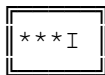


16 April 1996

A4-0110/96



## REPORT

on the Commission proposal for a European Parliament and Council Directive amending the Annex to Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State  
(COM(95)0479 - C4-0463/95 - 95/0254(COD))

Committee on Culture, Youth, Education and the Media

Rapporteur: Mr José Antonio Escudero

PE 216.643/fin.

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By letter of 20 October 1995 the Commission submitted to Parliament, pursuant to Article 189b(2) of the EC Treaty and Article 100a of the EC Treaty, the proposal for a European Parliament and Council Directive on the return of cultural objects unlawfully removed from the territory of a Member State.

At the sitting of 27 October 1995 the President of Parliament announced that he had referred this proposal to the Committee on Culture, Youth, Education and the Media as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Legal Affairs and Citizens' Rights and the Committee on Civil Liberties and Internal Affairs for their opinions.

At its meeting of 6 February 1996 the Committee on Culture, Youth, Education and the Media appointed Mr Escudero rapporteur.

At its meetings of 22 February 1996, 18 March 1996 and 15 April 1996 it considered the Commission proposal and draft report.

At the last meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: Castellina, chairman; , Bannoti, 1st vice-chairman; Escudero, rapporteur; Ahlquist, Ancona d'(for Kuhne), Aparicio Sanchez, Daskalaki (for Todini), de Coene, Elliott, Guinebertière, Hawlicek, Heinisch, Kerr (for Morgan), Larive (for Vaz da Silva), Mohamed Ali, Monfils, Mouskouri, Pack, Ryyananen and Tongue..

The opinion of the Committee on Legal Affairs and Citizens' Rights is attached; the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Civil Liberties and Internal Affairs decided not to deliver an opinion.

The report was tabled on 16 April 1996.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A**  
**LEGISLATIVE PROPOSAL**

**Proposal for a European Parliament and Council Directive amending the Annex to Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State  
(COM(95)0479 - C4-0463/95 - 95/0254(COD))**

The Proposal is approved.

**DRAFT LEGISLATIVE RESOLUTION**

**Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive amending the Annex to Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State  
(COM(95)0479 - C4-0463/95 - 95/0254(COD))**

**(Codecision procedure: first reading)**

The European Parliament,

-having regard to the Commission proposal to Parliament and the Council  
(COM(95)0479 - 94/0254(COD))<sup>1</sup>,

-having regard to Article 189b(2) of the EC Treaty and Article 100a of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0463/95),

-having regard to Rule 58 of its Rules of Procedure,

-having regard to the report of the Committee on Culture, Youth, Education and the Media and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0110/96),

1. Approves the Commission proposal;

2. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament and requests that the conciliation procedure be initiated;

3. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal;

4. Instructs its President to forward this opinion to the Council and Commission.

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<sup>1</sup>OJ C 6, 11.1.1996, p. 15

**B**  
**EXPLANATORY STATEMENT**

**I. INTRODUCTION**

A) Free movement of goods and protection of cultural goods

Article 7a of the EC Treaty provides for the creation of a frontier-free area for the internal market, within which the free movement of goods is guaranteed. However, this led to the need to make this free movement of goods compatible with the criterion of protecting cultural goods, which are - in the most important cases - part of the cultural heritage of the countries which produced them, are intimately linked to their traditional surroundings and are symbols of the rich and varied cultural identity of Europe.

This means that, while goods in general may move and be traded freely within a frontier-free Community, the need remains to extend the protection of cultural goods and preserve the artistic heritage of localities, regions and Member States; there is no question of permitting the unalloyed economic laws of supply and demand to impinge on trade in cultural goods in such a way as to cause irreparable damage to this plural artistic heritage, or quite simply strip the poor of their signs of cultural identity to give them to the rich. With this in view, the EC Treaty, after removing barriers to trade between Member States in Articles 30 to 34, states in Article 36 that Member States may impose prohibitions or restrictions on imports, exports or goods in transit justified, inter alia, on the grounds of the protection of national treasures possessing artistic, historic or archaeological value.

While the aim of these provisions is intended to ensure the free movement of goods within the Community single market, it is up to the Member States to define and catalogue those national treasures possessing artistic, historic or archaeological value as they see fit, so as to prevent their illegal export in whatever form. The Community rules on the protection of cultural goods do not stop there: not only are Member States authorized to determine which of their cultural goods are to be excepted from the general rule of free trade, but the Community has taken it on itself to institute, in general terms, a complementary protection system for the export, import and transit of cultural goods.

B) Complementary Community protection: the Regulation and the Directive

This complementary Community protection is exercised by means of two legal instruments: Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods<sup>2</sup> and 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>3</sup>. Cultural goods, that is, goods qualifying for protection under Community law, are defined as those listed in an annex common to both the Regulation and the Directive.

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<sup>2</sup>OJ L 395, 31.12.1992, p. 1

<sup>3</sup>OJ L 74, 27.3.1993, p. 74

This annex consists of two sections, one setting out the various categories of cultural goods (A) and the other laying down the minimum values in ECU applicable to those categories (B). Below the thresholds laid down for any type of cultural goods, such goods may be imported or exported freely. Above those thresholds, that is, where the value of the goods concerned exceeds that specified in section B for their category, the legal protection afforded by the Regulation and the Directive applies:

-under the Regulation, such goods may only be exported outside the Community's customs territory if a licence is granted (Article 2). This licence is required irrespective of the Member State from which the object is to be exported or of its Member State of origin;

-under the Directive, where such goods have been unlawfully removed from the territory of a Member State and have been classified by that Member State as national treasures, they must be returned, irrespective of the Member State in which they are discovered.

## II. PROTECTION OF THE PLASTIC ARTS

### A) Paintings and drawings

The categories of cultural goods listed in the annex include paintings (Category 3) and drawings (Category 4). The financial threshold for paintings is ECU 150 000; that for drawings is ECU 15 000. It follows that a painting is protected by the Regulation if its value exceeds ECU 150 000, and by the Directive if it is classified as a national treasure, while a drawing is protected by the Regulation if its value exceeds ECU 15 000, and by the Directive if it is considered a national treasure. All is, then, clear provided the essential condition for fixing criteria for the movement of works of art is fulfilled, that is, that all parties concerned share a common notion of what may be considered a painting or a drawing. The most elementary criteria of legal security would be put at risk if the error was made of allowing an object considered to be a painting in one Member State to be classified as a drawing in another. Paradoxical though it may seem, this is precisely what does happen in the case of water colours, pastels and gouaches.

### B) The problem of water colours, pastels and gouaches

This error arises from the existence of different notions in different Member States of what constitutes a drawing. In France, Belgium, Greece and the Netherlands a drawing is considered to be a work whose binding or carrying materials leave a dry powder on evaporation, and it follows that water colours, pastels and gouaches are defined as drawings. If, however, the defining criterion is based on technical procedure and the pictorial treatment of lines and surfaces - the approach followed in the UK, Ireland and Germany - then water colours, pastels and gouaches are considered to be paintings.

It is clear that under the Regulation the ECU 150 000 threshold applies to 'cuadros y pinturas' (Spanish), 'tableaux and peintures' (French), 'pictures and paintings' (English), 'Bilder und Gemälde' (German), etc, while the ECU 15 000 threshold applies to 'dessins' (French), 'drawings' (English), 'Zeichnungen' (German), 'dibujos' (Spanish), etc. In present circumstances, however, it is impossible to apply a uniform treatment in financial terms to water colours, pastels and gouaches, as they are considered to be paintings in

some Member States and drawings in others. This lack of harmonization, which has been noted by the committee of Member State representatives set up to assist the Commission (Article 8 of the Regulation), must be remedied as soon as possible and, indeed, before the three-year report provided for by Article 10 of the Regulation itself.

In view of this situation and in order to reach a solution, the Commission could have proposed the explicit inclusion of water colours, pastels and gouaches in the text of either category 3 or category 4 of the annex, thus enabling them to be defined as either paintings or drawings. This would have gone against the positions of those Member States whose definition was rejected, and would also not have been a viable solution in financial terms. In general, overall terms the prices paid for water colours, pastels and gouaches are considerably lower than those paid for paintings but somewhat higher than those paid for drawings. Were the threshold the same as that for paintings (ECU 150 000), a high proportion of water colours, pastels and gouaches would circulate unrestricted. Should the threshold for drawings (ECU 15 000) apply, a large and excessive number of such works would require Community export licences, leading to problems of bureaucratic saturation.

If, in the end, water colours, pastels and gouaches cannot be classified in all cases as either paintings or drawings, both for purely terminological reasons and on financial grounds, only one solution remains: these types of work must be placed in a separate intermediate category. This is what the Commission, quite reasonably, proposes: a new category 3a should be inserted between categories 3 and 4. Given that, as seen above, water colours, pastels and gouaches generally fetch prices closer to those of drawings than those of paintings, the financial threshold for category 3a should not be equidistant between the other two, but should be closer to that for drawings: it is accordingly fixed at ECU 30 000.

It should be noted, finally, that this alteration, which is both urgently required and strictly technical in nature, is without prejudice to the overall revision of the Regulation and the Directive which will be carried out in the near future.

**OPINION**

of the Committee on Legal Affairs and Citizens' Rights

Letter from the chairman of the committee to Mrs Luciana Castellina, chairman of the Committee on Culture, Youth, Education and the Media

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Brussels, 19 March 1996

Subject:

Proposal for a Council Regulation (EC) amending the Annex to Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods  
(COM(95)0479 - C4-0558/95 - 95/0253(CNS))

Proposal for a European Parliament and Council Directive amending the Annex to Council Directive No 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State  
(COM(95)0479 - C4-0463/95 - 95/0254(COD))

Dear Mrs Castellina,

At its meeting of 18 and 19 March 1996 the Committee on Legal Affairs and Citizens' Rights considered the above proposals and, after hearing the conclusions presented orally by the draftsman, Mr Barzanti, it unanimously adopted<sup>4</sup> those conclusions, which are summarized below.

Overall, the Committee on Legal Affairs and Citizens' Rights considers the proposed amendments to the annexes to the regulation and directive to be timely and satisfactory. The amendments are intended, in both cases, to create a new category of art objects for water colours, pastels and gouaches, and a new threshold of ECU 30 000, which would ensure that works of major significance would require an export licence without the need for any undue bureaucracy.

The position of the Committee on Legal Affairs and Citizens' Rights is that, whilst it supports the proposed amendments, it believes the Commission must carry out a review, every three years, of the effectiveness of the directive and the regulation and must also make any adjustments needed, including the amounts in the annex. The first of these double three-year reviews will be in 1996.

(closing formula and signature)

Carlo CASINI

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<sup>4</sup>The following were present for the vote: Casini, chairman; Palacio Vallelersundi, vice-chairman; Barzanti, vice-chairman and draftsman; Gebhardt, Janssen van Raay, Pelttari and Schaffner.