



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title **DG ENTR - Impact Assessment on a proposal for the recast of Directive 93/7/EEC on the return of cultural objects unlawfully removed from a Member State (draft version of 9 August 2012)***

(A) Context

Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State is a measure in support of internal market policy, which was adopted when internal frontiers were abolished on 1 January 1993. One of its main objectives is to reconcile the fundamental principle of the free movement of goods (TFEU art. 34), with the protection of national treasures (TFEU art. 36). The 2001 Parliament resolution on the first report on the application of the Directive considered the provisions of Directive 93/7/EEC to be inadequate, particularly the one-year limitation period and called on the Commission to conduct a campaign aimed at raising public awareness of the adverse effects of the illegal trade in cultural goods. Council conclusions on preventing and combating crime against cultural goods of 13-14 December 2011 recommend the Commission to support Member States in the effective protection of cultural goods with a view to preventing and combating trafficking.

(B) Overall assessment

The report should be improved in a number of respects. First, it should strengthen the problem description by better focussing on the concrete problems the initiative aims to address and by describing in more detail Member States' different approaches regarding the implementation of Directive 93/7/EEC. Second, the objectives section should be developed and include measurable operational objectives, such as increasing the number of cultural goods restitutions. Third, the report should strengthen the analysis of impacts, for instance by quantifying the impacts of the measures on administrative burdens and by better explaining impacts on Member States and other relevant stakeholders, such as antiquaries or art merchants. On that basis the options should be compared in terms of effectiveness, efficiency and coherence vis-à-vis the revised objectives. Finally, the report should provide greater detail on stakeholders' different views and better explain, in particular, Member States' reserves regarding some of the envisaged changes to the Directive.

In their written communication with the Board DG ENTR accepted to amend the report along the lines of these recommendations.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

1) Strengthen the problem definition. The report should provide a clearer presentation of the problem by focussing on the concrete problems (e.g. the limitations of Directive 93/7/EEC) that the initiative aims to address. It should also clarify a number of aspects regarding the context of the initiative such as the nature of Member States' reserves regarding the ratification of the UNESCO convention and whether a ratification of that convention by all Member States would render the Directive redundant. The report should also provide a more detailed overview of how Member States have implemented or interpret the Directive's provisions and better explain how such differences reduce the effectiveness of the Directive.

2) Develop a more complete and smarter set of objectives. On the basis of that revised problem definition, the report should identify a more complete set of objectives clearly linked to the problems identified. This new set of objectives should include measurable operational objectives (e.g. to increase the number of cultural goods restitutions). These would help to identify concrete indicators to assess the success of the envisaged legislative and non-legislative measures.

3) More fully assess and compare the options. The quantification of impacts in the report should be enhanced and cover, where significant, all the envisaged measures. In particular, the report should attempt to quantify the measures' impact on administrative burden. It should also provide an assessment of the impacts on SMEs (e.g. antiquaries and art merchants); in particular, of the envisaged obligation on goods' possessors to prove that they have taken all necessary precautions to verify the origin of a good. The report should also explain whether some Member States may be impacted more than others by the planned measures. The options should be compared in terms of their effectiveness, efficiency and coherence with the revised set of objectives.

4) Better present stakeholders' views. The report should better describe stakeholders' positions, in particular, regarding the divergences of views in the public and private sectors. It should also provide more detail on Member States' views on planned measures such as the elimination of the financial and age thresholds or the change in the burden of the proof regarding the origin of a good.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should facilitate access to its sources by systematically providing a link to the corresponding study.

(E) IAB scrutiny process

Reference number	2013/ENTR/002
External expertise used	No
Date of IAB meeting	19 September 2012 (Written Procedure)