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**REPORT FROM THE COMMISSION
TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE**

**Second report on the application of Council Directive 93/7/EEC on the return of cultural
objects unlawfully removed from the territory of a Member State**

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1. INTRODUCTION

Council Directive 93/7/EEC, adopted on 15 March 1993,¹ introduces systems for cooperation between national authorities and a legal procedure for the return of cultural objects when they have been unlawfully removed from the territory of a Member State.

Article 16(2) of the Directive lays down that every three years the Commission shall send a report reviewing the application of the Directive to the European Parliament, the Council and the European Economic and Social Committee.

This is the second report and covers the period 1999-2003; it assesses the application of the Directive in the fifteen Member States. The first report covered the period 1993-1998².

2. GENERAL BACKGROUND

At Community level, cultural objects are subject to the provisions of the Treaty establishing the European Community (hereafter referred to as the EC Treaty), in particular those concerning the free movement of goods. Articles 28 and 29 of the EC Treaty prohibit measures having an equivalent to quantitative restrictions on imports or exports.

However, article 30 lays down that articles 28 and 29 of the EC Treaty shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds, in particular, of “the protection of national treasures possessing artistic, historic or archaeological value”. For such prohibitions or restrictions to be allowed, they must in any event be necessary for and proportionate to the objective that they aim to achieve and, consequently, they must constitute neither a means of arbitrary discrimination nor a disguised restriction on trade between Member States.

In this context, Directive 93/7/EEC is an internal market support measure aimed at reconciling the operation of the internal market with the guarantee that Member States can protect cultural objects with the status of national treasures of artistic, historic or archaeological value, in accordance with article 30 EC.

The aim of the Directive is not to combat the illegal trafficking of cultural objects. Nor does it regulate the use which Member States may make of article 30 EC. Under this article Member States preserve the right to define their national treasures and the ability to take the national measures necessary to protect them.

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, OJ L 74 of 27.03.1993, p. 74, amended by Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997, OJ L 60 of 1 March 1997, p. 59, and by Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001, OJ L 187 of 10 July 2001, p. 43.

² Report from the Commission to the Council, the European Parliament and the European 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 of 25 May 2000.

3. FIRST REPORT ON THE APPLICATION OF DIRECTIVE 93/7/EEC (1993-1998)

3.1. Conclusions of the first report

The first report³ noted the slow progress made in transposing the Directive into national law and the consequent delay in its application. The actual period of application of the Directive was therefore not considered sufficient to assess its effectiveness.

The report stressed that the Member States saw the Directive as necessary and useful for the protection of their cultural heritage. Most Member States also regarded the Community legal framework created by the Directive as sufficient, although some would have liked to develop it further. For example, Italy was of the opinion that the one-year time limit should be increased to three years, while the Netherlands proposed extending the right to bring return proceedings to private individuals.

However, the report revealed that administrative cooperation between the national and Community authorities had not taken any practical shape. Most Member States therefore called for greater cooperation. The report also noted that the traceability of cultural objects should be improved, given the lack of information on cultural objects unlawfully removed from the territories of the Member States.

3.2. Institutions' responses

The responses of the European Parliament and the Council proposed improvements to the Directive.

In its Resolution,⁴ the European Parliament stated that the European Union should, within its sphere of jurisdiction, attach greater importance to combating illegal trade in cultural objects and that the Commission had a central role to play. Parliament therefore called for:

- a change in the one-year time limit laid down in Directive 93/7/EEC;
- a campaign in the 15 Member States and the 10 candidate countries, aimed at raising public awareness of the adverse effects of the illegal trade in cultural objects;
- comprehensive, public catalogues of all such objects in the possession of public or private institutions, foundations or bodies; and
- a Green Paper on illegal trade in cultural objects and specific proposals at Community level to combat it.

This report deals exclusively with the application of the Directive and does not address the last three points.

³ See footnote 2.

⁴ European Parliament Resolution of 12 June 2001 on the Commission report to the Council, the European Parliament and the European 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 OJ C 53 E of 28 February 2002, p.125, p.7.

In its Resolution,⁵ the Council called upon Member States to exploit fully the protection afforded by the Directive, particularly by intensifying administrative cooperation. It called on the Commission to:

- pursue the proposed initiatives and, if necessary, develop new ones to contribute more effectively to the protection of Member States' cultural heritage and the effective operation of the Directive; and
- pay particular attention to the establishment of administrative structures and capabilities in the new Member States that are responsible for protecting the European Union's new external borders.

4. DEVELOPMENTS SINCE THE FIRST REPORT

4.1. Legal amendments: Directive 2001/38/EC

In accordance with the first report, Directive 2001/38/EC⁶ amends the Annex to Directive 93/7/EEC in order to adapt, as of 1 January 2002, the amounts expressed in national currencies to the euro and to replace the reference to the value 0 (zero) of the financial thresholds by the words “Whatever the value”. The Directive has been transposed by all the Member States.

4.2. Preparation for the accession of the 10 new Member States

The Commission examined the ten new Member States' draft national measures transposing the Directive. It thus provided the technical assistance necessary to facilitate correct transposition within the deadlines set. However, in 2004 the Commission initiated infringement proceedings against some Member States for failing to notify national transposition measures.

4.3. Contribution to improving the protection of the European cultural heritage: study on the traceability of cultural objects

The main objective of the study, which was finalised at the end of 2004, was to examine the structures and systems put in place in the Member States for the dissemination of information, with a view to collecting, passing on and exchanging information on the cultural objects listed in the Annex to the Directive⁷.

The study showed that the system of cultural heritage protection in each country consisted of a core of national treasures which could not permanently leave the national territory, a second category comprising cultural objects that required national authorisation in order to be transferred abroad and a third category consisting of all the objects which could move freely without controls because of their relative lack of importance in cultural terms. The study

⁵ Council Resolution of 21 January 2002 on the Commission report to the Council, the European Parliament and the European Economic and Social Committee on the implementation of Regulation (EEC) No 3911/92 on the export of cultural goods and Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, OJ C 32 of 5 February 2002, page 3.

⁶ Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001, OJ L 187 of 10 July 2001, p.43.

⁷ http://europa.eu.int/comm/enterprise/regulation/inst_sp/dir937_en.htm

concluded that traceability was possible only for cultural objects belonging to the core category and, to a lesser extent, the second category which could be removed on the basis of a licence.

To increase the traceability of cultural objects in Europe when they are transferred from one Member State to another, the study recommended the following measures:

- the adoption of a single model licence for transfers of cultural objects within the Community;
- the creation at European level of a database of transfer licences and licences for exports outside the Community; and
- the introduction of efficient systems for marking cultural objects and the establishment of a network based on regular meetings and the use of common technical tools in order to increase cooperation between the competent authorities in the Member States⁸.

4.4. Improving administrative cooperation: adoption of guidelines

The advisory Committee referred to in article 17 of the Directive has adopted guidelines for improving and strengthening administrative cooperation between the competent national authorities through the creation of a network of contacts and the exchange of information⁹. They provide the institutions and persons concerned with useful information regarding the existence of Community instruments regulating the export of cultural objects to non-member countries and the return of objects which were unlawfully removed from the territory of a Member State.

5. APPLICATION OF THE DIRECTIVE IN THE PERIOD 1999-2003.

5.1. Content of the Member States' implementation reports

In the absence of the reports which, in accordance with article 16 of the Directive, at the end of February 2004 the Commission sent a questionnaire to the Member States designed to make it easier to compare the data provided. All the Member States contributed, although several reminders were necessary before the last contribution was obtained in March 2005. An additional questionnaire was then sent, later in March 2005, to the central authorities responsible for implementing the Directive: at the end of September 2005 four Member States had not replied to this second questionnaire (France, Luxembourg, the Netherlands and Austria).

The Member States regard the Directive as a useful instrument for recovering national treasures removed unlawfully from their territory from 1993 onwards. However, their comments reveal that:

- the Directive is not often applied;

⁸ This recommendation has already resulted in the approval, under the Sixth Research Framework Programme (2002-2006), of an initial research project. At the time of drafting this report, a new call for research proposals was being drawn up including tasks aimed in particular at facilitating authentication and improving the traceability and marking of cultural objects.

⁹ http://europa.eu.int/comm/taxation_customs/customs/customs_controls/cultural_goods/index_en.htm. At the time of drafting this report, these guidelines were being updated.

- there is insufficient cooperation between the competent authorities at Community level; and
- the central authorities lack data on the actual application of the Directive.

The statistics on the application of articles 4 and 5 of Directive 93/7/EEC, sent to the Commission by the Member States, are annexed. To summarise, there were five cases where cultural objects were returned as a result of cooperation between the national authorities without recourse to the legal procedure provided for in Directive 93/7/EEC. Two other return proceedings initiated during the period in question are still in progress.

Twelve applications for searches for cultural objects and nine notifications of cultural objects found in the territory of Member States were reported. The Netherlands reported eight requests for verification by six Member States. Austria mentioned just one case.

Finally, Germany and Portugal stated that they had taken the measures necessary for the physical preservation of cultural objects. Italy reported that France and Germany had taken interim measures in its favour to prevent action to evade the return procedure. This was not corroborated by France and Germany.

The Member States also reported three proceedings for the return of cultural objects under article 5 of the Directive, two initiated by Greece and one by France.

Some Member States, such as Germany and the Netherlands, put the rare application of the Directive down to ignorance on the part of the public prosecutor and the police authorities of the national legislation implementing the Directive. Others, such as Spain, believe the time limit for initiating proceedings for the return of an object is too short, hence the preference for civil litigation.

Finally, some Member States would like the frequency of the report changed. Ireland is in favour of an annual report whereas Denmark and Belgium suggest extending the reporting period to five or even ten years.

5.2. Evaluation of the application of the Directive

In the light of the national reports, the Commission notes the very low number of cases in which articles 4 and 5 of the Directive were applied. However, it is difficult to know whether this is the true figure, as the Commission has found it difficult to compare the data provided by the Member States¹⁰. Sometimes one Member State reports having never received an application for a search or a notification that an object has been found while another claims to have sent one. The low number could also be due to the facts that:

- cultural objects removed illegally from a country only reappear after 20 to 30 years on average; and
- only the national treasures listed in the Annex to the Directive fall within its scope.

¹⁰ Given these difficulties, the Commission has submitted the annexed tables to the central authorities of the 15 Member States for their approval.

5.2.1. *Cooperation and exchange of information between authorities*

The national contributions showed that cooperation and consultation between the central authorities was rare, given the low number of cases of application reported.

In this respect, some Member States, such as Belgium and Germany, reported shortcomings in the collection and transfer of information, both among and within them.

In any event, it appears that information on measures taken under article 4 of the Directive is not passed on adequately by the authorities concerned to the central authorities responsible for implementing the Directive. The central authorities therefore call for an improvement in the exchange of information both at national level and between the Member States in order to eliminate obstacles to the effective application of the Directive.

Denmark, France, Spain, Italy, Portugal and the United Kingdom highlighted the results they had achieved by virtue of the close understanding among their respective competent authorities, whilst complaining about the uncooperative attitude of other central authorities.

As regards cooperation between the various authorities involved in the field of cultural objects at national level (culture, customs, police and justice), the information provided by the Member States reveals a variety of national situations. In the experience of Portugal, Ireland, France, Belgium, Italy and the United Kingdom, the existence of a working party bringing together the services involved to exchange information and share good practice seemed to produce good results.

5.2.2. *Return proceedings*

Three proceedings for the return of objects were brought by the Member States under article 5 during the period 1999-2003. Two were brought by Greece against Germany and one by France against Belgium.

The low number of proceedings may be explained by the fact that the mere availability of legal proceedings has a positive effect on efforts to find amicable solutions out of court. However, it is not possible to ascertain from the Member States' contributions the exact number of cases where objects have been returned out of court following implementation of the Directive. Indeed, some Member States (Greece, Spain, France and the Netherlands) generally prefer to use other legal methods to recover cultural objects because the conditions for bringing return proceedings are considered too restrictive (unlawful removal from 1993 onwards and/or the time limit of one year).

In addition, the data provided lead to the conclusion that article 6, which provides for the exchange of information among Member States during proceedings for the return of an object, has not been applied.

5.2.3. *Protection of cultural objects*

The system for recovering cultural objects established by the Directive aims to protect Member States' cultural heritage.

The Member States agree that, even though the Directive has a preventative effect in terms of safeguarding their heritage, it is not in itself designed to combat the illegal trafficking of cultural objects. Furthermore, the purpose of the Directive is not to regulate the free

movement of cultural objects. Its effectiveness should not, therefore, be judged in terms of its contribution to combating the illegal trafficking of cultural objects.

Nevertheless, given the interest of the Member States and the Community institutions in actively tackling the illegal trafficking of cultural objects, the Commission believes it would be appropriate to examine in detail the recommendations of the study on the traceability of cultural objects. Even though the study's conclusions go beyond the scope of the Directive, the Commission believes that the Advisory Committee on Cultural Goods has the appropriate expertise to launch such a discussion.

In accordance with the European Parliament's request in its Resolution,¹¹ the Commission is considering whether the time is right for a Communication on the movement of cultural objects within the Union, including a review of the situation in the Member States.

6. CONCLUSIONS

6.1. Improving cooperation and the exchange of information among Member States

The assessment of the application of Directive 93/7/EEC in the period 1999-2003 highlights shortcomings in administrative cooperation and consultation among the Member States, mechanisms which are fundamental to the protection and defence of the Member States' cultural heritage.

To remedy these shortcomings, the Commission will examine to what extent the recommendations set out in the guidelines for improving administrative cooperation have been acted upon. This would provide the opportunity for a general appraisal of the operation of the guidelines and an assessment of the degree to which they meet real needs. The Commission believes that targeted action is necessary at both national and Community levels to correct the deficiencies in cooperation, in order to ensure that the Community system for the protection of cultural objects works properly and to facilitate the application of Directive 93/7/EEC. In this respect, some Member States, such as Spain and Germany, would be in favour of setting up a procedure for applying article 4 of the Directive if this helped improve administrative cooperation between Member States without creating more red tape. Denmark, for example, considers it important to set deadlines for replying to requests for cooperation. However, other Member States do not appear to be in favour of a common procedure. The Commission believes that it is premature to draw conclusions at this stage.

6.2. Extension of the time limit for bringing proceedings

Member States consider insufficient the time limit of one year for initiating proceedings for the return of a cultural object. They are in favour of extending the limit to three years. This request was made at the time of the first report.

Subject to the results of consultations with the Advisory Committee on Cultural Goods, article 7(1) of the Directive could be amended to extend the time limit for bringing proceedings to three years after the requesting Member State becomes aware of the location of the cultural object and of the identity of its possessor or holder.

¹¹ See footnote 4.

6.3. Maintaining financial thresholds

The Directive lays down that every three years, acting on a proposal from the Commission, the Council shall examine and, where appropriate, update the financial thresholds indicated in the Annex to the Directive, on the basis of economic and monetary indicators in the Community.

The replies which the Member States provided for the drafting of this report are not unanimous. Some Member States, such as Spain, Austria and Sweden, think the thresholds are too high and do not provide adequate protection. Others, such as the United Kingdom, would prefer to increase the thresholds in order to reduce the list of cultural objects covered by Directive 93/7/EEC. Given that the differences in approach already apparent in the first report persist, the Commission does not intend to propose the updating of the thresholds at this stage.

6.4. Frequency of the assessment report

Given that it is difficult to obtain information from the Member States on the application of the Directive and in view of the limited number of cases of application of articles 4 and 5 thereof, the Commission does not consider it necessary to maintain the obligation laid down in Article 16 of the Directive to draw up a report every three years.

6.5. Referral to the Advisory Committee on Cultural Goods

The Commission intends to submit the issues referred to above to the Advisory Committee on Cultural Goods.

* * *

- The Commission invites the European Parliament, the Council and the European Economic and Social Committee to take note of this report.
- In the light of this report, the Commission will consult the Advisory Committee on Cultural Goods on the proposed amendments to Directive 93/7/EEC concerning the time limit for bringing return proceedings and the frequency of reports.

ANNEX

Tables showing returns and instances of administrative cooperation between Member States 1999-2003¹²

- List of returns (all amicable settlements outside the legal return procedure)**

Year	Returning State	Requesting State	Object
2003	UK	Portugal	Archive of Manuscripts from the 18th century
?	UK	Sweden	Books
2001	Portugal	Spain	Painting “Romany” of Frederico Madrazo Kuntz
2000	Netherlands	Austria	Painting
2003	UK	Netherlands	Manuscripts

- Summary of ongoing requests for return**

Year	Returning State	Requesting State	Result
?	Germany	Italy	ongoing
2002	Netherlands	Italy	ongoing (armour)

- List of legal return procedures (article 5 of directive 93/7/EEC)**

Year	Requesting State	Requested State	Object
2002	Greece	Germany	438 antiquities of Greek origin
2003	Greece	Germany	13 antiquities of Greek origin
2003	France	Belgium	Public archives (33.000 documents)

- List of requests for search (article 4, 1 of Directive 93/7/EEC)**

Year	Requesting State	Requested State	Result
2003	Netherlands	UK	Due to an agreement between the parties, the objects were returned to the Netherlands without the need to apply the Directive.
2003	Germany	UK	Removal from Germany was not unlawful.

¹² Source / Mesures notified by the central authorities charged with the application of Directive 93/7/EEC to the European Commission.

2003	Germany (painting of Degas)	Austria	No result. The painting is not known in Austria.
2001	Austria (Latin military diploma)	Germany	No result for lack of intervention by the authorities.
1999 2000	Italy (2)	Netherlands	Resolved outside the ambit of the Directive.
?	Italy	Germany	Ongoing
?	Portugal	Spain	ongoing
?	Spain	Germany	Without success (Painting of Bernardo Belotto)
?	Greece (2)	Germany	Securing of the objects
?	Italy	Netherlands	?

• **Notifications of discoveries (Article 4, 2 of Directive 93/7/EEC)**

Year	Notifying State	Notified State	Result
2003	UK	France	The French authorities have granted retroactive authorisation and the British authorities have issued an export licence.
2001 (1) 2003 (2)	UK (3)	Portugal	In two cases the Portuguese authorities granted retroactive authorisation and the British authorities issued export licences. In the other case, the article has been sent back to Portugal on a voluntary basis following mediation by the British authorities between the holder and the Portuguese authorities.
2003	Germany (objects of Greek origin)	Austria	No result. Restitution abandoned for lack of conditions.
1999	Italy (gothic reliefs)	Austria	No result. Origin could not be determined. Item returned to owner.
1999	Austria	Italy	?
?	Spain	Italy	ongoing
2002	France	Greece	Prohibition of the sale