



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.9.2006
COM(2006) 513 final

2006/0171 (CNS)

Proposal for a

COUNCIL REGULATION

on the export of cultural goods

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EEC) No 3911/92 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Regulation.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II to this proposal.

↓ 3911/92 (adapted)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article $\boxtimes$ 133 $\boxtimes$ thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:



- (1) Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Regulation should be codified.

↓ 3911/92 Recital 1 (adapted)

- (2) $\boxtimes$ In order to maintain $\boxtimes$ the internal market, rules on trade with third countries are needed for the protection]of cultural goods.

¹ OJ [...], [...], p. [...].

² OJ [...], [...], p. [...].

³ OJ L 395, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁴ See Annex II.

↓ 3911/92 Recital 2 (adapted)

- (3) It seems necessary to take measures in particular to ensure that exports of cultural goods are subject to uniform controls at the Community's external borders.

↓ 3911/92 Recital 3 (adapted)

- (4) Such a system should require the presentation of a licence issued by the competent Member State prior to the export of cultural goods covered by this Regulation. This necessitates a clear definition of the scope of such measures and the procedures for their implementation. The implementation of the system should be as simple and efficient as possible.

↓

- (5) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵.

↓ 3911/92 Recital 4 (adapted)

- (6) In view of the considerable experience of the Member States' authorities in the application of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters⁶, the said Regulation should be applied to this matter.

↓ 3911/92 Recital 5 (adapted)

- (7) Annex I to this Regulation is aimed at making clear the categories of cultural goods which should be given particular protection in trade with third countries, but is not intended to prejudice the definition, by Member States, of national treasures within the meaning of Article 30 of the Treaty,

⁵ OJ L 184, 17.7.1999, p. 23.

⁶ OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

↓ 3911/92 (adapted)

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

Without prejudice to Member States' powers under Article 30 of the Treaty, the term “cultural goods” shall refer, for the purposes of this Regulation, to the items listed in Annex I.

↓ 3911/92

Article 2
Export licence

1. The export of cultural goods outside the customs territory of the Community shall be subject to the presentation of an export licence.
2. The export licence shall be issued at the request of the person concerned:

↓ 3911/92 (adapted)
→₁ Corrigendum 3911/92
(OJ L 267, 19.10.1996, p. 30)
(adapted)

- ⧻ (a) ⧻ by a competent authority of the Member State in whose territory the cultural object in question was lawfully and definitively located on 1 January 1993₅ ⧻ ; ⧻
- ⧻ (b) ⧻ or, thereafter, by a competent authority of the Member State in whose territory it is located following either lawful and definitive dispatch from another Member State, or importation from a third country, or re-importation from a third country after lawful dispatch from a Member State to that country.

However, without prejudice to paragraph 4, the Member State which is competent in accordance with ⧻ points (a) or (b) of ⧻ the first subparagraph →₁ ⧻ is ⧻ authorised not to require export licences ← for the cultural goods specified in the first and second indents of category A.1 of Annex ⧻ I ⧻ where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds ⧻ or ⧻ archaeological sites within a Member State, and that their presence on the market is lawful.

↓ 3911/92

The export licence may be refused, for the purposes of this Regulation, where the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the Member State concerned.

↓ 3911/92 (adapted)

Where necessary, the authority referred to in ☒ point (b) ☒ of the first subparagraph shall enter into contact with the competent authorities of the Member State from which the cultural object in question came, and in particular the competent authorities within the meaning of Council Directive ☒ 93/7/EEC ☒⁷.

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

4. Without prejudice to the provisions of ☒ paragraphs 1, 2 and 3 ☒, direct export from the customs territory of the Community of national treasures having artistic, historic or archaeological value which are not cultural goods within the meaning of this Regulation is subject to the national law of the Member State of export.

Article 3 *Competent authorities*

1. Member States shall furnish the Commission with a list of the authorities empowered to issue export licences for cultural goods.

2. The Commission shall publish a list of the authorities and any amendment to that list in the “C” series of the *Official Journal of the European ☒ Union ☒*.

↓ 3911/92

Article 4 *Presentation of licence*

The export licence shall be presented, in support of the export declaration, when the customs export formalities are carried out, at the customs office which is competent to accept that declaration.

Article 5 *Limitation of competent customs offices*

1. Member States may restrict the number of customs offices empowered to handle formalities for the export of cultural goods.

⁷ ☒ OJ L 74, 27.3.1993, p. 74 ☒.

2. Member States availing themselves of the option afforded by paragraph 1 shall inform the Commission of the customs offices duly empowered.

↓ 3911/92 (adapted)

The Commission shall publish this information in the «C» series of the *Official Journal of the European ☒ Union ☒.*

Article 6
Administrative cooperation

For the purposes of implementing this Regulation, the provisions of Regulation (EC) No ☒ 515/97 ☒, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

In addition to the cooperation provided for under the first paragraph, Member States shall take all necessary steps to establish, in the context of their mutual relations, cooperation between the customs authorities and the competent authorities referred to in Article 4 of Directive ☒ 93/7/EEC ☒.

↓ 3911/92 (adapted)

Article 7
Implementing measures

The provisions necessary for the implementation of this Regulation, in particular those concerning the form to be used (for example, the model and technical properties) shall be adopted in accordance with the procedure ☒ referred to ☒ in Article 8(2).

↓ 806/2003 Art. 1 and Annex I, pt. 2 (adapted)

Article 8
Committee

1. The Commission shall be assisted by a committee.
 2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
 3. The Committee shall adopt its rules of procedure.
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↓ 3911/92 (adapted)

Article 9
Penalties

⊗ The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. ⊗

Article 10
Reporting

⊗ 1. ⊗ Each Member State shall inform the Commission of the measures taken pursuant to this Regulation.

The Commission shall pass on this information to the other Member States.

⊗ 2. ⊗ Every three years the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Regulation.

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

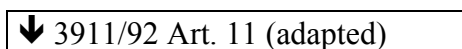
In any event, the Council, acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in Annex ⊗ I ⊗, on the basis of economic and monetary indicators in the Community.



Article 11
Repeal

Regulation (EEC) No 3911/92 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.



Article 12
Entry into force

This Regulation shall enter into force on the ☒ twentieth ☒ day following that of ☒ its ☒ publication in the *Official Journal of the European ☒ Union ☒*.

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

Done at Brussels,

For the Council
The President

↓ 3911/92 Annex

ANNEX I

CATEGORIES OF CULTURAL OBJECTS COVERED BY ARTICLE 1

- A.**
1. Archaeological objects more than 100 years old which are the products of:
 - excavations and finds on land or under water 9705 00 00
 - archaeological sites 9706 00 00
 - archaeological collections
 2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years 9705 00 00
9706 00 00

↓ 2469/96 Art. 1 pt. 1(a)
(adapted)

3. Pictures and paintings, other than those included in categories 4 or 5, executed entirely by hand in any medium and on any material¹ 9701

↓ 2469/96 Art. 1 pt. 1(b)
(adapted)

4. Water-colours, gouaches and pastels executed entirely by hand on any material¹ 9701

↓ 2469/96 Art. 1 pt. 1(c)
(adapted)

5. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material¹ 6914
9701

¹ Which are more than 50 years old and do not belong to their originators.

⊗ 6. ⊗	Original engravings, prints, serigraphs and lithographs with their respective plates and original posters ¹	Chapter 49
		9702 00 00
		8442 50 99
⊗ 7. ⊗	Original sculptures or statuary and copies produced by the same process as the original ¹ , other than those in category 1	9703 00 00
⊗ 8. ⊗	Photographs, films and negatives thereof ¹	3704
		3705
		3706
		4911 91 80
⊗ 9. ⊗	Incunabula and manuscripts, including maps and musical scores, singly or in collections ¹	9702 00 00
		9706 00 00
		4901 10 00
		4901 99 00
		4904 00 00
		4905 91 00
		4905 99 00
		4906 00 00
⊗ 10. ⊗	Books more than 100 years old, singly or in collections	9705 00 00
		9706 00 00
⊗ 11. ⊗	Printed maps more than 200 years old	9706 00 00

¹ Which are more than 50 years old and do not belong to their originators.

⊠ 12. ⊠	Archives, and any elements thereof, of any kind or any medium which are more than 50 years old	3704
		3705
		3706
		4901
		4906
		9705 00 00
		9706 00 00
⊠ 13. ⊠	(a) Collections ² and specimens from zoological, botanical, mineralogical or anatomical collections;	9705 00 00
	(b) Collections ² of historical, palaeontological, ethnographic or numismatic interest	9705 00 00
⊠ 14. ⊠	Means of transport more than 75 years old	9705 00 00
		Chapters 86—89
⊠ 15. ⊠	Any other antique items not included in categories A.1 to ⊠ A.14 ⊠	
	(a) between 50 and 100 years old	
	– toys, games	Chapter 95
	– glassware	7013
	– articles of goldsmiths' or silversmiths' wares	7114
	– furniture	Chapter 94
	– optical, photographic or cinematographic apparatus	Chapter 90
	– musical instruments	Chapter 92
	– clocks and watches and parts thereof	Chapter 91

² As defined by the Court of Justice in its judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading No 9705 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value'.

– articles of wood	Chapter 44
– pottery	Chapter 69
– tapestries	5805 00 00
– carpets	Chapter 57
– wallpaper	4814
– arms	Chapter 93
(b) more than 100 years old	9706 00 00

The cultural objects in categories A.1 to ☒ A.15 ☒ are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds under B.

B. FINANCIAL THRESHOLDS APPLICABLE TO CERTAIN CATEGORIES UNDER A (IN ☒ EURO ☒)

	↓ 974/2001 Art. 1 pt. 1
<i>Value:</i>	
Whatever the value	

	↓ 3911/92
– 1 (Archaeological objects)	
– 2 (Dismembered monuments)	
– 9 (Incunabula and manuscripts)	
– 12 (Archives)	
15 000	
– 5 (Mosaics and drawings)	
– 6 (Engravings)	
– 8 (Photographs)	
– 11 (Printed maps)	

↓ 2469/96 Art. 1 pt. 2 (adapted)

30 000

- ☒ 4 ☒ (Water-colours, gouaches and pastels)

↓ 3911/92 (adapted)

50 000

- 7 (Statuary)
- 10 (Books)
- 13 (Collections)
- 14 (Means of transport)
- 15 (Any other object)

150 000

- 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export licence is submitted. The financial value is that of the cultural object in the Member State referred to in Article 2(2).

↓ 974/2001 Art. 1 pt. 2 (adapted)

For the Member States which do not have the euro as their currency, the values expressed in euro in Annex ☒ I ☒ shall be converted and expressed in national currencies at the rate of exchange on 31 December 2001 published in the *Official Journal of the European Communities*. This countervalue in national currencies shall be reviewed every two years with effect from 31 December 2001. Calculation of this countervalue shall be based on the average daily value of those currencies, expressed in euro, during the 24 months ending on the last day of August preceding the revision which takes effect on 31 December. This method of calculation shall be reviewed, on a proposal from the Commission, by the Advisory Committee on Cultural Goods, in principle two years after the first application. For each revision, the values expressed in euro and their countervalues in national currency shall be published periodically in the *Official Journal of the European ☒ Union ☒* in the first days of the month of November preceding the date on which the revision takes effect.



ANNEX II

Repealed Regulation with its successive amendments

Council Regulation (EEC) No 3911/92
(OJ L 395, 31.12.1992, p. 1)

Council Regulation (EC) No 2469/96
(OJ L 335, 24.12.1996, p. 9)

Council Regulation (EC) No 974/2001
(OJ L 137, 19.5.2001, p. 10)

Council Regulation (EC) No 806/2003
(OJ L 122, 16.5.2003, p. 1)

Annex I point 2 only

ANNEX III

CORRELATION TABLE

Regulation (EEC) No 3911/92	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2), first subparagraph, introductory wording	Article 2(2), first subparagraph, introductory wording
Article 2(2), first subparagraph, first indent	Article 2(2), first subparagraph, point (a)
Article 2(2), first subparagraph, second indent	Article 2(2), first subparagraph, point (b)
Article 2(2), second subparagraph	Article 2(2), second subparagraph
Article 2(2), third subparagraph	Article 2(2), third subparagraph
Article 2(2), fourth subparagraph	Article 2(2), fourth subparagraph
Article 2(3)	Article 2(3)
Article 2(4)	Article 2(4)
Articles 3 to 9	Articles 3 to 9
Article 10, first paragraph	Article 10(1), first subparagraph
Article 10, second paragraph	Article 10(1), second subparagraph
Article 10, third paragraph	Article 10(2), first subparagraph
Article 10, fourth paragraph	Article 10(2), second subparagraph
Article 10, fifth paragraph	Article 10(2), third subparagraph
—	Article 11
Article 11	Article 12
Annex, points A.1, A.2 and A.3	Annex I, points A.1, A.2 and A.3
Annex, point A.3A	Annex I, point A.4
Annex, point A.4	Annex I, point A.5
Annex, point A.5	Annex I, point A.6
Annex, point A.6	Annex I, point A.7

Annex, point A.7
Annex, point A.8
Annex, point A.9
Annex, point A.10
Annex, point A.11
Annex, point A.12
Annex, point A.13
Annex, point A.14
Annex, point B

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Annex I, point A.8
Annex I, point A.9
Annex I, point A.10
Annex I, point A.11
Annex I, point A.12
Annex I, point A.13
Annex I, point A.14
Annex I, point A.15
Annex I, point B
Annex II
Annex III
