

Cooperation Agreements. An overall limit of ECU 250 million per year shall be set for a three-year period; this limit will be reviewed at the end of this period.

To this end the Bank and the Commission shall agree on the procedures for implementing the guarantee.

Amended proposal for a Council Directive on the return of cultural objects unlawfully removed from the territory of a Member State ⁽¹⁾

(92/C 172/06)

COM(92) 280 final — SYN 382

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 17 June 1992)

⁽¹⁾ OJ No C 53, 28. 2. 1992, p. 11.

ORIGINAL PROPOSAL

AMENDED PROPOSAL

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

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Having regard to the proposal from the Commission,

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In cooperation with the European Parliament,

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Having regard to the opinion of the Economic and Social Committee,

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Whereas Article 8a of the Treaty provides for the establishment, not later than 1 January 1993, of the internal market, which is to comprise 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 Treaty;

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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; whereas they will, on the other hand, no longer be able to apply checks or formalities at the Community's internal frontiers to ensure the effectiveness of those measures;

Whereas arrangements should therefore be introduced enabling Member States to secure the return to their territory of cultural objects which are classed as national treasures within the meaning of Article 36 of the Treaty and have been removed from their territory in breach of the abovementioned national measures or of Council Regulation (EEC) No ...; 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 Article 36 of the Treaty, but merely categories of object which may be classed as such and may accordingly be covered by the return procedure introduced by this Directive;

Whereas the procedure introduced by this Directive is a first step in establishing cooperation between Member States in this field in the context of the internal market; whereas 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 with a view to amending, if necessary, the Annex to this Directive in the light of experience,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'cultural object' means an object which:

- is a 'national treasure' under national legislation in the context of Article 36 of the Treaty,

and

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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; whereas they will, on the other hand, no longer be able to apply checks or formalities at the Community's internal frontiers to ensure the effectiveness of those measures;

Whereas arrangements should therefore be introduced enabling Member States to secure the return to their territory of cultural objects which are classed as national treasures within the meaning of Article 36 of the Treaty and have been removed from their territory in breach of the abovementioned national measures or of Council Regulation (EEC) No ...; 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 Article 36 of the Treaty, but merely categories of object which may be classed as such and may accordingly be covered by the return procedure introduced by this Directive;

Whereas the procedure introduced by this Directive is a first step in establishing cooperation between Member States in this field in the context of the internal market, which should lead to a system of 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 with a view to amending, if necessary, the Annex to this Directive in the light of experience,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'cultural object' means 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 administrative procedures in the context of Article 36 of the Treaty,

and

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- belongs to one of the categories listed in the Annex to this Directive;
2. 'unlawfully removed from the territory of a Member State' means:
- 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 ...;
- or
- not returned at the end of a period of lawful temporary removal;
3. 'requesting Member State' means the Member State from whose territory the cultural object has been unlawfully removed;
4. 'requested Member State' means the Member State on whose territory a cultural object unlawfully removed from the territory of another Member State is located;
5. 'return' means the physical return of the cultural object to the territory of the requesting Member State;
6. 'holder' means the person physically holding the cultural object.

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.

The Commission shall publish a list of those central authorities in the *Official Journal of the European Communities*, C series.

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- belongs to one of the categories listed in the Annex to this Directive 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 collections,
- the inventories of ecclesiastical institutions;
2. 'unlawfully removed from the territory of a Member State' means:
- removed from the territory of a Member State in breach of the rules in force in that Member State on the protection of national treasures or in breach of Regulation (EEC) No ...;
- failure to comply with the conditions under which temporary authorization was granted;
3. 'requesting Member State' means the Member State from whose territory the cultural object has been unlawfully removed;
4. 'requested Member State' means the Member State on whose territory a cultural object unlawfully removed from the territory of another Member State is located;
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Article 4

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

1. seek cultural objects which have been unlawfully removed from the territory of a Member State, locating them and identifying the holder;
2. inform the Member States presumed to be concerned, where a cultural object is found on their 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 within the meaning of Article 1 (1);
4. take any necessary measures for the physical preservation of the cultural object;
5. prevent, through the necessary interim measures, any action to evade possible return;
6. act as intermediary between the holder and the requesting Member State.

Article 5

The requesting Member State may initiate, before the competent court in the requested Member State, proceedings against 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 document describing the object covered by the request and certifying that it is a cultural object within the meaning of Article 1 (1),
- 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.

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Article 4

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

1. seek cultural objects which have been unlawfully removed from the territory of a Member State, locating them and identifying the holder;
2. inform the Member States presumed to be concerned, where a cultural object is found on their territory, of its location and the identity of the holder, where there is evidence 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 within the meaning of Article 1 (1);
4. take any necessary measures for the physical preservation of the cultural object;
5. prevent, through the necessary interim measures, any action to evade possible return;
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The central authority of the requested Member State shall forthwith inform the central authorities of the other Member States.

Article 7

The central authority of the requested Member State or of other Member States which have a legitimate interest may, at its request, take part in the proceedings referred to in Article 5.

Article 8

1. Return proceedings provided for in this Directive may no longer be brought more than five years after the requesting Member State became aware or ought reasonably to have become aware of the location of the cultural object or the identity of its holder. Such proceedings may, at all events, no longer be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State.

2. Return proceedings may not be brought if removal from the national territory is no longer unlawful.

Article 9

Save as otherwise provided in Articles 8 and 14, 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.

Article 10

Where return of the object is ordered, the acquirer shall be entitled to fair compensation, to be determined by the competent court according to the circumstances of the case, on condition that he proves that he could not have known, or could not have been expected to know, that the object had been unlawfully removed from the territory of the requesting Member State.

In the case of a donation or succession, the acquirer 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.

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

Article 7

Where various return proceedings have been brought in respect of the same object, the judicial authority shall deliver a single judgment.

Article 8

1. Return proceedings provided for in this Directive may no longer be brought more than five years after the requesting Member State became aware of the location of the cultural object and the identity of its holder. Such proceedings may, at all events, no longer be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State, except in the case of objects forming part of public collections recognized as not being subject to a time limit.

2. Return proceedings may not be brought if removal from the national territory of the requesting State is no longer unlawful.

Article 9

Save as otherwise provided in Articles 8 and 14, 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.

Article 10

Where return of the object is ordered, the acquirer shall be entitled to fair compensation, to be determined by the competent court according to the circumstances of the case, on condition that he proves that he had exercised all due care at the time of acquisition.

In the case of a donation or succession, the acquirer 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.

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Article 11

Expenses incurred in implementing a decision ordering the return of a cultural object shall be borne by the requesting Member State.

Article 12

Payment of the fair compensation and of the expenses referred to in Articles 10 and 11 respectively shall be without prejudice to the requesting Member State's right to take action, under its national law, with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

Article 13

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

Article 14

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

Article 15

1. Each Member State may extend its obligation to return cultural objects to cover categories of object other than those listed in the Annex.
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 16

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 17

1. Member States shall send the Commission each year, and for the first time in February 1994, a report on the application of this Directive.

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Article 11

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Article 17

1. Member States shall send the Commission each year, and for the first time in February 1994, a report on the application of this Directive.

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2. The Commission shall send the Council, the European Parliament and the Economic and Social Committee every three years a report reviewing the application of this Directive.

In the light of the assessment of the effectiveness of the return machinery, it shall, where appropriate, propose amendments to this Directive.

Article 18

For the purposes of revising the Annex to this Directive, the Commission shall be assisted by the committee set up by Regulation (EEC) No ...

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

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 a Member State's representative.

Article 19

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 20

This Directive is addressed to the Member States.

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ANNEX

ANNEX

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

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

- A. 1. Products of archaeological excavations and archaeological finds, more than 100 years old
2. Elements of artistic, historical or religious monuments or archaeological sites which have been dismembered, including furniture, more than 100 years old
3. Pictures, paintings and drawings produced entirely by hand on any support and in any material ⁽¹⁾
4. Original engravings, prints and lithographs and lithographic plates ⁽¹⁾
5. Original works of statuary art or sculpture ⁽¹⁾
6. Constructions and composite works ⁽¹⁾
7. Photographs ⁽¹⁾
8. Manuscripts more than 100 years old and incubula, singly or in collections
9. Books more than 200 years old, singly or in collections
10. Archives of any kind, on any medium, more than 50 years old
11. Collections and specimens for collections of postage stamps
12. Collections and specimens of fauna, flora, minerals or anatomy or of historical, archaeological, palaeontological, ethnographic or numismatic interest

- A. 1. Products of archaeological excavations and archaeological finds, more than 100 years old
2. Elements of artistic, historical or religious monuments or archaeological sites which have been dismembered, including furniture, more than 100 years old
3. Pictures, paintings, drawings and mosaics produced entirely by hand on any support and in any material ⁽¹⁾
4. Original engravings, prints and lithographs and lithographic plates ⁽¹⁾
5. Original works of statuary art or sculpture ⁽¹⁾
6. Constructions and composite works ⁽¹⁾
7. Photographs and audiovisual material ⁽¹⁾
8. Manuscripts more than 100 years old and incubula, singly or in collections
9. Books more than 200 years old, singly or in collections
10. Archives of any kind, on any medium, more than 50 years old
11. Collections and specimens for collections of postage stamps
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13. Motor vehicles more than 75 years old	13. Motor vehicles more than 75 years old
14. Antiques and collectors' pieces more than 100 years old	14. Antiques and collectors' pieces more than 100 years old
The cultural objects in these categories are only covered by the present Directive if they fulfil the financial criteria under B.	The cultural objects in these categories are only covered by the present Directive if they fulfil the financial criteria under B.
B. Financial criteria applicable to certain categories under A:	B. Financial criteria applicable to certain categories under A:
Category 3: — Objects from between 1600 and 1900: ECU 75 000, — Objects from after 1900: ECU 150 000;	Category 3: — Objects from between 1600 and 1900: ECU 75 000, — Objects from after 1900: ECU 150 000;
Category 4: ECU 7 500;	Category 4: ECU 7 500;
Category 5: ECU 50 000;	Category 5: ECU 50 000;
Category 6: ECU 100 000;	Category 6: ECU 100 000;
Category 7: ECU 7 500;	Category 7: ECU 7 500;
Category 11: ECU 25 000;	Category 11: ECU 25 000;
Category 14: — Furniture, furnishings or decorative items: ECU 20 000; — Musical instruments: ECU 20 000; — Any other object: ECU 50 000.	Category 14: — Furniture, furnishings or decorative items: ECU 20 000; — Musical instruments: ECU 20 000; — Any other object: ECU 50 000.
The assessment of whether or not a monetary threshold is reached must be made when return is requested. The monetary value is that of the object in the requested Member State.	The assessment of whether or not a monetary threshold is reached must be made when return is requested. The monetary value is that of the object in the requested Member State.