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COM(2013) 311 final

2013/0162 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the return of cultural objects unlawfully removed from the territory of a Member State**

**(Recast)**

(Text with EEA relevance)

{SWD(2013) 188 final}

{SWD(2013) 189 final}

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND TO THE PROPOSAL

#### • General context, reasons for and objectives of this proposal

National cultural objects are objects identified by the Member States as belonging to their cultural heritage. These objects are generally classified in terms of their cultural importance and covered by more or less stringent protection rules. Of these cultural objects, national treasures possessing artistic, historic or archaeological value (“national treasures”) under national legislation or administrative procedures within the meaning of Article 36 of the Treaty on the Functioning of the European Union (TFEU), are objects of major interest that should be preserved for future generations. As a general rule, national treasures receive better legal protection preventing their permanent removal from the Member State’s territory.

The internal market is an area without internal frontiers in which the free movement of goods is ensured in accordance with the provisions of the Treaty on the Functioning of the European Union. These provisions do not preclude prohibitions or restrictions justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value within the meaning of Article 36 TFEU.

Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State<sup>1</sup> was adopted in 1993, when the internal frontiers were abolished, in order to protect the Member States’ cultural objects that are classified as national treasures. This Directive seeks to reconcile the fundamental principle of free movement of goods with the need for effective protection of national treasures.

The assessments of the Directive<sup>2</sup> have shown that its effectiveness in securing the return of cultural objects classified as national treasures which have been unlawfully removed from the territory of a Member State and are located on the territory of another Member State is limited. The main reasons for this were identified as being:

- the conditions making objects classified as national treasures eligible for return, in other words whether they belong to one of the categories referred to in the Annex and meet the financial and age thresholds;
- the short time available for bringing return proceedings;

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<sup>1</sup> Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 74, 27.3.1993, p. 74, amended by Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997, OJ L 60, 1.3.1997, p. 59, and by Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001, OJ L 187, 10.7.2001, p. 43.

<sup>2</sup> First report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation (EEC) No 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2000) 325 final, 25.05.2000). Second report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2005) 675 final, 21.12.2005). Third report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2009) 408 final, 30.07.2009)]. Fourth report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2013) 310 final, 30.5.2013).

- the cost of compensation.

The assessment reports also highlighted the need for improved administrative cooperation and consultation between the central authorities in order to enable them to better implement the Directive.

Under the system set up by the Directive, certain Member States would have to use the mechanisms provided for by international agreements in order to secure the return of their cultural objects. UNESCO's Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the UNIDROIT Convention of 1995 on Stolen or Illegally Exported Cultural Objects have not been ratified by all Member States<sup>3</sup>.

Despite the variety of instruments available, trafficking in cultural objects has become one of the most widespread forms of illegal trade. Trafficking in cultural objects classified as national treasures is a particularly serious form of this crime which adversely affects the national identity, culture and history of the Member States, since the disappearance of national treasures deprives a State's citizens of a mark of their identity and history.

In response to this problem and its major impact on the Member States, the Council of the European Union concluded on 13 and 14 December 2011 that measures needed to be taken to make preventing and combating crime against cultural objects more effective. It therefore recommended that the Commission, amongst other bodies, support the Member States in the effective protection of cultural objects with a view to preventing and combating trafficking and promoting complementary measures where appropriate<sup>4</sup>.

The aim of this proposal is to enable Member States to secure the return of any cultural object which is classified as a national treasure and has been unlawfully removed from their territory since 1993.

The overall objective is to contribute to the protection of cultural objects in the context of the internal market.

### **Consistency with other policies and objectives of the Union**

This initiative is consistent with the Union's policy on the protection of cultural objects. It is also in line with the above-mentioned conclusions of the Council of the European Union on preventing and combating crime against cultural goods.

The proposal for a Directive relates to the return of cultural objects by means of arrangements enabling Member States to protect their cultural objects which are classified as national treasures.

As far as the recovery of a cultural object by its owner is concerned, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012<sup>5</sup> on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides for the creation of a forum for civil recovery proceedings based on ownership at the courts of the place where the object is located. This new provision would also cover civil proceedings brought for the recovery of cultural objects.

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<sup>3</sup> As at September 2012, the UNESCO Convention of 1970 had been ratified by 22 Member States and the UNIDROIT Convention of 1995 by 13 Member States. Austria was in the process of ratifying the UNESCO Convention.

<sup>4</sup> Conclusions of the Council of the European Union on preventing and combating crime against cultural goods, 13 and 14 December 2011.

<sup>5</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/126866.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126866.pdf).

<sup>5</sup> OJ L 351, 20.12.2012, p. 1.

Both initiatives are aimed at protecting cultural objects, one enabling national authorities to request the return of a cultural object which is classified as a national treasure and has been removed unlawfully from the territory, and the other giving the owner the right to seek recovery of a cultural object before the courts of the Member State where the object is located.

## **2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **• Consultation of interested parties**

A public consultation, addressed to all the parties concerned by this initiative, was held from 30 November 2011 to 5 March 2012. The consultation was carried out via the interactive policy-making system (“*Your Voice in Europe*”) in the form of two specific questionnaires, one for public authorities and bodies and the other for citizens and economic operators concerned by the issue or working in the area of cultural objects.

The Commission received 142 replies, 24 of which were from public bodies and 118 from the private sector. A summary of the results of this public consultation is available on the Europa website<sup>6</sup>.

Most (61%) of those from the private sector taking part in the consultation felt that Directive 93/7/EEC met the needs of the Member States and that there was no need to revise it. Only 22% were in favour of revision.

However, 54% of the representatives of public authorities and bodies took the view that the Directive did not guarantee the return of national treasures unlawfully removed from the territory of a Member State. The solutions proposed for improving the Directive’s effectiveness received fairly even support, with 29% in favour of revision of the Directive, 29% in favour of improved administrative cooperation and information exchange between the competent authorities, 17% in favour of promoting ratification by the Member States of the international agreements (UNESCO and UNIDROIT) and 25% in favour of an approach combining several solutions, such as revision of the Directive together with improved administrative cooperation and consultation between the competent authorities.

### **• Acquisition and use of expertise**

The Commission has regularly drawn up reports reviewing Directive 93/7/EEC on the basis of national reports on its application. These evaluation reports covering the period 1993 to 2011 are addressed to the European Parliament, the Council and the European Economic and Social Committee<sup>7</sup>.

The Commission also carried out an *ex post* evaluation of the Directive by setting up a group of national experts representing the central authorities which carry out the tasks set out in the Directive. The role of the Return of Cultural Goods expert group, established within the Committee on the Export and Return of Cultural Goods, was to identify problems in applying the Directive and find possible solutions. The group carried out its work between 2009 and 2011.

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<sup>6</sup> [http://ec.europa.eu/yourvoice/consultations/2012/index\\_en.htm](http://ec.europa.eu/yourvoice/consultations/2012/index_en.htm)

<sup>7</sup> [http://ec.europa.eu/enterprise/policies/single-market-goods/regulated-sectors/cultural-goods/index\\_en.htm](http://ec.europa.eu/enterprise/policies/single-market-goods/regulated-sectors/cultural-goods/index_en.htm)

The group concluded that the Directive should be revised to make it a more effective instrument for the return of national treasures and that mechanisms should be put in place to improve administrative cooperation and consultation between the central authorities<sup>8</sup>.

- **Impact assessment**

This proposal is accompanied by an executive summary of the impact assessment and an impact assessment, a draft version of which was assessed by the Impact Assessment Board of the European Commission, which issued its opinion on 21 September 2012. The final version of the impact assessment was amended to take the Board's recommendations into account.

The impact assessment took particular account of the reports reviewing the application of the Directive, the documentation obtained from the work of the Return of Cultural Goods expert group, the work of the OMC (Open Method of Coordination) expert group on the mobility of collections under the Work Plan for Culture 2007-2010<sup>9</sup>, the results of the public consultation on the matter, and also studies looking into cultural goods carried out in 2004, 2007 and 2011<sup>10</sup>.

Based on the information collected, the Commission carried out an impact assessment which examined and compared the following options<sup>11</sup>:

**Option 1: no change to the current situation**

No amendment is made to Directive 93/7/EEC as amended by Directives 96/100/EC and 2001/38/EC.

**Option 2: promoting the use of common tools by the central authorities**

The central authorities are provided with an electronic tool (the Internal Market Information System or "IMI") to facilitate administrative cooperation, consultation and the exchange of information between these authorities.

**Option 3: revision of Directive 93/7/EEC**

Directive 93/7/EEC is revised to: (i) extend its scope to include all objects classified as national treasures, (ii) extend the time-limits for bringing return proceedings and for checking the cultural object, and (iii) align the conditions for compensating the possessor.

**Option 4: encouraging ratification and application by the Member States of the UNESCO Convention of 1970 on cultural property**

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<sup>8</sup> The work of this group and the individual contributions of its members have not been published.

<sup>9</sup> Final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections, June 2010: [http://ec.europa.eu/culture/our-policy-development/working-group-on-museum-activities\\_en.htm](http://ec.europa.eu/culture/our-policy-development/working-group-on-museum-activities_en.htm)

<sup>10</sup> Study in 2004 entitled "*Analyse des structures et mécanismes de diffusion des données nécessaires aux autorités afin de garantir l'application de la directive relative aux biens culturels*" [Analysis of the structures and mechanisms of data distribution that the authorities require to guarantee application of the Directive on cultural goods] and study in 2007 entitled "*Extension aux 12 nouveaux États membres*" [Extension to the 12 new Member States, Final Report] (Information & Communication Partners, (study contract No 30-CE-0102617/00-49), available on request from [ENR-PRODUCT-MARKET-INTEGR-AND-ENFOR@ec.europa.eu](mailto:ENR-PRODUCT-MARKET-INTEGR-AND-ENFOR@ec.europa.eu). "Study on preventing and fighting illicit trafficking in cultural goods in the European Union", CECOJI-CNRS-UMR 6224 (France), 2011. [http://ec.europa.eu/home-affairs/doc\\_centre/crime/docs/Report%20Trafficking%20in%20cultural%20goods%20EN.pdf#zoom](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/Report%20Trafficking%20in%20cultural%20goods%20EN.pdf#zoom)

<sup>11</sup> Other options, such as (i) ratification by the Union of the UNESCO Convention of 1970 and the UNIDROIT Convention of 1995, (ii) shaping a Union approach towards ratification by all Member States of the UNIDROIT Convention, (iii) replacing Directive 93/7/EEC with a regulation and (iv) repealing Directive 93/7/EEC, were abandoned during the initial stages of examination of the various solutions on grounds of feasibility.

Directive 93/7/EEC remains unamended and action is focused on ratification and application by the Member States of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The preferred approach is a combination of options 2 and 3, aimed in particular at:

- prescribing the use of the IMI administrative cooperation system between the central authorities;
- extending the scope of the Directive to include all cultural objects classified as national treasures within the meaning of Article 36 of the Treaty;
- extending the time available for bringing return proceedings;
- extending the time allowed for checking the cultural object;
- aligning the conditions for compensating the possessor in cases of return.

### **3. LEGAL ASPECTS OF THE PROPOSAL**

#### **• Summary of the proposed action**

The aim of recasting Directive 93/7/EEC, as amended by Directives 96/100/EC and 2001/38/EC, is to enable Member States to secure the return of any cultural object which is classified as a national treasure. The recast is also intended to simplify Union legislation in this area.

The changes made to the provisions of Directive 93/7/EEC concern: (i) extending its scope to cover all cultural objects classified as national treasures within the meaning of Article 36 of the Treaty, (ii) prescribing the use of the IMI system for administrative cooperation and information exchanges between the central authorities, (iii) extending the time given to the authorities of the requesting Member State to check the nature of the cultural object found in another Member State, (iv) extending the time-limit for bringing return proceedings, (v) indicating which authority of the requesting Member State starts the period for bringing return proceedings, (vi) stipulating that the possessor has the burden of proof that due care and attention was taken when the cultural object was acquired, (vii) indicating the common criteria for interpreting the concept of due care and attention and (viii) extending the time-limit for the reports assessing and reviewing the application of the Directive.

#### **• Legal basis**

The proposal is based on Article 114 of the Treaty (TFEU).

#### **• Subsidiarity principle**

The internal market is a competence that is shared between the Union and the Member States. Therefore the principle of subsidiarity applies.

Directive 93/7/EEC was adopted when the internal market was created, since any action taken in isolation by Member States towards the return of objects might be thwarted by differences between national laws.

Establishing rules on the return of objects contributes towards the smoother functioning of the internal market. It would be very difficult for a Member State to secure the return of a cultural object classified as a national treasure that has been unlawfully removed without a common procedure that is also available in the Member State where the object is located. A possessor who knows that the object has been unlawfully removed could therefore establish himself in a Member State without having to fear the loss of that object.

The cross-border dimension of the unlawful removal of cultural objects makes the Union better suited to act on these matters and enable the return of objects that have been unlawfully removed and are located in the territory of a Member State. Therefore, the objective of the proposal cannot be sufficiently achieved by Member States and requires action at EU level.

However, the Union is not competent for determining what is a national treasure or which national courts have competence for hearing the return proceedings brought by the requesting Member State against the possessor and/or holder of a cultural object that is classified as being a national treasure and has been unlawfully removed from the territory of the Member State. These matters are covered by subsidiarity, as they fall within the competence of the Member States.

- **Proportionality principle**

In accordance with the principle of proportionality, the proposed modifications do not go beyond what is necessary to achieve the objectives set.

The scale of the proposed measure is connected with the major factors limiting the effectiveness of Directive 93/7/EEC with regard to securing the return of certain objects classified as national treasures. This proposal is proportionate to the objective of ensuring the return of all cultural objects that are classified as national treasures and have been unlawfully removed from the territory of a Member State since 1993 and does not go beyond what is necessary for that purpose.

In order to improve its application, this proposal stipulates that administrative cooperation and information exchange between the central authorities is to be carried out using the IMI system; it also indicates which national authority of the requesting Member State starts the period for bringing return proceedings, stipulates that the possessor has the burden of proof that due care and attention was exercised, and sets out certain common criteria for interpreting the concept of due care and attention so that it is easier for national judges to arrive at a more uniform interpretation of this concept for the purposes of compensating the possessor. These criteria are not exhaustive.

However, there is no need for action with regard to other aspects, such as enabling an individual to bring return proceedings to retrieve an object considered a national treasure which belongs to him, extending the time-limit for bringing return proceedings from thirty to fifty years, or limiting the maximum amount of compensation to the possessor.

The proposal will not add to the administrative burden of the administrations; it should, in fact, reduce it.

- **Legislative technique**

On 1 April 1987, the Commission decided to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify the texts for which they are responsible at even shorter intervals in order to ensure that their provisions are clear and readily understandable.

Codification of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State<sup>12</sup> was initiated by the

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<sup>12</sup> 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.

Commission, and a relevant proposal was submitted to the legislative authority<sup>13</sup>. The new Directive was to have superseded the various acts incorporated in it<sup>14</sup>.

In the course of the legislative procedure, it was acknowledged that Article 16(4) of Directive 93/7/EEC, which corresponded to Article 16(3) of the proposed codified text, established a secondary legal basis. In the light of the judgment of the Court of Justice of 6 May 2008 in Case C-133/06, it was considered necessary to delete Article 16(3) of the proposed codified text. Since such a deletion would have involved a substantive change going beyond straightforward codification, it was considered necessary that point 8<sup>15</sup> of the Interinstitutional Agreement of 20 December 1994 – Accelerated working method for official codification of legislative texts – be applied, in the light of the joint declaration on that point<sup>16</sup>.

The Commission therefore considered it appropriate to withdraw the proposal for a Directive of the European Parliament and of the Council codifying Directive 93/7/EEC<sup>17</sup> and to transform the codification of the Directive into a recast in order to incorporate the necessary amendment.

As explained above, the objective of enabling Member States to secure the return of cultural objects which are classified as national treasures requires a certain number of substantial changes to be made to Directive 93/7/EEC. It has therefore been decided to apply the recasting technique in accordance with the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>18</sup>.

This proposal is for a recast of Directive 93/7/EEC, as amended by Directives 96/100/EC and 2001/38/EC. It provides for simplification of the legislation in force and will lead to the repeal of Directives 93/7/EEC, 96/100/EC and 2001/38/EC.

- **Detailed explanation of the proposal**

Article 1(1) defines a ‘cultural object’ as an object which is classified, before or after its unlawful removal from the territory of a Member State, among the ‘national treasures possessing artistic, historic or archaeological value’ under national legislation or administrative procedures within the meaning of Article 36 of the Treaty. The Annex to Directive 93/7/EEC is deleted.

For the purposes of the return of an object, this Directive removes the requirements that objects classified as national treasures should:

- belong to one of the common categories referred to in the Annex and to respect, where necessary, the age and/or financial thresholds set for those categories, or,
- where the objects do not belong to one of those categories, form an integral part of public collections listed in the inventories of museums, archives or

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<sup>13</sup> COM (2007) 873 final.

<sup>14</sup> See Annex I, Part A of this proposal.

<sup>15</sup> "Should it prove necessary during the legislative process to go beyond straightforward codification and make substantive changes, it will be the Commission's responsibility to submit any proposal(s), where appropriate".

<sup>16</sup> "The European Parliament, the Council and the Commission note that if it should appear necessary to go beyond straightforward codification and make substantive changes, the Commission will be able to choose, case by case, whether to recast its proposal or whether to submit a separate proposal for amendment, leaving its codification proposal on the table, and then, once the substantive change has been adopted, incorporate it into the proposal for codification".

<sup>17</sup> OJ C 252, 18.9.2010, p. 11.

<sup>18</sup> OJ C 77, 28.3.2002, p. 1.

libraries' conservation collections or the inventories of ecclesiastical institutions.

Each Member State must define their national treasures within the meaning and the limits of Article 36 of the Treaty. The Annex to Directive 93/7/EEC is not intended to define objects which rank as national treasures within the meaning of that article, but merely categories of object which may be classified as such and may be eligible for return proceedings.

This proposal seeks to reconcile the fundamental principle of the free movement of cultural objects with the need for effective protection of national treasures. It confirms the intention of the legislature of 1993 to make Directive 93/7/EEC a first step in establishing cooperation between Member States in this field in the context of the internal market, and that its aim was mutual recognition of the relevant national laws.

This proposal meets the repeated demand made by representatives of the Member States for effective arrangements for the return of cultural objects classified as national treasures. It allows Member States to secure the return of cultural objects which are classified as national treasures and have been unlawfully removed from their territory since 1993, and thus provides better protection for the Member States' cultural heritage.

However, the possessor would be able to submit evidence in the return proceedings to argue that the requesting State infringed Article 36 of the Treaty when it classified the object as a national treasure. The court in question will then have to make a ruling, where necessary after sending a referral for a preliminary ruling to the Court of Justice of the European Union.

Articles 4 and 6 provide for the use by the central authorities of the Internal Market Information System ("IMI") in order to facilitate administrative cooperation, consultation and the exchange of information between them.

Article 4(3) extends the time-limit allowed to the competent authority of the requesting Member State to check that the object discovered in another Member State is a cultural object to five months after the notification that the object has been discovered.

In view of the cross-border aspect of this issue, extending this time-limit will contribute to more effective administrative cooperation between the competent authorities.

Article 7(1) stipulates that the return proceedings may not be brought more than three years after the central authority of the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder.

The extension of this period takes account of the complexity of cross-border relations and also the obligation of due care and attention incumbent on the requesting State.

Article 9 contains common criteria for interpreting the concept of the due care and attention exercised by the possessor in acquiring the object. These criteria are based on those set out in Articles 4(4) and 6(2) of the UNIDROIT Convention of 1995.

Under this proposal, the burden of proof of due care and attention in acquiring the object will lie with the possessor. The person acquiring the object will be entitled to compensation provided that he can prove that he exercised due care and attention in acquiring the object with respect to whether the cultural object was lawfully removed from the territory of the requesting Member State.

These changes should enable the Directive to be applied more uniformly and, where necessary, make it more difficult for possessors acting in bad faith or not exercising due care and attention to obtain compensation.

Article 16 lays down the evaluation and monitoring arrangements allowing the other institutions of the Union to gain an insight into the actual implementation of the Directive. The reports reviewing the application of the Directive will be drawn up every five years. A review clause is included.

- **Comitology and delegated acts**

Article 17 of Directive 93/7/EEC provides for the Commission to be assisted by the committee established by Article 8 of Regulation (EC) No 116/2009 (codified version of Regulation (EEC) No 3911/92 on the export of cultural goods)<sup>19</sup>. This is the Committee on the Export and Return of Cultural Goods, which is an advisory committee of the Commission made up of representatives of the Member States.

Directive 93/7/EEC stipulates that the Committee is to examine any question arising from the application of its Annex which may be tabled by the chairman either on his own initiative or at the request of the representative of a Member State.

Since the new Directive does not contain an annex, the reference to the Committee has been deleted in the proposal.

In accordance with the Communication from the Commission entitled “Framework for Commission's expert groups: horizontal rules and public register”, the Commission will set up, where necessary, an expert group made up of experts from the central authorities responsible for the Directive to set out the operating procedure for using the Internal Market Information System (IMI) in the area of cultural objects.

#### **4. ADDITIONAL INFORMATION**

- **Repeal of existing legislation**

The adoption of this proposal for a recast will lead to the repeal of the legislation in force, Directives 93/7/EEC, 96/100/EC and 2001/38/EC.

- **Amendment of existing legislation**

This Directive amends the Annex to Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System to include the new Directive.

- **European Economic Area**

The proposed act is relevant to the EEA and should therefore extend to the European Economic Area.

#### **5. BUDGETARY IMPLICATIONS**

The budgetary implications of this proposal are set out in the financial statement attached to the proposal. The proposal involves only administrative costs.

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<sup>19</sup> OJ L 39, 10.2.2009, p. 1.

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↓ 93/7/EEC (adapted)

2013/0162 (COD)

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**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the return of cultural objects unlawfully removed from the territory of a Member State**

**(Recast)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty ~~establishing the European Economic Community~~  on the  
Functioning of the European Union  , and in particular Article ~~100 A~~  114  thereof,  
Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national parliaments,  
Having regard to the opinion of the  European  Economic and Social Committee<sup>20</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

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↓ new

(1) Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State<sup>21</sup> has been substantially amended several times<sup>22</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.

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↓ 93/7/EEC Recital 1 (adapted)

⇒ new

(2) ~~Whereas Article 8a of the Treaty provides for the establishment, not later than 1 January 1993, of the~~  The  internal market, ~~which is to comprise~~  comprises  an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the

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<sup>20</sup> OJ C [...], [...], p. [...].

<sup>21</sup> OJ L 74, 27.03.1993, p. 74.

<sup>22</sup> See Annex I, Part A.

Treaty. ⇨ These provisions do not preclude prohibitions or restrictions justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value. ⇩

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↓ 93/7/EEC Recital 2 (adapted)

- (3) ~~Whereas, Under the terms and within the limits of Article 36 of the Treaty, Member States will, after 1992, retain the right to define their national treasures and to take the necessary measures to protect them in this area without internal frontiers.~~
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↓ 93/7/EEC Recital 3 (adapted)

- (4) ~~Whereas arrangements should therefore be introduced~~ ☒ Directive 93/7/EEC introduced arrangements ☒ enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of ~~the said~~ Article 36 ☒ of the Treaty, fall under the common categories of cultural object referred to in the Treaty's Annex ☒ and have been removed from their territory in breach of the above-mentioned national measures or of Council Regulation (EEC) No ~~3911/92~~ 116/2009 of ~~9~~ 18 December ~~1992~~ 2008 on the export of cultural goods<sup>23</sup>; ☒ and cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions but which do not fall within these common categories ☒. ~~whereas the implementation of these arrangements should be as simple and efficient as possible; whereas, to facilitate cooperation with regard to return, the scope of the arrangements should be confined to items belonging to common categories of cultural object; whereas the Annex to this Directive is consequently not intended to define objects which rank as 'national treasures' within the meaning of the said Article 36, but merely categories of object which may be classified as such and may accordingly be covered by the return procedure introduced by this Directive;~~
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↓ 93/7/EEC Recital 4 (adapted)

~~Whereas cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions but which do not fall within these common categories should also be covered by this Directive;~~

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↓ 93/7/EEC Recital 5 (adapted)

- (5) ~~Whereas administrative cooperation should be~~ ☒ Directive 93/7/EEC ☒ established administrative cooperation between Member States as regards their national treasures, in close liaison with their cooperation in the field of stolen works of art and involving in particular the recording, with Interpol and other qualified bodies issuing similar lists, of lost, stolen or illegally removed cultural objects forming part of their national treasures and their public collections.

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<sup>23</sup> OJ L 395, 31.12.1992, p. 1; OJ L 39, 10.2.2009, p. 1.

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↓ 93/7/EEC Recital 6 (adapted)

- (6) ~~Whereas~~ The procedure ~~is~~ provided for in ~~is~~ introduced by this Directive ~~is~~ 93/7/EEC was ~~is~~ a first step in establishing cooperation between Member States in this field in the context of the internal market. The aim is mutual recognition of the relevant national laws. ~~whereas provision should therefore be made, in particular, for the Commission to be assisted by an advisory committee.~~
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↓ 93/7/EEC Recital 7 (adapted)

- (7) ~~Whereas~~ Regulation (EEC) No ~~3911/92~~ 116/2009 introduces, together with this Directive, a ~~Community~~ ~~is~~ Union ~~is~~ system to protect Member States' cultural goods. ~~whereas the date by which Member States have to comply with this Directive has to be as close as possible to the date of entry into force of that Regulation; whereas, having regard to the nature of their legal systems and the scope of the changes to their legislation necessary to implement this Directive, some Member States will need a longer period,~~
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↓ new

- (8) Application of Directive 93/7/EEC has shown the limitations of the arrangements for securing the return of objects classified as national treasures which have been unlawfully removed from the territory of a Member State and discovered in the territory of another Member State.
- (9) The Member States should have arrangements at their disposal to ensure that the unlawful removal of a cultural object classified as a national treasure to another Member State does not present the same risk as its illegal export outside the Union.
- (10) The scope of this Directive must extend to any cultural object classified as a national treasure possessing artistic, historic or archaeological value under national legislation or administrative procedures within the meaning of Article 36 of the Treaty. The criterion of falling under one of the categories referred to in the Annex to Directive 93/7/EEC should therefore be removed and thus the Annex itself should be deleted and the criterion of forming an integral part of public collections listed in the inventories of museums, archives and libraries' conservation collections or the inventories of ecclesiastical institutions should also be removed. The diversity of national arrangements for protecting cultural objects is recognised in Article 36 of the Treaty. In this context, mutual trust, a willingness to cooperate and mutual understanding between Member States are therefore essential.
- (11) Administrative cooperation between the Member States needs to be stepped up so that this Directive can be applied more effectively and uniformly. The central authorities should therefore be required to use the Internal Market Information System ("IMI") provided for by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC<sup>24</sup>. It would also

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<sup>24</sup> OJ L 316, 14.11.2012, p. 1.

be desirable for other competent authorities of the Member States to use the same system where possible.

- (12) In order to ensure the protection of personal data, administrative cooperation and the exchange of information between the competent authorities should comply with the rules set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>25</sup> and, insofar as the Internal Market Information System is used, in Regulation(EU) No 1024/2012.
- (13) The time given to the competent authorities of the requesting Member State to check whether the cultural object found in another Member State is a cultural object within the meaning of this Directive should be extended. A longer period should allow appropriate measures to be taken in order to keep the object and, where necessary, prevent any action to evade the return procedure.
- (14) The time-limit for bringing return proceedings should be set at three years after the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder. In the interests of clarity, it should be stipulated that the time-limit for bringing proceedings begins on the date on which the information came to the knowledge of the central authority of the requesting Member State.
- (15) The Council of the European Union has recognised the need for measures to be taken in order to make preventing and combating crime against cultural objects more effective. It therefore recommended that the Commission support the Member States in the effective protection of cultural objects with a view to preventing and combating trafficking and promoting complementary measures where appropriate<sup>26</sup>.
- (16) It is desirable to ensure that all those involved in the market in cultural objects exercise due care and attention in transactions involving cultural objects. The consequences of acquiring a cultural object of unlawful origin will be genuinely dissuasive only if the obligation to return is coupled with an obligation on the possessor to prove the exercise of due care and attention in order to obtain compensation. In order, therefore, to achieve the Union's objectives in preventing and combating unlawful traffic in cultural objects, it must be stipulated that the possessor must provide proof that he exercised due care and attention in acquiring the object in order to obtain compensation, and that the possessor may not claim to have acted in good faith if he failed to exercise the level of due care and attention required by the circumstances.
- (17) In order to enable Member States to arrive at a uniform interpretation of the concept of due care and attention, the circumstances should be set out which are to be taken into account to determine whether due care and attention have been exercised.
- (18) The aim of this Directive, that of enabling the return of any cultural object classified as a national treasure which has been unlawfully removed from the territory of a Member State, cannot be adequately achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level. The Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of

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<sup>25</sup> OJ L 281, 23.11.1995, p. 74.

<sup>26</sup> Conclusions of the Council of the European Union on preventing and combating crime against cultural goods, Justice and Home Affairs Council, 13 and 14 December 2011.

proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (19) Since the tasks of the committee set up by Article 8 of Regulation (EC) No 116/2009 are rendered obsolete by the deletion of the Annex to Directive 93/7/EEC, references to that committee should be deleted.
- (20) Since the Annex to Regulation (EU) No 1024/2012 contains a list of provisions on administrative cooperation in Union acts which are implemented by means of the IMI, the Annex should be amended to include this Directive.
- (21) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises from Directive 93/7/EEC.
- (22) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B,

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↓ 93/7/EEC

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

For the purposes of this Directive:

- 1) 'Cultural object' shall mean an object which: is classified, before or after its unlawful removal from the territory of a Member State, among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 of the Treaty,

~~and~~

~~belongs to one of the categories listed in the Annex or does not belong to one of these categories but forms an integral part of:~~

~~public collections listed in the inventories of museums, archives or libraries' conservation collection.~~

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↓ 93/7/EEC (adapted)

~~For the purposes of this Directive, 'public collections' shall mean collections which are the property of a Member State, local or regional authority within a Member States or an institution situated in the territory of a Member State and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority;~~

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↓ 93/7/EEC

~~the inventories of ecclesiastical institutions.~~

- 2) 'Unlawfully removed from the territory of a Member State' shall mean:
- (a) removed from the territory of a Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EEC) No ~~3911/92~~ 116/2009,
- or
- (b) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.
- 3) 'Requesting Member State' shall mean the Member State from whose territory the cultural object has been unlawfully removed.
- 4) 'Requested Member State' shall mean the Member State in whose territory a cultural object unlawfully removed from the territory of another Member State is located.
- 5) 'Return' shall mean the physical return of the cultural object to the territory of the requesting Member State.

- 6) 'Possessor' shall mean the person physically holding the cultural object on his own account.
- 7) 'Holder' shall mean the person physically holding the cultural object for third parties.
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↓ 93/7/EEC (adapted)

- ⊗ 8) 'Public collections' shall mean collections which are the property of a Member State, local or regional authority within a Member State or an institution situated in the territory of a Member State and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority. ⊗
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↓ 93/7/EEC

#### *Article 2*

Cultural objects which have been unlawfully removed from the territory of a Member State shall be returned in accordance with the procedure and in the circumstances provided for in this Directive.

#### *Article 3*

Each Member State shall appoint one or more central authorities to carry out the tasks provided for in this Directive.

Member States shall inform the Commission of all the central authorities they appoint pursuant to this Article.

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↓ 93/7/EEC (adapted)

The Commission shall publish a list of these central authorities and any changes concerning them in the C series of the Official Journal of the European ~~Communities~~ ⊗ Union ⊗.

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↓ 93/7/EEC

*Article 4*

Member States' central authorities shall cooperate and promote consultation between the Member States' competent national authorities. The latter shall in particular:

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↓ 93/7/EEC (adapted)

- 1) upon application by the requesting Member State, seek a specified cultural object which has been unlawfully removed from its territory, identifying the possessor and/or holder. ~~The application must include all information needed to facilitate this search, with particular reference to the actual or presumed location of the object;~~
- 

↓ 93/7/EEC

⇒ new

- 2) notify the Member States concerned, where a cultural object is found in their own territory and there are reasonable grounds for believing that it has been unlawfully removed from the territory of another Member State;
- 3) enable the competent authorities of the requesting Member State to check that the object in question is a cultural object, provided that the check is made within ~~2~~ ⇒ five ⇐ months of the notification provided for in paragraph 2. If it is not made within the stipulated period, paragraphs 4 and 5 shall cease to apply;
- 4) take any necessary measures, in cooperation with the Member State concerned, for the physical preservation of the cultural object;
- 5) prevent, by the necessary interim measures, any action to evade the return procedure;
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↓ 93/7/EEC (adapted)

- 6) act as intermediary between the possessor and/or holder and the requesting Member State with regard to return. ~~To this end, the competent authorities of the requested Member States may, without prejudice to Article 5, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested State and provided that the requesting State and the possessor or holder give their formal approval.~~
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↓ 93/7/EEC (adapted)

⊗ For the purposes of paragraph 1, the Member State's application must include all information needed to facilitate the search, with particular reference to the actual or presumed location of the object. ⊗

⊗ For the purposes of paragraph 6, the competent authorities of the requested Member States may, without prejudice to Article 5, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested State and provided that the requesting State and the possessor or holder give their formal approval. ⊗

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↓ new

The central authorities of the Member States shall use the Internal Market Information System ("IMI") established by Regulation (EU) No 1024/2012 to cooperate and consult with each other. The Member States shall decide on the use of the IMI for the purposes of this Directive by other competent authorities.

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↓ 93/7/EEC

#### *Article 5*

The requesting Member State may initiate, before the competent court in the requested Member State, proceedings against the possessor or, failing him, the holder, with the aim of securing the return of a cultural object which has been unlawfully removed from its territory.

Proceedings may be brought only where the document initiating them is accompanied by:

- (a) a document describing the object covered by the request and stating that it is a cultural object;
- (b) a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

#### *Article 6*

The central authority of the requesting Member State shall forthwith inform the central authority of the requested Member State that proceedings have been initiated with the aim of securing the return of the object in question.

The central authority of the requested Member State shall forthwith inform the central authorities of the other Member States.

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↓ new

The exchange of information shall be conducted using the IMI.

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↓ 93/7/EEC (adapted)  
⇒ new

#### Article 7

1. 1. Member States shall lay down in their legislation that the return proceedings provided for in this Directive may not be brought more than ~~one year~~ ⇒ three years ⇐ after  the central authority of  the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder.

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↓ 93/7/EEC

Such proceedings may, at all events, not be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State.

However, in the case of objects forming part of public collections, referred to in Article 1 ~~(4)~~ (8), and ecclesiastical goods in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time-limit of 75 years, except in Member States where proceedings are not subject to a time-limit or in the case of bilateral agreements between Member States laying down a period exceeding 75 years.

2. Return proceedings may not be brought if removal from the national territory of the requesting Member State is no longer unlawful at the time when they are to be initiated.

#### Article 8

Save as otherwise provided in Articles 7 and 13, the competent court shall order the return of the cultural object in question where it is found to be a cultural object within the meaning of Article 1 (1) and to have been removed unlawfully from national territory.

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↓ 93/7/EEC (adapted)

#### Article 9

Where return of the object is ordered, the competent court in the requested States shall award the possessor ~~such~~  fair  compensation ~~as it deems fair~~ according to the circumstances of the case, provided ~~that it is satisfied~~ that the possessor  demonstrates that he  exercised due care and attention in acquiring the object.

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↓ new

In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the nature of the parties, the price paid, whether the possessor consulted any

accessible register of stolen cultural objects, and any other relevant information and documentation which he could reasonably have obtained and whether the possessor consulted accessible agencies or took any other step which a reasonable person would have taken in the circumstances.

The possessor may not claim to have acted in good faith if he failed to exercise the level of due care and attention required by the circumstances.

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↓ 93/7/EEC

~~The burden of proof shall be governed by the legislation of the requested Member State.~~

In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by that means.

The requesting Member State shall pay such compensation upon return of the object.

#### *Article 10*

Expenses incurred in implementing a decision ordering the return of a cultural object shall be borne by the requesting Member State. The same applies to the costs of the measures referred to in Article 4 (4).

#### *Article 11*

Payment of the fair compensation and of the expenses referred to in Articles 9 and 10 respectively shall be without prejudice to the requesting Member State's right to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

#### *Article 12*

Ownership of the cultural object after return shall be governed by that law of the requesting Member State.

#### *Article 13*

This Directive shall apply only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993.

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↓ 93/7/EEC (adapted)  
⇒ new

#### *Article 14*

1. Each Member State may extend its obligation to return cultural objects to ~~cover categories~~ of objects other than those ~~listed~~ defined in ~~the Annex~~ Article 1(1).

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↓ 93/7/EEC  
⇒ new

2. Each Member State may apply the arrangements provided for by this Directive to requests for the return of cultural objects unlawfully removed from the territory of other Member States prior to 1 January 1993.

#### Article 15

This Directive shall be without prejudice to any civil or criminal proceedings that may be brought, under the national laws of the Member States, by the requesting Member State and/or the owner of a cultural object that has been stolen.

#### Article 16

1. Member States shall send the Commission every ~~three~~ ⇒ five ⇐ years, and for the first time in ~~February 1996~~ ⇒ [...] ⇐, a report on the application of this Directive.

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↓ 93/7/EEC (adapted)  
⇒ new

2. The Commission shall send the European Parliament, the Council and the  European  Economic and Social Committee, every ~~three~~ ⇒ five ⇐ years, a report reviewing the application of this Directive. ⇒ The report shall be accompanied by any appropriate proposals. ⇐

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↓ 93/7/EEC

~~3. The Council shall review the effectiveness of this Directive after a period of application of three years and, acting on a proposal from the Commission, make any necessary adaptations.~~

~~4. 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 the Annex, on the basis of economic and monetary indicators in the Community.~~

#### Article 17

~~The Commission shall be assisted by the Committee set up by Article 8 of Regulation (EEC) No 3911/92.~~

~~The Committee shall examine any question arising from the application of the Annex to this Directive which may be tabled by the chairman either on his own initiative or at the request of the representative of a Member State.~~

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↓ new

#### Article 17

The following point 6 shall be added to the Annex to Regulation (EU) No 1024/2012:

"6. European Parliament and Council Directive xxxx/xx/EU on the return of cultural objects unlawfully removed from the territory of a Member State (\*): Articles 4 and 6.

(\*) OJ L [...]."

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↓ 93/7/EEC (adapted)

#### Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive within nine months of its adoption, except as far as the Kingdom of Belgium, the Federal Republic of Germany and the Kingdom of the Netherlands are concerned, which must conform to this Directive at the latest twelve months from the date of its adoption~~ ☒ the [following] articles: [Article 1(1), the first subparagraph of Article 4, Article 4(3), the fourth subparagraph of Article 4, the third subparagraph of Article 6, Article 7, Article 9 and Article 16] of this Directive ☒ at the latest twelve months from the date of its adoption.

They shall forthwith ~~inform~~ ☒ communicate the text of these provisions to ☒ the Commission ~~thereof~~. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. ☒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive(s) repealed by this Directive shall be construed as references to this Directive. ☒ ~~The methods of making such a reference shall be laid down by the Member States~~ ☒ Member States shall determine how such reference is to be made and how that statement is to be formulated ☒ .

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↓

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 19

Directive 93/7/EEC, as amended by the Directives listed in Annex I, Part A, is repealed with effect from [...], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

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

*Article 20*

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

Articles [...] shall apply from [...].

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↓ 93/7/EEC

*Article 21*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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↓ 93/7/EEC

**ANNEX**

~~Categories referred to in the second indent of Article 1 (1) to which objects classified as 'national treasures' within the meaning of Article 36 of the Treaty must belong in order to qualify for return under this Directive~~

~~A. 1. Archaeological objects more than 100 years old which are the products of:~~

~~land or underwater excavations and finds,~~

~~archaeological sites,~~

~~archaeological collections.~~

~~2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, more than 100 years old.~~

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↓ 96/100/EC Article 1(1)(a)

~~3. Pictures and paintings, other than those included in Category 3A or 4, executed entirely by hand on any material and in any medium<sup>27</sup>.~~

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↓ 96/100/EC Article 1(1)(b)

~~3 A. Water colours, gouaches and pastels executed entirely by hand on any material<sup>+</sup>.~~

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↓ 96/100/EC Article 1(1)(c)

~~4. 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 material<sup>+</sup>.~~

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↓ 93/7/EEC

~~5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters<sup>+</sup>.~~

~~6. Original sculptures or statuary and copies produced by the same process as the original<sup>+</sup> other than those in category 1.~~

~~7. Photographs, films and negatives thereof<sup>+</sup>.~~

~~8. Incunabula and manuscripts, including maps and musical scores, singly or in collections<sup>+</sup>.~~

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<sup>27</sup> Which are more than fifty years old and do not belong to their originators.

- ~~9. Books more than 100 years old, singly or in collections.~~
- ~~10. Printed maps more than 200 years old.~~
- ~~11. Archives and any elements thereof, of any kind, on any medium, comprising elements more than 50 years old.~~
- ~~12. (a) Collections<sup>28</sup> and specimens from zoological, botanical, mineralogical or anatomical collections;~~
- ~~(b) Collections<sup>2</sup> of historical, palaeontological, ethnographic or numismatic interest.~~
- ~~13. Means of transport more than 75 years old.~~
- ~~14. Any other antique item not included in categories A 1 to A 13, more than 50 years old.~~

~~The cultural objects in categories A 1 to A 14 are covered by this Directive only if their value corresponds to, or exceeds, the financial thresholds under B.~~

~~**B. Financial thresholds applicable to certain categories under A (in euros)**~~

↓ 2001/38/EC Article 1(1)

~~VALUE:~~

~~Whatever the value~~

↓ 93/7/EEC

- ~~1 (Archaeological objects)~~
- ~~2 (Dismembered monuments)~~
- ~~8 (Incunabula and manuscripts)~~
- ~~11 (Archives)~~
- ~~15 000~~
- ~~4 (Mosaics and drawings)~~
- ~~5 (Engravings)~~
- ~~7 (Photographs)~~
- ~~10 (Printed maps)~~

↓ 96/100/EC Article 1(2)

~~30 000~~

<sup>28</sup> As defined by the Court of Justice in its Judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of Heading No 99.05 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.'

~~3A. (Water colours, gouaches and pastels)~~

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↓ 93/7/EEC

~~50 000~~

~~6 (Statuary)~~

~~9 (Books)~~

~~12 (Collections)~~

~~13 (Means of transport)~~

~~14 (Any other item)~~

~~150 000~~

~~3 (Pictures)~~

~~The assessment of whether or not the conditions relating to financial value are fulfilled must be made when return is requested. The financial value is that of the object in the requested Member State.~~

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↓ 2001/38/EC Article 1(2)

~~For the Member States which do not have the euro as their currency, the values expressed in euro in the Annex 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. The Advisory Committee on Cultural Goods shall review this method of calculation, on a proposal from the Commission, 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 Communities in the first days of the month of November preceding the date on which the revision takes effect.~~

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## **ANNEX I**

### **Part A**

#### **Repealed Directive with list of its successive amendments** (referred to in Article 19)

Council Directive 93/7/EEC	(OJ L 74, 27.03.1993, p. 74)
Directive 96/100/EC of the European Parliament and of the Council	(OJ L 60, 1.3.1997, p. 59)
Directive 2001/38/EC of the European Parliament and of the Council	(OJ L 187, 10.7.2001, p. 43)

### **Part B**

#### **List of time-limits for transposition into national law** (referred to in Article 19)

Directive	Time-limit for transposition
93/7/EEC	15.12.1993 <sup>29</sup>
96/100/EC	1.9.1997
2001/38/EC	31.12.2001

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<sup>29</sup> The time-limit for transposition for Belgium, Germany and the Netherlands was 15 March 1994.

## ANNEX II

### CORRELATION TABLE

Directive 93/7/EEC	This Directive
Article 1(1), first indent	Article 1(1)
Article 1(1), second indent, introductory phrase	_____
Article 1(1), second indent, first sub-indent, first subparagraph	_____
Article 1(1), second indent, first sub-indent, second subparagraph	Article 1(8)
Article 1(1), second indent, second sub-indent	_____
Article 1(2), first indent	Article 1(2)(a)
Article 1(2), second indent	Article 1(2)(b)
Article 1(3) to (7)	Article 1(3) to (7)
Articles 2 and 3	Articles 2 and 3
Article 4, first subparagraph	Article 4, first subparagraph
Article 4(1), second sentence	Article 4, second subparagraph
Article 4(6), second sentence	Article 4, third subparagraph
_____	Article 4, fourth subparagraph
Article 5, first subparagraph	Article 5, first subparagraph
Article 5, second subparagraph, first indent	Article 5, second subparagraph, point (a)
Article 5, second subparagraph, second indent	Article 5, second subparagraph, point (b)
Article 6, first subparagraph	Article 6, first subparagraph
Article 6, second subparagraph	Article 6, second subparagraph
_____	Article 6, third subparagraph
Articles 7 and 8	Articles 7 and 8
Article 9, first subparagraph	Article 9, first subparagraph
Article 9, second subparagraph	_____
_____	Article 9, second subparagraph

_____	Article 9, third subparagraph
Article 9, third and fourth subparagraphs	Article 9, fourth and fifth subparagraphs
Articles 10 to 15	Articles 10 to 15
Article 16, paragraphs 1 and 2	Article 16, paragraphs 1 and 2
Article 16, paragraph 3	_____
Article 16, paragraph 4	_____
Article 17	_____
_____	Article 17
Article 18	Article 18, paragraph 1
_____	Article 18, paragraph 2
_____	Article 19
_____	Article 20, first subparagraph
_____	Article 20, second subparagraph
Article 19	Article 21
Annex	_____
_____	Annex I
_____	Annex II



## LEGISLATIVE FINANCIAL STATEMENT

- 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**
  - 1.1. Title of the proposal/initiative**
  - 1.2. Policy area(s) concerned in the ABM/ABB structure**
  - 1.3. Nature of the proposal/initiative**
  - 1.4. Objective(s)**
  - 1.5. Grounds for the proposal/initiative**
  - 1.6. Duration and financial impact**
  - 1.7. Management method(s) envisaged**
  
- 2. MANAGEMENT MEASURES**
  - 2.1. Monitoring and reporting rules**
  - 2.2. Management and control system**
  - 2.3. Measures to prevent fraud and irregularities**
  
- 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**
  - 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**
  - 3.2. Estimated impact on expenditure**
    - 3.2.1. Summary of estimated impact on expenditure*
    - 3.2.2. Estimated impact on operational appropriations*
    - 3.2.3. Estimated impact on appropriations of an administrative nature*
    - 3.2.4. Compatibility with the current multiannual financial framework*
    - 3.2.5. Third-party contributions*
  - 3.3. Estimated impact on revenue**

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State (Recast)

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>30</sup>

Title 2 – Enterprise - Chapter 02 03: Internal market for goods and sectoral policies

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Contribute towards the protection of cultural objects in the context of the internal market.

##### 1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective: to enable Member States to secure the return of cultural objects which are classified as national treasures and have been unlawfully removed from their territory since 1993.

##### 1.4.3. Expected result(s) and impact

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The aim of this proposal is to increase the number of returns of cultural objects classified as national treasures and reduce their costs. It will have an impact on the prevention and combating of crime against cultural objects within the European Union.

##### 1.4.4. Indicators of results and impact

*Specify the indicators for monitoring implementation of the proposal/initiative.*

- Increasing the number of return proceedings;
- increasing the number of returns of cultural objects classified as national treasures;
- following up requests to search for a cultural object within the meaning of Article 4(1) of the Directive;
- following up notifications that a cultural object within the meaning of Article 4(2) of the Directive has been found;
- comparability of statistics on the application of the Directive;
- survey of satisfaction among central authorities with the use of the IMI system.

<sup>30</sup>

ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

## 1.5. Grounds for the proposal/initiative

### 1.5.1. Requirement(s) to be met in the short or long term

The general objective of this initiative is to contribute towards the protection of cultural objects in the context of the internal market by making it easier to secure the return of cultural objects which are classified as national treasures and have been unlawfully removed from the territory of a Member State since 1993.

### 1.5.2. Added value of EU involvement

The cross-border aspect of the unlawful removal of cultural objects makes the Union better suited to take action in this area.

### 1.5.3. Lessons learned from similar experiences in the past

The assessments of Directive 93/7/EEC show that the arrangements in place are of limited effectiveness in securing the return of certain cultural objects which are classified as national treasures.

In the light of studies and reports by experts on preventing and combating crime against cultural objects, the Commission has also concluded that the Directive needs to be revised.

### 1.5.4. Compatibility and possible synergy with other relevant instruments

This initiative is fully compatible with the other measures and policies on cultural objects.

## 1.6. Duration and financial impact

Proposal/initiative of **unlimited duration**

## 1.7. Management method(s) envisaged<sup>31</sup>

**Centralised direct management** by the Commission

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<sup>31</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

Article 16 lays down the evaluation and monitoring arrangements allowing the other institutions of the Union to gain an insight into the actual implementation of the Directive. The reports reviewing the application of the Directive will be drawn up every five years.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

No financial risks could be identified.

#### *2.2.2. Control method(s) envisaged*

The control methods envisaged are laid down in the Financial Regulation and Regulation (EU) No 1268/2012.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

The Commission must ensure that the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and other illegal activities, by effective checks and by the recovery of amounts unduly paid and, if irregularities are detected, by effective, proportionate and dissuasive penalties, in accordance with Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EC) No 1073/1999.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Participation			
		Diff./ Non-diff. (32)	from EFTA countries <sup>33</sup>	from applicant countries <sup>34</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
[...]	[XX.YY.YY.YY] [...]	Diff./ Non-diff.				

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Participation			
	Number [Description.....]	Diff./ Non-diff.	from EFTA countries	from applicant countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/N O	YES/N O	YES/N O	YES/NO

<sup>32</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>33</sup> EFTA: European Free Trade Association.

<sup>34</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:			2015	2016	2017	2018	2019	TOTAL
DG: ENTR								
• Operational appropriations			0	0	0	0	0	0
<b>TOTAL appropriations for DG ENTR</b>	Commitments	=1+1a +3	0	0	0	0	0	0
	Payments	=2+2a +3	0	0	0	0	0	0
Heading of multiannual financial framework:								
	<b>5</b>	'Administrative expenditure'						
DG ENTR			2015	2016	2017	2018	2019	TOTAL
• Human resources			0.2	0.2	0.2	0.2	0.2	1.0
• Other administrative expenditure			0.05	0.05	0.05	0.05	0.05	0.25
<b>TOTAL DG ENTR</b>		Appropriations	0.25	0.25	0.25	0.25	0.25	1.25
<b>TOTAL appropriations for HEADING 5 of the multiannual financial framework</b>		(Total commitments = Total payments)	0.25	0.25	0.25	0.25	0.25	1.25
<b>TOTAL appropriations for HEADINGS 1 to 5 of the multiannual financial framework</b>		Commitments	0.25	0.25	0.25	0.25	0.25	1.25
		Payments	0.25	0.25	0.25	0.25	0.25	1.25

### 3.2.2. Estimated impact on operational appropriations

The proposal/initiative does not require the use of operational appropriations

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

The proposal requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	2015	2016	2017	2018	2019	TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>						
Human resources	0.2	0.2	0.2	0.2	0.2	<b>1.0</b>
Other administrative expenditure	0.05	0.05	0.05	0.05	0.05	<b>0.25</b>
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>	<b>1.25</b>

<b>Outside HEADING 5<sup>35</sup> of the multiannual financial framework</b>						
Human resources	0	0	0	0	0	0
Other expenditure of an administrative nature	0	0	0	0	0	0
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>TOTAL</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>	<b>0.25</b>	<b>1.25</b>
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<sup>35</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

### 3.2.3.2. Estimated human resource requirements

The proposal requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	2015	2016	2017	2018	2019
<b>• Establishment plan posts (officials and temporary agents)</b>					
02 01 01 01 (Headquarters and Commission's Representation Offices)	0.2	0.2	0.2	0.2	0.2
	FTE = 1.5	FTE = 1.5	FTE = 1.5	FTE = 1.5	FTE = 1.5
XX 01 01 02 (Delegations)	0	0	0	0	0
XX 01 05 01 (Indirect research)	0	0	0	0	0
10 01 05 01 (Direct research)	0	0	0	0	0
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>36</sup></b>					
XX 01 02 01 (CA, INT, SNE from the 'global envelope')	0	0	0	0	0
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)	0	0	0	0	0
XX 01 04 yy <sup>37</sup>	- at Headquarters <sup>38</sup>	0	0	0	0
	- in delegations	0	0	0	0
XX 01 05 02 (CA, INT, SNE - Indirect research)	0	0	0	0	0
10 01 05 02 (CA, INT, SNE - Direct research)	0	0	0	0	0
Other budget lines (specify)	0	0	0	0	0
<b>TOTAL</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>
	<b>FTE=1.5</b>	<b>FTE=1.5</b>	<b>FTE=1.5</b>	<b>FTE=1.5</b>	<b>FTE=1.5</b>

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

<sup>36</sup> CA= Contract Agent; LA= Local Agent; SNE= Seconded National Expert; INT= agency staff ("Intérimaire"); JED= "Jeune Expert en Délégation" (Young Experts in Delegations).

<sup>37</sup> Under the ceiling for external personnel from operational appropriations (former "BA" lines).

<sup>38</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

Officials and temporary agents	Manage the transposition and implementation of the Directive.
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*3.2.4. Compatibility with the current multiannual financial framework*

The proposal is compatible with the current multiannual financial framework.

*3.2.5. Third-party contributions*

The proposal does not provide for co-financing by third parties.

**3.3. Estimated impact on revenue**

The proposal has no financial impact on revenue.