



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 28 April 2014
(OR. en)

2013/0162 (COD)

PE-CONS 55/14

CULT 30
MI 228
ENFOPOL 61
ENFOCUSTOM 32
UD 66
CODEC 630

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast)

Directive 2014/.../EU
of the European Parliament and of the Council

of

**on the return of cultural objects unlawfully removed from the territory
of a Member State and amending Regulation (EU) No 1024/2012 (Recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) Council Directive 93/7/EEC¹ has been substantially amended by Directives 96/100/EC² and 2001/38/EC³ of the European Parliament and of the Council. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the Treaty on the Functioning of the European Union (TFEU). According to Article 36 TFEU, the relevant provisions on free movement of goods do not preclude prohibitions or restrictions on imports, exports or goods in transit, justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value.
- (3) Under the terms and within the limits of Article 36 TFEU, Member States retain the right to define their national treasures and to take the necessary measures to protect them. Nevertheless, the Union plays a valuable role in encouraging cooperation between Member States with a view to protecting cultural heritage of European significance, to which such national treasures belong.

¹ 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).

² Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997 amending the Annex to Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 60, 1.3.1997, p. 59).

³ Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 amending Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 187, 10.7.2001, p. 43).

- (4) Directive 93/7/EEC introduced arrangements enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of Article 36 TFEU, which fall within the common categories of cultural objects referred to in the Annex to that Directive, and which have been removed from their territory in breach of the national measures or of Council Regulation (EC) No 116/2009¹. That Directive also covered cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions which did not fall within those common categories.
- (5) Directive 93/7/EEC established administrative cooperation between Member States as regards their national treasures, closely linked to their cooperation with Interpol and other competent bodies in the field of stolen works of art and involving, in particular, the recording of lost, stolen or illegally removed cultural objects forming part of their national treasures and their public collections.
- (6) The procedure provided for in Directive 93/7/EEC was a first step in establishing cooperation between Member States in this field in the context of the internal market, with the aim of further mutual recognition of relevant national laws.
- (7) Regulation (EC) No 116/2009, together with Directive 93/7/EEC, introduced a Union system for the protection of Member States' cultural objects.

¹ Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L 39, 10.2.2009, p. 1).

- (8) The objective of Directive 93/7/EEC was to ensure the physical return of the cultural objects to the Member State from whose territory those objects have been unlawfully removed, irrespective of the property rights applying to such objects. The application of that Directive, however, has shown the limitations of the arrangements for securing the return of such cultural objects. The reports on the application of that Directive have pointed out its infrequent application due in particular to the limitation of its scope, which resulted from the conditions set out in the Annex to that Directive, the short period of time allowed to initiate return proceedings and the costs associated with return proceedings.
- (9) The scope of this Directive should be extended to any cultural object classified or defined by a Member State under national legislation or administrative procedures as a national treasure possessing artistic, historic or archaeological value within the meaning of Article 36 TFEU. This Directive should thus cover objects of historical, paleontological, ethnographic, numismatic interest or scientific value, whether or not they form part of public or other collections or are single items, and whether they originate from regular or clandestine excavations, provided that they are classified or defined as national treasures. Furthermore, cultural objects classified or defined as national treasures should no longer have to belong to categories or comply with thresholds related to their age and/or financial value in order to qualify for return under this Directive.

- (10) The diversity of national arrangements for protecting national treasures is recognised in Article 36 TFEU. In order to foster mutual trust, a willingness to cooperate and mutual understanding between Member States, the scope of the term "national treasure" should be determined, in the framework of Article 36 TFEU. Member States should also facilitate the return of cultural objects to the Member State from whose territory those objects have been unlawfully removed regardless of the date of accession of that Member State, and should ensure that the return of such objects does not give rise to unreasonable costs. It should be possible for Member States to return cultural objects other than those defined or classified as national treasures provided that they respect the relevant provisions of the TFEU, as well as cultural objects unlawfully removed before 1 January 1993.
- (11) The administrative cooperation between Member States needs to be increased so that this Directive can be applied more effectively and uniformly. Therefore, the central authorities should be required to cooperate efficiently with each other and to exchange information relating to unlawfully removed cultural objects through the use of the Internal Market Information System ("IMI") provided for by Regulation (EU) No 1024/2012 of the European Parliament and of the Council¹. In order to improve the implementation of this Directive, a module of the IMI system specifically customised for cultural objects should be established. It is also desirable for other competent authorities of the Member States to use the same system, where appropriate.

¹ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

- (12) In order to ensure the protection of personal data, administrative cooperation and the exchange of information between the competent authorities should comply with the rules set out in Directive 95/46/EC of the European Parliament and of the Council¹, and, insofar as the IMI is used, in Regulation (EU) No 1024/2012. The definitions used in Directive 95/46/EC and in Regulation (EC) No 45/2001² should also apply for the purpose of this Directive.
- (13) The time-limit for checking whether the cultural object found in another Member State is a cultural object within the meaning of Directive 93/7/EEC was identified as being too short in practice. Therefore, it should be extended to six months. A longer period should allow Member States to take the necessary measures to preserve the cultural object and, where appropriate, prevent any action to evade the return procedure.
- (14) The time-limit for bringing return proceedings should also be extended to three years after the Member State from whose territory the cultural object was unlawfully removed became aware of the location of the cultural object and of the identity of its possessor or holder. The extension of this period should facilitate the return and discourage the illegal removal of national treasures. In the interest of clarity, it should be stipulated that the time-limit for bringing proceedings begins on the date on which the information came to the knowledge of the central authority of the Member State from whose territory the cultural object was unlawfully removed.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 74).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (15) Directive 93/7/EEC provided that return proceedings may not be brought more than 30 years after the object was unlawfully removed from the territory of the Member State. However, in the case of objects forming part of public collections and of objects belonging to inventories of ecclesiastical institutions in the Member States where they are subject to special protection arrangements under national law, return proceedings are subject to a longer time-limit under certain circumstances. Due to the fact that Member States may have special protection arrangements under national law with religious institutions other than ecclesiastical ones, this Directive should also extend to those other religious institutions.
- (16) In its Conclusions on preventing and combating crime against cultural goods adopted on 13 and 14 December 2011, the Council recognised the need to take measures in order to make preventing and combating crime concerning cultural objects more effective. It recommended that the Commission support Member States in the effective protection of cultural objects with a view to preventing and combating trafficking and promoting complementary measures where appropriate. In addition, the Council recommended that the Member States consider the ratification of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 17 November 1970, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects signed in Rome on 24 June 1995.

- (17) It is desirable to ensure that all those involved in the market exercise due care and attention in transactions involving cultural objects. The consequences of acquiring a cultural object of unlawful origin will only be genuinely dissuasive if the payment of compensation is coupled with an obligation on the possessor to prove the exercise of due care and attention. Therefore, in order to achieve the Union's objectives of preventing and combating unlawful trafficking in cultural objects, this Directive should stipulate that the possessor must provide proof that he exercised due care and attention in acquiring the object, for the purpose of compensation.
- (18) It would also be useful for any person, and in particular those who are involved in the market, to have easy access to public information on cultural objects defined or classified as national treasures by the Member States. Member States should try to facilitate access to this public information.
- (19) In order to facilitate a uniform interpretation of the concept of due care and attention, this Directive should set out non-exhaustive criteria to be taken into account to determine whether the possessor exercised due care and attention when acquiring the cultural object.
- (20) Since the objective of this Directive, namely to enable the return of cultural objects classified or defined as national treasures which have been unlawfully removed from the territory of Member States, cannot be sufficiently achieved by the Member States, but can, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (21) Since the tasks of the committee set up by Regulation (EC) No 116/2009 are rendered obsolete by the deletion of the Annex to Directive 93/7/EEC, references to that committee should be deleted accordingly. However, in order to maintain the platform for the exchange of experience and good practices on the implementation of this Directive among Member States, the Commission should set up an expert group, composed of experts from the Member States' central authorities responsible for the implementation of this Directive, which should be involved, inter alia, in the process of customising a module of the IMI system for cultural objects.
- (22) Since the Annex to Regulation (EU) No 1024/2012 contains a list of provisions on administrative cooperation in Union acts which are implemented by means of the IMI, that Annex should be amended to include this Directive.
- (23) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises from the earlier Directives.
- (24) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive applies to the return of cultural objects defined or classified by a Member State as being among national treasures, as referred to in point (1) of Article 2, which have been unlawfully removed from the territory of that Member State.

Article 2

For the purposes of this Directive, the following definitions apply:

- (1) 'cultural object' means an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 TFEU;
- (2) 'unlawfully removed from the territory of a Member State' means:
 - (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 (EC) No 116/2009; or
 - (b) 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' means the Member State from whose territory the cultural object has been unlawfully removed;

- (4) 'requested Member State' means the Member State in whose territory a cultural object, which was unlawfully removed from the territory of another Member State, is located;
- (5) 'return' means the physical return of the cultural object to the territory of the requesting Member State;
- (6) 'possessor' means the person physically holding the cultural object on his own account;
- (7) 'holder' means the person physically holding the cultural object for third parties;
- (8) 'public collections' means collections, defined as public in accordance with the legislation of a Member State, which are the property of that Member State, of a local or regional authority within that Member State or of an institution situated in the territory of that Member State, such institution being the property of, or significantly financed by, that Member State or local or regional authority.

Article 3

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 4

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 those central authorities and any changes concerning them in the C series of the *Official Journal of the European Union*.

Article 5

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 the 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 six months of the notification provided for in point (2). If it is not made within the stipulated period, points (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 that end, the competent authorities of the requested Member State may, without prejudice to Article 6, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested Member State and provided that the requesting Member State and the possessor or holder give their formal approval.

In order to cooperate and consult with each other, the central authorities of the Member States shall use a module of the Internal Market Information System ("IMI") established by Regulation (EU) No 1024/2012 specifically customised for cultural objects. They may also use the IMI to disseminate relevant case-related information concerning cultural objects which have been stolen or unlawfully removed from their territory. The Member States shall decide on the use of the IMI by other competent authorities for the purposes of this Directive.

Article 6

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 7

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

The exchange of information shall be conducted using the IMI in accordance with the applicable legal provisions on the protection of personal data and privacy, without prejudice to the possibility for the competent central authorities to use other means of communication in addition to the IMI.

Article 8

1. Member States shall provide in their legislation that return proceedings under this Directive may not be brought more than three years after the competent central authority of 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, in any event, 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, defined in point (8) of Article 2, and objects belonging to inventories of ecclesiastical or other religious institutions 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 providing for a period exceeding 75 years.

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

Article 9

Save as otherwise provided in Articles 8 and 14, 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 point (1) of Article 2 and to have been removed unlawfully from national territory.

Article 10

Where return of the object is ordered, the competent court in the requested Member State shall award the possessor fair compensation according to the circumstances of the case, provided that the possessor demonstrates that he exercised due care and attention in acquiring the object.

In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances.

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 those means.

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

Article 11

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 5.

Article 12

Payment of the fair compensation and of the expenses referred to in Articles 10 and 11 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 13

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

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.

Article 15

1. Each Member State may apply the arrangements provided for in this Directive to the return of cultural objects other than those defined in point (1) of Article 2.
2. Each Member State may apply the arrangements provided for in 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 16

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 17

1. By ...^{*} and every five years thereafter, Member States shall submit to the Commission a report on the application of this Directive.
2. Every five years the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee, reviewing the application and effectiveness of this Directive. The report shall be accompanied, if necessary, by appropriate proposals.

^{*} OJ: Please, insert the date: eighteen months after the date of the entry into force of this Directive.

Article 18

The following point shall be added to the Annex to Regulation (EU) No 1024/2012:

- "8. Directive 2014/.../EU of the European Parliament and the Council of ... on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012* : Articles 5 and 7.

* OJ L ..., p...."⁺.

Article 19

1. By ...⁺⁺, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with point (1) of Article 2, point (3) of the first paragraph of Article 5, the second paragraph of Article 5, the third paragraph of Article 7, Article 8(1), the first and the second paragraphs of Article 10 and Article 17(1) of this Directive.

They shall forthwith communicate the text of those measures to the Commission.

⁺ OJ: Please, insert the number, date in the text and the reference of the publication of this Directive.

⁺⁺ OJ: Please, insert the date: eighteen months after the date of the entry into force of this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

Article 20

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

Article 21

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

^{*} OJ: Please, insert the date: eighteen months and one day after the date of the entry into force of this Directive.

Points (2) to (8) of Article 2, Articles 3 and 4, points (1), (2) and (4) to (6) of the first paragraph of Article 5, Article 6, the first and second paragraphs of Article 7, Article 8(2), Article 9, the third and fourth paragraphs of Article 10, and Articles 11 to 16 shall apply from ...*.

Article 22

The Directive is addressed to the Member States.

Done at ..., ...

For the European Parliament

The President

For the Council

The President

* OJ: Please, insert the date: eighteen months and one day after the date of the entry into force of this Directive.

ANNEX I

Part A

Repealed Directive with list of its successive amendments

(referred to in Article 20)

Council Directive 93/7/EEC	(OJ L 74, 27.03.1993, 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 20)

Directive	Time-limit for transposition
93/7/EEC	15.12.1993 (15.3.1994 for Belgium, Germany and the Netherlands)
96/100/EC	1.9.1997
2001/38/EC	31.12.2001

ANNEX II

Correlation table

Directive 93/7/EEC	This Directive
Article 1, point (1), first indent	Article 1
Article 1, point (1), second indent, introductory part	Article 2, point (1)
Article 1, point (1), second indent, first sub-indent, first phrase	_____
Article 1, point (1), second indent, first sub-indent, second phrase	_____
Article 1, point (1), second indent, second sub-indent	Article 2, point (8)
Article 1, point (2), first indent	_____
Article 1, point (2), second indent	Article 2, point (2)(a)
Article 1, points (3) to (7)	Article 2, point (2)(b)
Article 2	Article 2, points (3) to (7)
Article 3	Article 3
Article 4, introductory part	Article 4
Article 4, points (1) and (2)	Article 5, first paragraph, introductory part
Article 4, point (3)	Article 5, first paragraph, points (1) and (2)
Article 4, points (4) to (6)	Article 5, first paragraph, point (3)
Article 5, first paragraph	Article 5, first paragraph, points (4) to (6)
Article 5, second paragraph, first indent	Article 5, second paragraph
Article 5, second paragraph, second indent	Article 6, first paragraph
Article 6, first paragraph	Article 6, second paragraph, point (a)
Article 6, second paragraph	Article 6, second paragraph, point (b)
Article 7 (1) and (2)	Article 7, first paragraph
Article 8	Article 7, second paragraph
Article 9, first paragraph	Article 7, third paragraph
	Article 8 (1) and (2)
	Article 9
	Article 10, first paragraph

Directive 93/7/EEC	This Directive
Article 9, second paragraph	Article 10, second paragraph
Article 9, third and fourth paragraphs	Article 10, third and fourth paragraphs
Articles 10 to 15	Articles 11 to 16
Article 16 (1) and (2)	Article 17 (1) and (2)
Article 16 (3)	
Article 16 (4)	
Article 17	
Article 18	Article 18
Article 19	Article 19
Annex	Article 20
	Article 21
	Article 22
	Annex I
	Annex II