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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.1.2008
COM(2007) 873 final

2007/0299 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State³. The new Directive will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 93/7/EEC and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Directive.

↓ 93/7/EEC (adapted)

2007/0299 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article ~~95~~ 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

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- (1) Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Directive should be codified.

↓ 93/7/EEC Recital 2 (adapted)

- (2) Under the terms and within the limits of Article 30 of the Treaty, Member States retain the right to define their national treasures and to take the necessary measures to protect them.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 74, 27.3.1993, p. 74. Directive as last amended by Directive 2001/38/EC of the European Parliament and of the Council (OJ L 187, 10.7.2001, p. 43).

⁴ See Annex II, Part A.

↓ 93/7/EEC Recital 3 (adapted)

- (3) Arrangements should therefore be maintained enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of Article 30 of the Treaty 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 goods⁵. Since the implementation of these arrangements should be as simple and efficient as possible, it is necessary, in order to facilitate cooperation with regard to return, that the scope of the arrangements be confined to items belonging to common categories of cultural object. Annex I to this Directive is consequently not intended to define objects which rank as national treasures within the meaning of the said Article 30, but merely categories of object which may be classified as such and may accordingly be covered by the return procedure under this Directive.
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↓ 93/7/EEC Recital 4

- (4) 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 those common categories should also be covered by this Directive.
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↓ 93/7/EEC Recital 5 (adapted)

- (5) Administrative cooperation should be maintained 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.
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↓ 93/7/EEC Recital 6 (adapted)

- (6) The procedure provided for by this Directive forms part of the cooperation between Member States in this field in the context of the internal market. The aim is mutual recognition of the relevant national laws. Provision should therefore be made, in particular, for the Commission to be assisted by an advisory committee.
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↓ 93/7/EEC Recital 7 (adapted)

- (7) Regulation [(EEC) No 3911/92], together with this Directive, sets up a Community system to protect Member States' cultural goods.

⁵ OJ L 395, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).



- (8) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B,
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↓ 93/7/EEC

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

- (1) 'cultural object' shall mean an object which:
- (a) 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 30 of the Treaty; and
 - (b) belongs to one of the categories listed in Annex I or does not belong to one of these categories but forms an integral part of:
 - (i) public collections listed in the inventories of museums, archives or libraries' conservation collection,
 - (ii) the inventories of ecclesiastical institutions;
- (2) 'public collections' shall mean collections which are the property of a Member State, a local or regional authority within a Member States or an institution situated in the territory of a Member State and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority;
- (3) 'unlawfully removed from the territory of a Member State' shall mean:
- (a) 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
 - (b) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal;
- (4) 'requesting Member State' shall mean the Member State from whose territory the cultural object has been unlawfully removed;
- (5) '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;

- (6) 'return' shall mean the physical return of the cultural object to the territory of the requesting Member State;
- (7) 'possessor' shall mean the person physically holding the cultural object on his own account;
- (8) '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.

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 *Official Journal of the European Union*, Series C.

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 has 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 possessor 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) a document describing the object covered by the request and stating that it is a cultural object;
- (b) 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 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 point (1) of Article 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.

↓ 93/7/EEC (adapted)

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 and to have been removed unlawfully from national territory.

Article 9

Where return of the object is ordered, the competent court in the requested Member State 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.

↓ 93/7/EEC

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 point (4) of Article 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 the 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 Annex I.
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.

↓ 93/7/EEC (adapted)

Article 16

1. Member States shall send the Commission every three years a report on the application of this Directive.
 2. The Commission shall send the European Parliament, the Council and the European Economic and Social Committee, every three years, a report reviewing the application of this Directive.
 3. The Council acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in Annex I, on the basis of economic and monetary indicators in the Community.
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↓ 93/7/EEC

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 Annex I 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.

↓ 93/7/EEC (adapted)

Article 18

Member States shall ☒ inform the Commission of ☒ the laws, regulations and administrative provisions necessary to comply with this Directive ☒ which they bring into force ☒.

↓ 93/7/EEC

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

Directive 93/7/EEC, as amended by the Directives listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 20

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

↓ 93/7/EEC

ANNEX I

Categories referred to in Article 1(1)(b) to which objects classified as ‘national treasures’ within the meaning of Article 30 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.
-

↓ 96/100/EC Art. 1 pt. (1)(a)

3. Pictures and paintings, other than those included in Category 4 or 5, executed entirely by hand on any material and in any medium¹.
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↓ 96/100/EC Art. 1 pt. (1)(b)

4. Water-colours, gouaches and pastels executed entirely by hand on any material¹.
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↓ 96/100/EC Art. 1 pt. (1)(c)

5. 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 material¹.
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↓ 93/7/EEC

6. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters¹.
7. Original sculptures or statuary and copies produced by the same process as the original¹ other than those in category¹.
8. Photographs, films and negatives thereof¹.
9. Incunabula and manuscripts, including maps and musical scores, singly or in collections¹.
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¹ Which are more than fifty years old and do not belong to their originators.

10. Books more than 100 years old, singly or in collections.
11. Printed maps more than 200 years old.
12. Archives and any elements thereof, of any kind, on any medium, comprising elements more than 50 years old.
13. (a) Collections² and specimens from zoological, botanical, mineralogical or anatomical collections;
- (b) Collections² of historical, palaeontological, ethnographic or numismatic interest.
14. Means of transport more than 75 years old.
15. Any other antique item not included in categories A.1 to A.14, more than 50 years old.

The cultural objects in categories A.1 to A.15 are covered by this Directive only if their value corresponds to, or exceeds, the financial thresholds set out in Part B.

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

↓ 2001/38/EC Art. 1 pt. (1)

VALUE:

Whatever the value

↓ 93/7/EEC

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 9 (Incunabula and manuscripts)
- 12 (Archives)

15 000

- 5 (Mosaics and drawings)
 - 6 (Engravings)
 - 8 (Photographs)
-

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.'

- 11 (Printed maps)
-

↓ 96/100/EC Art. 1 pt. (2)

30 000

- 4 (Water colours, gouaches and pastels)
-

↓ 93/7/EEC

50 000

- 7 (Statuary)
- 10 (Books)
- 13 (Collections)
- 14 (Means of transport)
- 15 (Any other item)

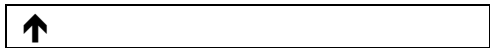
150 000

- 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.

↓ 2001/38/EC Art. 1 pt. (2)
(adapted)

For the Member States which do not have the euro as their currency, the values expressed in euro in this 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 Union*. 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 Union* in the first days of the month of November preceding the date on which the revision takes effect.



ANNEX II

Part A

Repealed Directive with list of its successive amendments (referred to in Article 19)

Council Directive 93/7/EEC	(OJ L 74, 27.3.1993, p. 74)
Directive 96/100/EC of the European Parliament and of the Council	(OJ L 60, 1.3.1997, p. 59)
Directive 2001/38/EC of the European Parliament and of the Council	(OJ L 187, 10.7.2001, p. 43)

Part B

List of time-limits for transposition into national law (referred to in Article 19)

Directive	Time-limit for transposition
93/7/EEC	15.12.1993 ¹
96/100/EC	1.9.1997
2001/38/EC	31.12.2001

¹ The time-limit for transposition for Belgium, Germany and the Netherlands was 15 March 1994.

ANNEX III

CORRELATION TABLE

Directive 93/7/EEC	This Directive
Article 1, point (1), first indent	Article 1, point (1)(a)
Article 1, point (1), second indent	Article 1, point (1)(b)
Article 1, point (1), second indent, sub-indent	Article 1, point (1)(b)(i)
Article 1, point (1), second indent, first sub-indent, second subparagraph	Article 1, point (2)
Article 1 point (1), second indent, second sub-indent	Article 1, point (1)(b)(ii)
Article 1, point (2), first indent	Article 1, point (3)(a)
Article 1, point (2), second indent	Article 1, point (3)(b)
Article 1, points (3) to (7)	Article 1, points (4) to (8)
Articles 2 to 4	Articles 2 to 4
Article 5, first paragraph	Article 5, first paragraph
Article 5, second paragraph, first indent	Article 5, second paragraph, point (a)
Article 5, second paragraph, second indent	Article 5, second paragraph, point (b)
Articles 6 to 15	Articles 6 to 15
Article 16(1) and (2)	Article 16(1) and (2)
Article 16(3)	_____
Article 16(4)	Article 16(3)
Articles 17 and 18	Articles 17 and 18
Article 19	Article 21
_____	Article 19
_____	Article 20
Annex, Part A, points 1 to 3	Annex I, Part A, points 1 to 3
Annex, Part A, point 3A	Annex I, Part A, point 4

Annex, Part A, points 4 to 14

Annex, Part B

Annex I, Part A, points 5 to 15

Annex I, Part B

Annex II

Annex III
