Return of Cultural Treasures under Directive 2014/60/EU

Stella Sarapani

SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION & LEGAL STUDIES
A thesis submitted for the degree of Master of Arts (MA) in Art, Law & Economy

January 2017
Thessaloniki – Greece
Student Name: Stella Sarapani
SID: 2202150011
Supervisor: Dr. Irini Stamatoudi

I hereby declare that the work submitted is mine and that where I have made use of another’s work, I have attributed the source(s) according to the Regulations set in the Student’s Handbook.

January 2017
Thessaloniki - Greece
Abstract

This dissertation was written as part of the MA in Art, Law & Economy at the International Hellenic University.

The subject of the dissertation is the Return of Cultural Treasures under Directive 2014/60/EU. The Directive 2014/60/EU is a recast of the Council Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State. The scope of this dissertation is to identify the enhanced provisions and the ailing issues of this new EU law instrument by comparing it with the international and European legislation regarding cultural heritage and especially the returns of cultural goods.

The Directive 2014/60/EU is one of the policy measures adopted by the European Union against illicit trafficking of cultural treasures within the Single European Market (SEM). Its purpose is to improve the cooperation between EU Member States for the return of cultural treasures taken unlawfully from their country of origin.

Keywords: Cultural treasures, Directive 2014/60/EU, Council Directive 93/7/EEC, TFEU.

Stella Sarapani

January 2017
Preface

I would like to thank Dr. Mrs. Irini Stamatoudi, my supervisor, for helping me at this dissertation.

The dissertation takes into account literature and documents available until January 2017.
Contents

ABSTRACT .......................................................................................................................... I
PREFACE ............................................................................................................................. II
CONTENTS ........................................................................................................................ III
INTRODUCTION ................................................................................................................ 1

CHAPTER 1. CULTURAL TREASURES AND RESTITUTION: THE THEORIES OF
CULTURAL INTERNATIONALISM AND CULTURAL NATIONALISM ....................... 2

1.1 DEFINITION OF CULTURAL TREASURES IN EUROPEAN UNION LAW ........... 2

UNIDROIT CONVENTION ................................................................................................. 6

1.3 WHO OWNS CULTURAL TREASURES? CULTURAL INTERNATIONALISM AND
CULTURAL NATIONALISM .............................................................................................. 11

CHAPTER 2. DIRECTIVE 2014/60/EU ON THE RETURN OF CULTURAL OBJECTS
UNLAWFULLY REMOVED FROM THE TERRITORY OF A MEMBER STATE: A CRITICAL
ANALYSIS ....................................................................................................................... 14

2.1 SCOPE AND OBJECTIVES OF THE NEW EU DIRECTIVE .................................. 14

2.2 THE RETURN PROCEEDINGS .................................................................................. 20

2.3 THE EFFECTIVENESS OF THE NEW EU DIRECTIVE: FINAL REMARKS ............ 25

CONCLUSIONS .................................................................................................................. 32

BIBLIOGRAPHY ................................................................................................................ 33

APPENDIX .......................................................................................................................... 37
Introduction

On May 15\textsuperscript{th} 2014 the European Parliament and the Council adopted Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State. The Directive 2014/60/EU was the result derived from the request of many EU Member States to have a more effective and less restrictive EU legislation as regards returns of cultural objects.\footnote{Fourth Report on the Application of Council Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, Brussels 30.5.2013, COM (2013) 310 final.}

The current dissertation will discuss the enhanced and ailing provisions of the Directive 2014/60/EU in order to measure the effectiveness of this new EU law instrument.

The paper consists of two main chapters divided into three sections each. In the first chapter the terms \textit{cultural treasure}, \textit{restitution} and \textit{return} are under consideration, while the theories of cultural internationalism and cultural nationalism – as strictly related to restitution of cultural goods – are also discussed in relevance with major texts from the cultural heritage legislation. The second chapter refers exclusively to Directive 2014/60/EU. In this chapter the improvements and the problematic issues of this new legal text come to the fore through a detailed analysis, leading at the end of the chapter to a general result regarding the effectiveness of the Directive 2014/60/EU on the returns of cultural treasures.
1. Cultural Treasures and Restitution: The Theories of Cultural Internationalism and Cultural Nationalism

1.1. Definition of Cultural Treasures in European Union Law

Cultural treasures are not just any kind of cultural objects. Cultural treasures are, irrespective of their monetary value, significant parts of a nation’s cultural patrimony that bear an emblematic character and configure a nation’s cultural identity. In other words, cultural treasures are the material remains of the past left behind by previous generations that witness important facts for the history and the existence of a nation. Their cultural significance to the nation is the one that primarily characterizes them as treasures.

However, not all objects can be classified as cultural treasures while on the one hand the distinction between cultural treasures and cultural objects is difficult to be achieved, as the criteria under which an object is classified as national cultural treasure differ among the EU Member States, depending mainly on each state’s interests and culture. This means that what is considered as national treasure of great significance in one state might be of no significance in another. In brevis, the criteria under which a cultural object is classified as national cultural treasure differ from state to state.²

² For instance in Greece and according to law Ν.3028/2002 για την προστασία των Αρχαιοτήτων και εν γένει της Πολιτιστικής Κληρονομιάς (Φ.Ε.Κ. 153/A/28.06.2002), (hereinafter ‘Greek Archaeological Law 3028/2002’), cultural objects that derive from specific periods in history are national cultural treasures and res extra commercium that belong by ownership and possession only to the Greek State see Articles 20 and 21 of the Greek Archaeological Law 3028/2002. On the other hand, in Italy without specific criteria and according to Italian Codice Civile R.D. 16 marzo 1942, n.262 (Gazzetta Ufficiale, n.79 del 4 aprile 1942), (hereinafter ‘Codice Civile n.262’), movable cultural heritage of historic, archaeological and artistic interest, collections of museums, art galleries, archives and
The only legal instrument clearly referred to cultural treasures still does not offer any guideline in order for a cultural object to qualify as national treasure, is the Treaty on the Functioning of the European Union (TFEU). National treasures is a term found in the English version of the TFEU and specifically in Article 36, which provides for an exception to the previous Articles 34 and 35. According to Article 36 TFEU, the only article within the treaty dealing with the free movement of cultural goods, the provisions of Articles 34 and 35 shall not preclude prohibitions or

libraries constitute part of the national cultural heritage and are res extra commercium see Articles 822 and 823 of the Codice Civile n.262.

3 The Treaty on the Functioning of the European Union reflects the principle of the free movement of goods within the borders of the European Community. As I. Stamatoudi underlines the Member States’ national market should be seen as part of a Common European Market, which functions in the same way as a national market and where any kind of restrictions on the free movement of goods are prohibited I. Stamatoudi, Cultural Property Law and Restitution, Cheltenham (UK): Edward Elgar Publishing, 2011, p.112.

4 However, the terminology used is not uniform all over Europe. For instance in the German version of the TFEU the term preferred is nationales Kulturgut (national cultural good), while in the Italian one the term used is Patrimonio nazionale (cultural patrimony). National treasures is a term used only in the English and French version of the treaty, which means that these two versions are too narrow, since both limit the protectable cultural objects and at the same time do not provide any criteria to classify objects as national treasures. According to A. Grammatikaki – Alexiou the notion of cultural treasure per se is vague; a fact that is common for all notions regarding cultural goods and that justifies to a certain extent the various terminology A. Grammatikaki – Alexiou, Διεθνής Διακίνηση Πολιτιστικών Αγαθών και Ιδιωτικό Διεθνές Δίκαιο, Thessaloniki: Sakkoulas Publications, 2002, p.275, while I. Stamatoudi more aptly noticed that this divergent terminology reflects the different national approaches to cultural heritage protection, an argument justified by the two dominant theories in cultural heritage: cultural nationalism and cultural internationalism I. Stamatoudi, n.3 above, p.119.

5 Articles 34 and 35 TFEU include an important principle regarding the trade within the EU and specifically the prohibitions on the quantitative restrictions applied on imports and exports of goods between EU Member States see Articles 34 and 35 of the Treaty on the Functioning of the European Union (TFEU) (OJ C 326 of 26.10.2012).
restrictions on imports, exports or goods in transit justified on grounds of protection of national treasures possessing artistic, historic or archaeological value. In other words cultural treasures is the only category of goods in the EU and the Single European Market (SEM) – that constitute an exception to the free movement of goods principle – subjected to restrictions that aim actually to protect Member States’ cultural heritage at national and European level, by permitting Member States to justify restrictions. The general result derived from Article 36 TFEU is that cultural treasures differ from any other ordinary object or good and therefore cannot, from a realistic point of view, circulate within the EU market as free as a bird.

In addition, 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, two interdependent legal instruments, refer to cultural goods and cultural objects respectively. Agreeing with I. Stamatoudi at that point it should become clear that both the Regulation 3911/92 and the Council Directive 93/7/EEC have only dealt with a limited area regarding the free movement of cultural goods. This argument means that both legal texts have not defined the notion of national cultural treasure sufficiently in order for them to provide a more spherical protection, nor have they explained fully the inchoate and narrow Article 36 TFEU. In fact the definition of cultural goods given by Regulation 3911/92 does not correspond exactly with the term national treasures provided by Article 36 TFEU. As I. Stamatoudi clarifies and according to the Preamble of the Regulation 3911/92 the Annex to this regulation is not seeking to provide a definition of cultural treasures but rather aims at making clear the categories of cultural objects that need particular protection in trade with third countries without any prejudice to Member States’ right to define their

---


7 I. Stamatoudi, n.3 above, pp.120 – 121.
national cultural treasures within the meaning of Article 36 TFEU.\textsuperscript{8} However, national cultural treasures that do not come within the notion of cultural goods set by the Regulation 3911/92 are not subjected to that kind of special EU protection. The result is that many cultural treasures are excluded from the special protection provided by the Regulation 3911/92 and the Council Directive 93/7/EEC as well, are vulnerable to illicit traffic, while Member States still retain their competence to define under their own criteria and interests their cultural treasures, a fact that basically makes the return of cultural treasures within the European Union more difficult. So, the limited character of the Council Directive 93/7/EEC and the lack in common rules within the European Union to regulate cultural treasures trade and to determine the nature of cultural treasures, in other words the insufficient EU legislation and the deficient European policy on restitution of cultural heritage were the reasons that led EU Member States to seek another, more efficient this time EU legislation.

To the contrary the new EU legislation regarding the return of cultural treasures, Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State (hereinafter ‘new EU Directive’), provides a totally new criterion in order for cultural objects to be classified as national cultural treasures; as it is provided in the Preamble (9) 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. With the abolition of restrictive criteria the new EU Directive extends the notion of cultural treasures, including more cultural objects under protection. Thus, as no common criteria have been set by European legislation for the definition of cultural treasures and Member States still retain the right to define their national cultural treasures according to their national laws, the new EU Directive following a more elastic policy than its predecessor and in order on the one hand to smooth out the various national laws – interests and on the other to achieve

\textsuperscript{8} The same thing applies for Council Regulation (EC) No 116/2009 same at I. Stamatoudi, n.3 above, p.135.
returns of cultural treasures among Member States in a more efficient way, includes a greater amount of objects classified as treasures under its protection.


Requirements to return cultural property to countries of origin date back to Ancient Greek and Roman times.9 As J. Nafziger noticed, until recently those

9 Requirements and efforts for the return of cultural treasures removed illegally from their country of origin as spoils of war derive from the very early times in history and extend to more recent times (First and Second World War). However, it is worthwhile to mention some indicative examples. A very characteristic case regarding the return of looted cultural treasures is the one included into the fourth book of Cicero’s speeches known as In Verrem. Gaius Verres was former governor of Sicily during 73 – 71 BC, whose illegal actions against cultural property (public and private) brought him to trial. Cicero demanded from the former Roman praetor to pay 45 million sesterces to the Sicilians as a compensation for the looting of their monuments and temples and to return some of the looted artifacts and especially the res sacrae, such as the Statue of Cupid made by Praxiteles for a Sicilian temple. Another very interesting case regarding the restitution of looted art during ancient years is the case of a group known as Tyrranicides, representing Harmodius and Aristogeiton, the two liberators of Athens that opened the way for the Athenian democracy. The group was taken away, actually in Susa, by the Persians in 480 BC and restored to the Athenians by Alexander the Great after the Persian defeat in 331 BC. Centuries later, in 1815, France was forced to carry out one of the biggest restitutions recorded in the history; the return of works of art looted by Napoleon from countries such as Belgium and Italy L. J. Rollet – Andriane, «Precedents, in Return and Restitution of Cultural Property», Museum (special issue) No.XXXI (1979) pp.4 – 6. Furthermore, during the 16th century issues of return had been discussed in detail by the Spanish theologian and lawyer Francisco de Vitoria when deploring the spoliation of goods from the indigenous people of Spanish America L.V Prott, «The History and Development of Processes for the Recovery of Cultural Heritage» in L. V. Prott (ed.), Witnesses to History, Paris: UNESCO, 2009, p.2.
requirements were addressed almost exclusively to military – related problems of plunder, spoils and occupation, meaning that international law regarding cultural heritage protection began with comparatively narrow objectives, viz the protection of cultural property in times of war. However, war of international or non – international character, is not the only threat of cultural heritage. Flourishing art market has shifted most attention to peacetime trafficking. In other words, demand on cultural treasures within the market causes supply. Intense commercialization of cultural treasures by the market and its exploitation nature lead to a more organized smuggling network that consist of looters, art dealers, large auction houses, major museums around the world, infamous collectors etc., in which the art market is the key force that creates the whole antiquities trafficking chain. Public concern over this post – war phenomenon led to the development of a more restrictive international legislation, aiming among other to accomplish restitution of the unlawfully removed cultural goods. The first international legal instrument regarding this latter issue is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, a convention that had paved the way for another significant legal instrument following few decades later, the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects. As J. Nafziger aptly has noticed it is the

13 Illicit cultural treasures are a major resource for traffickers, ranking among other highly trafficked commodities such as drugs and weapons. UNESCO estimates the antiquities trade to be worth US$2.2 billion annually P. B. Campbell, «The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage», International Journal of Cultural Property 20 (2013), pp.113 – 114.
development of international cultural law and not policing or international legal control of trafficking, which has offered the greatest promise during the last years.\textsuperscript{14} However, what sort of cultural goods are covered under the term \textit{restitution} and what notion is represented by this term, are some questions that need to be clarified further.

As it has been mentioned in the beginning of this section, requirements for returns of cultural treasures go back to ancient times. With the development of Roman law the notion of \textit{restitutio in integrum} came to the fore. Despite the fact that restitution is very likely a controversial term with different significance across the various legal systems, the initial meaning of the term \textit{restitution}, viz restoration of the \textit{status quo ante}, is maintained up to this day.\textsuperscript{15,16} Specifically, the term features the complete or almost complete restoration of the previous status of affairs, which means that restitution can be achieved only under two possible ways; directly or indirectly.\textsuperscript{17} Thus, if this is transposed to cultural objects removed from their countries of origin, then restitution should mean that the object should either be returned to the dispossessed owner \textit{in integro} or an object similar or equivalent should be given back. During the 19\textsuperscript{th} century and the international ban of pillaging, the notion of restitution was evolved further.\textsuperscript{18} It was based on the principle of

\textsuperscript{14} J. A. R. Nafziger, n.10 above, p.792.
\textsuperscript{15} I. Stamatoudi, n.3 above, p.15.
\textsuperscript{16} In Civil Law systems based on Roman Law \textit{restitution} may mean either specific restitution of an object or reimbursement – compensation, while in Common Law systems restitution aims to return parties to the position they occupied before a transaction took place, meaning transfer of an object back to its original holder see «Notes on Terminology» in L. V. Prott (ed.), \textit{Witnesses to History}, n.9 above, 2009, p.xxi.
\textsuperscript{17} W. A. Kowalski, «‘Restitution’: Art Treasures and War» (a more detailed version is to be found in \textit{Restitution of Works of Art pursuant to Private and Public International Law, Recueil des Cours 80 – 90}, The Hague: Martinus Nijhoff) in L. V. Prott (ed.), \textit{Witnesses to History}, n.9 above, p.163.
\textsuperscript{18} Actually the principle of restitution goes back to 1648, when the Treaty of Westphalia, signed at that year, made provision for the return of objects looted during the Thirty Years’ War. After World War I the principle was expressed in the Treaty of Trianon 1921, signed
identification, which provided for the return of the removed cultural object and the principle of territoriality, under which an item is returned to the place from which it was taken. As I. Stamatoudi noticed this latter principle was also connected with the protection of the integrity of the national cultural heritage and has influenced both bilateral and multilateral agreements.

Apart from the peace treaties signed after World War I (n.18), the restitution principle is also found within the 1970 UNESCO Convention regarding import, export and transfer of cultural property and the 1995 Unidroit Convention regarding stolen and illegally exported cultural objects. In both, however, the notion of restitution between Allied Powers and Hungary, in the Treaty of St. Germain 1919 with Austria and in the Treaty of Riga 1921 signed between Russia and Poland required Russia and Ukraine to restore Polish national treasures L.V Prott, «The History and Development of Processes for the Recovery of Cultural Heritage», *Art Antiquity and Law* 15 (2008) in L. V. Prott (ed.), *Witnesses to History*, n.9 above, pp.2 – 4.

I. Stamatoudi, n.3 above, p.16 and W. A. Kowalski, n.17 above, p.164.

20 I. Stamatoudi, n.3 above, p.16.

21 See Articles 13(b) and 15 of the 1970 UNESCO Convention and Articles 1 (a), 3 (3), (4), (5), (8), 9 (1), 10 (3), 16 (1), 16 (2), 19 (3) of the 1995 Unidroit Convention respectively.

22 Although the principle was not featured in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, it did appear in the First Protocol adopted and came into force at the same time with the Convention W. A. Kowalski, n.17 above, p.166. As Roger O’Keefe notices the systematic removal by Nazi Germany of artworks and antiquities from the occupied countries (the Nazis also seized the collections of German, Austrian and Sudeten Jews, however these seizures fell outside the laws of armed conflict, since they did not take place in occupied territory) and the subsequent entry of many of these looted pieces into the market, where they were purchased by private collectors and public institutions, motivated the drafters of the Hague Convention to address the question of the exportation and importation of cultural property from occupied territory through the Protocol to the Convention, which in spite of its loose drafting as O’Keefe adds, it has assumed increasing significance in the fifty years since its adoption, as the main danger to cultural property in armed conflict has changed from its destruction during bombardment to its illicit removal R. O’Keefe, *The Protection of Cultural Property in Armed Conflict*, New York: Cambridge University Press, 2011, pp.196 – 196. Additionally, the principle of restitution
allows for the return of the removed cultural object, irrespective of the particular requirements applied. This means that restitution is gradually being taken out of its narrow legal context, whilst ethical values and principles are being attached to it.\textsuperscript{23}

On the other hand, return or rei vindicatio is the most neutral term of all.\textsuperscript{24} The term is widely used in requests for relocation and specifically in the area of illegal trade in cultural property.\textsuperscript{25} Usually the return presupposes destruction of the integrity, viz destruction of the cultural context from which parts have been unlawfully removed. As I. Stamatoudi underlines it is not the unlawful act as such that dictates return (which in this case could be considered as a form of restitution) but ethical and moral principles attached to it.\textsuperscript{26} The term return is possible to apply without considering time limitations or other legal constraints in cases of relocation of cultural objects displaced under unethical circumstances. Specifically war, belligerent occupation, hostilities, colonization, punitive raids and generally circumstances of social and political turbulence, where a state is unable to control and safeguard its cultural heritage. As I. Stamatoudi underlines in these cases the existence in the 1985 Delphi European Convention on Offences Relating to Cultural Property. Part IV of the Convention deals with the Restitution of cultural property and specifically Article 6 that expects the parties to undertake to cooperate with a view to the restitution of cultural property found on their territory, and which has been taken from the territory of another Party subsequent to an offence relating to cultural property committed in the territory of a Party. However, this Convention was never ratified by enough countries to be able to enter into force U. M. Bonnici, The Protection of Cultural Property at International Law, Valletta: Midsea Books, 2008, pp.198 – 199.

\textsuperscript{23} I. Stamatoudi, n.3 above, p.16.

\textsuperscript{24} Repatriation is more specific than the neutral term return. Repatriation applies to returns between states but also between institutions and communities within these states. In other words, it has to do with the return of cultural objects to their country of origin and not with ownership between individuals see «Notes on Terminology», in L. V. Prrott (ed.), Witnesses to History, n.9 above, p.xxiii. As I. Stamatoudi very aptly noticed it is the territory and not the dispossessed owner that matters in that case I. Stamatoudi, n.3 above, p.17.

\textsuperscript{25} I. Stamatoudi, n.3 above, pp.17 – 18.

\textsuperscript{26} I. Stamatoudi, n.3 above, p.18.
return of the object or objects is initiated on the basis of ethical, moral and humanitarian grounds mainly and not necessarily for the rectification of an illegal action. The Nigerian Benin bronzes removed by British troops during the 1897 Punitive Expedition and the Parthenon Sculptures detached from the Athenian Monument by Lord Elgin during the 1800s are two well-known cases, where return is required due to ethical and moral reasons.

1.3. Who Owns Cultural Treasures? Cultural Internationalism and Cultural Nationalism

Who owns cultural treasures? By consensus, this is a very difficult question to be answered even so it is not beyond reach. There are two important theories in the area of cultural property law: cultural internationalism and cultural nationalism. These theories initially were developed in the late 19th century with the emergence of the international legal instruments in the field of cultural property law, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict, viz the 1954 Hague Convention. They were evolved later on with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects.

Cultural internationalism expressed through the 1954 Hague Convention supports that cultural property is linked neither to a state or a nation nor to a particular territory and as such it constitutes part of the world’s cultural heritage belonging to the mankind. Moreover, under this theory the ability of a state to secure and

\[27\] I. Stamatoudi, n.3 above, pp.227 – 228.


\[29\] J. Litvak King also has noticed that a nation’s cultural achievements are the property of humankind as a whole deriving from a universal interaction and forming the world’s cultural
protect cultural goods is more important than their historic provenance. Therefore, claims for restitution and return are not justified. In addition a country of origin should not be responsible to decide whether a cultural object has left its territory illegally or not. In that sense, as I. Stamatoudi clarifies, national export laws as well as national laws providing for state ownership in cultural treasures should not be enforced by third countries. Finally under cultural internationalism, cultural objects should be traded freely without particular legislative obstacles that according to the theory reinforce instead to reduce the illicit trade or to menace the profitable and corrupt black market. According to prof. Grammatikaki the main purpose of this theory is to beat off the requirements for returning cultural treasures to their country of origin in the expense of source countries and at the same time to promote the interests of the so called import countries. As expected, the supporters of this theory do not feel comfortable with the 1970 UNESCO Convention, the 1995 Unidroit Convention and subsequently the rest of the international legislation


30 A. Grammatikaki – Alexiou, n.4 above, p.24.
31 I. Stamatoudi, n.3 above, p.22.
32 J. H. Merryman, n.28 above, pp.847 – 848.
33 Looters, antiquarians, gallery owners, art dealers, auction houses and major museums around the world create a very well organized smuggling net within the art market, operating either illegally (black market) or semi – legally (grey market). The interests involved within this manifold net were and still are mainly financial, since the art market constitutes one of the most lucrative markets comparable with profits derived from drugs and weapons B. Hauser – Schäublin and L.V. Prott (ed.), Cultural Property and Contested Ownership: The Trafficking of Artefacts and the Quest for Restitution, New York: Routledge, 2017, introduction pp.8 – 9.
34 A. Grammatikaki – Alexiou, n.4 above, p.25.
regarding the restitution of cultural heritage.\textsuperscript{35} As regards the European legislation on the issue, both the Council Directive 93/7/EEC and the recently adopted new EU Directive express and serve the notion of restitution according to the EU cultural policy. J. H. Merryman, one of the supporters of cultural internationalism once had noticed that the purpose of the 1970 UNESCO Convention is to restrain the flow of cultural property from the source nations by limiting its importation by market nations.\textsuperscript{36} In fact the 1970 UNESCO Convention aims to limit the \textit{illicit} and not all imports made by market nations.

On the other side, cultural nationalism is another way of thinking about ownership of cultural heritage. Under this theory states aim to retain their cultural treasures within their territory as parts of their national cultural heritage. They also seek the return of cultural goods left either illegally or unethically.\textsuperscript{37} This way of

\textsuperscript{35} The supporters of the opposite theory might have been thinking that the 1970 UNESCO Convention embodies a \textit{nationalist} or \textit{statist} approach to cultural property whereby the interest of the state of origin are paramount, mirroring the strong feeling during the 1970’s amongst developing nations that the power of the dominant developed States should be counteracted. In fact the 1970 UNESCO Convention reflects a contemporary struggle between developing and developed nations over control of art – works and archaeological remains set in the wider political context of post – colonialism. J. Blake, n.11 above, pp.18 – 31.

\textsuperscript{36} J. H. Merryman, n.28 above, p.843.

\textsuperscript{37} As A. Grammatikaki notices cultural nationalism depends on ethical rather than legal arguments because of the nature of cultural goods and their connection with the nation from which they have been unlawfully removed, while I. Stamatoudi adds that cultural goods are usually removed in periods when national laws do not exist or could not be enforced by reasons of special circumstances such as military occupation, a fact that justifies the involvement of ethical criteria. For instance the Rosetta Stone, the Nefertiti bust, the Denderra Zodiac, the Koh – i – Noor diamond and the Parthenon Sculptures are some of these cultural goods A. Grammatikaki – Alexiou, n.4 above, pp.27 – 28 and I. Stamatoudi, n.3 above, pp.27 – 28.
thinking is expressed primarily by the 1970 UNESCO Convention. The 1970 UNESCO Convention is actually the result after decades of colonial exploitation and abuse of power practiced on certain states under turbulent circumstances. It is considered as the most significant international legal text in the area of cultural heritage, which expresses the restitution notion by seeking the return of cultural treasures as a measure for the protection of a nation’s cultural heritage, history and identity. The 1970 UNESCO Convention has been charged due to this reason many times and mainly by the supporters of the opposite side; however up today source countries and import countries as well adopt the 1970 UNESCO Convention and its policy. I. Stamatoudi has noticed that after the enactment of the 1970 UNESCO Convention and the 1995 Unidroit Convention the theory of cultural nationalism has gained ground over cultural internationalism, while it has been widely recognized that countries have legitimate interests in their cultural heritage and are the best placed custodians to preserve it for the sake of mankind. In the European Union source countries and import countries as well have signed or/and ratified the 1970 UNESCO Convention. Greece has ratified the 1970 UNESCO Convention in 1980.

2. Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State: A Critical Analysis

2.1. Scope and Objectives of the New EU Directive


---

40 I. Stamatoudi, n.3 above, pp.29 – 30.
Unlawfully Removed from the Territory of a Member State (hereinafter ‘new EU Directive’), which went into effect on June 17th, 2014. Council Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State was designed in order to become a useful tool for the recovery of cultural objects. However and according to the 2013 fourth report on the application of Council Directive 93/7/EEC, Member States were frustrated due to the limited scope of the Council Directive 93/7/EEC and the restrictive conditions imposed on initiating return proceedings. Of course, the recovery of cultural treasures was not the only target that Council Directive 93/7/EEC had to achieve. Under the construction of the Single European Market (SEM) and the free movement of goods

42 Greece adopted Directive 2014/60/EU in national law N.4355 (Φ.Ε.Κ.178/A/18.12.2015). However, there are eight EU countries Spain, Cyprus, Finland, France, Lithuania, Poland, Portugal, Romania that have not incorporate yet into their national law the Directive 2014/60/EU. According to the European Commission failure to comply will mean the beginning of legal actions at https://www.euractiv.com/section/languages-culture/news/eu-countries-failing-to-protect-cultural-heritage/.


44 Indeed the scope of the Directive 93/7/EEC was limited and restrictive to cultural objects removed after 1st January 1993, for that reason its implementation was almost rare with regard to both administrative cooperation and proceedings before national courts. Specifically, the time limits applied for initiating return proceedings (Article 7 (1) of the Directive) and the necessity of them to belong to one of the categories listed in the Annex of the Directive (Article 1 of the Directive) held back, rather than promoted, the return of cultural treasures and foreshadowed Directive’s lack of success Fourth Report, n.1 above, COM (2013) 310 final.

expressed by the TFEU, the Directive was the legal tool designed to regulate the intra–Community trade of cultural goods and to harmonize the various national legislations in the area of cultural heritage law (up today this latter issue cannot easily be resolved and derives actually from the 1970 UNESCO Convention, which is tolerant of the various legal rules applied for the restitution of cultural heritage in the EU46). As prof. Grammatikaki aptly has noticed the Council Directive 93/7/EEC is a conciliating text47, which (speaking under the two theories mentioned previously) aims to balance on the one hand the demands of import countries and of art market for a free trade of cultural goods within the EU and on the other hand the demands of source countries for a stricter legislation regarding the protection and restitution of their cultural heritage. Since the balance between import and source EU countries could not have been achieved and the Member States were widely frustrated it was commonly decided in 2011 that Council Directive 93/7/EEC needed to be revised in order to make the arrangements for returning cultural objects classified as national treasures more effective, leading to the new EU Directive. The new EU Directive aims to reconcile the free movement of goods principle with the protection of national heritage in a more acceptable and enhanced legal framework. To achieve that goal

46 As regards the 1970 UNESCO Convention it aims to provide a minimum level of uniform protection against illicit trade of cultural objects and to promote at the same time the international cooperation, while the 1995 Unidroit Convention has as goal to establish common, minimal legal mechanisms for the restitution of cultural objects by harmonizing the various national rules (weak points of the 1970 UNESCO Convention). Unidroit Convention of 1995 derives actually from the 1970 UNESCO Convention and its problematic Article 7 (b) (ii). A. Grammatikaki – Alexiou has noticed that actually the scope of the 1970 UNESCO Convention has not been achieved, as it did not implement sufficient mechanisms to control illicit trade. Instead of enforcing a uniform legislation on the return of cultural goods, the 1970 UNESCO Convention permits Member States to follow their national legislation and to take their own decision on the issue, making things even more complicated. As regards the scope of the 1995 Unidroit Convention A. Grammatikaki – Alexiou adds that it has not been successful as well, since the Convention almost makes no use of private law rules; an ailing issue for the Directive 2014/60/EU too A. Grammatikaki – Alexiou, n.4 above, pp.224 – 242.

47 A. Grammatikaki – Alexiou, n.4 above, p.295.
and contrary to the previous legislation the new EU Directive has – according to some scholars – undergone major improvements towards a more comprehensive protection of cultural property. Nevertheless, problematic and elusive provisions still exist therein.

For instance and in relevance with the scope of the new EU Directive improvements have been occurred in order to become more concrete than the provisions provided by Article 36 TFEU and to cover objects that Council Directive 93/7/EEC did not include because of its restrictive nature. Specifically and as it is mentioned in the Preamble (9) of the new EU Directive the scope should be extended to any cultural object classified or defined by a Member State under national legislation or administrative procedures as national treasure possessing artistic, historic or archaeological value within the meaning of Article 36 TFEU. However, and in comparison to Council Directive 93/7/EEC, it is quite obvious that the new EU Directive, likewise its predecessor, maintains the sovereign right of Member States to define their cultural treasures per se, which means that Member States are fully free under the new EU Directive as well to indicate the objects that according to their national legislation should be classified as national cultural treasures. As it is explained further in the Preamble (9) the Directive should 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. Thus, under the right of Member States to define per se their national cultural treasures the interpretation could be wider for certain

---

51 Designation by Member States of cultural objects as national cultural treasures is significant for the return proceedings not only in relation to Directive 2014/60/EU but also had a decisive role to the Council Directive 93/7/EEC I. Stamatoudi, n.3 above, p.120.
interest groups (source countries) and narrower for others (art dealers, collectors, import countries). Nevertheless, the scope of the protection has been extended to all cultural objects to the extent that they have been identified as national treasures possessing artistic, historic, archaeological value within the meaning of Article 36 TFEU.\textsuperscript{53} \textit{A contrario}, the former necessity of the latter to belong either to one of the categories listed in the Annex of Council Directive 93/7/EEC or a public collection, as it is provided in Article 1 (1), has been waved. Under the new EU Directive it is no longer necessary for an object in order to qualify as protectable and therefore to be subject of return neither to belong in a specific category nor to be included in a

\begin{footnotesize}

\textsuperscript{53} Article 36 TFEU provides that the provisions of Articles 34 and 35 shall 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 see the Treaty on the Functioning of the European Union (TFEU) (OJ C326 of 26.10.2012).

\textsuperscript{54} However, at that point a new issue arises in relevance with the functionality and effectiveness of the new EU Directive. More specifically, according to the Preamble (9) cultural objects derived from clandestine excavations are covered by the Directive 2014/60/EU and therefore are subjected to the return proceedings provided by this legal text to the extent that these objects are classified as national treasures. The issue raised here is how, in case of clandestine excavation, could someone determine the provenance of the object in question and all the necessary elements (country of origin, age etc.) in order for an object to be classified as national cultural treasure and consequently to be returned to its country of origin. Bulgaria and Italy in the fourth report on the application of Council Directive 93/7/EEC highlighted the problem of the unlawful traffic in archaeological objects taken from illegal excavations and the difficulty in proving not only the origin of these objects but also the date of their illegal removal (another issue derived that especially affects the time limitations set by the Directive 2014/60/EU for the return of cultural treasures). Despite the fact that these countries asked for a solution the issue still remains, as it has not been settled by the Directive 2014/60/EU as well Fourth Report, n.1 above, COM (2013) 310 final.
\end{footnotesize}
particular list. The new EU Directive resulted in the deletion of the Annex found within the Council Directive 93/7/EEC.\footnote{According to the Preamble (9) of the Directive 2014/60/EU 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 the return under this Directive see Directive 2014/60/EU (OJ L 159 of 28.5.2014).}

The scope of the new EU Directive extends even more, as according to the Preamble (10) and Article 15(1) it should be possible for Member States to return cultural objects other than those classified or defined as national treasures provided that they respect the relevant provisions of the TFEU. However, the new EU Directive does not clarify at that point what kind of objects are those not classified as national treasures. Interpreting this provision according to Article 1 of the Council Directive 93/7/EEC and Article 2 (8) of the new EU Directive, then cultural objects belonged to public collections of museums, archives or libraries, as well cultural objects listed in the inventories of ecclesiastical institutions should also be classified as national treasures and therefore are under the protection of the new EU Directive.\footnote{In order for a cultural object to be protectable under Council Directive 93/7/EEC it had to be classified as national treasure and also it had to be listed in the Annex of the Directive. Even so, objects other than these were being covered by Council Directive 93/7/EEC as well, to the extent that they were part of public collections (museums, institutions, archives, libraries). As A. Grammatikaki – Alexiou has noticed Directive 93/7/EEC covers at that point much more objects than Article 36 TFEU provides, as the latter does not include under its provisions objects of public collections A. Grammatikaki – Alexiou, n.4 above, pp.286 – 287.} In this way the new EU Directive not only demands the return of those goods as cultural treasures but at the same time through Article 36 TFEU affects the whole TFEU by limiting the national treasures that would likely be traded freely within the EU as any other cultural good.

Finally and according to Article 14 of the new EU Directive return shall apply only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993. It is important at that point to notice that the new EU Directive, likewise its predecessor, does not presuppose theft for the restitution of a
cultural treasure and thus applies the same to all illicit actions occurring in the field of cultural heritage.\textsuperscript{57}

\textbf{2.2. The Return Proceedings}

So, the scope of the new EU Directive has been admittedly extended and subsequently improved. However, what happens in practice? Is the new EU Directive effectively improved in relevance with the legal proceedings need to be followed for the \textit{rei vindicatio}?

To begin with, Article 5 is the cornerstone of the new EU Directive, as the scope and subsequently the success of it depends mainly on the provisions of this Article, under which \textit{Member States’ central authorities shall cooperate and promote consultation between the Member States’ competent national authorities}. In other words, the new EU Directive requires the administrative cooperation between Member States in order to carry out in the best possible way the return of cultural treasures.\textsuperscript{58} In addition to that the provisions of Article 4, applicable also under

\footnotesize
\begin{itemize}
\item \textsuperscript{57} To the contrary the 1995 Unidroit Convention separates the stolen cultural objects from the illegally exported cultural objects and regulates differently in each occasion the same at A. Grammatikaki – Alexiou, n.4 above, p.287.
\item \textsuperscript{58} Council Directive 93/7/EEC had also introduced mechanisms for administrative cooperation between national authorities and encouraged the exchange of information for the return of cultural objects taken illegally from their territory. Article 4 of the Council Directive 93/7/EEC provides that \textit{Member States’ central authorities shall cooperate and promote consultation between the Member States’ competent national authorities}. However, in the 2013 fourth report on the application of Council Directive 93/7/EEC Member States recommended that the cooperation and exchange of information for the purposes of the Directive could be improved further, while at the same time Belgium, Bulgaria, the Czech Republic, Germany and the United Kingdom characterized this sort of
\end{itemize}
Council Directive 93/7/EEC, seek to facilitate and promote even more the administrative cooperation between Member States by organizing the relevant authorities within a common European level.\textsuperscript{59} Moreover and according to Article 5 (3) of the new EU Directive \textit{national authorities shall enable competent authorities of the requesting Member State to check that the object in question is a cultural object, provided that the control is made within six months of the notification provided for in point (2)}. Meaning that the requesting Member State, under the framework of administrative cooperation and after being informed by the requested Member State about the \textit{locus novus} and the possessor or holder of the cultural object, should within a period of six months control that the object in question is a cultural object within the meaning of Article 2 (1) of the new EU Directive, viz is classified as national cultural treasure by the national legislation of the requesting Member State.

The period of two months provided for this procedure by the Council Directive 93/7/EEC has been extended under the new EU Directive, which offers to the requesting Member State a wider limit to check the nature of the cultural object and specifically whether the cultural object found in another Member State could be classified as cultural treasure according to Article 2 (1) of the new EU Directive.

Within Article 5 lies a new provision that seeks to improve the cooperation between Member States even more. The Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 is a new tool specifically customized for cultural objects. \textit{Member States may use the IMI to disseminate relevant case–related information concerning cultural objects which have been stolen or unlawfully removed from their territory}. This new tool fosters the exchange of information and at the same time creates a record of this exchange, which makes it more traceable for the authorities involved. Moreover and according to Article 7 of the new EU Directive the usage of IMI is possible in case that the requesting Member State initiates before the competent court of the requested Member State proceedings against the possessor or the holder, aiming to secure the return of the illegally cooperating and exchange of information as insufficient for the return of cultural treasures Fourth Report, n.1 above, COM (2013) 310 final.

removed cultural object. The provision is without prejudice to the competent authority’s right to use other means of communication in addition to the IMI. In that sense, IMI is a useful tool to preserve a cultural object or to prevent an action to evade the return proceedings, securing at the same time the requesting party’s rights to bring the case to the court.

Article 8 of the new EU Directive is as significant as Article 7 for the return of a cultural treasure. Apart from determining time limitations regarding the return proceedings, Article 8 introduces new provisions – improvements on the issue. As early as 2009 and 2011, the working group on the Export and Return of Cultural Goods, set by the EU Commission, revealed that Member States are unanimous in feeling that the one year period provided by Council Directive 93/7/EEC in Article 7 (1) for bringing return proceedings is not sufficient. In this respect, countries such as Bulgaria and Poland indicated that they had secured returns under the 1970 UNESCO Convention, whereas Romania stated that it had secured the return of 235 objects under the Unidroit Convention. Apparently the restrictive conditions imposed by EU law (Council Directive 93/7/EEC) obliged many Member States to seek recourse to international conventions or criminal proceedings for the recovery of their cultural treasures. On these grounds and according to Article 8 (1) of the

---


61 According to Article 5 (5) of the Unidroit Convention any request for the return shall be brought within a period of three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned under a permit referred to in paragraph 2 of this article. The flexible time limits for the request of an unlawfully removed cultural treasure made the Unidroit Convention more preferable to Member States see the 1995 Unidroit Convention.


63 C. Roodt supports that peacetime Conventions and domestic criminal prosecution remain viable options for restitution actions and Member States prefer to use such options, because civil and criminal proceedings offer quicker and cheaper alternatives compared to the return proceedings provided for under the Council Directive 93/7/EEC. Roodt, Private International Law, Art and Cultural Heritage, Cheltenham (UK): Edward Elgar Publishing, 2015, p.144.
new EU Directive the period for initiating return proceedings has been extended to 3 years after the requesting Member State has been aware of the *locus novus* and the possessor or holder of the cultural treasure\(^\text{64}\). The standard period though remains at 30 years from the date of illegal exportation, but special protection arrangements under national law that stipulate a longer limit are permitted in certain circumstances.\(^\text{65}\)

Article 10 of the new EU Directive includes another important still controversial provision as regards the return proceedings; the compensation of the possessor or holder. *When 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. However, in determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition (...).*\(^\text{66}\) So, contrary to Article 9 of the

\(^{64}\) See Article 8 (1) of the Directive 2014/60/EU (OJ L 159 of 28.5.2014).

\(^{65}\) However and as Article 8 (1) provides, *in the case of objects forming part of public collections...and objects belonging to inventories of ecclesiastical or other religious institutions in the Member State where they are subject to 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 see Article 8 of the Directive 2014/60/EU (OJ L 159 of 28.5.2014). The provision as such derives from Directive 93/7/EEC see Article 7 (1) of the Council Directive 93/7/EEC (OJ L 74 of 27.3.1993).*

\(^{66}\) The provision derives directly from Article 4 (4) and Article 6 (2) of the Unidroit Convention, which is actually very remarkable given the fact that only half of the EU Member States have ratified this Convention: *In determining whether the possessor exercised due diligence, regard shall be had to all circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could be reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that reasonable person would have taken in the circumstances see the 1995 Unidroit Convention.*
Council Directive 93/7/EEC the possessor or holder is engaged with the obligation to prove the exercise of due care and attention in order to obtain the compensation provided by the new EU Directive in Article 10.\textsuperscript{67} Thus, Article 10 could be considered as a binding EU standard of due diligence for cultural property exchange and compensation as well.\textsuperscript{68} According to R. Peters the provision in Article 10 of the new EU Directive provides hope that EU legislation can increase the standards in dealing with cultural property in the Single European Market (SEM).\textsuperscript{69} However, the rule of compensation might be deterrent for the EU countries that are facing financial difficulties. So, despite the fact that compensation is a good \textit{lure} for the good – faith purchaser it is an impediment for states not able to pay for it. Taken also into account Article 11 of the new EU Directive it seems that the return of an unlawfully removed cultural treasure can become really expensive for the requesting Member State.\textsuperscript{70}

In relevance with the type of the return proceedings Article 16 of the new EU Directive provides that \textit{the 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}. The possibility of individuals to bring return proceedings was also featured in the Council Directive 93/7/EEC, in which civil and criminal proceedings for the restitution of cultural objects were not precluded as well.\textsuperscript{71} Thus, in the new EU

\textsuperscript{67} Indeed, Council Directive 93/7/EEC was interested only in returning the object to the requesting Member State and the proof of diligence was necessary only for the compensation of the good – faith possessor or holder and not for providing him with title of ownership C. Roodt, n.63 above, pp.147 – 148.


\textsuperscript{69} R. Peters, n.68 above, p.147.


\textsuperscript{71} The possibility for individuals to bring return proceedings was introduced by the \textit{Return of Cultural Goods} group during the revision of Council Directive 93/7/EEC Fourth Report, n.1 above, COM (2013) 310 final.
Directive parallel proceedings are possible. More specifically, both the requesting Member State and the individual owner of a stolen object are able to bring proceedings before courts. This means that in case of a cultural treasure removed from an individual, the Member State where the loss noted could request the return of the cultural treasure in terms of the new EU Directive and the owner could initiate proceedings in respect of the stolen object under the national laws of an EU Member State. In this way the pursuer of the cultural object differs in each case.

Regarding Article 13 of the new EU Directive it provides that ownership of the cultural object after the return shall be governed by the law of the requesting Member State, viz the national legislation of that state. Thus, it becomes obvious that the new EU Directive does not include provisions related to regulations of ownership because is not interested in finding solutions on that issue. The return of the illegally removed cultural treasure seems to be the only and main purpose of the new EU Directive.

2.3. The Effectiveness of the New EU Directive: Final Remarks

The main idea behind the whole European legislation on the return of illegally removed cultural treasures was and still is the protection of cultural heritage from illicit trafficking at national and European level. The TFEU and particularly Article 36, the new EU Directive and its predecessor, Council Directive 93/7/EEC, all have been designed and introduced to serve this idea. Additionally, a number of EU regulations have been adopted to support and reinforce that purpose. However, it has been proven that the goal is very difficult to be achieved since the abolition of national boundaries in the European Union and the creation of the Single European Market (SEM) in 1993.

\[72\] In the same way Council Directive 93/7/EEC does not regulate issues regarding ownership of the cultural object A. Grammatikaki – Alexiou, n.4 above, p.288.
Beginning with TFEU, despite the exceptions provided by Article 36 TFEU cultural treasures still circulate within the EU market illicitly and some of them even without identity. Most of these objects derive from clandestine excavations and cannot be classified as cultural treasures, nor can be granted to a certain country because of lack in information about their provenance. The TFEU not only does not regulate such an issue, but additionally does not provide minimal criteria of what exactly constitute a cultural treasure. This is a significant drawback in the TFEU, since in this way Member States are free to interpret Article 36 TFEU under their own legislation and accordingly to implement it. But at what point do Member States have discretion to define their national treasures? I. Stamatoudi cites that the most widespread view is that Article 36 TFEU must be interpreted as narrowly as possibly, since constitutes a provision that derogates from the rules of the free movement of goods.\(^{73}\) Still, \textit{narrowly} is a confusing word and does not provide any solution, as there is a number of definitions available: the definition provided by the international legislation (many EU Countries could select this option, in case they have signed or/and ratified the 1970 UNESCO Convention), the extended definition given by the new EU Directive and the one that the import countries (thus the art market) are more likely to adopt, including only the national treasures which are of great monetary value to a state. The issue is triggered even more by Article 114 (4) TFEU, which actually permits the implementation of national laws on grounds of major needs referred to in Article 36 TFEU, such as imports and exports of cultural treasures.\(^{74}\) Of course, the interpretation of Article 36 TFEU according to the new EU Directive for all EU Member States would be ideal, as the latter is more elastic and wider but the market’s interests are too strong to permit such an action.

Moreover, Regulation 3911/92 was an additional measure adopted by the EU in order to balance out the controls on illicit trafficking of cultural treasures among Member States and the free movement of goods.\(^{75}\) Regulation 3911/92 has been

\(^{73}\) I. Stamatoudi, n.3 above, p.123.


\(^{75}\) A. Grammatikaki – Alexiou, n.4 above, p.278 – 279.
replaced by Council Regulation (EC) No 116/2009; however the conversion did not make major modifications to the content. Both have been introduced to ensure that export of national cultural treasures is being subjected to uniform export controls and on the other hand to limit the number of illicit cultural treasures within the Single European Market (SEM)\textsuperscript{76,77}. The Regulation 3911/92, as it has been noticed in a previous section, was designed in order to work together with the Council Directive 93/7/EEC. Like Council Directive 93/7/EEC the Regulation 3911/92 is very restrictive, since it applies only to cultural goods listed in its Annex, which is similar to the one included in Council Directive 93/7/EEC\textsuperscript{78}. The objects are under protection according to their age, cultural and monetary value, while a combination of these criteria is necessary in order for an object to be licensed\textsuperscript{79}. This latter provision is quite problematic, especially when the object in question fulfills only one of the criteria provided. Regarding the cultural treasures having artistic, historic or archaeological value but do not come within the notion of cultural goods as provided by the Regulation 3911/92, national export controls apply\textsuperscript{80}.

Council Directive 93/7/EEC was proven ineffective to combat illicit trafficking by returning the unlawfully removed cultural objects. Specifically, from 1993 until 2013 only 15 claims have been filed by Member States for the return of cultural treasures

\textsuperscript{76} By controls it means specifically the demonstration of an EU export license, which is absolutely necessary if the exported objects falls in one of the categories listed in the Annex I of Council Regulation (EC) No 116/2009 see Article 2 (1) of the Council Regulation (EC) No 116/2009 (OJ L 39 of 10.2.2009). Nevertheless and as R. Peters aptly has noticed there are cultural treasures that leave SEM without export license. Switzerland is an ideal loophole for such operations taking into account the existence of several Swiss free ports R. Peters, n.68 above, p.143.

\textsuperscript{77} Contrary to the directives, the regulations applied by the European Union are immediately enforceable as law in all Member States without the need to be transposed into national law.


\textsuperscript{79} A. Grammatikaki – Alexiou, n.4 above, p. 280.

and only 7 of them were successful.\footnote{I. Stamatoudi, «Greek Law 4355/2015 Implementing Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State», Santander Art & Culture Law Review, 2016 (in print).} On the other hand, many returns have been carried out under amicable out – of court settlements, through negotiations between national authorities.\footnote{In that spirit Germany returned to Greece 90 antique objects in 2009, while in 2011 United Kingdom returned to Greece 6 icons Fourth Report, n.1 above, COM (2013) 310 final.} The number of returns settled out of the court was higher than the returns ruled on by the courts.\footnote{Fourth Report, n.1 above, COM (2013) 310 final.} However, in this case return of cultural treasures was based on the good will of Member States and was not binding. Additionally and as it has been noticed already, many EU Member States had used international legal instruments in order to achieve return of cultural treasures. The particularly ailing provisions of this directive such as the Annex, the restrictive time limits for initiating return proceedings, the compensation rule for the good – faith purchaser or holder, the insufficient administrative cooperation between Member States and many other issues mentioned previously (chapter 2.2) but mainly the unsuccessful efforts to abolish the various national laws and to set out common minimal standards, were the reasons that made the Council Directive 93/7/EEC inefficient\footnote{Unlike to the 1970 UNESCO Convention, the Council Directive 93/7/EEC is not in itself an instrument against trafficking in cultural heritage. Its main purpose is to harmonize the principle of free movement of goods with the idea of protecting national – European cultural heritage. At that point R. Peters agrees completely with G. Carducci (n.45 above), who also supports this argument R. Peters, n.68 above, p.144.}. On these grounds the inserting of a new legal text on the issue within the European Union was ratione inevitable.

Even so, has the new EU Directive dealt effectively with the problems derived not only from its predecessor but also from the rest of the EU legislation mentioned above? What can be said at that point is that the new EU Directive seems to be a sufficient enough legal instrument due to the improvements occurring from the efforts of Member States and their willingness to protect their cultural heritage by
combating illicit trade with returns of cultural treasures. However, the effectiveness and success of the new EU Directive is very difficult to be predicted, as there are many important issues still remaining within this new EU law instrument.

One of them is the identification and provenance of cultural objects taken from clandestine excavations. As it was mentioned previously Member States, mainly source countries, brought the issue into focus, hopping for a solution within the recast of Council Directive 93/7/EEC. Particularly, Italy and Bulgaria highlighted the difficulty of proving the origin of these goods and the date of their illegal removal, two absolutely necessary criteria for the return proceedings. Despite the indication, the new EU Directive does not provide any provision regarding return of objects taken from clandestine excavations and what is more concerning and problematic is that the new EU Directive does not regulate issues that occur after the seizure of such an object. One issue is for example the ownership of the object after seizure. In brevis, there is no rule provided by the new EU Directive regarding the return proceedings need to be followed in that case. The new EU Directive regulates only issues regarding the return of identified cultural objects. In that case the issue noted already within the Council Directive 93/7/EEC still exists. It should be noticed also that if the new EU Directive had covered the issue of the unidentified cultural objects, the same issue might have been resolved within the TFEU as well. To the contrary, unidentified cultural objects still cannot be covered by Article 36 TFEU, namely are not considered as cultural treasures and thus are not subjected to the restrictions of the article.

Another unsolved issue is the obligations that auction houses have according to the international obligations and the relevant UNESCO Code of Conduct in order to be diligent as regards the auctioning of cultural treasures.\textsuperscript{85,86} Unfortunately, the new EU Directive entails no provisions regarding the issue.

\textsuperscript{85} Recently, in October 2016, Prof. Ch. Tsirogiannis spotted at Christie’s Auction House an Aphrodite statue of dubious provenance. According to the professor’s report the ancient
Furthermore, the new EU Directive does not provide any solution in relevance with possession or ownership of a cultural treasure after prescription. There are countries within the European Union such as France and Switzerland that grant the title of ownership to good faith purchaser in case its original owner does not bring any legal action for the restitution of the object in question within the period of three years. So, what happens if the object requested by a Member State will be found in the possession of a good faith purchaser after prescription provided by national laws given also the lex rei sitae mostly applied for restitutions? In that case the implementation of the new EU Directive would be likely pointless. However, due to Article 16 of the new EU Directive a requesting Member State is able first of all to reject the provisions of Article 5 (6) regarding the implementation of an arbitration procedure under the national laws of the requested Member State and then to bring civil or criminal proceedings under the national law that corresponds better to its interests. Thus, given the fact that the whole proceeding for the discovery of the locus novus and the holder or possessor of the cultural treasure is time–consuming, triggering the threat of prescription, the new EU Directive ought to had corporate measures that would have settled basic issues derived from national laws.

sculpture appears to be identical to that found in the confiscated archives of Robin Symes, a dealer who dominated the international art market in the 1980s and 1990s supplying with illicit Italian and Greek antiquites major museums, auction houses and private collectors. The auction house, in the breach of UNESCO’s Code of Conduct, has failed to list the Symes collection in the history of the statue’s provenance. As professor mentioned the statue listed simply as property from a distinguished private collection citing as its source the Perpitch Gallery at Paris.

http://www.ethnos.gr/politismos/arthro/arxaia_afroditi_ypoptis_proeleusis-64566986/.

I. Stamatoudi, n.81 above.

A. Grammatikaki – Alexiou, n.4 above, p.180.


It is very characteristic what prof. Grammatikaki notes for Greek Civil Law, which actually provides in Articles 1094, 1081 and 271 for objections in case of prescription A. Grammatikaki – Alexiou, n.4 above, p.180.
Additionally, the new EU Directive does not regulate illegal removals of treasures before January 1\textsuperscript{st} 1993. According to Article 15 (2) of the new EU Directive, 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 State prior to 1 January 1993. Meaning that it is at the discretion of each Member State to decide whether to return cultural treasures removed illegally from the territory of a Member State before 1 January 1993. Thus, the new EU Directive does not apply \textit{stricto sensu} for removals before 1993 but \textit{may} apply, according to Article 15 (2), based on Member States’ good will.

On the other hand there is another issue rising in the new EU Directive and might be considered by certain groups of interests (import countries) as problematic: the protection of the good – faith purchaser. Although in good faith the possessor or holder of an unlawfully removed cultural object is obliged under the new EU Directive to return the object in question. Proof of due care and attention provided by Article 10 of the new EU Directive are necessary only for the compensation of good – faith purchaser and not in order for him/her to retain the object. Additionally, in light of Article 13 of the new EU Directive, ownership of the cultural object after return shall be governed by the law of the requesting Member State, which means that under these circumstances the good – faith purchaser by returning the object to the requesting Member State will likely lose the ownership obtained under the law of the country where the transaction took place.\textsuperscript{90} Loosing ownership title is inevitable, since the new EU Directive expresses a particular policy of the European Union; return of cultural treasures in all cases for the restitution of cultural heritage.

\textsuperscript{90} Council Directive 93/7/EEC provided exactly the same thing and therefore the good – faith purchaser was obliged to lose ownership title under that legal instrument as well A. Grammatikaki – Alexiou, n.4 above, p. 294.
Conclusion

Despite the improvements occurred the effectiveness of the new EU Directive is not guaranteed, as many problems still exist. Only the application of the new EU Directive over the course of the following years will demonstrate the extent to which the modifications of the Council Directive 93/7/EEC improve the mechanism for the return of unlawfully removed cultural treasures among EU Member States.

However, speaking generally the new EU Directive has improved most of the ailing provisions applied previously on the return proceedings, providing requesting Member States with a more enhanced regime to realize returns. The fact that the new EU Directive has not the restrictive character of its predecessor is actually the most important improvement introduced by this legal text. On the other hand it will continue to be difficult for a requesting Member State to prove that a certain object was unlawfully removed from its territory after 1st January 1993 and especially when this object derives from a clandestine excavation.

In conclusion, it can be said that the effectiveness and the success of the new EU Directive depend mainly on the cooperation among the EU Member States and their willingness to apply the EU cultural policy at the issue.
Bibliography

Books

Grammatikaki – Alexiou, A., Διεθνής Διακίνηση Πολιτιστικών Αγαθών και Ιδιωτικό Διεθνές Δίκαιο, Thessaloniki: Sakkoulas Publications, 2002


Journal Articles


**Web Publications**

Kotti, A., «Αρχαία Αφροδίτη Υποπτη Προέλευση», *Εθνος*, October 12, 2016


**Legislation**

**International Legislation**

UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, Paris, 12 October – 14 November 1970
UNIDROIT Convention on stolen or illegally exported cultural objects, Rome, 24 June 1995

**EU Legislation**

Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 159, 28.5.2014

Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 74, 27.3.1993


**National Legislation**

Greek Law Ν.4355 (Φ.Ε.Κ.178/A/18.12.2015)

Greek Law Ν.3028 (Φ.Ε.Κ.153/A/28.06.2002)

Italian Codice Civile n.262 (Gazzetta Ufficiale, n.79 del 4 aprile 1942)
Appendix

DIRECTIVE 2014/60/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

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 procedure (1),

Whereas:

(1) Council Directive 93/7/EEC (2) has been substantially amended by Directives 96/100/EC (3) and 2001/38/EC (4) 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.

(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 116/2009. 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.


(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 classified or defined 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 Council (6). 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.

(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 Council (7), and, in so far as the IMI is used, in Regulation (EU) No 1024/2012. The definitions used in Directive 95/46/EC and in Regulation (EC) No 45/2001 of the European Parliament and of the Council (8) should also apply for the purposes 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.

(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.
classified or defined 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 classified or defined 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 18 December 2015 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.

Article 18

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

Article 19

1. By 18 December 2015, 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.

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 19 December 2015, 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*.

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 19 December 2015.

Article 22

The Directive is addressed to the Member States.

Done at Brussels, 15 May 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

D. KOURKOULAS


data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).