

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.7.2009
COM(2009) 408 final

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

**Third 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**

TABLE OF CONTENTS

1.	Introduction	3
2.	Second report on the application of Directive 93/7/EEC (1999-2003): conclusions...	3
3.	Developments since the second report (2004-2007).....	4
3.1.	Accession of the twelve new Member States.....	4
3.2.	Study on the traceability of cultural objects: extension to the twelve new Member States (2007).....	4
4.	Application of the directive during the period 2004-2007	5
4.1.	Application reports from the Member States	5
4.2.	Evaluation of the application of the directive	6
4.2.1.	Administrative cooperation and exchange of information between authorities (Article 4).....	7
4.2.2.	Proceedings for return (Article 5)	8
5.	Conclusions	8
6.	Next step.....	9
	ANNEX.....	10

1. INTRODUCTION

Council Directive 93/7/EEC, adopted on 15 March 1993¹, introduced mechanisms for cooperation between the national authorities and a legal procedure for the return of cultural objects taken unlawfully from the territory of a Member State.

At Community level, cultural objects are subject to the provisions of the Treaty establishing the European Community (the EC Treaty), especially those relating to the free movement of goods. In particular, Articles 28 and 29 of the EC Treaty prohibit restrictions on imports and exports and all measures having equivalent effect. However, Article 30 provides 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 of ... the protection of national treasures possessing artistic, historic or archaeological value...". Therefore, pursuant to this Article, the Member States retain the right to define cultural goods which they consider to be national treasures and to take measures to protect them.

Directive 93/7/EEC is therefore a measure to support the internal market with the aim of reconciling the operation of the internal market with a guarantee for the Member States that their cultural objects with the status of national treasures of artistic, historic or archaeological value, pursuant to Article 30 of the EC Treaty, will be protected.

Pursuant to Article 16(2) of the Directive, the Commission sends the European Parliament, the Council and the Economic and Social Committee, every three years, a report reviewing the application of this Directive².

This document is the third report reviewing the Directive. It covers the period 2004-2007 and examines the application of the Directive in the Member States³.

2. SECOND REPORT ON THE APPLICATION OF DIRECTIVE 93/7/EEC (1999-2003): CONCLUSIONS

The second report noted that the Member States considered the Directive to be useful for protecting cultural heritage and that the Community legal framework created by it was sufficient, even if certain improvements were necessary. The second report thus concluded that the following approaches were appropriate:

- improving cooperation and the exchange of information among Member States;
- extending the time limit of one year for bringing proceedings;

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, 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.

² 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 May 2000].

Second 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(2005) 675 final].

³ The Commission has not received a national application report from Estonia, Ireland, Luxembourg, Malta or Bulgaria.

- maintaining financial thresholds;
- leaving unchanged the frequency of the assessment report.

The Commission had indicated its intention to consult the Advisory Committee on Cultural Goods on the issue of the time-limit for bringing proceedings and the frequency of the reports.

3. DEVELOPMENTS SINCE THE SECOND REPORT (2004-2007)

3.1. Accession of the twelve new Member States

Before each accession, the Commission examined the planned national measures for the transposition of the Directive. The candidate countries also received regular technical assistance to facilitate correct transposition.

The Commission launched infringement proceedings against some Member States⁴ for failure to communicate national transposition measures within the deadlines set. These procedures were discontinued once the national measures had been communicated and checked.

Over the period of the two accessions (in 2004 and 2007), the Advisory Committee on Cultural Goods (now known as the Committee on the Export and Return of Cultural Goods) met once, on 16 February 2005. Issues relating to the Directive raised by the Member States include the need to extend the period of one year for bringing proceedings for the return of cultural goods. This request made by Greece was supported by other Member States such as Spain and Italy.

3.2. Study on the traceability of cultural objects: extension to the twelve new Member States (2007)

At the end of 2006, the Commission requested that the study on the traceability of cultural objects in the 15 'old' Member States and the three EEA countries be extended to also include the 12 new Member States. The new 2007 study confirmed the conclusions of the study conducted in 2004⁵, i.e. that traceability is ensured only for national treasures and, to a lesser extent, for cultural objects whose movement is based on an export authorisation.

It also confirmed the recommendations in the basic study, in particular the importance of:

- putting in place a single Community model for shipping authorisations for cultural objects in the intra-Community area;
- creating a European database for shipping and export licences to third countries;
- creating marking systems for cultural objects; and
- creating a network to strengthen cooperation between the competent authorities of the Member States.

Some Member States, such as France, wished to have these recommendations examined by the Committee on the Export and Return of Cultural Goods. The Commission considers,

⁴ Malta, Poland, Slovakia and Bulgaria.

⁵ http://ec.europa.eu/enterprise/regulation/goods/dir937_en.htm

however, that these recommendations, which go beyond the scope of Directive 93/7/EEC, should be evaluated in the light of the principles relating to the free movement of goods between Member States (Articles 28 to 30 EC)⁶.

4. APPLICATION OF THE DIRECTIVE DURING THE PERIOD 2004-2007

4.1. Application reports from the Member States

In line with Article 16(1) of the Directive, the Member States must send the Commission, every three years, a report reviewing the application of this Directive⁷.

As a rule, the Member States consider that the Directive is a useful instrument for the return of national treasures which have been unlawfully taken from the territory of a Member State and are to be found in another Member State. They also agree that, even though the Directive goes some way towards safeguarding cultural heritage, it is not enough in itself to combat the illegal trade in cultural goods.

The national reports note:

- that the Directive is seldom applied, either in the context of administrative cooperation or in the exercise of return proceedings (see Annex)⁸;
- the need for enhanced administrative cooperation between the competent authorities at national and Community level;
- the need to make certain adjustments to the Directive to make it more effective.

Moreover, most of the Member States blamed the administrative complexity and cost of applying the Directive for the fact that it is seldom used. According to these Member States, this is why the national authorities prefer to use civil or criminal proceedings. Furthermore, some Member States, such as France, Italy and Hungary, take the view that limiting the scope of the Directive to national treasures listed in the Annex to the Directive or belonging to public collections or on ecclesiastical lists constitutes a further restriction.

Improvements proposed by the Member States

In order to make the Directive more effective, almost all the Member States are in favour of amending Article 7(1) to extend the period during which return proceedings can be initiated. This period, currently one year, could be extended to three years, for instance. France and Italy, for example, take the view that the starting point of the corresponding period should also be clarified.

⁶ During the period 2004-2007, the Commission dealt with just one complaint concerning obstacles to the removal of a cultural good from a Member State to another Member State (Article 29 EC).

⁷ In order to obtain comparable data, the Commission sent the national authorities responsible for implementing Directive 93/7/EEC the same questionnaire as the one sent for the preparation of the second assessment report.

⁸ This table was submitted, for their opinion and agreement, to the national authorities responsible for the Directive.

The vast majority of the Member States (including Belgium, Germany, Spain, Cyprus, Hungary, Poland, Slovenia and Slovakia) are also in favour of amending the Annex to the Directive, either to include new categories of goods such as certain contemporary works of art, or to amend the current financial thresholds⁹ or the frequency of the reports.

The Czech Republic, France, Italy and Austria emphasise the difficulties inherent in return proceedings, for example different interpretations of the concepts of "due care" and "fair compensation" by the national jurisdictions involved in the proceedings. For this reason, these Member States are in favour of a standard interpretation of these concepts. The Czech Republic has suggested that Articles 9 and 11 of the Directive be amended to make clearer the obligations of the possessor upon acquisition of a cultural good. As stated above, some Member States (in particular France, Italy and Hungary) have noted that the concepts of "cultural object" and "national treasure" vary between Member States, complicating the implementation of the Directive by the authorities. These Member States therefore propose that the scope of the Directive be reviewed.

Finally, some Member States take the view that a set of guidelines for administrative cooperation (Article 4) would facilitate implementation of the Directive.

4.2. Evaluation of the application of the directive

The Commission has listed in the table in the Annex the cases where Articles 4 and 5 of the Directive were applied between 2004 and 2007, on the basis of information supplied by the Member States concerning this period.

Specifically, the Member States implemented Article 4, which provides for administrative cooperation by way of searches for cultural objects and notifications of their discovery in the territory of another Member State. Moreover, three Member States (Germany, Cyprus and Latvia) stated that they allowed another Member States to check the nature of the cultural object; Spain, Austria and Sweden indicated that they had taken administrative measures for the physical preservation of a cultural object. Hungary and Greece stated that they had taken interim measures to avoid the return procedure.

The national contributions also take account of the 148 actual returns of cultural objects following negotiations between the national authorities, without recourse to the courts.

Lastly, the national authorities stated that they had instituted eight legal actions for return under Article 5 during the reference period¹⁰.

However, as was the case during previous evaluations, the Commission stresses the difficulty of checking the accuracy of data communicated regarding the application of Articles 4 and 5. In this context, some national authorities responsible for the application of the Directive noted difficulties in the collection of all the information relating, in particular, to court actions.

⁹ Some Member States are in favour of raising the threshold (Cyprus and the UK), whilst others would like to see it lowered (Spain, Hungary, Austria, Poland, Slovenia, Slovakia, Sweden and Romania).

¹⁰ Apart from the request by the Czech Republic to Germany concerning baptismal fonts (*Taufbecken*), rejected for lapse of time in 2008, the other actions were still ongoing at the end of 2007.

4.2.1. Administrative cooperation and exchange of information between authorities (Article 4)

The national reports described good cooperation and exchange of information at national level between the central authorities responsible for implementing the Directive and the other competent authorities with regard to the unlawful export of cultural objects (in particular customs and the police). The central authorities took the view that this was vital for the application of the Directive. For example, Hungary, the Czech Republic, Poland and Romania pointed to the existence of either cooperation agreements between the national authorities, *ad hoc* provisions (e.g. the *Office central de lutte contre le trafic des biens culturels* in France) or working groups for the exchange of information and good practices (Germany and Portugal). The Netherlands referred to its plan¹¹ to strengthen this cooperation through, among other things, exchanges of knowledge, experience and training. Belgium announced that regular meetings between the relevant authorities and a cooperation project were planned from 2008 onwards.

The Member States also agreed on the importance of good administrative cooperation and the exchange of information between the Member States for the implementation of the Directive. In this context, Greece commented that all information received about objects which had been unlawfully removed from a Member State had come from the national courts or from INTERPOL, not from the national authorities responsible for implementing the Directive. The Greek authorities also stated that they always inform the other national authorities responsible for the Directive of any thefts recorded on their territory. In this context, Greece noted the shortcomings in administrative cooperation at European level. France emphasised the importance of creating a platform for contacts and exchanges between the national authorities responsible for the Directive at European level. According to the Netherlands, such cooperation should be extended to include the countries of the European Economic Area¹². The Czech Republic and Lithuania suggested improving communication by means of electronic tools such as a joint Internet portal¹³. In this context, the Commission recalls the ITCG (*Information on Transfer of Cultural Goods*) pilot project intended to facilitate exchanges of information on the protection of cultural goods between the competent administrations¹⁴. Lastly, Portugal noted that the preservation of cultural heritage would be even more effective if all the authorities also cooperated with INTERPOL and EUROPOL. The Member States confirmed that it would be useful to have joint guidelines for administrative cooperation, like those adopted in 2002 by the Committee on the Export and Return of Cultural Goods. In their view, such guidelines would provide a very important information tool on the national provisions applicable to the protection of cultural objects and

¹¹ *Pure Art - preventive criminal analysis of the Dutch art and antiques trade*. Intraval - Groningen-Rotterdam. 2007. The report was drawn up following a survey on the vulnerability of the art market in the Netherlands to organised crime.

¹² Directive 93/7/EEC also applies to the EFTA countries which are part of the EEA, pursuant to Annex II, Chapter 28, point 1.

¹³ European portal allowing Member States to share up-to-date information on export permits and providing information on unlawful removals. This portal would, in particular, be an entry point for the national databases of stolen objects (circa group).

¹⁴ The ITGC project was financed between 1997 and 2000 by means of the IDA (Interchange of Data between Administrations). Its final report, published in May 2000, proposed the creation of a website comprising two parts: one public, containing information on cultural goods (national legislation, movement forms, contact addresses, etc.); the other, with access limited to the authorities and with a standardised exchange domain, would contain confidential information. Even though the Commission proposed that implementation of this project be launched in 2003, the approval procedure was blocked.

on the competent authorities in the Member States. Finally, all the Member States recognised the Committee on the Export and Return of Cultural Goods as a body to facilitate administrative cooperation and the exchange of information between the national authorities represented.

4.2.2. *Proceedings for return (Article 5)*

According to the information communicated by the Member States, eight legal actions for the return of cultural objects pursuant to Article 5 were instituted during the period 2004-2007.

According to the Member States, there are two reasons for this small number: 1) the scope of the Directive, which covers only national treasures unlawfully removed since 1 January 1993 and belonging to one of the categories of objects listed in the Annex to the Directive, a public collection or an ecclesiastical list; and 2) the deadline for return, which is one year from the time the applicant Member State discovers the place where the object is located and the identity of its owner or holder. For these reasons, several Member States indicated that they prefer to use other legal means, such as the UNESCO Convention¹⁵, for the recovery of cultural objects.

5. CONCLUSIONS

In line with the conclusions of the last two assessment reports, most of the Member States take the view that the Directive is a useful tool for the recovery of certain cultural objects removed unlawfully from the territory of a Member State, and for protecting heritage. These Member States acknowledge that the Directive has a preventive effect and discourages the unlawful removal of objects. However, the Member States regret that the Directive has certain restrictions, such as the one-year deadline for initiating recovery proceedings.

Regarding administrative cooperation and the exchange of information on the Directive, the Commission has seen an improvement both within and between the Member States. However, it has noted some shortcomings, on the one hand in the collection and exchange of information between the authorities responsible for implementing the Directive and the other national authorities responsible for protecting cultural objects and, on the other hand, between the various national authorities responsible for the Directive. The Commission therefore suggests that the Member States take the necessary action to improve cooperation between the various national authorities. In order to support them, the Commission will update the guidelines on administrative cooperation and publish lists of the national authorities responsible for implementing the Directive. To this end, the Commission would emphasise the Member States' obligation to notify it every time the national authority designated pursuant to Article 3 of Directive 93/7/EEC changes so that the list published in the Official Journal of the European Union can be updated.

Regarding actions for recovery, the Commission notes that the small number of proceedings launched could also be the result of successful administrative cooperation and, in particular, of negotiations for amicable out-of-court settlements¹⁶. However, there is a consensus among the Member States that the current one-year deadline is too short, rendering the Directive less

¹⁵ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property, Paris, 14 November 1970

¹⁶ See table "Overview of recoveries under amicable out-of-court settlements" in the Annex.

effective, and that it should be extended. On the other hand, there is no similar consensus regarding other proposals for amending the Directive, for example the addition of other categories of goods to the list in the Annex, or the amendment of the financial thresholds.

6. NEXT STEP

In the light of the information received about the application of the Directive, the Commission takes the view that the amendment of the Directive should be considered. It is of the opinion that any proposal to amend the Directive should be analysed in depth by the national authorities responsible for implementing the Directive with regard to its impact.

Accordingly, the Commission will suggest to the Committee on the Export and Return of Cultural Goods that an *ad hoc* working group be created under its auspices in 2009. The role of this group will be to identify problems associated with the application of the Directive and to suggest solutions which are effective and acceptable to all the Member States with a view to possibly amending the Directive.

* * *

The Commission calls on the European Parliament, the Council and the European Economic and Social Committee to take note of this report.

ANNEX

Recoveries, actions for recovery and administrative cooperation between the Member States between 2004 and 2007¹⁷

- Overview of recoveries under amicable out-of-court settlements

Year	Returning State	Requesting State	Object
2004	Germany	Greece	1 antiquity (fragment of a marble relief of a colossal statue)
2006	Austria	France	2 parts of a <i>bas relief</i>
2006	Latvia	Poland	2 wooden <i>bas reliefs</i> (part of an altar)
2006	United Kingdom	Greece	1 ancient piece
2006	Sweden	Greece	48 ancient pieces
2007	Austria	Hungary	1 painting by W. Farkas
2007	France	United Kingdom	1 fourteenth century Hebrew manuscript
?	Germany	Czech Republic	1 sculpture of an angel in polychrome wood, eighteenth century
?	Germany	Austria	1 royal journal
?	Germany	Czech Republic	4 sculptures of saints in polychrome wood, eighteenth century
?	Spain	Italy	1 Roman sculpture
?	Spain	Sweden	86 religious objects
?	France	Spain	1 canvas

- Ongoing negotiations with a view to amicable recovery (Article 4(6) of Directive 93/7/EEC)

Year	Returning State	Requesting State	Result
2006	Poland	Latvia	In progress
2006	Czech Republic	Germany	In progress (matrix of the book " <i>De Revolutionibus orbium coelestium</i> ")
?	Germany	Austria	In progress (1 gouache)

¹⁷ Source: National reports on the application of the Directive. These tables were checked by the central authorities responsible for implementing Directive 93/7/EEC. However, some data were not confirmed by the two Member States concerned.

The steps associated with the recovery of a single object may appear in more than one table.

Year	Returning State	Requesting State	Result
?	Spain	Sweden	In progress (1 enamel casket)

• **Requests for return submitted (Article 5 of Directive 93/7/EEC)¹⁸**

Year	Claimant	Against	Object
2005	Greece	United Kingdom	1 Byzantine icon (ongoing)
2006	Italy	Austria	336 archaeological items (ongoing)
2006	Czech Republic	Germany	Fonts (proceedings dismissed in 2008 through lapse of time)
2006	Czech Republic	Austria	1 sculpture of the Madonna of Cholina, fifteenth century, returned after 2007)
2006	Czech Republic	Austria	1 painting of a church (ongoing)
2006	Czech Republic	Austria	80 objects from churches or monasteries (ongoing)
2006	Czech Republic	Austria	4 sculptures from a luxury hotel (ongoing)
2007	Greece	Germany	90 ancient objects (to be returned in 2009)

• **Requests for searches (Article 4(1) of Directive 93/7/EEC)**

Year	Claimant	Against	Result
2004	Hungary	Austria	Positive (painting by W. Farkas found)
2004-2007	Greece	All the national authorities	Negative (39 requests concerning 439 objects stolen from churches and monasteries)

¹⁸ In 2004, two requests from Italy were rejected by the Dutch and German courts respectively concerning proceedings brought in 2002 for the return of a Greek panoplia, and proceedings dating from 2001 concerning 911 archaeological items.

Year	Claimant	Against	Result
2004-2005	Austria	Greece (20 requests)	Negative because of lack of information on the objects: 35 paintings and 11 886 works of art or pieces. The latter request for works of art came from Bulgaria.
2005-2006	Germany Belgium Bulgaria Hungary Czech Republic Romania Slovakia		
2007	Portugal Finland		
2005	Latvia	Poland	2 wooden <i>bas reliefs</i> (part of an altar)
2006	Finland	Germany	Negative (object in USA)
2006	France	United Kingdom	1 musical instrument (no reply, according to France)
2006	Netherlands	Germany	Negative (request to search for archive material refused)
2006	Poland	Latvia	In progress (1 object)
?	Germany	Lithuania	Positive
?	Italy	Austria	Negative (1 Roman dental prosthesis). Request rejected because deadline passed
?	Czech Republic	Germany	2 sculptures returned, 1 request withdrawn and start of return procedure (fonts)
?	Czech Republic	Austria	In progress
?	Romania	France	In progress
?	Romania	Germany	Return (3 objects)
?	Romania	Austria	In progress
?	Romania	United Kingdom	In progress
?	Sweden	Spain	Return of 86 religious objects
?	Sweden	Spain	In progress (1 enamel casket)

• **Notifications of discovery of objects (Article 4(2) of Directive 93/7/EEC)**

Year	Notifying State	Notified State	Result
2004	France	Greece	Negative. As the one-year deadline had passed, the Directive was not applicable. Greece had to purchase the

Year	Notifying State	Notified State	Result
			ancient amphora
2005	Hungary	Austria	Positive (painting by W. Farkas)
2006	Austria	France	Return (2 parts of a <i>bas relief</i>)
2006	Austria	Czech Republic	Return following legal action to recover 1 sculpture of the Madonna of Cholina
2006	United Kingdom	Greece	1 ancient item recovered
2007	Germany	Greece	3 confiscations: 1) 90 ancient objects (to be returned to Greece in 2009) 2) 3 ancient objects (under investigation). 3) 1 ancient object (under investigation). In three other cases, the result was negative, because it was found that the objects in question had not left Greece unlawfully
?	Germany	Austria	Negative
?	Austria	Bulgaria	Ongoing (ancient coins)
?	Cyprus	Bulgaria	In progress (3 objects)
?	Spain	Italy	Return (Roman sculpture)
?	Spain	Italy	Ongoing (sixteenth century Bible)
?	Lithuania	Germany	Positive