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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:

		Official Journal		
		No	page	date
►**M1**	Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997	L 60	59	1.3.1997
►**M2**	Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001	L 187	43	10.7.2001

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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COUNCIL DIRECTIVE 93/7/EEC

of 15 March 1993

on the return of cultural objects unlawfully removed from the territory of a Member State

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission [1],

In cooperation with the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas Article 8a of the Treaty provides for the establishment, not later than 1 January 1993, of the internal market, which is to comprise 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;

Whereas, under the terms and within the limits of Article 36 of the Treaty, Member States will, after 1992, retain the right to define their national treasures and to take the necessary measures to protect them in this area without internal frontiers;

Whereas arrangements should therefore be introduced enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of the said Article 36 and have been removed from their territory in breach of the abovementioned national measures or of Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods [4]; 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 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;

Whereas cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions but which do not fall within these common categories should also be covered by this Directive;

Whereas administrative cooperation should be established between Member States as regards their national treasures, in close liaison with their cooperation in the field of stolen works of art and involving in particular the recording, with Interpol and other qualified bodies issuing similar lists, of lost, stolen or illegally removed cultural objects forming part of their national treasures and their public collections;

Whereas the procedure introduced by this Directive is a first step in establishing cooperation between Member States in this field in the context of the internal market; whereas the aim is mutual recognition of the relevant national laws; whereas provision should therefore be made, in particular, for the Commission to be assisted by an advisory committee;

Whereas Regulation (EEC) No 3911/92 introduces, together with this Directive, a Community system to protect Member States' cultural

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(1) OJ No C 53, 28. 2. 1992, p. 11, and OJ No C 172, 8. 7. 1992, p. 7.
(2) OJ No C 176, 13. 7. 1992, p. 129 and OJ No C 72, 15. 3. 1993.
(3) OJ No C 223, 31. 8. 1992, p. 10.
(4) OJ No L 395, 31. 12. 1992, p. 1.

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goods; whereas the date by which Member States have to comply with this Directive has to be as close as possible to the date of entry into force of that Regulation; whereas, having regard to the nature of their legal systems and the scope of the changes to their legislation necessary to implement this Directive, some Member States will need a longer period,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

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,

   and

   — belongs to one of the categories listed in the Annex or does not belong to one of these categories but forms an integral part of:

      — public collections listed in the inventories of museums, archives or libraries' conservation collection.

        For the purposes of this Directive, 'public collections' shall mean collections which are the property of a Member State, 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;

      — the inventories of ecclesiastical institutions.

2. 'Unlawfully removed from the territory of a Member State' shall mean:

   — removed from the territory of a Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EEC) No 3911/92, or

   — not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.

3. 'Requesting Member State' shall mean the Member State from whose territory the cultural object has been unlawfully removed.

4. 'Requested Member State' shall mean the Member State in whose territory a cultural object unlawfully removed from the territory of another Member State is located.

5. 'Return' shall mean the physical return of the cultural object to the territory of the requesting Member State.

6. 'Possessor' shall mean the person physically holding the cultural object on his own account.

7. 'Holder' shall mean the person physically holding the cultural object for third parties.

Article 2

Cultural objects which have been unlawfully removed from the territory of a Member State shall be returned in accordance with the procedure and in the circumstances provided for in this Directive.

Article 3

Each Member State shall appoint one or more central authorities to carry out the tasks provided for in this Directive.

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Member States shall inform the Commission of all the central authorities they appoint pursuant to this Article.

The Commission shall publish a list of these central authorities and any changes concerning them in the C series of the *Official Journal of the European Communities*.

Article 4

Member States' central authorities shall cooperate and promote consultation between the Member States' competent national authorities. The latter shall in particular:

1. upon application by the requesting Member State, seek a specified cultural object which as been unlawfully removed from its territory, identifying the possessor and/or holder. The application must include all information needed to facilitate this search, with particular reference to the actual or presumed location of the object;
2. notify the Member States concerned, where a cultural object is found in their own territory and there are reasonable grounds for believing that it has been unlawfully removed from the territory of another Member State;
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 2 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;
4. take any necessary measures, in cooperation with the Member State concerned, for the physical preservation of the cultural object;
5. prevent, by the necessary interim measures, any action to evade the return procedure;
6. act as intermediary between the prossessor and/or holder and the requesting Member State with regard to return. To this end, the competent authorities of the requested Member States may, without prejudice to Article 5, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested State and provided that the requesting State and the possessor or holder give their formal approval.

Article 5

The requesting Member State may initiate, before the competent court in the requested Member State, proceedings against the possessor or, failing him, the holder, with the aim of securing the return of a cultural object which has been unlawfully removed from its territory.

Proceedings may be brought only where the document initiating them is accompanied by:

— a document describing the object covered by the request and stating that it is a cultural object,

— a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

Article 6

The central authority of the requesting Member State shall forthwith inform the central authority of the requested Member State that proceedings have been initiated with the aim of securing the return of the object in question.

The central authority of the requested Member State shall forthwith inform the central authorities of the other Member States.

Article 7

1. Member States shall lay down in their legislation that the return proceedings provided for in this Directive may not be brought more than one year after the requesting Member State became aware of the

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location of the cultural object and of the identity of its possessor or holder.

Such proceedings may, at all events, not be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State. However, in the case of objects forming part of public collections, referred to in Article 1 (1), 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.

2. Return proceedings may not be brought if removal from the national territory of the requesting Member State is no longer unlawful at the time when they are to be initiated.

Article 8

Save as otherwise provided in Articles 7 and 13, the competent court shall order the return of the cultural object in question where it is found to be a cultural object within the meaning of Article 1 (1) and to have been removed unlawfully from national teerritory.

Article 9

Where return of the object is ordered, the competent court in the requested States shall award the possessor such compensation as it deems fair according to the circumstances of the case, provided that it is satisfied that the possessor exercised due care and attention in acquiring the object.

The burden of proof shall be governed by the legislation of the requested Member State.

In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by that means.

The requesting Member State shall pay such compensation upon return of the object.

Article 10

Expenses incurred in implementing a decision ordering the return of a cultural object shall be borne by the requesting Member State. The same applies to the costs of the measures referred to in Article 4 (4).

Article 11

Payment of the fair compensation and of the expenses referred to in Articles 9 and 10 respectively shall be without prejudice to the requesting Member State's right to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

Article 12

Ownership of the cultural object after return shall be governed by that law of the requesting Member State.

Article 13

This Directive shall apply only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993.

Article 14

1. Each Member State may extend its obligation to return cultural objects to cover categories of objects other than those listed in the Annex.

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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.

Article 15

This Directive shall be without prejudice to any civil or criminal proceedings that may be brought, under the national laws of the Member States, by the requesting Member State and/or the owner of a cultural object that has been stolen.

Article 16

1. Member States shall send the Commission every three years, and for the first time in February 1996, a report on the application of this Directive.

2. The Commission shall send the European Parliament, the Council and the Economic and Social Committee, every three years, a report reviewing the application of this Directive.

3. The Council shall review the effectiveness of this Directive after a period of application of three years and, acting on a proposal from the Commission, make any necessary adaptations.

4. In any event, the Council acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the Annex, on the basis of economic and monetary indicators in the Community.

Article 17

The Commission shall be assisted by the Committee set up by Article 8 of Regulation (EEC) No 3911/92.

The Committee shall examine any question arising from the application of the Annex to this Directive which may be tabled by the chairman either on his own initiative or at the request of the representative of a Member State.

Article 18

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within nine months of its adoption, except as far as the Kingdom of Belgium, the Federal Republic of Germany and the Kingdom of the Netherlands are concerned, which must conform to this Directive at the latest twelve months from the date of its adoption. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 19

This Directive is addressed to the Member States.

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ANNEX

Categories referred to in the second indent of Article 1 (1) to which objects classified as 'national treasures' within the meaning of Article 36 of the Treaty must belong in order to qualify for return under this Directive

A. 1. Archaeological objects more than 100 years old which are the products of:

— land or underwater excavations and finds,

— archaeological sites,

— archaeological collections.

2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, more than 100 years old.

▼M1

3. Pictures and paintings, other than those included in Category 3A or 4, executed entirely by hand on any material and in any medium ([1])

3A. Water-colours, gouaches and pastels executed entirely by hand on any material ([1])

4. Mosaics in any material executed entirely by hand, other than those falling in Categories 1 or 2, and drawings in any medium executed entirely by hand on any material ([1])

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5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters ([1]).

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

7. Photographs, films and negatives thereof ([1]).

8. Incunabula and manuscripts, including maps and musical scores, singly or in collections ([1]).

9. Books more than 100 years old, singly or in collections.

10. Printed maps more than 200 years old.

11. Archives and any elements thereof, of any kind, on any medium, comprising elements more than 50 years old.

12. (a) Collections ([2]) and specimens from zoological, botanical, mineralogical or anatomical collections;

(b) Collections ([2]) of historical, palaeontological, ethnographic or numismatic interest.

13. Means of transport more than 75 years old.

14. Any other antique item not included in categories A 1 to A 13, more than 50 years old.

The cultural objects in categories A 1 to A 14 are covered by this Directive only if their value corresponds to, or exceeds, the financial thresholds under B.

B. **Financial thresholds applicable to certain categories under A (in ecus)**

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VALUE:

Whatever the value

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— 1 (Archaeological objects)

— 2 (Dismembered monuments)

([1]) Which are more than fifty years old and do not belong to their originators.

([2]) As defined by the Court of Justice in its Judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of Heading No 99.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.'

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— 8 (Incunabula and manuscripts)
— 11 (Archives)

15 000

— 4 (Mosaics and drawings)
— 5 (Engravings)
— 7 (Photographs)
— 10 (Printed maps)

▼M1

30 000

— 3A. (Water colours, gouaches and pastels)

▼B

50 000

— 6 (Statuary)
— 9 (Books)
— 12 (Collections)
— 13 (Means of transport)
— 14 (Any other item)

150 000

— 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when return is requested. The financial value is that of the object in the requested Member State.

▼M2

For the Member States which do not have the euro as their currency, the values expressed in euro in the Annex shall be converted and expressed in national currencies at the rate of exchange on 31 December 2001 published in the *Official Journal of the European Communities*. This countervalue in national currencies shall be reviewed every two years with effect from 31 December 2001. Calculation of this countervalue shall be based on the average daily value of those currencies, expressed in euro, during the 24 months ending on the last day of August preceding the revision which takes effect on 31 December. The Advisory Committee on Cultural Goods shall review this method of calculation, on a proposal from the Commission, in principle two years after the first application. For each revision, the values expressed in euro and their countervalues in national currency shall be published periodically in the *Official Journal of the European Communities* in the first days of the month of November preceding the date on which the revision takes effect.