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REPORT

on the Commission report to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation (EEC) No 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State
(COM(2000) 325 – C5-0509/2000 – 2000/2246(COS))

Committee on Culture, Youth, Education, the Media and Sport

Rapporteur: Pedro Aparicio Sánchez

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PROCEDURAL PAGE

By letter of 25 May 2000, the Commission forwarded to Parliament its report to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation (EEC) No 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2000) 325 – 2000/2246(COS)).

At the sitting of 23 October 2000 the President of Parliament announced that she had referred the report to the Committee on Culture, Youth, Education, the Media and Sport as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0509/2000).

The Committee on Culture, Youth, Education, the Media and Sport appointed Pedro Aparicio Sánchez rapporteur at its meeting of 13 July 2000.

It considered the Commission report and the draft report at its meetings of 5 March and 10-11 April 2001.

At the last meeting it adopted the motion for a resolution unopposed, with 1 abstention.

The following were present for the vote: Vasco Graça Moura, acting chairman; Ulpu Iivari and Giorgio Ruffolo, vice-chairmen; Pedro Aparicio Sánchez, rapporteur; Ole Andreasen, Thierry de La Perriere, Christine de Veyrac, Raina A. Mercedes Echerer (for Eurig Wyn), Jillian Evans (for Phillip Whitehead), Cristina Gutiérrez Cortines, Ruth Hieronymi, Magdalene Hoff (for Lissy Gröner), Elizabeth Lynne (for Marieke Sanders-ten Holte), Lucio Manisco, Maria Martens, Mario Mauro, Pietro-Paolo Mennea, Barbara O'Toole, Roy Perry, Christa Prets, Dana Rosemary Scallon, Feleknas Uca (for Geneviève Fraisse), Stavros Xarchakos, Sabine Zissener and Myrsini Zorba (for Martine Roure).

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached; the Committee on Committee on Legal Affairs and the Internal Market decided on 27 February 2001 not to deliver an opinion.

The report was tabled on 19 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission report to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation (EEC) No 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2000) 325 – C5-0509/2000 – 2000/2246(COS))

The European Parliament,

- having regard to the Commission report (COM(2000) 325 – C5-0509/2000)¹,
 - having regard to Articles 30 and 151 of the EC Treaty,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Culture, Youth, Education, the Media and Sport and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0122/2001),
- A. whereas illegal trade in cultural goods often causes irreparable damage to the national and European cultural heritage and whereas this trade has undergone a noticeable increase over the last few years, reaching alarming proportions, as works of art and archaeological sites within and outside the EU are steadily plundered and dispersed,
- B. whereas there is a danger that, as a result of the impending enlargement of the European Union and the consequent increase in the internal market, the situation will get even worse, since it is likely to become more difficult to control the illegal trade in cultural goods within the European Union and across its longer external borders,
- C. whereas the above issues must form an integral part of the enlargement negotiations, to be dealt with in the discussions on culture and the internal market and on third pillar matters, particularly those relating to customs and police cooperation and action to combat organised crime,
- D. whereas catalogues of cultural goods belonging to institutions or public and private bodies in each of the Member States are currently not sufficiently comprehensive and, and in some cases, do not even exist,

¹ Not yet published in the Official Journal.

- E. having regard to the shortcomings in the collection and forwarding of information both between Member States and inside individual Member States,
- F. whereas the European Union must effectively support the Member States in the work of conserving and retrieving their national cultural assets and the cultural heritage of European importance and therefore also in the combating of illegal trade in those goods,
- G. whereas the Regulation on the export of cultural goods and the Directive on the return of cultural objects have hitherto been the only legal instruments at Community level aimed specifically at combating illegal trade in cultural goods,
- H. whereas although the regulation and directive were adopted by the Council of the European Union in 1992 and 1993, many of the Member States delayed transposing the directive into national law and the Commission has therefore indicated that it is still unable to present a realistic assessment of their effectiveness,
- I. whereas most of the Member States and the Commission take the view, however, that both the directive and the regulation have already had a positive effect on the protection of cultural goods, by raising awareness of the protection of national cultural treasures among those involved in international trade and prompting a realisation of the importance of protecting cultural goods at European level,
- J. whereas, however, various Member States have expressed doubts about the real impact of the Community instruments which are the subject of the Commission's report on illegal exports of cultural goods,
- K. whereas the Commission draws attention in its report to the allegedly unsatisfactory cooperation between the competent customs authorities and the cultural authorities of the Member States and between the authorities at Community level; whereas, however, the ITCG site for the exchange of information relating to the protection of cultural goods, to which the Commission itself referred in connection with the IDA programme, has, inexplicably, yet to be set up,
- L. whereas such cooperation could be strengthened:
- by a requirement to make the granting of licences conditional on a preliminary application to the state of origin of the cultural object with a view to determining whether the object in question had been removed from that state lawfully,
 - by the introduction of an accompanying document certifying the origin of the object,
 - by establishing a computerised system to notify customs and police authorities of thefts of cultural objects;
1. Stresses the importance of the cultural heritage to national and European identity and calls for this heritage to be properly protected by all those involved;
 2. Takes the view that illegal trade in cultural goods has reached such proportions that the cultural heritage of the Member States is constantly suffering significant and often irreparable damage;

3. Points out that illegal trade covers a wide spectrum of activities ranging from the export of cultural goods by their lawful owners without the necessary licences to deliberate trade in stolen property which is often carried out by criminal organisations, particularly for money-laundering purposes, and it includes the appropriation and trading by natural persons of cultural goods (mainly manuscripts and archaeological finds, including from underwater archaeological sites), of whose existence the relevant authorities are unaware at the time of appropriation;
4. Considers the provisions of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State to be inadequate, particularly the one-year limitation period, which should be extended to at least three years as provided for in the UNIDROIT Convention of 24 June 1995;
5. Notes that in view of the existing internal market and its impending enlargement the Member States can combat this illegal trade more effectively by ensuring better coordination between the relevant institutional bodies of the European Union;
6. Urges the Member States to ensure more effective coordination of their policies and measures aimed at combating the illegal trade in cultural goods;
7. Believes, therefore, that the European Union must attach greater importance to combating illegal trade in cultural goods within its jurisdiction, and considers it to be urgently necessary for the Commission to take action;
8. Calls on the Commission to conduct a campaign in the Member States and the applicant countries, aimed at raising public awareness of the adverse effects of the illegal trade in cultural goods;
9. Calls on the Commission, the Member States and the applicant countries to obtain from the owners of cultural goods comprehensive, public catalogues of all such goods that are in the possession of institutions such as the Church, or of public and private foundations or bodies;
10. Calls on the Commission to consider the possibility of submitting a proposal to tighten up Regulation 3911/92 by introducing a requirement for Member States to:
 - (a) make the granting of a licence conditional on a preliminary application to the state of origin of the cultural object for the purpose of determining whether it was removed from that state lawfully;
 - (b) introduce a mandatory accompanying document certifying, inter alia, the origin of the object and the credentials of the person submitting the request.
11. Considers that although the combating of illegal trade in cultural goods is primarily a cultural policy matter, it also falls within the province of the Commissioners responsible for the internal market and for justice and home affairs; the Commissioners responsible need to adopt a coordinated approach, therefore, to enable wide-ranging action to be taken and all the instruments at the Community's disposal to be used;

12. Calls on the Commission, at the instigation of the Commissioner for Culture, to draw up by the end of the year 2001 a Green Paper, or at least a communication, on illegal trade in cultural goods containing the following:
 - (a) a description of the current situation of the illegal trade in cultural goods in Europe, to include a detailed and up-to-date list of the main works of art that have been stolen and not recovered since the adoption of Regulation (EEC) No 3911/92 and Council Directive 93/7/EEC;
 - (b) a more comprehensive analysis of the effects of the regulation and the directive, as part of a comparative analysis of the national legislation of the Member States;
 - (c) an assessment of the probable implications of the accession of the new Member States;
 - (d) proposals for practical measures, at European level, to combat illegal trade;
 - (e) an assessment of the possibility of recommending that Member States establish a standard multilingual form containing information about the nature and characteristic features of the unlawfully removed object and, if possible, a photograph of it while providing, in the case of valuable items, for the relevant information to be entered in the Schengen Information System (SIS II)¹ and the Customs Information System (CIS)²;
 - (f) the setting up of an Internet site on which forms and pictures relating to the stolen items would be freely accessible;
 - (g) an assessment of the possibility of the Union (in connection with its powers in the area of police and judicial cooperation in criminal matters) or the Community (in connection with the exercise of the powers conferred on it already by Community acts) acceding to the recent Convention instigated under United Nations auspices by Unidroit, which covers the recovery of stolen artefacts and was signed in Rome on 24 June 1995;
13. Calls on the Council, Commission and Member States, pending the publication of the above document, to introduce as a matter of the utmost urgency policies aimed at combating the illegal trade in cultural goods, such as increased and better-coordinated police activity and closer judicial cooperation between the Member States;
14. Calls on the Commission and the Member States to set up a digital information network under the eEurope action plan, covering cultural goods that are illegally appropriated and traded;
15. Instructs its President to forward this resolution to the Council and Commission, and the governments and parliaments of the Member States and candidate countries.

¹ See the Schengen acquis – Decision of the Executive Committee of 7 October 1997 on the development of the SIS (SCH/Com-ex(97)24), *OJ L 239 of 22.9.2000*, p. 442.

² Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes, *OJ C 316 of 27.11.1995*, p. 34 and Explanatory Report on the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on mutual assistance and cooperation between customs administrations (text approved by the Council on 28 May 1998), *OJ C 189 of 17.6.1998*, p. 1.

EXPLANATORY STATEMENT

1. The application of the directive and the regulation

The Council regulation on the export of cultural goods has been in force since 30 March 1992. The directive on the return of cultural objects unlawfully removed from the territory of a Member State was adopted by the Council on 15 March 1993. Both legal instruments provide that the Commission must send Parliament, the Council and the Economic and Social Committee a report on its application every three years.

The Commission has complied with that duty by forwarding this report on 25 May 2000. In its report the Commission points out that many of the Member States delayed transposing the directive into national law, so it is unable realistically to judge its effectiveness as not enough time has elapsed. The Commission cannot put forward sufficient data with regard either to the directive or to the regulation for an objective assessment of their effectiveness. But it stresses in particular the positive impact on the protection of cultural goods by raising awareness among the various parties involved in international trade.

On the other hand, shortcomings in cooperation between the customs authorities and the authorities responsible for cultural affairs within the Member States and in cooperation between the authorities at Community level can already be detected. The Commission also criticises the fact that the conduct and attitudes of the Member States still found mainly on protection of national cultural treasures and not on the protection of cultural goods at Community level.

It is thus already clear that a further, more comprehensive assessment of the impact of these two legal instruments must be carried out in the near future on the basis of improved data and that only on that basis can substantive amendments be made to the directive and regulation if necessary.

2. Combating illegal trade at European level

The directive and the regulation have hitherto been the only legal instruments at Community level aimed at protecting cultural goods from illegal trade. In contrast to this, the situation is continually worsening. Although it is of course difficult to quantify the volume of illegal trade, it is generally regarded as being of alarming proportions and is causing irreparable damage to the Member States' cultural heritage. The impending enlargement of the European Union and with it the enlargement of the internal market mean further dangers relating to the protection of the cultural treasures of the present Member States as well as those of the new Member States.

For this reason the Commission must have a close look at this problem and take action. To combat the illegal trade measures must be adopted in various fields for which several Members of the Commission are responsible: cultural policy, internal market, justice and home affairs. We should not however forget that combating illegal trade serves to protect and

preserve the cultural treasures of the Member States, and that this matter should therefore primarily be one for the Commissioner for Culture.

In view of the critical situation this matter cannot be postponed. At the instigation of your rapporteur the chairman of the Committee on Culture, Youth, Education, the Media and Sport requested in a letter of September 2000 to the Commissioner that a Green Paper, or at least a communication, be drawn up on this issue as soon as possible. Unfortunately, the Commissioner did not agree to this request, either in her letter of reply or in her discussions with the committee.

It is therefore appropriate to stress once more in a resolution adopted by Parliament the importance that Parliament attaches to this real problem, and to suggest a few guidelines for the action which the Commission is expected to take.

10 April 2001

**OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS,
JUSTICE AND HOME AFFAIRS**

for the Committee on Culture, Youth, Education, the Media and Sport

on the Commission report to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation (EEC) No 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (COM(2000) 325 – C5-0509/2000 – 2000/2246(COS))

Draftsman: Marcello Dell'Utri

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Marcello Dell'Utri draftsman at its meeting of 29 August 2000.

It considered the draft opinion at its meetings of 20 March and 10 April 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Robert J.E. Evans, acting chairman; Marcello Dell'Utri, draftsman; Niall Andrews, Alima Boumediene-Thiery, Carmen Cerdeira Morterero (for Adeline Hazan), Ozan Ceyhun, Carlos Coelho, Giuseppe Di Lello Finuoli, Giorgos Dimitrakopoulos (for Rocco Buttiglione), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Alain Krivine (for Pernille Frahm), Hartmut Nassauer, William Francis Newton Dunn (for Jan-Kees Wiebenga), Arie M. Oostlander (for Timothy Kirkhope), Ingo Schmitt (for Eva Klamt), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Anne E.M. Van Lancker (for Gianni Vattimo) and Christian Ulrik von Boetticher.

SHORT JUSTIFICATION

The Committee on Citizens' Freedoms and Rights supports on the whole the Committee on Culture's call for more information to be provided by the Commission and, above all, the Member States. According to Interpol, the problem is relatively widespread; in France alone, for example, it is reported that 5 569 works of art were stolen in 1997 and 7 800 the following year, and the situation appears to be comparable in Germany, Italy and Belgium. The data contained in the Commission's communication, on the other hand, could give rise to conflicting interpretations and the sample on which its findings are based does not appear to be large enough to ascertain the real extent of the problem and whether or not the public authorities in the Member States are responding appropriately.

It also appears that the exchange of information between those primarily involved (museums, art collectors and national authorities) is haphazard and unstructured. However, the setting up of a special computerised network (ITCG, or Information on Transfer of Cultural Goods) with funds from the IDA project does not seem to have generated much interest on the part of the Member States.

It might be appropriate, therefore, to consider the feasibility of a less onerous system based on the use of standardised forms supplemented, where possible, by photographs. In the case of more valuable items, it would probably be sufficient to reuse the standardised information (and the photographs) annexed to insurance contracts. The documents in question could be reused either:

- on the special networks used by customs authorities (in connection with the Customs Information System) or for border controls inside the Schengen area (the Schengen Information System, which already gathers information on, for example, stolen cars), or
- on an internet site comprising files gathered on behalf of private citizens containing information on items which have disappeared or been unlawfully removed (as Interpol has begun to do on its website <http://www.stolenart.net>).

The main benefit of using standardised information would be to allow searches by keywords (date, place, type of cultural object).

If it emerged that the problem was very widespread, it might be appropriate to draw on the expertise of Europol or Interpol.

Moreover, we should not rule out the possibility of the Union (in the context of its powers in the area of police and judicial cooperation in criminal matters) or the Community (in the context of its exercise of the powers already conferred on it by Community acts) acceding to the recent Convention on the recovery of stolen artefacts drawn up by Unidroit under United Nations auspices, which was signed in Rome on 24 June 1995.

The adoption of an initiative of this kind would also have the great advantage of extending the 'acquis' of the Union and the Community in this area, thus facilitating the integration of the candidate countries on their accession.

Your rapporteur was amazed to discover from the Commission communication that the Member States had almost completely disregarded the provisions of Article 6 of Regulation 3911/92 relating to mutual assistance between national administrations. It would seem reasonable, therefore, to request the Commission to draw up a proposal to revise the regulation with a view to introducing more binding requirements for that type of cooperation.

Your rapporteur suggests, in particular:

1. incorporating in the regulation a requirement to make the granting of licences conditional on a preliminary application to the state of origin of the cultural object for the purpose of determining whether the object had been removed from that state in a lawful manner, along the lines of the practice followed in Italy;
2. introducing a compulsory requirement for an accompanying document certifying the origin of the object, to enable the national authorities to respond more effectively to requests for export licences.

CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Culture, Youth, Education, the Media and Sport, as the committee responsible, to incorporate the following points in its motion for a resolution:

AMENDMENT 1

After Recital G, insert the following new Recital Ga:

whereas the Commission draws attention in its report to the almost lack of compliance with Article 6 of Regulation 3911/92,

AMENDMENT 2

After Recital G, insert the following new Recital Gb:

whereas such cooperation could be strengthened:

- *by a requirement to make the granting of licences conditional on a preliminary application to the state of origin of the cultural object with a view to determining whether the object in question had been removed from that state lawfully,*
- *by the introduction of an accompanying document certifying the origin of the object,*
- *by establishing a computerised system to notify customs and police authorities of thefts of cultural objects,*

AMENDMENT 3

Insert a new Paragraph 5b:

Calls on the Commission to consider the possibility of submitting a proposal to tighten up Regulation 3911/92 by introducing a requirement for Member States to:

1. *make the granting of a licence conditional on a preliminary application to the state of origin of the cultural object for the purpose of determining whether it was removed from that state lawfully;*
2. *introduce a mandatory accompanying document certifying, inter alia, the origin of the object and the credentials of the person submitting the request.*

AMENDMENT 4
Paragraph 6

Considers that although the combating of illegal trade in cultural goods *is primarily a cultural policy matter, it also falls within the province of the Commissioners responsible for the internal market and for justice and home affairs. The Commissioners responsible need to adopt a coordinated approach, therefore, to enable wide-ranging action to be taken and all the instruments at the Community's disposal to be used;*

AMENDMENT 5

In Paragraph 7, insert new points (e), (f) and (g):

- (e) an assessment of the possibility of recommending that Member States establish a standard multilingual form containing information about the nature and characteristic features of the unlawfully removed object and, if possible, a photograph of it while providing, in the case of valuable items, for the relevant information to be entered in the Schengen Information System (SIS II)¹ and the Customs Information System (CIS)²;*
- (f) the setting up of an internet site on which forms and pictures relating to the stolen items would be freely accessible;*
- (g) an assessment of the possibility of the Union (in connection with its powers in the area of police and judicial cooperation in criminal matters) or the Community (in connection with the exercise of the powers conferred on it already by Community acts) acceding to the recent Convention instigated under United Nations auspices by Unidroit, which covers the recovery of stolen artefacts and was signed in Rome on 24 June 1995;*

¹ See the Schengen acquis – Decision of the Executive Committee of 7 October 1997 on the development of the SIS (SCH/Com-ex(97)24), *OJ L 239 of 22.9.2000, p. 442.*

² Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes, *OJ C 316 of 27.11.1995, p. 34* and Explanatory Report on the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on mutual assistance and cooperation between customs administrations (text approved by the Council on 28 May 1998), *OJ C 189 of 17.6.1998, p. 1.*