



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.03.1998
COM(1998) 78 final

96/ 0085 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the resale right for the benefit of the author of an original work of art

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

I. GENERAL

1. On 25 April 1996 the Commission presented the Council with a proposal for a European Parliament and Council Directive on the resale right for the benefit of the author of an original work of art.¹

At its meeting on 18 December 1996, the Economic and Social Committee delivered a favourable opinion on the proposal.²

Parliament, consulted under the co-decision procedure, examined the proposal in detail in its committees. On 8 April 1997, it debated the report drawn up by Mrs Ana Palacio Vallelersundi on behalf of the Committee on Legal Affairs and Citizens' Rights, and at its plenary sitting of 9 April adopted the proposal with amendments.³

In this amended proposal for a Directive, the Commission has tried to take account of Parliament's opinion. Compared with the original text, it has introduced three substantive amendments and made a number of changes designed to make the proposal more accurate and clearer.

2. The substantive amendments proposed by Parliament and accepted by the Commission relate to:
 - (a) the exclusion of manuscripts from the original works of art concerned by resale right (recitals 1 and 15; Article 2);
 - (b) the introduction of a minimum rate where a national threshold lower than the Community threshold is applied (recital 17; Article 4);
 - (c) the extension of the period during which the author or his authorised representative may request the information necessary in order to secure payment under the resale right (Article 9).

¹ OJ C 178, 21.6.1996, p. 16.

² OJ C 75, 10.3.1997, p. 17.

³ OJ C 132, 28.4.1997, p. 88.

3. The main changes of a drafting nature accepted by the Commission relate to the following points:

- (a) the unassignable and inalienable nature of the resale right, and the basis of resale right (recitals 1 and 2, Article 1);
- (b) the integral inclusion of a recital on the definition of resale right (recital 1a);
- (c) the integral inclusion of a recital calling for the introduction, in a binding manner, of resale rights at international level (recital 5a);
- (d) the advantage of harmonising resale right with a view to ensuring the proper functioning of the internal market (recitals 6 and 7);
- (e) the transactions giving rise to resale right (recital 13);
- (f) the composition of the sale price bands and the tapering scale of rates (recital 9; Articles 3 and 4);
- (g) the term of resale right, in conjunction with Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights (Article 8);
- (h) the procedures for the revision clause (recital 21);
- (i) the procedures for managing the sums paid (recital 23; Article 6).

The Commission accepts 21 of Parliament's 28 amendments in whole or in part, subject in certain cases to the adjustment of the various language versions.

4. The amendments or parts of amendments not adopted by the Commission for reasons of substance concern:

- (a) the exemption of the first transfer of ownership between dealers or between a dealer and a final purchaser, provided that the transfer takes place within three years of the acquisition of the work of art by the dealer. This amendment was rejected, since Article 14^{ter} of the Berne Convention provides that resale right applies to any resale. The legislations of the 11 Member States which have established resale right follow Article 14^{ter} and do not distinguish between the various participants on the market for contemporary art (amendments 17 and 49);

- (b) the use, as a basis for calculation, of the difference between the price obtained when the work of art is sold and the purchase price initially paid by the seller (excluding loss-making transactions). This amendment was rejected, since Article 14^{ter} of the Berne Convention indicates that the tax base for resale right is the sale price, irrespective of the success obtained by the work. The legislations of all the Member States which apply resale right are consistent with Article 14^{ter}. Only one Member State has taken value added as the tax base for certain resale transactions, and it has to be concluded that, given the practical difficulties, such statutory provisions have only a formal value. The amendment impairs the consistency of the text, since some of the articles left intact by Parliament provide that resale right is paid on the basis of the sale price and not of the value added (amendment 51);
- (c) the restriction of entitled parties to the author's legal heirs. This amendment was rejected, since resale right like all copyright is an economic right and, accordingly, is covered by the freedom of the rightholder to transmit his property right to the heir of his choice (fundamental freedom to bequeath). The law of inheritance is, at present, a matter entirely for the Member States and cannot be affected, even indirectly, by the principle of subsidiarity (amendment 55);
- (d) the new price bands and the reduction of the rates applicable to resale right. The Commission rejected this amendment, since it thought it would involve too big a fall in the income of the authors of plastic and graphic works of art compared with the current situation in those Member States which have adopted resale right. The Commission's proposal takes account, however, of the different interests involved, by providing for a lower base rate than that currently applied in most of the Member States and for a tapering scale of rates for the price bands, whereas, at the moment, Member States can only apply single rates (amendment 57);
- (e) The inclusion of glass among the original works of art giving rise to resale right. This amendment was rejected by the Commission on the grounds that it is generally accepted, both under Article 14^{ter} of the Berne Convention and in the legislation of the Member States on resale right, that the applied arts are not included among works of art covered by resale right (amendment 64);
- (f) the limitation to twelve copies maximum of works of art considered to be original. This amendment was rejected by the Commission on the grounds that a greater number of copies of some of the works of art concerned may be made while still being considered by the profession and by collectors as original (lithographs, photographs, etc.) (amendments 18 and 64);
- (g) the procedures for the revision clause (date of the first report and the frequency of subsequent reports), since the time limit proposed by Parliament is too short to allow the practical impact of the Directive to be assessed (amendment 27).

II. COMMENTS ON THE RECITALS

Recitals 1, 1a and 2

These recitals are based on amendments 1, 2 and 3.
See the comments on Article 2.

Recital 5a

This recital fully incorporates amendment 4.
Article 14^{ter} of the Berne Convention is an optional provision; the amendment proposes to make the introduction of resale right at international level obligatory.

Recital 6

The recital incorporates amendment 5 in slightly altered form.
The amendment clarifies the wording in particular with regard to harmonisation of resale right with a view to ensuring the proper functioning of the internal market.

Recital 7

The recital incorporates amendment 6. It improves the wording.

Recital 13

This recital is based on amendment 49.
The change made is intended to specify the persons involved in the transaction giving rise to resale right.

Recital 15

The recital incorporates amendment 9 and is intended to exclude manuscripts from the scope of the amended proposal.
See the comments on Article 2.

Recital 17

The recital is based on amendment 10.
See the comments on Article 4.

Recital 19

The recital is based on amendment 11.
It stresses the attention paid to the various interests in question when the Directive was drawn up. It establishes a link between the selection of a tapering scale of rates for the different price bands and the desire to reduce the risk of sales being relocated.

Recital 21

The recital incorporates amendment 13 in conjunction with amendment 27.
See the comments on Article 10.

Recital 23

The recital incorporates amendment 15.
This change stresses that it is for the Member States to regulate the exercise of resale right and in particular the procedures for its management.

Article 1

Amendment 17 has been incorporated in part into Article 1 in a manner which highlights the inalienable character of resale right.

Article 2

Amendments 18 and 64 have been partly incorporated in Article 2. Manuscripts are consequently excluded from the scope of the proposal. Although they are covered by Article 14^{ter} of the Berne Convention, the original manuscripts of authors and composers are rarely of major importance as far as the generation of income is concerned. Income arises, rather, from the right of reproduction.

The amendment makes it possible to define more accurately the scope of resale right with regard to plastic and graphic works of art.

The text also makes it clearer that resale right is exercised upon the alienation of a tangible object which is deemed to be original. Thus it is the originality of the physical medium of the creative work which is important in this case and not the creation itself. In most such cases, the medium is a single copy. In others, the right will also apply to limited editions, though it is not appropriate to fix the number of these in the Directive.

Article 3

The amended text incorporates amendment 45, as regards structure and presentation.

Article 4

The amended article incorporates, as regards structure and presentation, amendments 57 and 34. It is more explicit as far as the composition of the bands and the tapering scale of rates are concerned. It clarifies the right given to the Member States, provided for by Article 3(2) of the initial proposal, to fix a national threshold lower than the Community one. It also introduces a minimum percentage, should the Member State make use of such a possibility.

Article 6(2)

The article is based on amendment 52. The rest of the text, which is of illustrative value, has been incorporated in recital 23.

Article 7

This article incorporates amendment 24. It strengthens the protection in the Member States of third-country nationals by granting equivalent treatment to that given to nationals of Member States, where the level in the third country concerned corresponds, in practice, to that in the Community Directive.

Article 8

This article incorporates amendment 25. Its wording has been slightly changed.

Article 9

The article incorporates amendment 26, slightly modified in its wording. The period in which the author or his authorised representative may request information necessary to secure payment of the resale right goes up from one to three years, and the start of such period is fixed as the date of the transaction itself. The amendment increases the possibility of supervising transactions and, accordingly, facilitates the exercise of resale right by its holder, without however imposing on the various operators formalities which are too restricting.

Article 10

The modified text incorporates amendment 27 in part. It clarifies in an appropriate manner certain features which have to be taken into account by the Commission when preparing its report. It broadens the scope of any future proposal.

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the resale right for the benefit of the author of an original work of art

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Initial proposal

Amended proposal

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

No change.

Having regard to the proposal from the Commission,⁴

No change.

Having regard to the opinion of the Economic and Social Committee,⁵

No change.

Acting in accordance with the procedure laid down in Article 189b of the Treaty,⁶

No change.

⁴ OJ C 178, 21.6.1996, p. 16.

⁵ OJ C 75, 10.3.1997, p. 17.

⁶ Opinion of the European Parliament, 9.4.1997.

1. Whereas, in the field of copyright, the artist's resale right is an inalienable right enjoyed by the author of an original work of art or original manuscript to an interest in any sale of the work subsequent to the first transfer by the author;

1. Whereas, in the field of copyright, the artist's resale right is an unassignable and inalienable right enjoyed by the author of an original work of graphic or plastic art to an economic interest in successive sales of the work concerned;

1a. Whereas the artist's resale right is a right of a productive character which enables the author/artist to receive consideration for successive transfers of the work; whereas the subject-matter of the artist's resale right is the physical work, namely the medium in which the protected work is incorporated;

2. Whereas the artist's resale right is intended to ensure that authors share in the economic success of their works; whereas it helps to redress the balance between the economic situation of authors and that of other creators who benefit from successive exploitations of their works;

2. Whereas the artist's resale right is intended to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art; whereas it helps to redress the balance between the economic situation of authors of graphic and plastic works of art and that of other creators who benefit from successive exploitations of their works;

3. Whereas the artist's resale right forms an integral part of copyright and is an essential prerogative for authors; whereas the imposition of such a right in all Member States meets the need for providing creators with an adequate and standard level of protection;

4. Whereas under Article 128(4) of the EC Treaty the Community is to take cultural aspects into account in its action under other provisions of the Treaty;

5. Whereas the Berne Convention for the Protection of Literary and Artistic Works provides that the artist's resale right is available only if legislation in the country to which the author belongs so permits; whereas the right is therefore optional and subject to the rule of reciprocity; whereas it follows from the case-law of the Court of Justice of the European Communities on the application of the principle of non-discrimination laid down in Article 6 of the EC Treaty, as shown in the judgment of 20 October 1993 in Joined Cases C-92/92 and C-326/92 *Phil Collins and others*,⁷ that domestic provisions containing reciprocity clauses cannot be relied upon in order to deny nationals of other Member States rights conferred on national authors; whereas the application of such clauses in the Community context runs counter to the principle of equal treatment resulting from the prohibition of any discrimination on grounds of nationality;

5a. Whereas it would seem desirable to introduce obligatory resale rights at international level; whereas the contracting parties to the Berne Convention should therefore make Article 14^{ter} of that instrument compulsory;

⁷ [1993] ECR I-5145.

6. Whereas the artist's resale right is currently provided for by the domestic legislation of a majority of Member States; whereas such laws, where they exist, display certain differences, notably as regards the works covered, those entitled to receive royalties, the rate applied, the sales subject to payment of a royalty, and the basis of assessment thereof; whereas the application or non-application of such a right has a significant impact on the competitive environment within the internal market; whereas as with any other parafiscal charge it is an element which must be taken into account by each individual wishing to sell a work of art; whereas this right is therefore a factor which contributes to the creation of distortions of competition as well as displacements of sales within the Community;

7. Whereas such disparities in the application of the artist's resale right by the Member States have a direct negative impact on the proper functioning of the internal market in works of art as provided for by Article 7a of the Treaty; whereas in such a situation Article 100a of the EC Treaty constitutes the appropriate legal basis;

6. Whereas the artist's resale right is currently provided for by the domestic legislation of a majority of Member States; whereas such laws, where they exist, display certain differences, notably as regards the works covered, those entitled to receive royalties, the rate applied, the transactions subject to payment of a royalty, and the basis on which these are calculated; whereas the application or non-application of such a right has a significant impact on the competitive environment within the internal market, since, as with parafiscal charges, the existence or absence of an obligation to pay on the basis of the artist's resale right is an element which must be taken into account by each individual wishing to sell a work of art; whereas this right is therefore a factor which contributes to the creation of distortions of competition as well as displacements of sales within the Community;

7. Whereas such disparities with regard to the existence and application of the artist's resale right by the Member States have a direct negative impact on the proper functioning of the internal market in works of art as provided for by Article 7a of the Treaty; whereas in such a situation Article 100a of the EC Treaty constitutes the appropriate legal basis;

8. Whereas the objectives of the Community as set out in the Treaty include laying the foundations of an ever closer union among the peoples of Europe, promoting closer relations between the Member States belonging to the Community, and ensuring their economic and social progress by common action to eliminate the barriers which divide Europe; whereas to that end the Treaty provides for the establishment of an internal market which presupposes the abolition of obstacles to the free movement of goods, freedom to provide services and freedom of establishment, and by the introduction of a system ensuring that competition in the common market is not distorted; whereas harmonization of Member States' laws on the artist's resale right contributes to the attainment of these objectives;

9. Whereas Council Directive 77/388/EEC,⁸ as amended by Directive 94/5/EC,⁹ supplementing the common system of value-added tax progressively introduces a Community system of taxation applicable *inter alia* to works of art; whereas measures confined to the tax field are not sufficient to guarantee the harmonious functioning of the art market; whereas this objective cannot be attained without harmonisation in the field of the artist's resale right;

⁸ OJ L 145, 13.6.1977, p. 1.

⁹ OJ L 60, 3.3.1994, p.16.

10. Whereas existing differences between laws should be eliminated where they have a distorting effect on the functioning of the internal market, and the emergence of any new differences of that kind should be prevented; whereas there is no need to eliminate or prevent the emergence of differences which cannot be expected to affect the functioning of the internal market;

11. Whereas it is not necessary to harmonise every provision of Member States' laws on the artist's resale right; whereas it will be sufficient to limit the harmonisation exercise to those domestic provisions which have the most direct impact on the functioning of the internal market; whereas, however, the objectives of this limited harmonisation exercise cannot be sufficiently achieved by the Member States acting alone; whereas, in accordance with the third paragraph of Article 3b of the Treaty, the proposed course of action does not go beyond what is necessary to achieve the abovementioned objectives; whereas this Directive is therefore, in its entirety, consistent with the requirements of the principles of subsidiarity and proportionality;

12. Whereas, pursuant to Council Directive 93/98/EC,¹⁰ the term of copyright runs for 70 years after the author's death; whereas the same period should be laid down for the artist's resale right; whereas, consequently, only the originals of works of contemporary or modern art may fall within the scope of the artist's resale right; whereas, in general, works of contemporary or modern art occupy a relatively modest place among sales by public auction;

¹⁰ OJ L 290, 24.11.1993, p. 9.

13. Whereas the scope of the artist's resale right should be extended to any resale, with the exception of transactions between private individuals, of the work subsequent to the first sale by the author; whereas the artist's resale right therefore applies to transactions effected by all professional sellers, such as salesrooms, art galleries and, in general, any dealer in works of art;

14. Whereas effective rules should be laid down based on experience already gained at national level with the artist's resale right; whereas it is appropriate to calculate the royalty as a percentage of the sale price and not of the increase in value of works whose original value has increased;

15. Whereas the categories of works of art subject to the artist's resale right should be harmonised; whereas works of applied art should be excluded;

16. Whereas the fixing of a Community minimum threshold for the application of the artist's resale right takes account of the requirements of the internal market; whereas, however, Member States should be given the opportunity to fix national thresholds which are lower than the Community threshold so as to further the interests of young artists;

13. Whereas the scope of the artist's resale right should be extended to any resale, with the exception of transactions between private individuals, of the work subsequent to the first sale by the rightholder; whereas the artist's resale right therefore applies to transactions effected by or with the participation of an art market professional, all professional sellers, such as salerooms, art galleries and, in general, any dealer in works of art;

15. Whereas the categories of works of art subject to the artist's resale right should be harmonised; whereas original manuscripts and works of applied art should be excluded;

17. Whereas the non-application of the artist's resale right below the minimum threshold makes it possible to avoid disproportionately high collection and administration costs;

17. Whereas the non-application of royalties below the minimum threshold may help to avoid disproportionately high collection and administration costs compared with the profit for the artist; whereas, however, in accordance with the principle of subsidiarity, the Member States should be allowed to establish national thresholds lower than the Community threshold, so as to promote the interests of new artists; whereas, given the small amounts involved, this derogation is not likely to have a significant effect on the proper functioning of the internal market;

18. Whereas the rates set by the different Member States for the application of the artist's resale right vary considerably at present; whereas the effective functioning of the internal market in works of contemporary or modern art requires the fixing of uniform rates;

19. Whereas a system consisting of a tapering scale of rates for several price bands may help to prevent the Community rules on the artist's resale right from being circumvented; whereas the rates must reflect the interests both of artistic circles and of the art market;

19. Whereas it is desirable to establish, with the intention of reconciling the various interests involved in the market for original works of art, a system consisting of a tapering scale of rates for several price bands; whereas it is important to reduce the risk of sales relocating and the circumvention of the Community rules on the artist's resale right;

20. Whereas the person liable for payment of the royalty is the seller; whereas the latter is the person or undertaking on whose behalf the sale is concluded;

21. Whereas provision should be made for the possibility of periodic adjustment of the threshold and rates; whereas, to this end, it is appropriate to entrust to the Commission the task of drawing up periodic reports on the practical effect of the application of the artist's resale right and, where appropriate, of making proposals for amendment of the threshold and rates;

22. Whereas the persons entitled to receive royalties must be specified, due regard being had to the principle of subsidiarity; whereas it is not appropriate to take action through this Directive in relation to Member States' laws of succession; whereas, however, those entitled under the author must be able to benefit fully from the resale right after his death;

23. Whereas Member States should be free to determine the procedures for collecting and managing the amounts paid over by virtue of the artist's resale right; whereas in this respect management by a collecting society is one possibility; whereas, however, Member States must ensure that amounts intended for authors who are nationals of other Member States are in fact collected and distributed;

21. Whereas provision should be made for the possibility of periodic adjustment of the threshold and rates; whereas, to this end, it is appropriate to entrust to the Commission the task of drawing up periodic reports on the actual application of the artist's resale right in the Member States and on the impact on the European art market and, where appropriate, of making proposals relating to the amendment of this Directive;

23. Whereas the Member States are responsible for regulating the exercise of the artist's resale right, particularly with regard to the way this is managed; whereas in this respect management by the collecting society is one possibility; whereas, however, Member States must ensure that amounts intended for authors who are nationals of other Member States are in fact collected and distributed;

24. Whereas enjoyment of the artist's resale right must be restricted to Community nationals and foreign authors whose countries afford such protection to authors who are nationals of Member States;

25. Whereas appropriate procedures for monitoring transactions should be introduced so as to ensure by practical means that the artist's resale right is effectively applied by Member States; whereas this implies a right on the part of the author or his authorised representative to obtain any necessary information from the person liable for payment of royalties,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope

Article 1

Subject-matter of the artist's resale right

Member States shall provide, for the benefit of the author of an original work of art, an artist's resale right, to be defined as an inalienable right to receive a percentage of the sale price obtained from any resale of the work, with the exception of transactions effected by individuals acting in their private capacity, subsequent to the first transfer of the work by the author.

Article 2

Works of art to which the artist's resale right relates

For the purposes of this Directive, "original work" means manuscripts and works of plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics and photographs, provided they are made by the artist himself or are copies considered to be original works of art according to professional usage in the Community.

CHAPTER I

Scope

Article 1

Subject-matter of the artist's resale right

Member States shall provide, for the benefit of the author of an original work of art, an artist's resale right, to be defined as an inalienable right, which cannot be given up, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, with the exception of transactions effected by individuals acting in their private capacity, subsequent to the first transfer of the work by the author.

Article 2

Works of art to which the artist's resale right relates

For the purposes of this Directive, "original work" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics and photographs, provided they are made by the artist himself or are copies considered to be original works of art.

CHAPTER II

Particular provisions

Article 3

Threshold

1. Royalties collected pursuant to Article 1 shall be payable when the sale price is equal to or higher than ECU 1 000.

2. Member States may fix a national threshold which is lower than the threshold laid down in paragraph 1.

Article 4

Rates and collection

The royalty collected pursuant to Article 1 shall be set at the following rates:

(a) 4% of the sale price between ECU 1 000 and ECU 50 000;

(b) 3% of the sale price between ECU 50 000 and ECU 250 000;

(c) 2% of the sale price above ECU 250 000.

The royalty shall be payable by the seller.

CHAPTER II

Particular provisions

Article 3

Threshold

1. It shall be for the Member States to set a minimum threshold above which the sales referred to in Article 1 shall be subject to resale right.

2. This threshold may not under any circumstances exceed ECU 1 000.

Article 4

Rates and collection

1. The royalty collected pursuant to Article 1 shall be set at the following rates:

(a) 4% for the sale price band between ECU 1 000 and ECU 50 000;

(b) 3% for the sale price band between ECU 50 000 and ECU 250 000;

(c) 2% for the sale price band exceeding ECU 250 000.

2. If the threshold set should be lower than ECU 1 000, the Member State shall also determine the percentage applicable, which may not be lower than 4%.

3. The royalty shall be payable by the seller.

Article 5

Calculation basis

The sale prices referred to in Articles 3 and 4 are net of tax. No change.

Article 5

Calculation basis

Article 6

Persons entitled to receive royalties

1. The royalty collected under Article 1 shall be payable to the author of the work and, after his death, to those entitled under him.

2. Member States may provide for the collective management of sums paid over by virtue of the artist's resale right. They shall determine the arrangements for collecting and distributing royalties where the author is a national of another Member State.

Article 6

Persons entitled to receive royalties

No change.

2. Member States may provide for collective management of sums paid over by virtue of the artist's resale right.

Deleted.

[Reinserted in recital 23]

Article 7

Third-country nationals entitled to receive royalties

Member States shall provide that authors who are nationals of third countries shall enjoy the artist's resale right in accordance with this Directive, provided that authors from the Member States enjoy reciprocal treatment in the third countries concerned.

Article 7

Third-country nationals entitled to receive royalties

Member States shall lay down that authors who are nationals of third countries shall enjoy the artist's resale right in accordance with this Directive and their internal legislation provided that authors from the Member States enjoy reciprocal treatment in practice in the third countries concerned.

Article 8

Duration of the artist's resale right

The artist's resale right shall last for the period laid down in Article 1 of Directive 93/98/EEC.

Article 8

Duration of the artist's resale right

The term of protection of the artist's resale right shall correspond to that laid down in Article 1 of Directive 93/98/EEC.

Article 9

Right to obtain information

The author or his authorised representative may require any dealer, sales director or organiser of public sales to furnish any information that may be necessary in order to secure payment of sums payable under the artist's resale right in respect of the sale during the past year of original works of art.

Article 9

Right to obtain information

The Member States shall lay down that for three years from the date of the transaction, the author or his authorised representative may require any dealer and commercial agent, sales director or organiser of public sales to furnish any information that may be necessary in order to secure payment of royalties in respect of the sale during the past year of original works of art as referred to in Article 2.

CHAPTER III

Final provisions

Article 10

Revision clause

The Commission shall present to the European Parliament, the Council and the Economic and Social Committee not later than 1 January 2004 and every five years thereafter a report on the implementation of this Directive and shall, where appropriate, put forward proposals for adjusting the minimum threshold and the rates of the royalties to take account of changes in the sector.

CHAPTER III

Final provisions

Article 10

Revision clause

The Commission shall present to the European Parliament, the Council and the Economic and Social Committee not later than on 1 January 2004 and every five years thereafter a report on the implementation and the effect of this Directive, paying particular attention to its impact on the European market in modern and contemporary art, especially as regards the fostering of artistic creativity and the management procedures in the Member States. Where appropriate, the Commission shall put forward proposals for adapting the minimum threshold and the rates of royalty to take account of changes in the sector, and any other proposal it may deem necessary in order to enhance the effectiveness of this Directive.

Article 11

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1999. They shall inform the Commission thereof immediately. No change.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 11

Implementation

Article 12

Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Communities. No change.

Article 13

This Directive is addressed to the Member States. No change.

Article 12

Entry into force

Article 13

Done at , ,

For the European Parliament

The President

For the Council

The President

ISSN 0254-1475

COM(98) 78 final

DOCUMENTS

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06 09 10

Catalogue number : CB-CO-98-146-EN-C

ISBN 92-78-31898-1

Office for Official Publications of the European Communities

L-2985 Luxembourg