REPORT


Committee on Legal Affairs

Rapporteur: Marielle Gallo
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

(2012/2038(INI))

The European Parliament,


– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Culture and Education (A7-0326/2012),

A. whereas the resale right is an author’s right granted under Article 14ter of the Berne Convention for the Protection of Literary and Artistic Works;

B. whereas the Directive has promoted harmonisation of the conditions necessary to apply the resale right in order to remove potential obstacles to the completion of the internal market;

C. whereas the adoption of the Directive was important for artists, as regards not only their initiatives aimed at obtaining recognition and fair treatment as creative people, but also their role as contributors of cultural values; whereas, however, concerns remain as to its effects on European art markets and particularly on the many smaller and specialist auction houses and dealers in the EU;

D. whereas the Directive was only fully implemented in all Member States on 1 January 2012;

E. whereas the EU’s global share of the market for works of living artists has declined significantly over the past few years;

F. whereas artistic creation contributes to the continual development of the EU’s cultural life and heritage;

G. whereas the art and antiques market makes a significant contribution to the global economy, including the businesses it supports, especially those in the creative industries;

H. whereas the Directive places an administrative burden on dealers and puts EU dealers at a
commercial disadvantage in relation to those in third countries;

*Trends in the European and global art markets*

1. Notes that 2011 was a record year for the art market and that total annual revenue was USD 11.57 billion, an increase of over USD 2 billion on 2010\(^1\); stresses that the art and antiques market makes a significant contribution to the global economy, including the businesses it supports, especially those in the creative industries;

2. Points out that there was strong growth in the European art market in 2011; the United Kingdom maintained a 19.4 % share of the global market, with an increase of 24 % in sales volume; France’s market share was 4.5 %, with a 9 % increase in turnover; and, Germany saw a 23 % increase in sales, with a market share of 1.8 %\(^2\);

3. Notes that China achieved a 41.4 % share of the global market in 2011, overtaking the United States, which suffered a drop of 3 % in turnover and 6 % in market share, from 29.5 % in 2010 to 23.5 % in 2011\(^3\);

4. Underlines the impressive growth recorded by China; notes, however, that at present China’s art market is restricted to artists from within the country;

5. Notes that the general trend for the centre of gravity of the art market shifting towards emerging countries is linked to globalisation, the rise of Asia and the emergence of new collectors in these countries;

6. Notes with satisfaction that third countries are planning to introduce the resale right into their national legislation; points out, in particular, that a draft bill was tabled on 12 December 2011 in the United States aimed at imposing a 7 % resale right charge on the resale of contemporary works of art; notes that the current copyright bill in China also provides for the introduction of a resale right (Article 11(13));

*Implementation of the Directive*

7. Notes that amounts involved in reproduction and representation rights are relatively insignificant in the case of the graphic and plastic arts, where revenue derives from the sale or resale of works of art;

8. Stresses that the resale right guarantees continuity of pay for artists, who very often sell their works at low prices at the start of their careers;

9. Notes that the Commission’s report on the implementation and effect of the Directive and statistics from the sector do not suggest that the resale right has had a detrimental effect on Europe’s art market;

10. Calls on the Commission to undertake an impact assessment of the functioning of the art market in general, including the administrative difficulties faced by smaller and specialist

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\(^2\) Idem.

\(^3\) Idem.
auction houses and dealers;

11. Notes that several of the Directive’s provisions ensure a balanced application of the resale right, taking into account the interests of all stakeholders, in particular the gradual decrease in applicable rates, the EUR 12 500 ceiling on the resale right, the exclusion of small sales and the resale exemption for the first buyer; stresses, however, that the Directive places an administrative burden on dealers;

12. Notes that the resale right for the benefit of the living author of an original work of art can be a useful tool to prevent discrimination against artists;

**Conclusions**

13. Notes that the art market was valued at USD 10 billion in 2010 and almost USD 12 billion in 2012 and that the resale right accounts for only 0.03 % of those sums; considers this to be an important market from which artists and their heirs should receive fair remuneration;

14. Notes that art market studies and statistics do not suggest that the resale right has a detrimental impact on the location of the art market or its turnover;

15. Notes that the Directive was only implemented in full in all Member States on 1 January 2012, although a resale right has been recognised in many Member States for several decades;

16. Highlights the importance of giving proactive support to local artists, including the youngest artists;

17. Considers it premature to reassess the Directive in 2014 as the Commission plans to do, and proposes that the reassessment be carried out in 2015 (four years after the assessment made in December 2011);

18. Encourages the Commission, in its next assessment report, to reconsider the relevance of applicable rates, the thresholds, and the relevance of categories of beneficiaries as specified in the Directive;

19. Calls on the Commission to work closely with stakeholders to strengthen the European art market’s position and to address problems such as the ‘cascade effect’ and the administrative difficulties faced by smaller and specialist auction houses and dealers;

20. Welcomes the initiatives taken by third countries to introduce the resale right and urges the Commission to continue its efforts in multilateral fora to strengthen the European art market’s position in the world;
21. Instructs its President to forward this resolution to the Council and the Commission.
EXPLANATORY STATEMENT

The Resale Right Directive was designed to achieve two objectives: on the one hand, to ensure that authors of graphic and plastic works of art share in the economic success of their creations, and, on the other hand, to harmonise the application of the resale right in the EU.

In its report on the implementation and effect of this Directive, the Commission concluded that no clear patterns could be established to link the loss of EU share in the global market for modern and contemporary art with the harmonisation of provisions relating to the application of the resale right in the EU on 1 January 2006. Nor could any clear patterns currently be established that would indicate systematic trade diversion within the EU away from those Member States which introduced the right for living artists in 2006. However, the Commission recognises that there are pressures on European art markets, in all price ranges, and affecting both the auction and dealer sectors.

Furthermore, the Commission notes that the quality of the administration of the resale right varies from country to country across the EU. As a result, the burden may be particularly high for those at the lower end of the market that are more deeply affected by the right’s administration costs.

Your rapporteur notes that the art market was valued at USD 10 billion in 2010 and almost USD 12 billion in 2012, and believes as a result that artists and their heirs must receive fair compensation.

Furthermore, the information in the Commission report and market data suggest that the resale right has no negative impact on the location of the art market or its turnover. The Commission is called upon to work closely with stakeholders to strengthen the European art market’s position and to address certain problems, for example the ‘cascade effect’.
11.7.2012

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs


Rapporteur: Emma McClarkin

SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

A. whereas the adoption of the directive was important for artists, not only for their initiatives aimed at obtaining recognition and fair treatment as creative people, but also for their role as contributors of cultural values; whereas, however, concerns remain as to the effects on European art markets and particularly on the many smaller and specialist auction houses and dealers in the EU;

B. whereas the EU’s global share of the market for works of living artists has declined significantly over the past few years;

C. whereas artistic creation contributes to the continual development of the EU’s cultural life and heritage;

D. whereas the art and antiques market makes a significant contribution to the global economy, including the businesses it supports, especially those in the creative industries;

E. whereas the resale right is the only means of enabling artists to benefit from a certain levy on subsequent sales applying if art market professionals take part in the transfer, but notes that it can entail significant administrative costs if applied beyond the resale of works by living artists;

F. whereas the directive places an administrative burden on dealers and puts EU dealers at a commercial disadvantage in comparison to those in third countries;

1. Notes that the resale right for the benefit of the living author of an original work of art can be a useful tool to prevent discrimination against artists;

2. Calls on the Commission to undertake an impact assessment of the functioning of the art market in general, including the administrative difficulties faced by smaller and specialist auction houses and dealers;

3. Highlights the importance of giving proactive support to local artists, including the
youngest artists;

4. Notes that, in order to ensure that the directive does not have a detrimental effect on the EU market, third countries should be encouraged to introduce and implement the resale right;

5. Stresses that the Commission has not done enough to establish a global level playing field and should be more active in encouraging third countries to introduce resale right measures;

6. Calls on the Commission to ensure the effective implementation of ARR across all Member States, to evaluate critically the costs and bureaucratic burdens placed on EU dealers as a result of the directive, and to address any lack of global competitiveness deriving from its introduction.
RESULT OF FINAL VOTE IN COMMITTEE

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<th>10.7.2012</th>
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| **Result of final vote** | +: 27  
| | –: 0  
| | 0: 0  |
| **Members present for the final vote** | Zoltán Bagó, Malika Benarab-Attou, Lothar Bisky, Piotr Borys, Jean-Marie Cavada, Silvia Costa, Santiago Fisas Ayxela, Lorenzo Fontana, Mary Honeyball, Petra Kammerevert, Morten Løkkegaard, Emma McClarkin, Emilio Menéndez del Valle, Doris Pack, Chrysoula Paliadeli, Marie-Thérèse Sanchez-Schmid, Marietje Schaake, Marco Scurria, Emil Stoyanov, Hannu Takkula, László Tókés, Helga Trüpel, Marie-Christine Vergiat |
| **Substitute(s) present for the final vote** | Ivo Belet, Nessa Childers, Seán Kelly, Iosif Matula, Mitro Repo |
| **Substitute(s) under Rule 187(2) present for the final vote** | Evžen Tošenovský |
## RESULT OF FINAL VOTE IN COMMITTEE

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<th>11.10.2012</th>
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<tr>
<td><strong>Result of final vote</strong></td>
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<tr>
<td><strong>Members present for the final vote</strong></td>
<td>Luigi Berlinguer, Sebastian Valentin Bodu, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Gerald Häfner, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka</td>
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<tr>
<td><strong>Substitute(s) present for the final vote</strong></td>
<td>Piotr Borys, Eva Lichtenberger, József Szájer, Axel Voss</td>
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<tr>
<td><strong>Substitute(s) under Rule 187(2) present for the final vote</strong></td>
<td>Sylvie Guillaume, Salvatore Tatarella</td>
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