



April 20, 2021

Comments submitted via EU login
on the draft implementing regulation on the introduction and the import of cultural goods
into the European Union

On behalf of the Ancient Coin Collectors Guild, we respectfully submit the following comments on the European Commission's draft rules, that implement provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council, on the introduction and the import of cultural goods into the European Union. This is in response to the European Commission's request for feedback on its draft implementing regulation listed as Ares(2021)2087089 and Annex – Ares(2021)2087089.

The Ancient Coin Collectors Guild (Guild) is a nonprofit organization in the United States, whose mission is to promote and nurture the free and independent collecting of coins from antiquity through education, political action and consumer protection. As detailed in the Guild's Bylaws, our goal is to foster an environment in which the general public can confidently and legally acquire and hold, for personal or professional use, any numismatic item of historical interest regardless of date or place of origin. The Guild's Bylaws also state that we do not in any way support, condone or defend the looting of designated archaeological sites, nor the violation of any nation's laws concerning the import or export of antiquities. We have twenty-four affiliate member organizations and advocates for the interests of thousands of ancient coin collectors and hundreds of small businesses of the numismatic trade. Our website may be found at accguild.org (visited April 19, 2021).

To begin with, we fully support Article 8-1 of the draft rules that requires that “[t]he applicant shall provide evidence to the competent authority that the cultural good in question has been exported from the country of interest¹ in accordance with its laws and regulations....” We request, however, that Article 8-1(d) of the draft rules be clarified to confirm that its List of supporting documents, to prove licit provenance in an import license application for any ancient and modern collectors' coins, do not apply to countries like the United States when they are a “country of interest,” when such coins have been properly located in the country for more than

¹ Article One of the draft rules defines the term “country of interest” as “the third country where the cultural good to be imported was created or discovered or the last country where the cultural good was located for a period of more than five years for purposes other than temporary use, transit, re-export or transshipment, in accordance with Articles 4(4) and 5(2) of Regulation (EU) 2019/880” (emphasis added).

five years for purposes other than temporary use, transit, re-export or transshipment. Such a clarification is fully consistent with the draft rule's Article 8-1 as well as its third WHEREAS clause that states that "it is necessary to lay down rules regarding the exceptions to the requirements to obtain an import licence or to submit an importer statement under certain conditions."

This would be consistent with Germany's treatment of most ancient coins as "coins in trade" rather than archaeological objects.² It would also be consistent with the recent decision of the United States to create a new customs code for ancient coins in trade.³ Indeed, coins are the first truly "massed-produced" objects in the ancient world, created by striking engraved obverse and reverse dies onto blank metal disks. An individual ancient coin is essentially a duplicate minted from coin dies, which are produced in the thousands, and should not be considered "cultural goods." There is "a lot of debate as to whether or not nations and scholars should consider coins as culturally significant.... Coinage, in a general sense, provides evidence to historians about the monetary systems of ancient civilizations, various historical events, information about the art styles of ancient civilizations, and more. Individual coins, however, are 'by their very nature duplicates.' Nothing new about a culture can be learned from a duplicate coin if a single, viable copy of that coin has been studied." Cody Wisniewski, *The Currency of History: The Possible, and Improper, Restriction on Ancient Egyptian Coinage*, 17 San Diego Int'l L.J. 329, 346 (2016)(footnotes omitted and emphasis added).

We make this request for coins located in the United States for more than five years because we believe it is improper to assume that collectors' coins, that may not have export documentation or other provenance information, are the products of recent looting or theft. It is critical to recognize that coins -- which have been collected for centuries -- may lack documentation for the simple reason that none had been required until recently. Indeed, collectors' coins circulated in the international numismatic market without any documentation whatsoever being required -- so none exists.

We expect that few ancient coins have evidence showing when they were exported from source countries, and indeed many were first exported from their country of origin as currency, not as collectibles. When countries began to adopt laws forbidding export of antiquities without government permission, the requirement was often ignored in practice with the full knowledge and tacit approval of government authorities. And if a country created a functional export control system (like Israel), they typically issued export permits for large numbers of coins at one time that did not specifically identify them with any particularity. Instead, export permits were issued

² German Bundesfinanzhof of the VII. Senate, Legal Dispute of Main Customs Office with Stephan Sonntage, 70182 Stuttgart on account of export permit, Hearing of Dec. 11, 2012, available at

<https://www.bundesfinanzhof.de/de/entscheidung/entscheidungen-online/detail/STRE201310048/>

(last visited April 14, 2021) (noting that coins from antiquity are generally not treated as archaeological objects).

³ The United States International Trade Commission has recognized the concept of "ancient coins in trade" through the creation of a new harmonized tariff code subheading for "Coins made prior to the 14th century and not known to be the direct products of excavations, finds or archaeological sites." As a result of this change, effective July 1, 2020, the new HTS code number 9705.00.00.01 should be used for all coins prior to 14th century. where there is no evidence of them coming from a hoard or excavation. See https://www.hts-code.com/code/hts_result?code=9705.00.00 (last visited April 14, 2021).

for groups of coins, i.e., for a group of 500 Roman coins. Thus, even if an export certificate were issued and retained, it would be of no use to prove that a specific coin was legally exported.

Technological realities also explain why so few ancient coins have detailed provenances or collection histories. At a recent event sponsored by the American Bar Association's International Law Section's Art & Cultural Heritage Law Committee, an expert on coin provenance issues explained that before the advent of digital photography in the 1990's, there were comparatively few coins that were recorded in a fashion that could readily identify them today. See <https://culturalpropertyobserver.blogspot.com/2020/06/coin-auctioneer-with-archaeological.html> (last visited April 14, 2021).

More valuable coins (or casts of them) were photographed for auction catalogues only starting in the early twentieth century, but such auctions were and continue to be a relatively small part of the market. Instead, particularly before the advent of the Internet, most coins were purchased at coin fairs and in coin stores with an invoice, but one which did not picture the coin. Moreover, because provenances were not that important, they were often not included in auction catalogues, except for coins from famous collections. Finally, before the advent of modern facial recognition technology, it was very time consuming to search for old auction provenances by reviewing old catalogues, and even with that technology, it remains an expensive effort to try to recreate the old provenances of ancient coins.

Thus, we believe it is unrealistic and unreasonable to assume that EU coin dealers or collectors who seek to import coins from the United States will be able to prove that the coin sought was "legally exported" to secure an EU import permit. At most, United States sellers should be expected to verify that the coin in their possession was legally on the market in accordance with its laws and regulations. Under such circumstances, the EU should make special allowances for ancient coins exported from the United States as a "country of interest," when such coins have been located in the United States for a period of more than five years for purposes other than temporary use, transit, re-export or transshipment.

The United States, like the member nations of the European Union, is a "market country" which has long established communities of avid coin collectors. It is also a signatory to the 1970 UNESCO Convention, and maintains strong and vigilant law enforcement authorities.⁴ The risk that imports into the EU from the United States are of recently looted coins is quite small. On the other hand, draconian EU import controls designed for far more valuable and scarce objects being applied to coins (particularly common ones with low associated values) will do nothing but discourage legitimate trade and perhaps even encourage smuggling.

In conclusion, we request that Article 8-1(d) of the draft rules be clarified to confirm that its List of supporting documents, to prove licit provenance in an import license application for any

⁴ For example, the US has placed import restrictions on a wide range of cultural goods, including coins from MENA countries where it is alleged that looting supports terrorism. See <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions> (last visited April 14, 2021). Additionally, the U.S. Congress has made "antiquities dealers" subject to the anti-money laundering regulations under the Bank Secrecy Act. 2021 NDAA, Section 6110, <https://www.govinfo.gov/content/pkg/BILLS-116hr6395enr/pdf/BILLS-116hr6395enr.pdf> (last visited April 14, 2021).

ancient and modern collectors' coins, do not apply to countries like the United States when they are a "country of interest," when such coins have been properly located in the country for more than five years for purposes other than temporary use, transit, re-export or transshipment.

Respectfully submitted,

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