

SENATE OF THE ITALIAN REPUBLIC
17th PARLIAMENT

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No 14

**RESOLUTION OF THE SEVENTH STANDING COMMITTEE
(Education, heritage, scientific research, entertainment and sport)**

(Rapporteur: Villari)

adopted on 16 July 2013

ON THE
**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 (COM (2013) 311
final)**

under Article 144(1) and (6) of the Rules of Procedure

Communicated to the Presidency on 19 July 2013

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The Committee,

having examined, pursuant to Article 144(1) and (6) of the rules of procedure, the 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 (COM (2013) 311 final);

1) Whereas the proposal aims to recast the text of Directive 93/7/EEC to incorporate the amendments that have been made in the meantime (Directives 96/100/EC and 2001/38/EC) and further amendments which twenty years' experience of implementation has shown to be necessary;

2) Whereas Directive 93/7/EEC was adopted in 1993, at the same time as internal borders were abolished, to guarantee the protection of cultural objects classified as 'national treasures';

3) Whereas over time the Directive has, however, proved insufficient to ensure the return of cultural objects unlawfully removed from the territory of a Member State and found in the territory of another Member State;

4) Whereas the main shortcomings found when implementing the Directive have been:

4.1 an Annex was added to the Directive listing the categories of cultural objects whose return could be requested, which has clear limitations with respect to the codification of national laws;

4.2. the time laid down for return (one year) was too short;

4.2. the compensation to be paid to the requesting State was far too high;

4.4 administrative cooperation between Member States was insufficient and the means of consultation between central authorities inadequate;

5) Whereas Italy has been particularly active in proposing amendments to the 1993 Directive, for example:

5.1 that the time allowed for return should be extended to three years and should run from when the Member State actually found out about the unlawful removal;

5.2 that the status of cultural object should be attributed on the basis of Member States' national rules rather than according to the list annexed to the Directive;

5.3 that it should be up to the requesting State and not the requested State to judge whether removal was unlawful;

5.4 that due care and attention should be effectively demonstrated by the owner of the object and not established on the basis of the laws of the requested State;

5.5 that the good faith of the owner should be taken into consideration to determine compensation but not as a reason to refuse return of the object;

5.6 that taking archaeological objects from illegal excavations should be regarded as theft;

5.7 that the results of scientific studies on where an object was found should be considered as evidence;

5.8 that return should be regarded as a special procedure in which court of the requested State should simply verify that the object in question is indeed a cultural object and was indeed unlawfully removed from the requesting State;

6) Whereas many of Italy's requests have been included in the proposed Directive, for example:

6.1 expanding the scope to all cultural objects classified as such under national law;

6.2 extending the time allowed for the legal return procedure;

6.3 the burden of proof of due diligence resting with the owner requesting compensation;

7) Whereas other important amendments to the Directive include:

7.1 use of the IMI system for administrative cooperation and the exchange of information between central authorities;

7.2 extension of the time the requesting State has to verify that the object found in another Member State is a cultural object;

7.3 designation of the requesting State authority responsible for deciding the start of the time allowed for the return procedure;

7.4 setting of common criteria for interpreting the concept of due diligence;

7.5 extension of the deadlines for reports on implementation and evaluation of the Directive;

8) Whereas the Directive was subject to wide public consultation addressed to all interested parties from 30 November 2011 to 5 March 2012, and the answers differed according to the type of participant:

8.1 61% of the private participants thought that the 1993 Directive did not need amendment as it already adequately met Member States' needs;

8.2 54% of public participants on the other hand expressed the view that the 1993 Directive did not effectively ensure the return of cultural objects unlawfully removed from the territory of a Member State;

9) Whereas the group of experts appointed by the European Commission to assess whether radical amendment of the 1993 Directive was necessary gave clear support for revision, and also recommended improved administrative cooperation and more effective means of consultation between central authorities;

Whereas the proposal appears to be in line with:

- the principle of subsidiarity, since the Member States would have difficulty in obtaining the return of cultural objects unlawfully removed from their territory without a common procedure also applicable in the Member State in which the object was found. In this respect, action at EU level is therefore essential. However the EU has no competence to define which objects are part of national cultural heritage or to determine which courts should deal with return proceedings. These aspects are therefore the competence of the Member States and they are covered by the principle of subsidiarity;

- the principle of proportionality, since the amendments to the 1993 Directive are limited to those aspects that are necessary to achieve the objectives set. For example, the proposal does not cover private owners of cultural objects who wish to initiate return proceedings, it does not affect the limitation period for return proceedings and it does not set a maximum amount for compensation to owners;

Agrees with the observations of the 14th Committee;

Gives a favourable opinion and calls on the government to reiterate, where possible in the appropriate fora, the proposals for amendments to the 1993 Directive, with particular emphasis on the taking of archaeological objects from illegal excavations, which should be regarded as theft, and on deciding whether export is unlawful, which should be up to the requesting State and not the requested State.

OPINION OF THE 14th STANDING COMMITTEE

(EUROPEAN UNION POLICIES)

(Rapporteur: Liuzzi)

26 June 2013

The Committee, having examined the proposal:

1) Whereas the proposal aims to strengthen the legislation which enables Member States to secure the return of any cultural object classified as a national treasure, noting that the existing legislation is not effective enough;

2) Whereas the proposal takes the form of a Directive amending and recasting Directive 93/7/EEC, as amended by Directives 96/100/EC and 2001/38/EC;

Welcoming the potential improvements that this proposal to amend existing legislation would bring to the return of cultural objects unlawfully removed from the territory of a Member State;

Comments favourably on the proposal, for matters within its remit, highlighting the following points:

The legal basis chosen is correctly identified as:

1) Article 114(1) of the Treaty on the Functioning of the European Union (TFEU), which states that ‘the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market’;

2) Article 114 (4) TFEU which establishes how Member States may, if they deem it necessary, maintain national provisions on grounds of major needs referred to in Article 36 TFEU. Those provisions, which derogate from single market legislation, also apply to ‘the protection of national treasures possessing artistic, historic or archaeological value’;

The text appears to comply with the principle of subsidiarity, in that the cross-border dimension of the unlawful export of cultural objects puts the Union in a better position to act on these matters and allow the return of objects unlawfully removed by a Member State and found in the territory of another Member State. The Member States would not be able properly to achieve the objective of this proposal, which requires action at Union level;

The text also appears to comply with the principle of proportionality, in that it is limited to what is strictly necessary to achieve its objectives. The scope of the action depends on the

main factors that hinder the effectiveness of Directive 93/7/EEC in achieving the return of objects classified as ‘national treasures’.

With reference to the merits of the proposal, we welcome the proposed amendments to the existing Directive, the purpose of which is to:

Extend from one year (as at present, under Article 7 of the Directive) to three years the time allowed to propose the return of objects and establish that the period should run from the date the central authority of the Member State became aware that the object had been removed unlawfully;

Attribute the status of cultural object on the basis of the legislation of the Member State, irrespective of the list of categories given in the present Directive, with mutual recognition of national laws;

Provide that, where a national court orders the return of an object, the owner, when applying for compensation, must demonstrate that they exercised due diligence at the time of purchase to ensure the legitimate origin of the cultural object, and that the good faith of the owner or holder should be taken into consideration only to determine compensation and not as a reason to refuse return of the object;

Consider the taking of archaeological objects from an illegal excavation to be theft committed against the State, where the domestic legislation of the country of origin so provides; Establish that return is a special procedure, in which the court of the requested State must simply verify that the object in question is a cultural object and has no certificate of dispatch and was therefore removed unlawfully from the requesting State.