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Committee on Culture and Education

2013/0162(COD)

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*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on the return of cultural objects unlawfully removed from the territory of a
Member State (recast)
(COM(2013)0311 – C7-0162/2013 – 2013/0341(COD))

Committee on Culture and Education

Rapporteur: Marie-Christine Vergiat

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or strikeout, e.g. '~~ABCD~~'. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State (recast)

(COM(2013)0311 – C7-0162/2013 – 2013/0341(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0311),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0147/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 18 September 2013¹,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts²,
 - having regard to the letter of 5 November 2013 from the Committee on Legal Affairs to the Committee on Culture and Education in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Legal Affairs (A7-0000/2013),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal, and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its

¹ Not yet published in the Official Journal.

² OJ C 77, 28.3.2002, p. 1.

proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Article 36 of the Treaty on the Functioning of the European Union (TFEU) empowers the Union to take steps to protect cultural objects defined or classified as national treasures, in the context of the opening-up of the Union's internal borders. It thus acknowledges the need to afford cultural objects special protection in the light of the rules governing the internal market. This article thus invokes the specific nature of cultural objects and the principle of cultural exception. What is more, Article 167 TFEU now emphasises that the Union should contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity, and paragraph 2 of that article deals with the conservation and safeguarding of cultural heritage of European significance, which includes national treasures. Article 167 TFEU also encourages cooperation between Member States in the context of Union cultural action.

Or. fr

Justification

It should be pointed out that the EU Treaties now make explicit reference to cultural matters.

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

(2) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty. ***These provisions do not preclude prohibitions or restrictions justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value.***

Amendment

(2) ***Although*** the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty, ***cultural objects, and in particular national treasures possessing artistic, historic or archaeological value, cannot be treated as goods like any others, not least in the light of the undertakings given by the Union and its Member States in the context of the UNESCO Convention on the protection and promotion of diversity of cultural expression.***

Or. fr

Justification

It should be pointed out that cultural objects enjoy special protection.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Under the terms ***and within the limits*** of Article 36 of the Treaty, Member States retain the right to define their national treasures and to take the necessary measures to protect them.

Amendment

(3) Under the terms of Article 36 of the Treaty, Member States retain the right to define their national treasures and to take the necessary measures to protect them.

Or. fr

Amendment 4

Proposal for a directive Recital 8

Text proposed by the Commission

(8) Application of Directive 93/7/EEC has ***shown the limitations of the arrangements for*** securing the return of objects classified as national treasures which have been unlawfully removed from the territory of a Member State and discovered in the territory of another Member State.

Amendment

(8) Application of Directive 93/7/EEC has ***been ineffective in*** securing the return of objects classified as national treasures which have been unlawfully removed from the territory of a Member State and discovered in the territory of another Member State. ***This ineffectiveness stems, in particular, from the constraints imposed by the annex to the directive as regards the categories of cultural objects covered, the thresholds it lays down in terms of age and financial value and the overly short time limits it sets for completing procedures and bringing proceedings. These aspects should therefore be taken into account when the directive is recast.***

Or. fr

Justification

The reason for the ineffectiveness of the 1993 directive should be made clear.

Amendment 5

Proposal for a directive Recital 9

Text proposed by the Commission

(9) The Member States should have arrangements at their disposal to ensure that the unlawful removal of a cultural object classified as a national treasure to another Member State does not present the same risk as its illegal export outside

Amendment

deleted

the Union.

Or. fr

Amendment 6

Proposal for a directive Recital 10

Text proposed by the Commission

(10) The scope of this Directive must extend to any cultural object classified as a national treasure possessing artistic, historic or archaeological value under national legislation or administrative procedures within the meaning of Article 36 of the Treaty. ***The criterion of falling under one of the categories referred to in the Annex to Directive 93/7/EEC should therefore be removed and thus the Annex itself should be deleted and the criterion of forming an integral part of public collections listed in the inventories of museums, archives and libraries' conservation collections or the inventories of ecclesiastical institutions should also be removed. The diversity of national arrangements for protecting cultural objects is recognised in Article 36 of the Treaty. In this context, mutual trust, a willingness to cooperate and mutual understanding between Member States are therefore essential.***

Amendment

(10) The scope of this Directive must extend to any cultural object ***defined or*** classified as a national treasure possessing artistic, historic or archaeological value under national legislation or administrative procedures within the meaning of Article 36 of the Treaty. ***Since the approaches to the definition of national treasures differs greatly from one Member State to another, mutual trust, a spirit of cooperation and mutual understanding between the Member States should be fostered as far as possible. With that aim in view, the Annex to Directive 93/7/EEC should be revised to delete the age and financial value thresholds. The Annex would then reflect more accurately the concept of cultural objects as defined in the first article of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (1970 UNESCO Convention), which could also be used as an instrument to bring about a greater consistency of approach among the EU Member States.***

Or. fr

Justification

Retaining the annex for guidance only would serve to foster cooperation and consistency of approach among the Member States and facilitate Member States' efforts to define their

national treasures, without undermining their own powers in this area.

Amendment 7

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In the same spirit of cooperation and mutual understanding, and in order to promote the return of cultural objects from one Member State to another, including outside the scope of this Directive, all the EU Member States should sign and ratify the 1970 UNESCO Convention and the 1995 UNIDROIT Convention on stolen or unlawfully exported cultural objects.

Or. fr

Justification

The signing by all the Member States of the two most important international conventions dealing with cultural objects would foster cooperation and understanding among them.

Amendment 8

Proposal for a directive

Recital 11

Text proposed by the Commission

Amendment

(11) Administrative cooperation between the Member States needs to be stepped up so that this Directive can be applied more effectively and uniformly. The central authorities should therefore be required to use the Internal Market Information System (“IMI”) provided for by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market

(11) Administrative cooperation between the Member States needs to be stepped up so that this Directive can be applied more effectively and uniformly. The central authorities should therefore be required to use the Internal Market Information System (“IMI”) provided for by Regulation (EU) No 1024/2012 of the European Parliament and of the Council²⁴. It would also be desirable for other competent authorities of the Member States to use the

Information System and repealing Commission Decision 2008/49/EC²⁴. It would also be desirable for other competent authorities of the Member States to use the same system where possible.

same system where possible. *In order to improve the implementation of this Directive and cooperation between the Member States, the central authorities of the Member States should, in particular, share information on the cultural objects which they have defined or classified as national treasures and on those objects classified as national treasures which have been stolen or unlawfully removed from their territory.*

OJ L 316, 14.11.2012, p. 1.

²⁴ *Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation')* (OJ L 316, 14.11.2012, p. 1).

Or. fr

Justification

As many experts have pointed out, the effective sharing of information among all art market participants is vital if trafficking in works of art of all kinds, including national treasures, is to be combated.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

(12) In order to ensure the protection of personal data, administrative cooperation and the exchange of information between the competent authorities should comply with the rules set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free

Amendment

(12) In order to ensure the protection of personal data, administrative cooperation and the exchange of information between the competent authorities should comply with the rules set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free

movement of such data²⁵ and, insofar as the Internal Market Information System is used, in Regulation (EU) No 1024/2012.

²⁵OJ L 281, 23.11.1995, p. 31.

movement of such data²⁵, **Regulation (EC) No 45/2001 of the European Parliament and of the Council^{25a}** and, insofar as the Internal Market Information System is used, in Regulation (EU) No 1024/2012. ***The definitions employed in Directive 95/46/EC and in Regulation (EC) No 45/2001 shall also apply for the purposes of this Directive and of administrative cooperation and exchanges of information between competent authorities.***

²⁵ ***Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data*** (OJ L 281 of 23.11.1995, p. 31).

^{25a} ***Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data*** (OJ L 8, 12.1.2001, p. 1).

Or. fr

Amendment 10

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) The time-limit for bringing return proceedings should be set at three years after the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder. In the interests of clarity, it should

Amendment

(14) The time-limit for bringing return proceedings should be set at three years after the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder. In the interests of clarity, it should

be stipulated that the time-limit for bringing proceedings begins on the date on which the information came to the knowledge of the central authority of the requesting Member State.

be stipulated that the time-limit for bringing proceedings begins on the date on which the information came to the knowledge of the central authority of the requesting Member State. ***The other time-limits for bringing proceedings in respect of public collections and the inventories of ecclesiastical and other religious institutions laid down by Directive 93/7/EEC should continue to apply.***

Or. fr

Amendment 11

Proposal for a directive Recital 16

Text proposed by the Commission

(16) It is desirable to ensure that all those involved in the market in cultural objects exercise due care and attention in ***transactions involving cultural objects***. The consequences of acquiring a cultural object of unlawful origin will be genuinely dissuasive only if the ***obligation to return*** is ***coupled with*** an obligation on the possessor to prove ***the exercise of*** due care and attention ***in order to obtain compensation***. ***In order, therefore, to achieve the Union's objectives in preventing and combating unlawful traffic in cultural objects, it must be stipulated that the possessor must provide proof that he exercised due care and attention in acquiring the object in order to obtain compensation, and that the possessor may not claim to have acted in good faith if he failed to exercise the level of due care and attention required by the circumstances.***

Amendment

(16) It is desirable to ensure that all those involved in the market in cultural objects exercise ***all*** due care and attention in ***order to prevent transactions which are unlawful in a Member State***. The consequences of acquiring a cultural object of unlawful origin will be genuinely dissuasive only if the ***payment of compensation to the possessor of the returned object*** is ***made contingent on*** an obligation on the possessor to prove ***that*** due care and attention ***was exercised when the object was purchased***. ***This obligation shall also apply if the cultural objects appear to be the products of illegal or unauthorised archaeological excavations.***

Or. fr

Amendment 12

Proposal for a directive Recital 19

Text proposed by the Commission

(19) ***Since the tasks of the committee set up by Article 8 of Regulation (EC) No 116/2009 are rendered obsolete by the deletion of the Annex to Directive 93/7/EEC, references to that committee should be deleted.***

Amendment

(19) ***With a view to the proper implementation of this Directive, the committee set up by Article 8 of Regulation (EC) No 116/2009 should continue to meet in order to exchange views on the implementation of this Directive and the examples of best practice which emerge and to identify any problems which may arise in the context of its implementation. The committee should consist of representatives of the national authorities responsible for implementing this Directive. Furthermore, the Commission should consult the committee on the operational procedures involved in using the IMI system in connection with cultural objects.***

Or. fr

Amendment 13

Proposal for a directive Article -1 – paragraph 1 (new)

Text proposed by the Commission

Amendment

Article -1

1. This Directive deals with the return of cultural objects defined or classified by a Member State as a ‘national treasure possessing artistic, historic or archaeological value’ under national legislation or administrative procedures within the meaning of Article 36 TFEU

*and which has been unlawfully removed
from the territory of a Member State.*

Or. fr

Amendment 14

Proposal for a directive Article -1 – paragraph 2 (new)

Text proposed by the Commission

Amendment

***2. Cultural objects which are part of
public collections listed in the inventories
of museums, archives or libraries'
conservation collections or in the
inventories of ecclesiastical or other
religious or lay institutions or of any other
institution recognised or approved by that
Member State may the subject of return
proceedings.***

Or. fr

Amendment 15

Proposal for a directive Article -1 – paragraph 3 (new)

Text proposed by the Commission

Amendment

***3. Annex I to this Directive lists for
guidance a number of categories of
cultural objects which may be defined or
classified as national treasures.***

Or. fr

Amendment 16

Proposal for a directive Article -1 – paragraph 4 (new)

Text proposed by the Commission

Amendment

4. Member States shall use all appropriate means to make public information about cultural objects defined or classified as national treasures, so that the information in question is readily available to anyone wishing to obtain it.

Or. fr

Amendment 17

Proposal for a directive Article 1 – point 1

Text proposed by the Commission

Amendment

1) ‘Cultural object’ shall mean ***an object which: is classified, before or after its unlawful removal from the territory of a Member State, among the ‘national treasures possessing artistic, historic or archaeological value’ under national legislation or administrative procedures within the meaning of Article 36 of the Treaty.***

1) ‘Cultural object’ shall mean ***all cultural objects, including national treasures as defined in Article 1;***

Or. fr

Amendment 18

Proposal for a directive Article 1 – point 8

Text proposed by the Commission

8) ‘Public collections’ shall mean collections which are the property of a Member State, local or regional authority within a Member State or an institution situated in the territory of a Member State and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority.

Amendment

8) ‘public collections’ shall mean collections which are the property of a Member State, a local or regional authority within a Member States or an institution situated in the territory of a Member State and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority ***or recognised or approved by that Member State;***

Or. fr

Amendment 19

Proposal for a directive

Article 4 – paragraph 1 – point -1 (new)

Text proposed by the Commission

Amendment

-1) disseminate all information concerning cultural objects defined or classified as national treasures which are listed in their registers or similar documents;

Or. fr

Amendment 20

Proposal for a directive

Article 4 – paragraph 1 – point -1 a (new)

Text proposed by the Commission

Amendment

-1a) disseminate all information concerning cultural objects stolen or unlawfully removed from their territory

which are listed in their registers or similar documents;

Or. fr

Amendment 21

Proposal for a directive

Article 4 – paragraph 1 – point 3

Text proposed by the Commission

3) enable the competent authorities of the requesting Member State to check that the object in question is a cultural object, provided that the check is made within **five** months of the notification provided for in paragraph 2. If **it** is not made within the stipulated period, paragraphs 4 and 5 shall cease to apply;

Amendment

3) enable the competent authorities of the requesting Member State to check that the object in question is a cultural object, provided that the check is made within **six** months of the notification provided for in paragraph 2. ***With that aim in view, the requested Member State must reply to the requesting Member State as quickly as possible, so that the latter can carry out the check within the time-limit set above. If the requested Member State fails to reply within three months of the forwarding of the notification, the time limit shall be extended by three months.*** If **the check** is not made within the stipulated period, paragraphs 4 and 5 shall cease to apply;

Or. fr

Amendment 22

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

The exchange of information shall be conducted using the IMI.

Amendment

The exchange of information, ***including the items referred to in Article 4,*** shall

primarily be conducted using the IMI, *in keeping with the applicable legal provisions on the protection of personal data and privacy. However, this provision shall be without prejudice to the possibility for the competent central authorities to use other means of communication, in particular if the specific measures required in the context of a return procedure make this essential.*

Or. fr

Amendment 23

Proposal for a directive Article 7 – paragraph 1 – subparagraph 3

Text proposed by the Commission

However, in the case of objects forming part of public collections, referred to in Article 1 (8), and ecclesiastical *goods* in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time-limit of 75 years, except in Member States where proceedings are not subject to a time-limit or in the case of bilateral agreements between Member States laying down a period exceeding 75 years.

Amendment

However, in the case of objects forming part of public collections, referred to in point (8) of Article 1, *and objects listed in the inventories of ecclesiastical or other religious or lay institutions* in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time-limit of 75 years, except in Member States where proceedings are not subject to a time-limit or in the case of bilateral agreements between Member States laying down a period exceeding 75 years.

Or. fr

Amendment 24

Proposal for a directive Article 9 – paragraph 3

Text proposed by the Commission

The possessor may not claim ***to have acted in good faith*** if he failed to exercise the level of due care and attention required by the circumstances.

Amendment

The possessor may not claim ***the compensation*** if he failed to exercise the level of due care and attention required by the circumstances.

Or. fr

Amendment 25

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. Each Member State may extend ***its*** obligation to return cultural objects to objects other than those defined in Article 1(1).

Amendment

1. Each Member State may ***agree to*** extend ***the*** obligation to return cultural objects to objects other than those defined in Article 1, ***including in respect of cultural objects unlawfully removed from the territory of other Member States prior to 1 January 1993.***

Or. fr

Amendment 26

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

2. Each Member State may apply the arrangements provided for by this Directive to requests for the return of cultural objects unlawfully removed from the territory of other Member States prior to 1 January 1993.

Amendment

deleted

Or. fr

Justification

For the sake of conciseness, this paragraph has been incorporated into the previous one.

Amendment 27

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

1. Member States shall send the Commission every five years, and for the first time *in [...]*, a report on the application of this Directive.

Amendment

1. Member States shall send the Commission every three years, and for the first time ***on 1 December 2017 at the latest***, a report on the application of this Directive.

Or. fr

Amendment 28

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. The Commission shall send the European Parliament, the Council and the European Economic and Social Committee, every five years, a report reviewing the application of this Directive. The report shall be accompanied by any appropriate proposals.

Amendment

2. The Commission shall send the European Parliament, the Council and the European Economic and Social Committee, every five years, ***and for the first time on 1 July 2018 at the latest***, a report reviewing the application of this Directive. The report shall be accompanied by any appropriate proposals ***for the revision of this Directive***.

Or. fr

Amendment 29

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

The Commission shall be assisted by the committee established by Article 8 of Regulation (EC) No 116/2009.

The committee shall consider any matter arising in connection with the implementation of this Directive, the exchange of information among the Member States and the best practices employed by the Member States and the main problems arising in connection with the implementation of this Directive.

Or. fr

Justification

This amendment seeks to reinstate an article deleted by the Commission. Given the ineffectiveness of Directive 1993/7/EEC, the committee should continue to meet in order to monitor regularly the implementation of the directive by the Member States, focusing in particular on the aspects referred to in this article.

Amendment 30

Proposal for a directive Article 18 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ***the [following] articles: [Article 1(1), the first subparagraph of Article 4, Article 4(3), the fourth subparagraph of Article 4, the third subparagraph of Article 6, Article 7, Article 9 and Article 16] of this Directive***

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest twelve months from the date of its adoption.

at the latest twelve months from the date of its adoption.

Or. fr

Amendment 31

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

Amendment

Articles [...] shall apply from [...].

deleted

Or. fr

Amendment 32

Proposal for a directive Annex -I (new)

Text proposed by the Commission

Amendment

Annex -I

Indicative list of categories of objects referred to in Article 1

1. Archaeological objects which are the products of collections, land or underwater excavations or finds or archaeological sites, irrespective of whether these excavations, finds or sites are lawful, clandestine or unlawful.

2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered.

2a. Ethnological material.

3. Pictures and paintings, other than those in category 3a or category 4, executed entirely by hand, on any medium

and in any material.

3a. Watercolours, gouaches and pastels executed entirely by hand, on any medium.

4. Mosaics other than those in category 1 or category 2, executed entirely by hand, in any material, and drawings executed entirely by hand, on any medium and in any material.

5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters.

6. Original sculptures or statuary and copies produced by the same process as the original, other than those in category 1.

6a. Old articles of furniture and musical instruments.

7. Photographic, cinematographic and sound archives, including photographs, films and negatives thereof, sound recordings and equipment which illustrate the evolution of the arts and technology in these areas.

8. Incunabula and manuscripts, including maps and musical scores, singly or in collections.

9. Books, documents and publications of special interest (historical, artistic, scientific, literary, etc.), singly or in collections.

10. Printed maps which are old or of special interest.

11. Archives of any kind, on any medium.

12.a) Collections and specimens from zoological, botanical, mineralogical or anatomical collections.

b) Property relating to history, including the history of science and technology and military and social history, and to the life of national leaders, thinkers, scientists and artists and to events of national

importance.

12a. Postage, revenue and similar stamps, singly or in collections.

12b. Old numismatic objects, such as inscriptions, coins and engraved seals.

13. Old means of transport.

Or. fr

Justification

The annex to the 1993 directive should be retained, but made non-binding, and the financial value and age thresholds, which have been the main obstacles to the effective implementation of the 1993 directive, should be done away with. A few changes have been made to bring the text into line with the UNESCO Convention on cultural objects.

EXPLANATORY STATEMENT

Council Directive 93/7/EEC of 15 March 1993 on the return of cultural goods unlawfully removed from the territory of a Member State was adopted with a view to protecting cultural objects, and in particular national treasures, in the context of the abolition of checks at the EU's internal borders with effect from 1 January 1993.

Fearing at the time that they would be inundated with complaints from individuals seeking the return of cultural objects, the Member States adopted a fairly restrictive and very detailed set of provisions.

First of all, only cultural objects classified as 'national treasures' within the meaning of Article 36 of the Treaties can be the subject of return proceedings, and Article 1 of the directive gives a definition of cultural object which refers to an annex. That annex in turn sets out fairly narrowly defined categories of cultural goods which can be the subject of return proceedings and lays down age and financial value thresholds for most such goods.

In May 2013, the Commission proposed a recast of the 1993 directive, citing the reports assessing the implementation of the directive, in particular the fourth report.

The impact assessment accompanying the recast proposal shows that since 1993 only 15 return proceedings have been brought: three between 1999 and 2003, six between 2004 and 2007 and six between 2008 and 2011¹; only seven of them actually led to the return of the objects in question. It is clear, therefore, that the 1993 directive has had only a limited impact, even if a return may involve a number of cultural objects (one involved 30 000 archive documents).

These figures must be seen in the context of the 46² returns effected by means of amicable procedures and the number of cultural objects which are stolen or trafficked across frontiers. By way of an example, between 2008 and 2011 more than 10 000 cultural objects unlawfully removed from the territory of a Member State were found in Italy and Romania and 365 were found in Greece³. An average of 8 000 crimes⁴ against cultural heritage were detected each year between 2007 and 2010, most of them in just a few Member States: France⁵, Germany, Poland and Italy (these four countries alone accounted for 79 % of the crimes committed in 2007). The Czech Republic is the Member State which has suffered most from this type of crime.

According to the Commission, trafficking in cultural objects, and more specifically in national treasures, has increased significantly in recent years, and now represents the third largest source of income for organised crime groups.

The reasons for the ineffectiveness of the 1993 directive

The Commission puts forward three reasons to explain the ineffectiveness of the directive: the conditions which objects classified as 'national treasures' must meet if they are to be the subject of return proceedings (categories and financial and age thresholds), the short time limits for

¹ See page 11 of the impact assessment; it is regrettable that, unlike in the case of amicable returns, the Commission does not specify the countries involved.

² See page 11 of the impact assessment.

³ See pages 9 and 12 of the impact assessment.

⁴ See page 9 of the impact assessment.

⁵ Between 2007 and 2009 the number of crimes fell by almost 50 % in France, and by slightly less in Germany.

completing procedures and bringing proceedings and the cost of compensation.

Aims of the recast

The aim of the recast is to increase the number of cultural objects classified as 'national treasures' which are returned. Accordingly, the Commission is proposing to do away with the annex to the 1993 directive and to extend the time limits for bringing proceedings for return.

The other objective of the recast is to approximate the laws of the Member States as regards the conditions governing the compensation of the possessor of the cultural object which is the subject of the proceedings for return by imposing the burden of proof on the possessor in all cases. Possessors will be required to show that they exercised due care and attention when purchasing the object, i.e. that they took all necessary steps to satisfy themselves that the object was of legal origin. Since in most cases possessors are art market participants, it is only normal that they should be required to show that a cultural object has been lawfully acquired, in order to be eligible for compensation.

The Commission is also seeking to improve cooperation between the national authorities responsible for matters relating to the return of cultural objects, with a view to avoiding legal proceedings wherever possible. With that aim in view, it is proposing that those authorities should make use of a new EU administrative cooperation instrument: the Internal Market Information system (IMI). The IMI is an electronic tool designed to improve communication and cooperation between the authorities of the Member States in the context of the implementation of internal market legislation. Your rapporteur has given some thought to the issue of the appropriateness of using this tool to deal with matters relating to cultural objects. It would seem that, of the instruments currently available in the EU, it is the best suited to meeting the needs which are likely to arise in connection with the implementation of the directive, since it makes it possible to share information about cultural objects defined or classified as national treasures, it provides secure internet access, and it can be used in all the EU official languages. What is more, it is accessible to the authorities of all the 30 countries making up the European Economic Area (EEA).

Cultural objects - national treasures

There is no common definition at Member State level of the concept of national treasure of artistic, historical or archaeological significance. The concept itself is based on Article 36 TFEU, which empowers the Member States to take measures to safeguard certain of their cultural objects.

Some Member States have not seen fit to define the concept at all, whilst others have come up with widely differing definitions which reflect the very diverse nature of their cultural heritage.

The purpose of the annex to the 1993 directive was not to define what is meant by a national treasure, but rather to specify which categories of national treasures could be the subject of proceedings for return, it being understood that public collections listed in the inventories of museums, archives and libraries' conservation fonds or cultural goods listed in the inventories of ecclesiastical institutions¹ fall per se within the scope of the directive, even if the annex makes no explicit reference to them.

What is more, the existence of an almost identical annex, namely that to Council Regulation

¹ Article 1 of the 1993 directive.

(EC) No 116/2009 concerning the export of cultural objects, which covers all cultural objects, not just national treasures, merely added to the confusion.

The decision to base EU legislation on the concept of cultural objects can primarily be explained by reference to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on stolen or unlawfully exported cultural objects. For this reason your rapporteur takes the view that amending the title of the directive to include a clear reference to the concept of national treasure would clarify the situation further.

The 'internal market' approach

The legal basis for the revision proposed by the Commission remains that covering the approximation of national laws (Article 114 TFEU); in other words, it is a measure designed to establish or ensure the functioning of the internal market, as provided for by Article 26 TFEU, to which Article 114 refers.

Your rapporteur understands why this approach has been chosen, partly for historical reasons, as stated above. However, the free movement of goods is not the only issue at stake here - the proposal also concerns the protection of cultural heritage. A reference to Article 167 TFEU on Union action in the cultural sphere, and in particular to paragraph 2 of that article, which deals with the conservation and safeguarding of cultural heritage of European significance, which include national treasures, and cooperation between the Member States would thus have cleared the way for an approach more consistent with the EU's ambitions in the cultural sphere.

The recast procedure

In the light of the above, your rapporteur broadly accepts the need to revise the directive, but finds it regrettable that the Commission should have chosen the recast procedure, which restricts Parliament's scope for tabling amendments to those parts of the directive which the Commission allows it to change.

These provisos notwithstanding, your rapporteur is tabling amendments which she regards as necessary to facilitate the achievement of the objectives pursued by means of the recast proposal.

She is proposing to amend Article 1 of the proposal for a directive, in order to delete from the annex only the references to financial and age thresholds and to give the annex the status of a document to be used for guidance only.

She is also proposing to amend the phrase '*a cultural object classified before or after its unlawful removal from the territory of a Member State*', on the grounds that this wording creates legal uncertainty. She also takes the view that reference should be made to cultural objects placed on the market following unlawful excavations.

Your rapporteur is also suggesting changes to the paragraph in Article 9 which deals with good faith, with a view to eliminating certain legal ambiguities and specifying clearly the link between the right to compensation and the exercise of due care and attention by the possessor of the cultural object which is the subject of proceedings for return.

Given the ineffectiveness of the 1993 directive, your rapporteur is proposing that the committee responsible for monitoring its implementation should be retained.

She is also proposing that the Member States should report on the implementation of the

revised directive within roughly three years of its adoption. This change is needed so that the Member States and the Commission can, in conjunction with Parliament, discuss even more effective ways of achieving the revised directive's objectives.

Your rapporteur is also proposing amendments concerning the IMI, incorporating a clear reference to the need to comply with legislation on the protection of personal data.

Other amendments, for example those to paragraphs 2 and 3 of Article 4, seek merely to make the directive more coherent and facilitate its implementation. They reinstate the requirement for the Member States to share information concerning returns.

Your rapporteur is also proposing amendments to the recitals in line with the proposed changes to the articles.

An amendment has also been tabled urging the EU Member States to sign and ratify the UNESCO and UNIDROIT conventions on cultural objects.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

Doris Pack
Chair, Committee on Culture and Education
ASP 10E102

Subject: ***Proposal for a directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State (recast) 2013/0162(COD) COM(2013)139***

Dear Chair,

The Committee on Legal Affairs has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping

with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal or in the opinion of the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 5 November 2013, the Committee on Legal Affairs, unanimously by 21 votes¹, recommends that the Committee on Culture and Education, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours sincerely,

Annex

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ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 1 October 2013

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council xxx (recast)
COM(2013)0311 of 31.5.2013 – 2013/0162(COD)**

In the light of the Interinstitutional agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular point 9 thereof, the Consultative Working Party of the legal services of Parliament, the Council and the Commission held a meeting on 4 July 2013 for the purpose of considering the abovementioned proposal by the Commission, among others.

¹At that meeting, an examination of the proposal for a directive of the European Parliament and of the Council with a view to the recasting of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State resulted in the Consultative Working Party's establishing, by common accord, as follows:

- 1) In order for the explanatory memorandum to be drawn up in full compliance with the relevant provisions of the interinstitutional agreement, the provisions of the previous act should have remained unchanged and should have been specified, as provided for in paragraph 6(a)(iii) of the agreement.
- 2) In the recasting proposal, the following parts of text should have been marked with the grey background that is generally used to identify substantive amendments:

in Recital 4, the deletion of the second, third and fourth sentences of the third recital of Directive 93/7/EEC (which read as follows: 'whereas the implementation of these arrangements should be as simple and efficient as possible; *whereas, to facilitate cooperation with regard to return, the scope of the arrangements should be confined to items belonging to common categories of cultural object*; whereas the Annex to this Directive is consequently

¹ The Group had the German, English and French versions of the proposal and used the French text, the original version of the working document, as the basis for its work.

not intended to define objects which rank as ‘national treasures’ within the meaning of the said Article 36, but merely categories of object which may be classified as such and may accordingly be covered by the return procedure introduced by this Directive’;

in Article 7(1), the insertion of the words ‘the central authority of’;

in Article 9, the deletion of the words ‘that it is satisfied’ and the addition of the words ‘demonstrates that he’.

Having considered the working document, the working party was thus able to establish, without dissent, that the proposal does not involve any substantive changes other than those identified as such in the text itself or in this opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal was indeed a straightforward codification, without any substantive changes to the acts to which it related.

C. PENNERA
Jurisconsult

H. LEGAL
Jurisconsult

L. ROMERO REQUENA
Director-General