods shall apply for an import licence to the competent authority of the Member State of entry. The application shall be accompanied by any supporting documents and information substantiating that



- 4.2 There are several fundamental difficulties with the Proposed Regulations in respect of the requirement to provide export licences for objects that fall within the categories of objects considered to be most at risk, categories (c), (d) and (h) ('High Risk Objects').
- 4.3 The first, and greatest, is that if an export licence from the source country cannot be obtained, the Proposed Regulations allow import provided the object is legally exported from a 'third country' if that country has ratified the 1970 UNESCO Convention¹¹. We consider that this proposed measure significantly reduces the likelihood of the Proposed Regulations achieving the Objective.
- 4.4 State Parties are only legally required to prohibit the import of cultural property from another signatory State Party. Therefore, if the source country was not a signatory to the 1970 UNESCO Convention when the object was imported into the territory of a signatory State Party, import is permitted. For example, Togo has not ratified the 1970 UNESCO Convention, but ICOM considers cultural objects from that country to be at such significant risk of illicit trafficking that in 2016 they launched a *Red List of West African Cultural Objects at Risk* (including Togo) to encourage countries to restrict import of potentially looted items¹².
- 4.5 However, under the Proposed Regulations, if an illegally excavated object from Togo is imported into a 1970 UNESCO Convention State Party outside the EU, (for example, the Russian Federation, who would be under no international legal obligation to restrict its import), it would be granted an EU Import licence provided it was legally exported from the signatory State Party. As such, UK Blue Shield have significant concerns that, rather than achieving the desired goals, the Proposed Regulations will simply push the traffic in illicitly excavated objects through transit countries in order to enter the EU.
- 4.6 Many transit countries have only recently ratified the 1970 UNESCO Convention, and lack experience and expertise in this area. For example, the UAE ratified the UNESCO Convention in October 2017 and is considered by many archaeologists¹³ to be a high-risk transit country

the cultural goods in question have been exported from the source country in accordance with its laws and regulations.

¹¹ Article 3:

2 "Where the export country is a Contracting Party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 14 November 1970 ('the 1970 UNESCO Convention'), the application shall be accompanied by any supporting documents and information substantiating that the cultural goods have been exported from that country in accordance with its laws and regulations."

¹² <http://icom.museum/resources/red-lists-database/red-list/west-africa/>

¹³ This was highlighted in the recent Hobby Lobby case (for example, see: <https://www.aljazeera.com/news/2017/07/hobby-lobby-suit-exposes-illegal-uae-antiquities-market-170712092030538.html>)



for High Risk Objects. However, the Proposed Regulations as drafted would permit the import into the EU of High Risk Objects directly from the UAE, provided it was legally exported from the UAE. This potentially permits the import into the EU of illicit High Risk Objects looted from countries such as Iraq, Syria, Afghanistan and Yemen.

- 4.7 In addition to the issues already highlighted, although the 1970 UNESCO Convention requires a system of export licensing by signatory States, it has fewer formal import requirements. State parties to the 1970 Convention should “*prevent museums and similar institutions within their territories from acquiring [illegally exported] cultural property*”, must “*prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention*”, after 1970 and assuming it was inventoried (Article 7).
- 4.8 We acknowledge that the UNESCO Operational Guidelines for the 1970 UNESCO Convention indicate¹⁴ that where a State is unable to produce a specific inventory relating to unexcavated / undiscovered material, they may make an assertion of State ownership regarding all undiscovered objects, in order to facilitate return under the 1970 UNESCO Convention. Although there are cases where a State is able to demonstrate that a looted

¹⁴ UNESCO. The Operational Guidelines for the implementation of the 1970 Convention. Available at: <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/operational-guidelines/>

Page 6. 12. *Products of archaeological and paleontological clandestine excavations: Regarding archaeological and paleontological finds clandestinely excavated, States are unable to produce any specific inventories. To avoid the problem of specifically identifying an object of archaeological or paleontological significance, it has been demonstrated that one useful approach is to make a clear assertion of State ownership of undiscovered objects, so that the State Party can request its return under the provisions of the 1970 Convention and/or by recourse to any other relevant means. This is particularly important in the case of an undisturbed archaeological site that has not yet been looted: every object in that site, still to be found, is important for the preservation of cultural heritage and the understanding and knowledge of the archaeological site’s full meaning and context. Consequently, States Parties are encouraged to follow best practice in designating the cultural property that is protected under their national law in accordance with these characteristics and all States Parties are encouraged to recognize this sovereign assertion for the purposes of the Convention.*

Page 11. 34. *These lists can include cultural property identified either by individual description or by category, considering that, in developing and recognizing inventories of such protected cultural property inventories, States Parties should bear in mind the specific characteristics of cultural property, as defined in Article 1, in particular regarding clandestinely excavated archaeological sites and other cultural property that poses special challenges in terms of their specific designation (see para. 12 above).*

35. *States Parties have the inalienable right to classify and declare certain cultural property as inalienable and, to enact State ownership laws on cultural property. In the spirit of the Convention and unless evidence of the contrary, States Parties are encouraged, for restitution purposes after the entry into force of the Convention as appropriate, to consider cultural property forming part of the cultural heritage of a State as appertaining to the relevant official inventory of the owner State.*



object is from that State¹⁵, in the majority of cases, expert opinion can only indicate the area or historic culture an object is from. As well as clearly rendering return problematic from a practical sense, this also highlights the practical difficulty in correctly identifying the source country for the purpose of licensing.

- 4.9 Therefore, whilst the 1970 UNESCO Convention may restrict High Risk Objects from a museum or religious institution (assuming they were inventoried), it does not clearly restrict the import of illegally excavated archaeological objects which the State Party may not know exist, and which may not be intended for sale to a museum or other public institution.
- 4.10 Finally, the dates and methods of implementation of the 1970 UNESCO Convention vary greatly between State Parties, including between EU Member States. We are therefore concerned that using the 1970 UNESCO Convention as the foundation for a standardised import system is flawed, as each signatory State applies the 1970 UNESCO Convention differently.
- 4.11 The UK, for example, implements the 1970 UNESCO Convention through the Dealing in Cultural Property (Offences) Act 2003. This Act creates an offence of the illegal import or export into or out of the UK of tainted cultural property, but only where the offender is (i) dishonest; (ii) knows or believes the object to have been tainted which is a very high threshold and (iii) applies to objects tainted after 2003. We note there has only been one conviction since this Act came into force, which we do not consider to be an adequate representation of the number of High Risk objects being illegally imported into the UK, rather we feel it reflects the high burden of proof. As such, it is possible that a large number of High Risk Objects may be entering the UK. However, once they have entered the UK, they will be eligible for the simpler import/export system within the EU.
- 4.12 Whilst we acknowledge that an import licence will not impact criminal offences, we are concerned the differing thresholds that countries apply to imports may facilitate the entry of High Risk Objects into the EU, which are then eligible for the simpler import / export system within it. Following on from this, we are also concerned that an import licence may be seen to legitimise an object and it may give the possessor grounds to argue that it has no reason to suspect the object was illegally exported from the source country, when the fault may lie with the varying implementation of the 1970 UNESCO Convention that allowed its import into the EU originally.

¹⁵ There have been cases in Italy where looters left the feet of a statute in the earth; in Cambodia where standing statuary feet remained (<http://illicitculturalproperty.com/tag/cambodia/>) allowing its identification, and an illegally excavated Sicilian head was identified from a single beard curl left at the scene: <https://www.thelocal.it/20160129/us-museum-gives-italy-back-looted-head-of-greek-statue>



4.13 Lastly, we note that three EU Member States (Latvia, Malta and Ireland) are not signatories to the 1970 UNESCO Convention, and so cannot be assumed to be “*thus a country committed to fighting against illicit trafficking of cultural property*.”¹⁶, potentially providing a transit route into the EU.

5.0 Fundamental Flaw (II): Definitions

- 5.1 The definitions used in the Proposed Regulations have a significant loophole that undermines the provisions intended to protect High Risk Objects. The Annex to the Regulations contains Categories of cultural goods (a) to (l), based on those in the 1995 UNIDROIT Convention.
- 5.2 Under Article 4: Import License, categories (c) ‘*products of archaeological excavations including regular or clandestine*’ and (e) ‘*antiquities*’ require different import obligations. (e) ‘*antiquities*’ requires only a self-certification declaration, whereas in order to protect them and limit their import, (c) ‘*products of archaeological excavations including regular or clandestine*’ has the much more stringent requirement of evidence of legal export from the country of origin or third country. Unfortunately, there is a large overlap between these two categories.
- 5.3 In fact, some of the most recent research in this area¹⁷ indicates that the objects described in class (e) ‘*antiquities*’ are exactly those looters are targeting from archaeological sites – coins, seals, and other small objects.
- 5.4 It is unclear how this distinction is to be applied, and we anticipate that many objects intended to fall within category (c) will be imported under category (e).
- 5.5 We consider that further guidance should be provided as to what would be included in the different categories, on what basis the determination is made (for example, why coins are considered antiquities when evidence clearly shows they are the target of illegal looting), and what proof is required to differentiate between them.

¹⁶ P12, para (7), Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the import of cultural goods. Available at:

https://ec.europa.eu/taxation_customs/sites/taxation/files/cultural_goods_proposal_en.pdf

¹⁷ Neil Brodie & Isber Sabrina (2017) The Illegal Excavation and Trade of Syrian Cultural Objects: A View from the Ground, *Journal of Field Archaeology*, 43:1, 74-84, DOI: 10.1080/00934690.2017.1410919



6.0 Fundamental Flaw (III): Source Country

- 6.1 The second difficulty with the Proposed Regulations is the importance of, and lack of clarity around, the 'source country'¹⁸. Article 4.2 states "*The application shall be accompanied by any supporting documents and information substantiating that the cultural goods in question have been exported from the source country in accordance with its laws and regulations*". The importer must also declare "*that the goods have been exported from the source country in accordance with its laws and regulations*" (Article 5.2). Failure to do so may be grounds for rejection of the import application.
- 6.2 However, it is often extremely difficult to identify a source country, as it may include the country in which the object was made or the country in which the object was re-discovered. As most international law (like the 1970 UNESCO Convention) relates to looting of cultural property from the territory of a State Party, the place of discovery is usually assumed to be the source country, there could often still be several potential source countries for one object.
- 6.3 However, as noted above, object provenance is often stated as the ancient civilisation rather than the modern-day country of origin. As many ancient civilisations covered several modern countries (and had frequently fluctuating borders), this can leave considerable confusion about which modern country the item may be from. The long-gone *Mesopotamia*, for example, is a common 'source' country for Syrian and Iraqi objects, and also covers a small part of Iran.
- 6.4 It is particularly concerning as this flaw applies most to the objects considered to be most at risk. The Proposed Regulations list "*elements of... archaeological sites and products of archaeological excavations*" as the most high-risk objects and therefore requiring an export licence. These objects by nature are less likely to be identifiable by a photograph in-situ or inventoried, and so the requirement to establish a source country may well be impractical, even for the potential source country. Even many experts can often only indicate the general area an object is from.
- 6.5 We urgently request clarification on how this issue is to be handled. Would the import licence application list all possible countries of origin? Or should it be up to the importer to choose one based on the information available? Or should there be a list of approved experts who can make such decisions? Which laws must be assessed to demonstrate legal export?
- 6.6 We feel that – without guidance - this could provide a significant loophole in the regulations.

¹⁸ Article 2 of the regulations defines 'source country' as: (b) 'source country' means the country in the current territory of which the cultural goods were created or discovered;



7.0 Additional Concerns

- 7.1 UK Blue Shield has several additional concerns regarding the Proposed Regulations. The majority of these concern issues of standardisation. We particularly welcome the determination to create standardised information to certify cultural goods are legal.
- 7.2 Inconsistency with national law: We are concerned that the new legislation may create ambiguities and inconsistencies with national law. For example, under the UK's new Cultural Property Armed Conflict Act 2017, it is a criminal offence under s.17 to import cultural property into the UK after 12 December 2017 that has been unlawfully exported from occupied territory. This offence is irrespective of whether the cultural property is imported directly from the occupied territory or a third country. Therefore, a situation may arise where an import licence could be issued under the Proposed Regulations, but the importer commits a criminal offence in the UK under the s.17 offence as the requirements are different.
- 7.3 *For example*: An archaeological object is exported from Occupied Georgia to America. A year later, it is imported into the UK, where it is classed as important cultural property under the Cultural Property Armed Conflict Act 2017 and a High Risk Object for the Proposed Regulations. The UK's Competent Authority would have no grounds on which to refuse an import licence under the Proposed Regulations provided that the object was legally exported from America. However, if the object had been unlawfully exported from Occupied Georgia without an export licence, this could potentially be a criminal offence under s.17 in the UK.
- 7.4 This legal complexity has the potential to cause significant confusion amongst those acting in good faith. Should the Proposed Regulations be adopted, the UK (and other countries) may wish to issue Guidance that includes how the Proposed Regulations impact other national laws to avoid inconsistency or ambiguity, and which clearly states that compliance with the Proposed Regulations is without prejudice to any other obligations in national law. An EU import licence should not be considered evidence of legal import into the UK.
- 7.5 The applicable export laws (article 5): "2. *The importer statement shall contain a declaration signed by the holder of the goods that the goods have been exported from the source country in accordance with its laws and regulations.*"
- 7.6 The requirement to obtain an export licence from the source country (or evidence of legal export from the third country if it is a State Party to the 1970 UNESCO Convention) if one was required at the time of export is ambiguous. Preamble (7) indicates "*The legality of export should be examined based on the laws and regulations of the country where the cultural goods were discovered or created ('source country')*." Therefore, this will require the person wishing to import the item to assess the export laws of foreign countries (assuming a source country can be identified), perhaps from many years ago. Whilst this could be done with the



assistance of a lawyer, we would encourage clarification on which export laws would be recognised. For example, many source countries have had laws regarding the export of antiquities for many years but, when tested in foreign courts, such laws were found to be unenforceable and unclear. They would however undoubtedly be enforceable in the source country.

- 7.7 We wish to highlight the UNESCO database of national heritage laws¹⁹, which is well recognised internationally as a reliable source of national law concerning cultural property, and which could provide a reliable index, although we recognise that it is difficult for art market professionals to know which of these laws is enforceable or recognised without legal advice.
- 7.8 An additional issue here is a lack of clarity regarding who the declarant is. Is it the shipper, or the potential owner? Often the importer (who may be making the declaration and requesting an import licence) is not the owner and is relying on the information provided by the owner. We are concerned that, without clarification, there is the potential for both blame and the burden of proof to be removed from the owner and placed unfairly on shippers and carriers. We hope that the owner of the object will retain responsibility.
- 7.9 The obligation to systematically show supporting documentation: Categories of cultural goods (a), (b), (e)- (g) and (i)-(l) only require a declaration from the importer to import them. However, we note there is no requirement to submit documentation with the declaration. We also note that in respect of High Risk Objects, there is no requirement to provide all information and documentation, together with a photograph, which should be the case for certainty.
- 7.10 As noted above, one of the difficulties in tracing the provenance of items is that there is so much inconsistency in documentation for the same item and descriptions are often vague. For example, there have been multiple cases where an export licence from a particular country has been used many times for different objects, as no photographs have been attached. We therefore recommend that on application for an EU Import licence for both categories (High Risk Objects and those that only require a declaration), the importer is required to attach all documents and information in its possession or control that relate to the object. This would immediately highlight any inconsistencies in the country of origin and would prevent the same paperwork being re-used. This would also protect buyers and reduce falsifying of documents.
- 7.11 Temporary retention by customs authorities (article 8)²⁰: It is not clear in the Proposed Regulations how a determination would be made as to whether an object had been unlawfully exported.

¹⁹ <https://en.unesco.org/news/unesco-database-national-cultural-heritage-laws-updated>

²⁰ Article 8: Temporary retention by customs authorities



- 7.12 We recommend that the UK Government requests further detail as to the level of investigation that would be carried out during this detention period. In particular it is important to understand whether there must have been a criminal offence (such as a false declaration), or what would count as sufficient evidence from a source country to satisfy the Member State that import should not be permitted.
- 7.13 Temporary admission: Preamble 12 states: *Temporary admission of cultural goods for educational, scientific or academic research purposes should not be subject to the presentation of a licence or of a statement.*
- 7.14 The majority of academic and scientific Codes of Ethical Conduct expressly forbid working with looted objects, and most reputable academic journals will not publish work based on them. As such, we consider it to be detrimental to the ethics of academic research to waive the licensing requirements in the name of “science”. It would, in fact, be highly beneficial for academia to have such licenses to aid academics – who frequently have little to no familiarity with the requisite legal systems and provenance checks – in adhering to Codes of Conduct by being able to refer to legal import documentation in their work.
- 7.15 Financial Burden: Although the Impact Assessment considers that the costs will not be “unreasonable” on states or traders due to the small number of objects that they anticipate will be affected, we note that the survey regarding the impact cost was inconclusive. We anticipate that the cost of implementing the import licensing system as set out in the Proposed Regulations will be high. In particular, it will involve training customs officers and border control to:
- Understand the categories of objects (the difficulties of which are set out above) to prevent duplicitous re-categorisation;
 - Understand the export laws of source countries and of UNESCO State Parties to ensure licensing information is correct;
 - And will require additional time to review documentation provided to evidence legal export.

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1. *Customs authorities shall seize and temporarily retain cultural goods brought into the customs territory of the Union where the cultural goods in question entered the customs territory of the Union without the conditions laid down in paragraphs 1 and 2 of Article 3 being fulfilled.*
 2. *The administrative decision referred to in paragraph 1 shall be accompanied by a statement of reasons, be communicated to the declarant and shall be subject to an effective remedy in accordance with procedures provided for in national law.*
 3. *The period of temporary retention shall be strictly limited to the time required for the customs authorities or other law enforcement authorities to determine whether the circumstances of the case warrant retention under other provisions of Union or national law. The maximum period of temporary retention under this Article shall be 6 months. If no determination is made regarding further retention of the cultural goods within that period or if a determination is made that the circumstances of the case do not warrant further retention, the cultural goods shall be made available to the declarant.*



- 7.16 Given this, we hope that the new EU/UNESCO “training modules on the trafficking of cultural goods for the relevant professional groups, including police officers” will be accessible to all Member States, although we note the focus on States with weak capacity.
- 7.17 Member States must designate a competent authority to approve import licenses for certain classes of cultural goods. In the UK, it seems likely that it would be the Arts Council who would be given the responsibility for approving import licenses, as they currently have responsibility for issuing export licenses for objects of cultural interest, including antiquities and works of art. The Arts Council rely on Expert Advisors to indicate whether an object can be exported. We consider it likely that the import license system will require a significant increase in workload for the Arts Council and their advisory staff (usually a director, senior keeper or curator in a national museum or gallery, of which there are not that many).

8.0 Conclusion

- 8.1 UK Blue Shield welcomes the determination by the EU to create a common standard for trading in cultural goods across EU Member States, and its clear commitment to combatting illicit trafficking and terrorist financing.
- 8.2 However, the current proposals raise multiple issues for both EU Member States generally, and the UK specifically.
- 8.3 Whilst we consider that a standardised definition of cultural property, the creation of an electronic database using standardised information across the EU, and the regular assessment of which cultural objects are most at risk would be significant steps towards combating illicit trafficking and terrorist financing through antiquities, the Proposed Regulations contain a number of loopholes which we feel means they will fall short of the intended outcome. As such, we are concerned about the costs, resources and expertise that will be needed to implement them, and are concerned that the costs are not proportionate to the gain we anticipate from the Proposed Regulations.
- 8.4 We feel that:
- the ambiguities in the definitions;
 - the reliance on national implementation of the 1970 UNESCO Convention as a measure of Due Diligence (despite the fact the Convention has different import requirements to the Regulations);
 - the failure to address the difficulties of identifying the source country;
 - and reliance on States with weak capacity to aid in supporting export legislation may render the Proposed Regulations ineffective, with a corresponding failure to combat illicit trafficking and terrorist financing in the EU generally, and the UK specifically.



- 8.5 At the UK level, we are concerned that there are many new instruments that are either proposed or have been recently implemented in the UK that seek to achieve the same Objective²¹. We express our concern that implementation and guidance may be inconsistent in the UK and create ambiguity, and that the inconsistencies will create an over-burden on those it is intended to regulate.
- 8.6 We encourage the UK Government to consider adopting a holistic approach to the new legal instruments and to ensure implementation (where applicable) and guidance is consistent and unambiguous for the art market, customs officials, and law enforcement.
- 8.7 We would therefore like to take this opportunity to make the following recommendations:
- That the UK government continues to lobby the EU for tighter regulation of the trade in cultural goods, in particular to tackle the loopholes we have identified;
 - That, if adopted by the EU, the UK creates Implementation Guidance for the Proposed Regulations that takes account of these concerns as far as possible;
 - That the UK's Implementation Guidance presents a holistic overview of legislation in this field, integrating the different relevant offences to aid users in understanding their legal requirements.
- 8.8 There is an opportunity for the UK to consider all legal instruments together to ensure that any implementation measures, guidance issued to the art market, and training to law enforcement and border control provides comprehensive and integrated coverage of all existing and upcoming legislation, thus setting global standards for best practice in this field.
- 8.9 Lastly, we would also like to take this opportunity to highlight *The Council of Europe Convention on Offences relating to Cultural Property* (the Nicosia Convention)²², adopted on 3 May 2017, which has now been signed by 10 states including several EU Member States. This legislation has the same Objective as the EU regulations, in addition to several thematically similar objectives: the Convention criminalises the illicit trafficking of cultural property, establishes a number of criminal offences, including theft; unlawful excavation, importation and exportation; and illegal acquisition and placing on the market. It also criminalises the falsification of documents and the destruction or damage of cultural property when committed intentionally.

²² *The Council of Europe Convention on Offences relating to Cultural Property* (the Nicosia Convention) <https://www.coe.int/en/web/culture-and-heritage/convention-on-offences-relating-to-cultural-property>



Organisation Information

UK Blue Shield

School of Arts and Cultures, Armstrong Building, Newcastle University

Contact: Professor Peter Stone.

peter.stone@ncl.ac.uk

This response drafted on behalf of the UK Blue Shield by Fionnuala Rogers, and Dr Emma Cunliffe, with contributions from James Ratcliffe, June 2018.

Cover: World War II shrapnel scarring on the Victoria and Albert Museum, London. 2017.

Photograph: Emma Cunliffe.