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

**Fourth 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**

(Text with EEA relevance)

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

## **Fourth 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**

(Text with EEA relevance)

### **1. INTRODUCTION**

Council Directive 93/7/EEC, adopted on 15 March 1993<sup>1</sup>, introduced mechanisms for administrative cooperation between national authorities and proceedings before the courts for the return of cultural objects taken unlawfully from the territory of a Member State.

Pursuant to Article 16 of Directive 93/7/EEC (hereinafter "the Directive"), the Member States sent a report to the Commission on the application of the Directive over the period 2008-2011<sup>2</sup>. On this basis, the Commission has drawn up this document, which constitutes the fourth report reviewing the application of the Directive<sup>3</sup>. This report is addressed to the Council, the European Parliament and the European Economic and Social Committee.

### **2. CONCLUSIONS OF THE THIRD REPORT ON THE APPLICATION OF DIRECTIVE 93/7/EEC (2004-2007)**

The third report on the application of the Directive concluded that the Directive was a useful tool for the recovery of certain cultural objects and thus an appropriate instrument of the European Union for helping the Member States to protect their heritage. However, the report reflected some disappointment among Member States as far as the limitations of the Directive were concerned, notably the limited period allowed for initiating return proceedings.

According to the report, administrative cooperation and the exchange of information had improved both within the Member States (between the authorities in charge of culture, customs, the police, etc.) and between the authorities responsible for the Directive in the

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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> The Commission received contributions from 22 Member States.

<sup>3</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 May 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 December 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 July 2009).

various Member States. However, it stated that the cooperation and exchange of information between the Member States could be improved still further.

The Member States considered that the lack of use made of the Directive (with regard to both administrative cooperation and proceedings before the national courts) was due to its limited scope and the restrictive conditions imposed on initiating return proceedings.

In this report, the Commission agreed to launch a discussion on the possibility of revising the Directive, the first step of which was the creation of a working group within the Committee on the Export and Return of Cultural Goods to analyse the application of the Directive in depth.

### **3. DEVELOPMENTS SINCE THE THIRD REPORT**

#### **3.1. Attempt to codify the Directive**

In 2007, the consolidation of Directive 93/7/EEC formed part of the Commission's programme for simplifying the Community acquis. The consolidation proposal was withdrawn from the programme following the judgment given by the Court of Justice of the European Union on 6 May 2008 (Case C-133/06)<sup>4</sup>.

This judgment had established that the proposal to codify Directive 93/7/EEC contained a secondary legal basis in the body of its text<sup>5</sup>. It was therefore not possible to continue with codification of the Directive, since the provision in question needed to be deleted, and this would have involved a substantive change going beyond codification.

#### **3.2. “Return of cultural goods” working group**

In the light of the conclusions of the third report, the Commission took the necessary steps to revise the Directive.

As a first step, the Commission formed the “Return of cultural goods” working group in 2009, which was made up of representatives of the national authorities responsible for the application of the Directive. The group's mandate was i) to identify the main problems posed by the implementation of the Directive and ii) to propose effective and acceptable solutions for a possible revision of the Directive. The group was created under the auspices of the Committee on the Export and Return of Cultural Goods.

The “Return of cultural goods” group concluded in 2011 that Directive 93/7/EEC needed to be revised in order to make the arrangements for returning cultural objects classified as national treasures more effective. From the suggestions made with regard to carrying out such a revision, the majority of members were in favour of: i) extending the time-limit of one year for bringing return proceedings and the time-limit of two months for the competent authorities of the requesting Member State to check the nature of the cultural object found in another Member State, ii) clarifying certain provisions of the Directive to render its application easier, for example indicating the common criteria for making interpretation of the concept of “due

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<sup>4</sup> See Judgment of 6 May 2008 in case C-133/06 *European Parliament v Council of the European Union* [2008] ECR I-03189, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0133:EN:HTML>

<sup>5</sup> The provision concerned stipulates that the Council, acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the Annex.

care and attention" more uniform with regard to compensation of the possessor, or iii) extending the time-limit for drawing up reports on the Directive.

The members of the group gave their opinion on other suggestions concerning the scope of the Directive, and in particular on the removal of financial and/or age thresholds for certain categories of objects in the Annex and on the deletion of the Annex, on fixing the burden of proof of due care and attention, and on the possibility for individuals to bring return proceedings.

The members of the group also stressed the value of using other non-legislative instruments to improve the cooperation and exchange of information between the competent authorities, thus helping to facilitate the return of cultural objects.

The work of the working group and the individual contributions of the group's members were a very important source of information for the impact analysis for revision of Directive 93/7/EEC<sup>6</sup>.

The conclusions of the "Return of cultural goods" working group were presented to the Committee on the Export and Return of Cultural Goods at its 17th meeting on 24 October 2011.

### **3.3. Other initiatives regarding cultural objects**

The European Union institutions and Member States, as well as certain international organisations such as Interpol and UNESCO, have shown growing interest in preventing and combating the illegal trafficking of cultural objects.

The Council Regulation on the export of cultural goods was codified in 2008 (Regulation (EC) No 116/2009 of 18 December 2008<sup>7</sup>). In 2011, the Commission adopted the second report on the application of this Regulation for the period 2000-2010<sup>8</sup>.

In response to the request of the Council of the European Union in 2008<sup>9</sup>, the Commission had ordered a study on preventing and combating illicit trafficking in cultural objects in the European Union. The final report of this study, dated October 2011, lists the instruments of international law and European Union law concerning cultural objects and also the obstacles to and difficulties in preventing and fighting illicit trafficking in cultural objects<sup>10</sup>.

The report concludes with a series of recommendations for preventing and combating this type of trafficking. It recommends, for example, the implementation of a system of cooperation between the various administrations and institutions involved in preventing and combating the unlawful trafficking of cultural objects at European level, the creation of a European internet portal, the endorsement of the international conventions of UNESCO and

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<sup>6</sup> This documentation is not public.

<sup>7</sup> OJ L 39, 10.2.2009, p. 1.

<sup>8</sup> Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, COM(2011)382 final, 27 June 2011.

<sup>9</sup> Conclusions of the Council of the European Union on Preventing and Combating Illicit Trafficking in Cultural Goods, Brussels 27 and 28 November 2008, <http://register.consilium.europa.eu/pdf/en/08/st14/st14224-re02.en08.pdf>

<sup>10</sup> "Study on preventing and fighting illicit trafficking in cultural goods in the European Union" CECOJI-CNRS-UMR 6224, France. The study is available in French and English at [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)

UNIDROIT<sup>11</sup>, the imposition of an obligation to provide information at Union level on internet sales sites, the standardisation of national documents authorising the dispatch of cultural objects, the creation of a "passport" for goods being moved within Europe or the introduction of a general obligation to keep police records of moveable cultural objects. It also recommends that Directive 93/7/EEC be updated in order to improve its efficiency in terms of the return of cultural objects, and the creation of good practice guidelines on return.

In the light of this report and other work in the area, the Council of the European Union, during its meeting of 13 and 14 December 2011, addressed recommendations to the Commission and the Member States on the illicit trafficking of cultural objects. In particular, the Commission was called upon to 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>12</sup>.

Under the European Agenda for Culture and the Work Plan for Culture 2008 – 2010, a group of national experts (Open Method of Coordination) worked on the issue of improving the mobility of collections. One of the sub-groups of this OMC group, working on the prevention of thefts and illicit trafficking and the exercise of due diligence, recommended adoption of the essential requirements relating to due care and attention<sup>13</sup>.

Using this approach, the second Work Plan for Culture 2011-2014 adopted by the Council<sup>14</sup> sets out three major initiatives on cultural objects.

Firstly, the creation of a group of experts to put together a toolkit, including good practice guidelines and a code of ethics on due diligence in the fight against illicit trafficking and theft of cultural objects. At its meeting of 13 and 14 December 2011, the Council recommended that the competent parties affected should be involved in the setting-up of this group of experts.

Secondly, examination by a group of national experts, meeting within the framework of the open method of coordination, of means to simplify the process of lending and borrowing works of art within the European Union.<sup>15</sup>

Thirdly, the preparation of a study of the systems for valuing works of art for insurance, state indemnity and share liability purposes.

Finally, in 2010, the Commission adopted a proposal to recast Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This proposal provides for the courts of the place where the object is located to have competence for civil proceedings concerning rights *in rem* or possession in moveable property. This place of jurisdiction, which applies to moveable property in general,

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<sup>11</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995).

<sup>12</sup> Conclusions of the Council of the European Union on preventing and combating crime against cultural goods, 13 and 14 December 2011, <http://register.consilium.europa.eu/pdf/en/11/st17/st17541.en11.pdf>  
<sup>13</sup> [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>14</sup> Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the Work Plan for Culture 2011-2014, OJ C 325, 2.12.2010, p.1. [http://ec.europa.eu/culture/our-policy-development/european-agenda\\_en.htm](http://ec.europa.eu/culture/our-policy-development/european-agenda_en.htm)

<sup>15</sup> The work of this group can be consulted at [http://ec.europa.eu/culture/our-policy-development/policy-documents/omc-working-groups\\_en.htm](http://ec.europa.eu/culture/our-policy-development/policy-documents/omc-working-groups_en.htm)

also covers proceedings for the recovery of cultural objects by their owners. The new Regulation will contribute to greater protection for cultural objects<sup>16</sup>.

#### **4. APPLICATION OF THE DIRECTIVE DURING THE PERIOD 2008-2011**

##### **4.1. Application reports from the Member States**

The Member States pointed out that, for obvious reasons, they do not have information on all the cultural objects that have left their territory<sup>17</sup>. It was therefore difficult for them to assess whether illegal removals have increased or decreased.

The national reports noted:

- the infrequent application of the Directive, particularly through return proceedings (see the tables in the Annex<sup>18</sup>).

The Member States blamed the fact that the Directive is seldom used on the limitations of its legal scope, in particular the categories defined in its Annex, and on the short period of time allowed to bring return proceedings and the difficulty in ensuring uniform application by the national judges of Article 9 concerning compensation for the possessor in the event that the object is returned.

In addition, some Member States mentioned the financial costs associated with return proceedings, or the difficulties in identifying the competent court in another Member State;

- progressive improvement in the administrative cooperation and exchange of information between the central authorities of the Member States, which should be continued for better implementation of the Directive.

Most Member States take the view that their cooperation and exchange of information with the authorities of other Member States is good. However, Belgium, Bulgaria, the Czech Republic, Germany and the United Kingdom believe that this cooperation and exchange of information is insufficient. By way of example, the authorities point out the importance of

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<sup>16</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

<sup>17</sup> The Czech Republic has, however, provided a summary of the number of items which were unlawfully removed from the country and have been identified in other Member States (189 since 1995), and unlawfully sourced goods which have been found in its territory (243 since 1995). Italy has also provided information on items that have been unlawfully removed from the country (10 372 between 2008 and 2011). These data were obtained from discoveries made by the police responsible for the protection of cultural heritage. To a large extent, these items were archaeological objects taken from illegal excavations. Hungary estimates that the number of items unlawfully removed from the country is several hundred per year. According to the Romanian police, 11 530 cultural objects (including 11 300 archaeological items) have left the territory unlawfully. Greece identified items that have been removed from its territory unlawfully, including 274 icons, 44 pieces of Roman, Byzantine or post-Byzantine architecture, 1 painting from the 20th century, 5 vases (from the Classical and Roman eras), 8 coins and 23 liturgical objects. This Member State noted a significant increase in the number of stolen post-Byzantine icons.

<sup>18</sup> In order to obtain comparable data, the Commission sent the national authorities responsible for implementing the Directive a similar questionnaire to that sent for the preparation of the previous reports. This questionnaire system will be revised in order to improve the reliability of the data and make their collection easier.

having the appropriate technical support to be able to search for missing items and/or to be able to use several working languages in contacts between these authorities;

- the need to revise the Directive.

The Member States believe that the Directive should be made a more effective instrument for the return of cultural objects which are classified as national treasures and have been unlawfully removed from their territory since 1993. To this effect, they support the proposals of the "Return of Cultural Goods" working group in favour of revision of the current provisions.

In addition, Bulgaria and Italy highlight the problem of the unlawful traffic in archaeological objects taken from illegal excavations, given the difficulty in proving the origin of these goods and the date of their illegal removal. These Member States would like the revision of the Directive to offer a solution to this problem.

Finally, Member States confirm the call for national provisions transposing the Directive to be applied as a matter of priority. However, the restrictive conditions imposed by the Directive would require repeated recourse to international conventions or criminal proceedings for the recovery of cultural objects<sup>19</sup>.

#### **4.2. Evaluation of the application of the Directive**

The Commission listed in the Annex the cases in which Articles 4 and 5 of the Directive have been applied, based on information from the central authorities of the Member States. However, this information does not always match up and may be incomplete.

The most frequent acts of administrative cooperation carried out by national authorities relate to the search for a cultural object which has been unlawfully removed from their territory, or notification of the discovery of such an object. Some Member States, including Germany, Ireland, Hungary, Latvia, Austria, the Netherlands, Poland and Romania also note that they took measures to verify the nature of the object, preserve it or prevent any action to evade the return procedure.

The national contributions record actual returns of cultural objects achieved through negotiations between national authorities. The number of returns agreed out of court is higher than that of returns ruled on by the courts; these are listed in the Annex.

The national reports also state that six requests for return have been initiated, one of which has been rejected. Some of the national authorities responsible for the application of the Directive have indicated that they do not have information regarding any return proceedings.

Several Member States, including Belgium, Bulgaria, Italy, Hungary, Poland and Finland, highlight the limitations of the Directive as regards securing the return of goods, due, notably, to the financial thresholds that apply to certain national treasures and the one-year time limit for bringing return proceedings. They also point to the difficulty of securing the return of archaeological goods taken from illegal excavations due to the difficulty in proving the object's provenance and/or the date on which it was unlawfully removed (Bulgaria and Italy).

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<sup>19</sup> In this respect, Bulgaria and Poland indicated that they had secured returns under the UNESCO Convention; Romania said that it had secured the return of 235 objects under the UNIDROIT Convention.

The national reports stress the importance of effective cooperation and exchange of information between all the authorities concerned, and particularly between the central authorities responsible for the Directive. They state that administrative cooperation between the central authorities of the Member States has improved, but is still poorly structured and faces problems relating to language barriers. The reports also identify shortcomings in the exchange of information between the authorities concerned, which reduce efficiency.

## **5. NEXT STEP**

The illegal trafficking of cultural objects is a scourge affecting the European Union. The Commission is called on by the Council of the European Union to support the Member States in preventing and combating trafficking in cultural objects.

The process of revising Directive 93/7/EEC was started in 2009. The public consultation on this project was completed on 5 March 2012<sup>20</sup>.

The revision of Directive 93/7/EEC provides an opportunity for improving the possibilities for securing the return of cultural objects classified as national treasures that have been unlawfully removed from the territory of a Member State since 1993.

In this context, the Commission is also looking at how to improve administrative cooperation and consultation between the authorities which carry out the tasks provided for in the Directive.

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

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<sup>20</sup> [http://ec.europa.eu/culture/news/201112-consultation\\_en.htm](http://ec.europa.eu/culture/news/201112-consultation_en.htm)

## Annex

### Returns under amicable out-of-court settlements, administrative cooperation measures and return proceedings from 2008 to 2011<sup>21</sup>

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

Year	Returning State	Requesting State	Result
2008	Germany	Czech Republic	1 wooden Pietà statue (Močidlec)
2008	Germany	Czech Republic	4 wooden Church Fathers statues (Semín)
2008	Germany	Czech Republic	1 wooden angel statue (Klokočka)
2008	Spain	Sweden	Archaeological objects
2009	Germany	Czech Republic	1 wooden angel statue, 'Allegory of love' (Česká Skalice)
2009	Germany	Czech Republic	1 wooden angel sculpture (Hněvčeves)
2009	Austria	Czech Republic	1 wooden statue of St John of Nepomuk (Přistoupim)
2009	Slovenia	Italy	Gorzanis book
2009	Austria	Czech Republic	1 church painting of St Anna (Noutonice)
2009	Germany	Greece	90 antique objects
2010	Netherlands	Czech Republic	Statues of angels (Hněvotín) (2)
2010	Germany	Czech Republic	1 wooden statue of St Nicholas (Libnič)
2010	Austria	Bulgaria	Archaeological coins
2010	Sweden	Latvia	Paintings
2010	France	Spain	Canvas

<sup>21</sup> 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 confirmed by only one of the two Member States concerned. The steps associated with the recovery of a single object may appear in more than one table.

2011	Czech Republic	Austria	Wooden sculpture of Christ the Saviour
2011	United Kingdom	Greece	6 icons
2011	Estonia	Latvia	3 icons
2011	United Kingdom	Italy	Two 14th and 15th century manuscripts and one 14th century missal
2011	Germany	Austria	Collection de manuscripts
2011	Germany	Italy	Manuscript
2011	France	Germany	2 sculptures

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

Year	Claimant	Against	Result
	Bulgaria	Belgium	Objects not found
	Italy Belgium	Germany (6)	Objects found (2)
	Germany	Austria	Object not found
2010	Hungary France Greece Czech Republic	Italy	Ongoing (painting) Ongoing (archives) Ongoing (ancient coins) Ongoing (statue)
2008	Lithuania	Austria	Object found (proceedings ongoing)
2008	Belgium	Netherlands	Objects found (ecclesiastical objects)
2010	United Kingdom		Objects found (archaeological objects)
2008-2011	Germany Bulgaria	Austria	(7) Certain objects found, others not found  (2) Objects found and returned (archaeological coins)
2008-2011	Austria	Germany (3)	Objects found

2008-2011	Belgium Bulgaria Czech Republic Germany France Hungary Austria Portugal Romania Slovakia Finland	Greece	Objects not found
	Bulgaria	Poland	Ongoing
	Poland	Germany	Objects not found
	Bulgaria	Romania	Objects not found
	Italy (1) Hungary (3) Czech Republic (1)	United Kingdom (5)	Objects found 1 object found, 2 objects not found Object not found
2008-2011	Greece	All Member States (39 cases)	Objects not found

- Notifications of objects found (Article 4(2) of Directive 93/7/EEC)

Year	Notifying State	Notified State	Result
	Germany (5)	France	Positive (two sculptures returned)
		Bulgaria	No action taken
		Italy	Positive (vase returned)
		Spain	No action taken

Year	Notifying State	Notified State	Result
		Denmark	No action taken
2011	Hungary Greece Spain	Italy	No action taken (vase from Apulia) Return ongoing (liturgical objects) Positive (works of art and ancient books returned)
	Italy	France	Positive (painting returned)
	Estonia	Latvia	Positive (3 icons returned)
2010	Netherlands	France	Return ongoing (statue)
2011		France	No action taken (archives)
2010		United Kingdom	No action taken (archaeological objects)
	Slovenia	Austria	Notified object not identified by Austria
	Germany France	Poland	Positive (sculpture returned) Assistance provided for preserving objects (10 paintings)
	Finland	France	No action taken

- Requests for return (Article 5 of Directive 93/7/EEC)

Year	Claimant	Against	Object
2008	Czech Republic	Austria	4 wooden statues of saints and 2 reliquaries (proceedings cancelled)
2008	Italy	Germany	Ancient bronze helmet (request refused)
2009	Czech Republic	Netherlands	Statue of St Anne (ongoing)
2009	Lithuania	Austria	Sculpture, "The risen Christ" (ongoing)
2010	Czech Republic	Austria	2 statues (ongoing) 10 statues (returned)

<b>Year</b>	<b>Claimant</b>	<b>Against</b>	<b>Object</b>
2011	Czech Republic	Austria	1 statue of St John of Nepomuk (Čímyšl)