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EUROPEAN PARLIAMENT

# SESSION DOCUMENTS

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## O P I N I O N

of the Committee on Legal Affairs and Citizens' Rights  
for the Committee on Culture, Youth, Education and the Media  
on the proposals from the Commission to the Council for

**(\*) a regulation on the export of cultural goods**  
(COM(91) 447 final - C3-0080/92) and

**(\*\*) a directive on the return of cultural goods unlawfully  
removed from the territory of a Member State**  
(COM(91) 447 final - C3-0081/92 - SYN 382)

Draftsman: Mr Manuel GARCIA AMIGO

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

\* = Consultation procedure requiring a single reading

\*\*II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

\*\*I = Cooperation procedure (first reading)

\*\*\* = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

**O P I N I O N**

(Rule 120 of the Rules of Procedure)

of the Committee on Legal Affairs and Citizens' Rights  
for the Committee on Culture, Youth, Education and the Media

Draftsman: Mr GARCIA AMIGO

At its meeting of 16, 17 and 18 March 1992 the Committee on Legal Affairs and Citizens' Rights appointed Mr Garcia Amigo draftsman.

At its meeting of 13 and 14 April 1992 and 23 and 24 April 1992 it considered the draft opinion.

At the latter meeting it adopted the amendments by 10 votes to 0, with 2 abstentions.

The following were present for the vote: Vayssade, acting chairman; Rothley, vice-chairman; Garcia Amigo, draftsman; Anastassopoulos, Bontempi, Defraigne (for Salema O. Martins), Grund, Janssen van Raay, Medina Ortega, Oddy, Riskaer Pedersen (for Galland), Simpson and Stavrou (pursuant to Rule 111(2)).

Commission proposal for a Council regulation  
on the export of cultural goods

Commission text\*

Amendments

(Amendment No. 1)

First, second and third citations

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

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

Having regard to the proposal from the Commission,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

In cooperation with the European Parliament,

(Amendment No. 2)

Second recital a (new)

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; whereas they will, on the other hand, no longer be able to apply certain checks or formalities at the Community's internal frontiers to ensure the effectiveness of those measures;

(Amendment No. 3)

Article 1

For the purposes of this Regulation, the term 'cultural goods' shall refer to the items listed in the Annex.

For the purposes of this Regulation, and without prejudice to the powers conferred upon the Member States under Article 36 of the Treaty, the term 'cultural goods' shall refer to the items listed in the Annex which are accompanied by a certificate of origin issued by the competent national authorities.

\* COM(91) 447 final - C3-0080/92

Commission text\*

Amendments

(Amendment No. 4)  
Article 2(3)

3. An export licence shall be issued at the request of the person concerned by the competent authorities of the Member State on whose territory the cultural article in question was lawfully and definitively located on 1 January 1993 or, thereafter, on whose territory it is located following lawful and definitive export from another Member State.

3. An export licence shall be issued, where appropriate, at the request of the person concerned by the competent authorities of the Member State on whose territory the cultural article in question was lawfully and definitively located on 1 January 1993 or, thereafter, on whose territory it is located following lawful and definitive export from another Member State.

(Amendment No. 5)  
Article 5

For the purposes of implementing this Regulation, the provisions of Regulation (EEC) No. 1468/81, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

For the purposes of implementing this Regulation, the provisions of Regulation (EEC) No. 1468/81, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

The customs authorities of the Member States shall cooperate with the competent authorities within the meaning of Council Directive (EEC) No. .../92 to ensure improved compliance with its provisions.

(Amendment No. 6)  
Article 6

The provisions necessary for the implementation of this Regulation, in particular those concerning the form to be used (model, technical properties, etc.) and the revision of the Annex, shall be adopted in accordance with the procedure laid down in Article 7(2).

The provisions necessary for the implementation of this Regulation, in particular those concerning the form to be used (model, technical properties, etc.) shall be adopted in accordance with the procedure laid down in Article 7(2).

\* COM(91) 447 final - C3-0080/92

Commission text

Amendments

(Amendment No. 7)  
Annex, paragraph C (new)

C. Where a good belonging to categories A1 and A2 of the Annex may, in isolation, fall into another category, it shall be considered to belong to categories A1 and A2 only.

Commission proposal for a Council directive  
on the return of cultural objects unlawfully removed  
from the territory of a Member State

Commission text\*\*

Amendments

(Amendment No. 1)  
Second recital

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; whereas they will, on the other hand, no longer be able to apply checks or formalities at the Community's internal frontiers to ensure the effectiveness of those measures;

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; whereas they will, on the other hand, no longer be able to apply certain checks or formalities at the Community's internal frontiers to ensure the effectiveness of those measures;

(Amendment No. 2)  
Third recital

Whereas arrangements should therefore be introduced enabling Member States to secure the return to their territory of cultural objects which are classed as national treasures within the meaning of Article 36 of the Treaty and have been removed from their territory in breach of the abovementioned national measures or of Council Regulation (EEC) No. ....; 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 Article 36 of the Treaty, but merely categories of object which may be classed as such and may accordingly be covered by the return procedure introduced by this Directive;

Whereas arrangements should therefore be introduced enabling Member States to secure the return to their territory of cultural objects which are classed as national treasures within the meaning of Article 36 of the Treaty and have been removed from their territory in breach of the abovementioned national measures or of Council Regulation (EEC) No. ....; whereas the Annex to this Directive is consequently not intended to define objects which rank as 'national treasures' within the meaning of Article 36 of the Treaty, but merely categories of object which may be classed as such, in addition to the provisional or definitive inventories or lists of cultural objects which exist at national level in the Member States, and may accordingly be covered by the return procedure introduced by this Directive;

\*\* COM(91) 447 final - C3-0081/92 - SYN 382

Commission text\*\*

Amendments

(Amendment No. 3)  
New recital

Whereas Regulation (EEC) No. ..../92 and this Directive constitute two complementary and intrinsically linked aspects of a single system of Community protection for cultural objects which are national treasures of the Member States possessing artistic, historic or archaeological value;

(Amendment No. 4)  
Fourth recital

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 with a view to amending, if necessary, the Annex to this Directive in the light of experience.

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, which should lead to a system of mutual recognition of the relevant national laws; whereas the Annex should therefore be revised and amended with a view to the full achievement of this aim,

Commission text\*\*

Amendments

(Amendment No. 5)  
Article 1(1)

For the purposes of this Directive:

1. 'cultural object' means an object which:

- is a 'national treasure' under national legislation in the context of Article 36 of the Treaty, and
- belongs to one of the categories listed in the Annex to this Directive;

For the purposes of this Directive:

1. 'cultural object' means an object which:

- (a) is or may be a national treasure possessing artistic, historic or archaeological value under national legislation within the meaning of Article 36 of the Treaty, and
- belongs to one of the categories listed in the Annex to this Directive, or
- (b) is contained in a list or inventory drawn up by each Member State on a provisional or definitive basis, forms part of a public collection or is a movable object of historic value deposited in an ecclesiastical institution;

(Amendment No. 6)  
Article 1(2)

2. 'unlawfully removed from the territory of a Member State' means:

- 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. ...;

or

- not returned at the end of a period of lawful temporary removal;

2. 'unlawfully removed from the territory of a Member State' means:

- 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. ...;

or

- failure to comply with the conditions under which temporary authorization was granted;

\*\* COM(91) 447 final - C3-0081/92 - SYN 382



Commission text\*\*

Amendments

(Amendment No. 7)

Article 2a (new)

Where a 'cultural object' is stolen and subsequently is 'unlawfully removed from the territory of a Member state', title to that 'cultural object' shall indefinitely belong to the person from whom it is stolen.

(Amendment No. 8)

Article 4(2)

2. inform the Member States presumed to be concerned, where a cultural object is found on their territory and there are reasonable grounds for believing that it has been unlawfully removed from the territory of another Member State;

2. inform the Member States presumed to be concerned, where a cultural object is found on their territory, of its location and the identity of the holder, where there is evidence for believing that it has been unlawfully removed from the territory of another Member State;

(Amendment No. 9)

Article 4(4)

4. take any necessary measures for the physical preservation of the cultural object;

4. take any necessary measures for the physical preservation of the cultural object with the aim of preventing any damage to it;

\*\* COM (91) 447 final - C3-0081/92 - SYN 382

Commission text\*\*

Amendments

(Amendment No. 10)  
Article 4(6)

6. act as intermediary between the holder and the requesting Member State.

6. act as intermediary between the holder and the requesting Member State. To this effect, the competent authorities shall endeavour to favour a private agreement between the parties so as to facilitate return. In addition, the above authorities may grant authorization for an arbitration procedure where the requesting State and the holder declare themselves in favour.

(Amendment No. 11)  
Article 4(7) (new)

7. notify the requesting Member State of the competent judicial authority in the requested Member State, where legal proceedings are found to be the only possible means of resolving the dispute;

(Amendment No. 12)  
Article 4(8) (new)

8. take all the necessary steps to ensure compliance with the aims of this Directive.

\*\* COM(91) 447 final - C3-0081/92 - SYN 382

Commission text\*\*

Amendments

(Amendment No. 13)  
Article 5, first paragraph

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

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

(Amendment No. 14)  
Article 7

The central authority of the requested Member State or of other Member States which have a legitimate interest may, at its request, take part in the proceedings referred to in Article 5.

Where various return proceedings have been brought in respect of the same object, the judicial authority shall decide the matter in a single trial.

\*\* COM(91) 447 final - C3-0081/92 - SYN 382

Commission text\*\*

Amendments

(Amendment No. 15)  
Article 8

1. Return proceedings provided for in this Directive may no longer be brought more than five years after the requesting Member State became aware or ought reasonably to have become aware of the location of the cultural object or the identity of its holder. Such proceedings may, at all events, no longer be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State.

2. Return proceedings may not be brought if removal from the national territory is no longer unlawful.

1. Return proceedings provided for in this Directive may no longer be brought more than five years after the requesting Member State became aware of the location of the cultural object or the identity of its holder. Such proceedings may, at all events, no longer be brought more than 50 years after the object was unlawfully removed from the territory of the requesting Member State.

Proof of expiry shall be provided by the party invoking it.

The above time-limits shall not apply to cultural objects in public ownership.

2. Return proceedings may not be brought if removal from the national territory of the requesting State is no longer unlawful.

\*\* COM(91) 447 final - C3-0081/92 - SYN 382

Commission text\*\*

Amendments

(Amendment No. 16)  
Article 10

Where return of the object is ordered, the acquirer shall be entitled to fair compensation, to be determined by the competent court according to the circumstances of the case, on condition that he proves that he could not have known, or could not have been expected to know, that the object had been unlawfully removed from the territory of the requesting Member State.

Where return of the object is ordered, the acquirer shall be entitled to fair compensation, to be determined by the competent court according to the circumstances of the case, on condition that he did not know, or, acting with all due care, could not have been expected to know, that the object had been unlawfully removed from the territory of the requesting Member State.

The ruling shall take immediate effect.

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

In the case of a donation or succession, the acquirer 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.

The requesting Member State shall pay such compensation.

(Amendment No. 17)  
Article 14

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

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

Should the holder invoke this article in order to object to the application of this Directive, he shall be required to prove that removal from the territory of the requesting State took place before 1 January 1993.

\*\* COM(91) 447 final - C3-0081/92 - SYN 382

Commission text\*\*

Amendments

(Amendment No. 18)  
Article 18, first paragraph

For the purposes of revising the Annex to this Directive, the Commission shall be assisted by the committee set up by Regulation (EEC) No. ....

The Commission shall be assisted by the Committee set up by Regulation (EEC) No. ...

(Amendment No. 19)  
Annex, paragraph C (new)

Where an object belonging to categories A1 and A2 of the Annex may, in isolation, fall into another category, it shall be considered to belong to categories A1 and A2 only.

\*\* COM(91) 447 final - C3-0081/92 - SYN 382

## OPINION

of the Committee on Economic and Monetary Affairs and Industrial Policy

Letter from the committee chairman to Mr Pergola, chairman of the Committee on Culture, Youth, Education and the Media

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Brussels, 15 April 1992

Subject: Proposal for a Council regulation (EEC) on the export of cultural goods (COM(91) 447 final - C3-80/92)  
Proposal for a Council directive on the return of cultural objects unlawfully removed from the territory of a Member State  
COM(91) 447 final - C3-81/92 - SYN 382

Rapporteur: Mr GALLE

Dear Mr La Pergola,

At its meeting of 13-15 April 1992 the Committee on Economic and Monetary Affairs and Industrial Policy considered the above subject and expressed the wish to make the following observations.

The two proposals under consideration are a follow-up to the guidelines contained in the Commission communication<sup>1</sup>. They aim at reconciling two principles of the EEC Treaty: the free movement of goods, persons, services and capital (Article 8a) and the protection of national treasures possessing artistic, historic or archaeological value (Article 36).

In addition, these two proposals seek to transform three basic aspects of the subject matter: better cooperation between Member States, harmonization of checks on cultural objects and a system for the return of cultural objects, into Community legislation. The end aim is to supplement the protection afforded by national rules with a common system of protection at Community level. But a Community system of protection should take into account the following concerns.

A first concern relates to the implementation of Article 8a of the Treaty on the establishment of the internal market which has been interpreted by the Commission<sup>2</sup> to mean dismantling physical frontiers and tax barriers. This, in effect, means that Member States will lose some of the means of verification, such as checks on goods, export formalities and tax checks.

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<sup>1</sup> See Communication from the Commission to the Council on the protection of national treasures possessing artistic, historic or archaeological value: needs arising from the abolition of frontiers in 1992, COM(89) 594 final, 22 November 1989

<sup>2</sup> See White Paper on completion of the internal market, COM(85) 310 final

A second aspect connected with the completion of the single market is the decision of the Court of Justice in its judgement of 10 December 1968 (Case 7/68, Commission v. Italy); it declares that all goods, including items such as works of art, fall within the competence of Articles 30 and 34 of the EEC Treaty relating to the free movement of goods. Yet when the Single European Act was signed, a General Declaration was adopted effectively recognizing the right of Member States to take the necessary measures to combat illicit trading in works of art and antiques. Hence the export licence authorized under Article 2 of the export of cultural goods proposal should reflect the spirit of such concerns.

The proposed directive on the return of cultural objects should take into account the conclusions, based on the 'Palma document', of the European Council in Madrid in June 1989, a Community system of controls at external frontiers and the accession of the Community to the UNESCO Convention of 14 November 1970 concerning the illicit import, export and transfer of ownership of cultural property.

Another concern of the committee is about whether the Commission's two measures to institute a system by which the return of cultural objects should be based on a list of commonly agreed categories would be restrictive so that the fundamental principles of Article 8a of the EEC Treaty would be narrowly interpreted or applied in a restrictive manner that could raise new barriers to trade.

Finally, the complex nature of these two regulations calls for an appreciation of their efficiency after a period of two or three year application. Such an exercise might lead to their revision.

Yours sincerely,

(sgd) Bouke BEUMER



## OPINION

of the Committee on External Economic Relations

Letter from the committee chairman to Mr La Pergola, chairman of the Committee on Culture, Youth, Education and the Media

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Brussels, 21 May 1992

Subject: Proposal for a Council regulation (EEC) on the export of cultural goods (COM(91) 447 - C3-0080/92)

Dear Mr Pergola,

The Committee on External Economic Relations considered the proposal for a Council regulation (EEC) on the export of cultural goods at its meeting of 22-23 April 1992.

Under the Single Act, all internal frontier controls in the Community are to disappear on 1 January 1993. Appropriate instruments must accordingly be put in place to ensure that national treasures are protected.

Within the limits of Article 36 of the Treaty, Member States will still have the right to define their national treasures and the provisions required for their protection.

All the difficulty lies in the fact that these national treasures cannot be treated as ordinary goods, while special measures designed for their protection must not be abused in order to hinder the operation of the single market.

At its December 1990 part-session Parliament adopted an (interim) own-initiative report and resolution on the movement of objects of cultural interest in the context of the single market (OJ No. C 19, 28.1.1991, p. 287). Parliament particularly advocated an effective system of checks at the Community's external frontiers and asked the Commission to give detailed attention to a restitution scheme. (This scheme is the subject of the proposal for a Council directive COM(91) 447 - SYN 382 - C3-0080/92.)

The proposal for a regulation on the export of cultural goods rests on the following principles:

- (a) Definition of the categories of cultural goods concerned;
- (b) Introduction of an export authorization system valid throughout the Community, to enable the Member States to safeguard the cultural interests of each other. Export authorization is issued by the relevant authorities of the Member State in which the cultural good receiving export control is situated;

- (c) Application of the provisions of Council Regulation (EEC) No. 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (OJ No. L 144, 2.6.1981, p. 1 as amended by Council Regulation (EEC) No. 945/87 of 30 March 1987);
- (d) The assistance of an advisory committee to adopt the necessary implementing measures to revise the list of categories of goods concerned, where required.

Goods forming part of cultural exhibitions are covered by special customs provisions and are not included in the present proposal.

The proposal advocates the use of procedures based on the scrutiny of the goods presented for clearance and the documents relating thereto, a traditional method well understood by the customs authorities that is also a simple way of protecting the Member States' interests, since in the absence of export documents support the single administrative document the customs service cannot authorize the export of the cultural goods concerned from EEC territory.

The proposed system therefore would seem to meet the intended aims in a realistic way as it safeguards the protection of national treasures without impeding the operation of the single market.

For this reason the committee unanimously decided to approve the proposal.

Yours sincerely,

Giorgio Rossetti  
rapporteur

Willy De Clercy

The following were present for the vote: De Clercq, chairman; Cano Pinto, vice-chairman; Escuder Croft (for Suarez Gonzalez, pursuant to Rule 111(2)), Izquierdo Rojo (for Miranda de Lage), Ortiz Climent (for Lemmer), Peijs, Porto (for de Vries) and Visser (for Mihr).