



Brussels, 17 December 2020
REV2 – replaces the notice (REV1) dated
17 August 2020

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON THE EXPORT AND THE IMPORT OF CULTURAL GOODS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.³

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁴ in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation applicable after the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B below), as well as the rules applicable in Northern Ireland after the end of the transition period (Part C below).

¹ A third country is a country not member of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁴ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders are in particular advised to verify the need for obtaining export licences for cultural goods shipped to the United Kingdom after the end of the transition period.

Stakeholders are also reminded that after the end of the transition period, the introduction in the EU from the United Kingdom of illegally exported cultural goods originating there or in any other third country will become subject to a general prohibition under EU law.

Please note:

This notice does not address

- issues of return of cultural goods;
- customs procedures and formalities.

For these aspects, other notices are in preparation or have been published.⁵

In addition, attention is drawn to the more generic notice on prohibitions and restrictions, including import/export licences.

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods⁶ and Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods⁷ no longer⁸ apply to the United Kingdom⁹. This has in particular the following consequences:

1. EXPORTS FROM THE UNION**1.1. Licences for exports to the United Kingdom**

In accordance with Article 2(1) of Regulation (EC) No 116/2009, the export of cultural goods listed in its Annex I¹⁰ is subject to an export licence, which

⁵ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/getting-ready-end-transition-period_en

⁶ OJ L 39, 10.2.2009, p. 1.

⁷ OJ L 151, 7.6.2019, p. 1.

⁸ It is recalled that the general prohibition set out in Article 3(1) of Regulation (EU) 2019/880 applies from 28 December 2020 (Article 16(2)(a) of Regulation (EU) 2019/880).

⁹ Regarding the applicability of these rules to Northern Ireland, see Part C of this notice.

¹⁰ For example, furniture more than 50 years old or books more than 100 years old and with a value of more than EUR 50,000, printed maps more than 200 years old and with a value of more than EUR 15,000; see Annex I to Regulation (EC) No 116/2009.

is issued by a competent authority of a Member State. After the end of the transition period, where such cultural goods are exported from the EU customs territory to the United Kingdom, the Channel Islands or to the Isle of Man, these exports are subject to an export licence requirement.

1.2. Licences for exports to other third countries

According to Article 2(2) of Regulation (EC) No 116/2009, the export licence is to be issued:

- by a competent authority of the Member State in whose territory the cultural object was lawfully and definitely located on 1 January 1993; or
- thereafter, by a competent authority of the Member State in whose territory it is located following either lawful and definitive dispatch from another Member State, or importation from a third country, or reimportation from a third country after lawful dispatch from a Member State to that country.

According to Article 2(3) of Regulation (EC) No 116/2009, export licences are valid throughout the Union.

Export licences issued by the United Kingdom on the basis of Union law are no longer valid after the end of the transition period for shipments of cultural goods from an EU Member State to a third country. Where this leads to the re-issuance by a competent authority of an EU Member State of an export licence previously issued by the competent authority of the United Kingdom, this re-issuance can take account of that previous licence.

2. INTRODUCTION AND IMPORT INTO THE UNION

Article 3(1) of Regulation 2019/880, which **prohibits the introduction into the Union of cultural goods illegally exported from a third country**, will become applicable as of **28 December 2020**. After the end of the transition period, the introduction in the EU from the United Kingdom of illegally exported cultural goods originating there or in any other third country will become subject to this general prohibition.

In the longer term¹¹, the import in the EU from the United Kingdom of cultural goods created or discovered there or in any other third country will be subject to an **import licence** for the goods listed in Part B of its Annex (Article 4 of Regulation 2019/880) and, for the goods listed in Part C of its Annex, to the submission of an **importer statement** to EU customs (Article 5 of Regulation 2019/880).

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

Article 47(1) of the Withdrawal Agreement provides that, under the conditions set out therein, movements of goods ongoing at the end of the transition period are to be treated

¹¹ After the creation of the centralised electronic system referred to in Article 8 of Regulation (EU) 2019/880 and by 28 June 2025 at the latest, Article 16(2)(b) of Regulation (EU) 2019/880.

as intra-Union movements regarding importation and exportation licencing requirements in EU law.

Example:

A cultural good, the movement of which is ongoing between the EU and the United Kingdom at the end of the transition period can still enter the EU or the United Kingdom as if it was a movement between two Member States (i.e. no requirement for a licence).

C. APPLICABLE RULES IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/NI Protocol”) applies¹². The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.¹³

The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the EU and the United Kingdom have furthermore agreed that, insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.¹⁴

The IE/NI Protocol provides that Regulation (EC) 116/2009 and Regulation (EU) 2019/880 apply to and in the United Kingdom in respect of Northern Ireland.¹⁵ This means that references to the EU in Parts A and B of this notice have to be understood as including Northern Ireland, whereas references to the United Kingdom have to be understood as referring only to Great Britain. More specifically, this means *inter alia* the following:

- A movement of cultural goods from the EU to Northern Ireland is not an export for the purposes of Regulation (EC) No 116/2009;
- A movement of cultural goods from Northern Ireland to a third country or to Great Britain is an export for the purposes of Regulation (EC) No 116/2009;¹⁶

¹² Article 185 of the Withdrawal Agreement.

¹³ Article 18 of the IE/NI Protocol.

¹⁴ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

¹⁵ Article 5(4) of the IE/NI Protocol and section 47 of Annex 2 to that Protocol. Regulation (EU) 2019/880 has been added to that Annex with Decision No 3/2020 of the Joint Committee of 17 December 2020.

¹⁶ The obligation in relation to exports in Regulation (EC) No 116/2009 is required by international obligations of the Union (1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property), cf. Article 6(1) of the IE/NI protocol.

- A movement of cultural goods from Northern Ireland to the EU is not an import for the purposes of Regulation (EC) No 2019/880;
- A movement of cultural goods from a third country or from Great Britain to Northern Ireland is an import for the purposes of Regulation (EC) No 2019/880. Thus, the **introduction** into Northern Ireland of cultural goods illicitly exported from a third country, including dispatched there from Great Britain, will be prohibited after the end of the transition period.¹⁷
- From the moment that the centralised electronic system for the Import of Cultural Goods (ICG system) provided for in Articles 8 and 9 of Regulation 2019/880 becomes operational and, by 28 June 2025 at the latest:
 - Operators will have to apply to the competent authority in Northern Ireland for import licences for cultural goods of the categories listed in Part B of the Annex to the Regulation that are to be imported there from a third country or dispatched there from Great Britain;
 - Operators will have to submit importer statements to NI customs for cultural goods belonging to the categories listed in Part C of the Annex to the Regulation that are to be imported in Northern Ireland from a third country or dispatched there from Great Britain.

However, the IE/Ni Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to

- participate in the decision-making and decision-shaping of the Union¹⁸ and
- invoke mutual recognition of export licences issued by the United Kingdom in respect of Northern Ireland¹⁹.

More specifically, this means *inter alia* the following:

- An export licence issued by the United Kingdom in respect of Northern Ireland cannot be invoked for shipments from the EU to a third country.
- When the ICG system becomes operational and import licences are issued by the United Kingdom in respect of Northern Ireland, those licences cannot be invoked for imports from a third country into the EU.

The website of the Commission on EU rules for the import and export of cultural goods (https://ec.europa.eu/taxation_customs/business/customs-controls/cultural-goods_en) provides general information. These pages will be updated with further information where necessary.

¹⁷ This prohibition does not entail systematic controls but, if e.g. NI authorities receive intelligence of suspicious shipments or in the course of random controls they come across a shipment of illicit cultural goods, they have to intercept it and take all appropriate measures.

¹⁸ Where an information exchange or mutual consultation is necessary, this will take place in the joint consultative working group established by Article 15 of the IE/Ni Protocol.

¹⁹ First subparagraph of Article 7(3) of the IE/Ni Protocol.

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