



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

TAXATION AND CUSTOMS UNION

Security, Safety, Trade Facilitation, Rules of Origin & International Cooperation

Protection of citizens and enforcement of IPR

***Synopsis Report of Open Public Consultation
for the proposal on the import of cultural
goods***

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Introduction

The proposal for measures on the import of cultural goods aims to provide an effective and coherent response to illicit trafficking challenges by empowering EU customs at the stage of importation to prevent the entry in the Union of illicit cultural goods, by improving traceability of the imported objects and by depriving organised crime and terrorist organisations from a source of income. The proposal is foreseen by the Commission's Action Plan for strengthening the fight against terrorist financing [see COM(2016) 50 final].

Open Public Consultation

The Commission launched an **Open Public Consultation** based on the "EU Survey", after publication via "My Voice in Europe" which could be accessed and completed by any interested party. The consultation ran from 23 October 2016 until and including 23 January 2017, for a total of 13 weeks.

Identification of stakeholders

From examination of the various administrations and actors involved in the import and trade in cultural goods in the EU and potential buyers, the most concerned stakeholders are:

1. Individual citizens
2. Enterprises (art market and activities related to the import of cultural goods)
3. Professional associations and interest representatives
4. NGOs and civil society
5. Public authorities

Concept and question methodology

The consultation was conceived as a multi-page document where an introduction was given about the subject, information was provided about the consultation itself as well as background documents (links to relevant EU and international legislation, resolutions, communications, etc.).

Subsequently, there were sections on

1. Identification of the respondents (stakeholder category, personal data, authorisation to seek contact and/or publish the contribution etc.),
2. Questions regarding the subject matter for which input was sought,
3. A final section where any opinion on any subject not addressed in the previous questions could be expressed by the respondents.

After a brief introduction to the topic, the questions were asked in a "closed/multiple choice" format with the choices corresponding to the major policy options under consideration. The respondents had every time the option to select a "No opinion/don't know" reply; in questions relevant to various possible actions that could be undertaken simultaneously they were given the opportunity to select more than one; respondents could also select "Other" and introduce their own suggestions; and at the end of the survey respondents were invited to provide remarks or submit statements on the topics previously addressed by the survey.

Consultation results

305 contributions were received within the deadline, while the Commission took into consideration also a number of positions and statements submitted within a week after the deadline expired.

It seems that some of the persons responding in the category 'citizens' are still representatives or professionals of the art market. There was a notable participation from one Member State in particular, Germany, with multiple contributions received from enterprises there, as well as from multiple German public authorities. Based on replies to the part 'identification of respondents', most enterprises of the art market are SMEs, with some rare exceptions (auction houses).

The questions and answers provided

Question 1:

This question aimed to address the baseline scenario, i.e. whether stakeholders consider that the Union should adopt customs rules at import, or whether it should not intervene. While citizens responses were not clearly for or against taking measures (31.97% agree very much; 29.51% disagree very much; 22.95% agree), enterprises and interest representatives were more clearly against the adoption of customs rules (Enterprises: 44% disagree very much. Interests representatives: 37.5% disagree very much). On the other hand, NGOs & civil society (87.5% agree very much; 12.5% agree) and respondent public authorities (60.98% agree very much; 29.27% agree) indicate they strongly support the adoption of EU rules scrutinising imports from third countries.

Question 2:

The question referred to the contribution of an EU measure against trafficking in the fight against organised crime and terrorist financing. The position of 'citizens' was not clear (32.79% would not contribute at all; 27.87% would contribute very much); enterprises were mostly against the perspective of adopting EU rules (42.67% would not contribute at all; 28% would not contribute much); Interests representatives were less negative but still not optimistic (34.38% would not contribute much; 28.12% would not contribute at all; 18.75% would contribute very much). Again, NGOs & civil society: (50% would contribute; 37.5% would contribute very much) and public authorities (51.22% would contribute; 36.59% would contribute very much) took the opposite position, with strong percentages.

Question 3:

This question sought to identify the weaknesses of the current situation that need to be addressed. Citizens consider problematic the difficulty to investigate and prove the illicit character, the lack of resources and expertise on third countries culture as the main problems. Enterprises mostly chose option 8 'Other' where they denied the existence of an illicit trafficking problem in the EU. Interest representatives cite the difficulty to investigate and prove the illicit character of the goods and as second option they chose 'Other' as was the case with enterprises ('there is no illicit trafficking problem'). NGOs & civil society and Public authorities selected as main identified weaknesses the insufficiency of human resources; diverse regulatory measures in the Member States and the difficulty to investigate and prove the illicit character.

Question 4:

This question sought to identify main criteria to establish the scope of potential measures, i.e. which cultural goods from third countries should be targeted according to the respondents. In some replies, all the criteria suggested were marked as 'not appropriate' by respondents, indicating more an opposition to any measures for which such a scope would be needed than actual not appropriateness of the criteria suggested (e.g. all instruments, domestic, EU and international, on the protection of cultural heritage include a minimum age criterion to define cultural goods that are within their scope of application).

In general, citizens, enterprises and interests representatives favour rarity and market value, whereas NGOs & civil society and public authorities consider age, scientific or educational value and whether the cultural good comes from a country in armed conflict are the most appropriate.

Certain responses and statements pointed out the particularities of objects of paleontological interest (just by chance found within a country's borders, no significance for history or culture; minimum age criterion irrelevant).

Question 5:

This question referred to the possible policy options under consideration. It is interesting to note that citizens, enterprises and interest representatives favoured all option 5, co-operation with third countries to help them protect their cultural heritage. They also selected as second or third-best training for customs and awareness campaigns. Although all three options seem to have been chosen because they appeared to these respondents as non-regulatory, the co-operation with third countries could actually result in the EU mirroring third countries' bans and restrictions of the export of cultural goods, i.e. by EU import bans and restrictions.

NGOs and civil society and public authorities selected mostly option 4, adopt legislation empowering EU customs, and 5 as second choice (co-operation with third countries).

Question 6:

Question 6 sought to identify aspects of the illicit trafficking problem that should be addressed by an eventual regulatory measure at import. Citizens showed preference for not impeding the temporary import of cultural goods for educational or scientific purposes (option 6) and to a lesser extent the requirement for some form of documentation to be submitted upon entry (option 3); while enterprises and interests representatives selected option 7 (museums as temporary repositories or refuges) and option 6 and as a third favourite 'Other', stating in remarks that they are opposed to any regulatory measure at import.

NGOs & civil society showed very strong favour for options 1 (imposing penalties), 3 (documentation requirements at import) and 6 and strong favour for options 2 (burden of proof to be placed on the importer), 5 (controls in free zones or transit) and 7, whereas Public authorities favour strongly options 6 and 3 and, to a slightly lesser extent, options 2 and 5.

Question 7:

This question seeks to identify among less or more strict documentation or authorisation requirements the one(s) that stakeholders consider as more appropriate or more effective (export certification; import licence; self-certification). It has to be noted that the third option, self-certification, although defined in the beginning of the survey, is not a system with which stakeholders are familiar so some respondents were reluctant to select it or chose not to reply.

The position of 'citizens' was again unclear, with export certification being their favourite option but not by a large margin.

The majority of enterprises respondents mostly chose 'not appropriate at all' for all suggested documentation or authorisation requirements (1: 29.33% not appropriate at all; 2: 33.33% not appropriate at all; 3: 22.67% not appropriate at all).

Interests representatives consider export or import authorisations are the most appropriate, while self-certification is not appropriate at all. This seems to be also the position of NGOs and civil society and of the Public authorities.

Question 8:

This question refers to the possible impact of the adoption of regulatory measures on national customs authorities.

Impact on national customs authorities, in terms of operational human resources

Public authorities consider that some additional human resources might be needed for customs checking export certification from third countries and for EU authorities issuing import licences, while the majority selected 'Don't know/No opinion for option number three, self-certification, which is to be expected as they have no experience with that system.

Export certificate

| | | Answers | Ratio |
|--|--|---------|---------|
| No impact | | 3 | 7.32 % |
| Some additional human resources | | 18 | 43.9 % |
| Significant additional human resources | | 11 | 26.83 % |
| Don't know/ No opinion | | 8 | 19.51 % |
| No Answer | | 1 | 2.44 % |

Import licence

| | | Answers | Ratio |
|--|--|---------|---------|
| No impact | | 2 | 4.88 % |
| Some additional human resources | | 11 | 26.83 % |
| Significant additional human resources | | 20 | 48.78 % |
| Don't know/ No opinion | | 7 | 17.07 % |
| No Answer | | 1 | 2.44 % |

Self-certification

| | | Answers | Ratio |
|--|--|---------|---------|
| No impact | | 10 | 24.39 % |
| Some additional human resources | | 10 | 24.39 % |
| Significant additional human resources | | 6 | 14.63 % |
| Don't know/ No opinion | | 12 | 29.27 % |
| No Answer | | 3 | 7.32 % |

This is also the position of NGOs and civil society.

In terms of additional administrative costs for national customs authorities to cover training, filing of information, inspections and verifications due to the new legal obligation

Public authorities consider that export certificates or import licences might require some additional administrative costs, while self-certification will have no impact.

The position of NGOs and civil society is similar, with a 37.5% selecting 'Don't know/No opinion' on the impact of self-certification.

Export certificate

| | | Answers | Ratio |
|---|--|---------|---------|
| No impact | | 3 | 7.32 % |
| Some additional administrative costs | | 21 | 51.22 % |
| Significant additional administrative costs | | 9 | 21.95 % |
| Don't know/ No opinion | | 7 | 17.07 % |
| No Answer | | 1 | 2.44 % |

Import licence

| | | Answers | Ratio |
|---|--|---------|---------|
| No impact | | 2 | 4.88 % |
| Some additional administrative costs | | 13 | 31.71 % |
| Significant additional administrative costs | | 18 | 43.9 % |
| Don't know/ No opinion | | 7 | 17.07 % |
| No Answer | | 1 | 2.44 % |

Self-certification

| | | Answers | Ratio |
|---|--|---------|---------|
| No impact | | 12 | 29.27 % |
| Some additional administrative costs | | 11 | 26.83 % |
| Significant additional administrative costs | | 5 | 12.2 % |
| Don't know/ No opinion | | 10 | 24.39 % |
| No Answer | | 3 | 7.32 % |

Question 9:

This question refers to the possible impact of the adoption of regulatory measures on importers/traders.

In terms of volume of imports of cultural goods from third countries

Citizens consider that imports of cultural goods will decrease if there were controls of export certificates or if an import licence requirement were imposed, while self-certification would have no impact on the volume of trade. Enterprises and interests representatives predict that import volumes will significantly decrease in the case of export certification or import licence requirements and will decrease if self-certification were imposed.

Export certificate

| | | Answers | Ratio |
|-------------------------------------|--|---------|---------|
| Imports will significantly decrease | | 33 | 44 % |
| Imports will decrease | | 24 | 32 % |
| No impact on imports | | 10 | 13.33 % |
| Imports will increase | | 2 | 2.67 % |
| Imports will significantly increase | | 0 | 0 % |
| Don't know/ No opinion | | 2 | 2.67 % |
| No Answer | | 4 | 5.33 % |

Import licence

| | | Answers | Ratio |
|-------------------------------------|--|---------|---------|
| Imports will significantly decrease | | 35 | 46.67 % |
| Imports will decrease | | 23 | 30.67 % |
| No impact on imports | | 9 | 12 % |
| Imports will increase | | 2 | 2.67 % |
| Imports will significantly increase | | 0 | 0 % |
| Don't know/ No opinion | | 2 | 2.67 % |
| No Answer | | 4 | 5.33 % |

Self-certification

| | | Answers | Ratio |
|-------------------------------------|--|---------|---------|
| Imports will significantly decrease | | 4 | 5.33 % |
| Imports will decrease | | 20 | 26.67 % |
| No impact on imports | | 24 | 32 % |
| Imports will increase | | 4 | 5.33 % |
| Imports will significantly increase | | 2 | 2.67 % |
| Don't know/ No opinion | | 16 | 21.33 % |
| No Answer | | 5 | 6.67 % |

In terms of operational human resources for EU importers/traders

Enterprises consider that they will need significant additional human resources both in the case of export certification and import licencing, while for self-certification a 26.33% replied that they will also need significant additional human resources in the case of self-certification, with a 26.67% however choosing 'Don't know/No opinion'.

Export certificate

| | | Answers | Ratio |
|--|--|---------|---------|
| No impact | | 10 | 13.33 % |
| Some additional human resources | | 10 | 13.33 % |
| Significant additional human resources | | 47 | 62.67 % |
| Don't know/ No opinion | | 5 | 6.67 % |
| No Answer | | 3 | 4 % |

Import licence

| | | Answers | Ratio |
|--|--|---------|---------|
| No impact | | 8 | 10.67 % |
| Some additional human resources | | 8 | 10.67 % |
| Significant additional human resources | | 50 | 66.67 % |
| Don't know/ No opinion | | 6 | 8 % |
| No Answer | | 3 | 4 % |

Self-certification

| | | Answers | Ratio |
|--|--|---------|---------|
| No impact | | 11 | 14.67 % |
| Some additional human resources | | 17 | 22.67 % |
| Significant additional human resources | | 22 | 29.33 % |
| Don't know/ No opinion | | 20 | 26.67 % |
| No Answer | | 5 | 6.67 % |

Interests representatives expressed the same position with regard to the export certification or import licencing, and the majority could not take position on self-certification (31.25%).

In terms of compliance costs for EU importers/traders due to the new legal obligation

More than half of the responded enterprises believe that compliance costs will significantly increase if there were a requirement for obtaining export certificates from the third country of origin or if they had to apply for an import licence in the EU. A 25.33% of them consider that compliance costs will significantly increase also in the case of self-certification requirements, while another 25.33% of them chose 'Don't know/No opinion' on that respect.

Export certificate

| | | Answers | Ratio |
|--|--|---------|--------|
| Compliance costs will significantly decrease | | 1 | 1.33 % |
| Compliance costs will decrease | | 0 | 0 % |
| No impact on compliance costs | | 7 | 9.33 % |
| Compliance costs will increase | | 24 | 32 % |
| Compliance costs will significantly increase | | 39 | 52 % |
| Don't know/ No opinion | | 2 | 2.67 % |
| No Answer | | 2 | 2.67 % |

Import licence

| | | Answers | Ratio |
|--|--|---------|---------|
| Compliance costs will significantly decrease | | 1 | 1.33 % |
| Compliance costs will decrease | | 0 | 0 % |
| No impact on compliance costs | | 5 | 6.67 % |
| Compliance costs will increase | | 20 | 26.67 % |
| Compliance costs will significantly increase | | 44 | 58.67 % |
| Don't know/ No opinion | | 3 | 4 % |
| No Answer | | 2 | 2.67 % |

Self-certification

| | | Answers | Ratio |
|--|--|---------|---------|
| Compliance costs will significantly decrease | | 0 | 0 % |
| Compliance costs will decrease | | 4 | 5.33 % |
| No impact on compliance costs | | 16 | 21.33 % |
| Compliance costs will increase | | 15 | 20 % |
| Compliance costs will significantly increase | | 19 | 25.33 % |
| Don't know/ No opinion | | 19 | 25.33 % |
| No Answer | | 2 | 2.67 % |

This seems to be also the prediction of interests representatives, while citizens consider that costs will increase in the first two cases but they cannot say with certainty about the third option (self-certification).