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## INTERIM REPORT

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

on the movement of objects of cultural interest in the context of the single market

Rapporteur: Mr M. GALLE

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\* = Consultation procedure requiring a single reading

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By letter of 9 January 1990 the Committee on Youth, Culture, Education, the Media and Sport requested authorization to draw up a report on the movement of objects of cultural interest in the context of the single market.

At the sitting of 2 April 1990, the President of the European Parliament announced that the committee had been authorized to report on this subject and that the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights had been requested to deliver opinions.

At its meeting of 19 April 1990 the Committee on Youth, Culture, Education, the Media and Sport appointed Mr Galle rapporteur.

At its meeting of 8 November 1990 it decided to include in its report the following motion for a resolution which had been referred to it:

- B 3-0880/90 by Mr Kostopoulos on protecting works of art more fully against vandalism; announced at the sitting of 9 July 1990; committee responsible: Youth, Culture, Education, the Media and Sport; opinion: Legal Affairs and Citizens' Rights.

It considered the draft interim report at its meetings of 26 June 1990, 20 September 1990, 6 November and 27 November 1990.

At the last meeting it adopted the motion for a resolution unanimously with two abstentions.

The following took part in the vote: Barzanti, chairman; Simeoni, first vice-chairman; Banotti, third vice-chairman; Galle, rapporteur; Barton (for Buchan), Canavaro (for Dührkop Dührkop), Coimbra Martins, Dillen (for Le Pen), Elliott, Fontaine, Hermans, Lambrias (for Formigoni), Larive, Maibaum (for Gröner), Oostlander, Pack (for Lima), Rawlings, Schwartzberg (for Gallo), Sir Jack Stewart-Clark and Taradash.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached. The opinion of the Committee on Legal Affairs and Citizens' Rights will be included in the final report.

The report was tabled on 28 November 1990.

The deadline for tabling amendments will appear in the draft agenda for the part-session at which the report will be considered.

A

MOTION FOR A RESOLUTION

on the movement of objects of cultural interest  
in the context of the single market

The European Parliament,

- having regard to Rule 121 of its Rules of Procedure,
  - having regard to the motion for a resolution by Mr Kostopoulos on protecting works of art more fully against vandalism (B 3-0880/90),
  - having regard to the communication from the Commission to the Council of 22 November 1989 (COM(89) 594 final) on the protection of national treasures possessing artistic, historic or archaeological value: needs arising from the abolition of frontiers in 1992, and the interim report by the Presidency and the opinions of the Member States at the Council of Ministers for Cultural Affairs of 18 May 1990,
  - having regard to Article 36 of the EEC Treaty and the relevant Council of Europe and UNESCO conventions,
  - having regard to the interim report of the Committee on Youth, Culture, Education, the Media and Sport and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A 3-0324/90),
- A. whereas the free movement of goods within the Community from 1 January 1993 under the single market should also apply to objects of cultural interest,
- B. mindful of the harmful effects this may have on national, regional and local artistic, historical or archaeological heritages, notwithstanding the existence in certain Member States, pursuant to Article 36 of the EEC Treaty, of legal provisions prohibiting or restricting the free movement of such objects of cultural interest,
- C. noting moreover that such legislation varies and is inadequate, especially in the criteria for such objects, which are, moreover, frequently either not catalogued or incompletely catalogued,
- D. concerned at the increase in thefts and the intensification of the illicit trade, often to countries outside the Community, thus depleting the heritage of the Community as a whole, which are all too often abetted by the inadequate cataloguing of such objects,
- E. mindful of the importance of the individuality of the various cultures and the need to protect them and put them in their proper context and mindful of the dubious interests often involved in transactions concerning objects of cultural interest,

1. Calls for the establishment of an effective Community system of checks at its external frontiers after 1992, closer monitoring of the art market to help provide better protection for Europe's cultural heritage and the work of contemporary artists, and the essential coordination of procedures for monitoring within the Community itself;
2. Believes that in this respect the mutual recognition of the laws in force in the Member States will be a first step towards the effective cooperation and coordination which will be vital to preventing the continuation of these illegal activities and hence the cultural sack of Europe;
3. Requests that Community liberalization measures and the abolition of border checks should be compatible with the paramount need to protect the artistic, historical and archaeological heritages of the Member States, so as to prevent the trade in such objects leading to foreseeable future abuse and thus progressively depleting those heritages;
4. Suggests to the Member States that they should, as soon as possible, make an inventory (as exhaustive as possible) of national and regional cultural objects, since the possession and proper classification of such data will make it easier to trace the movements of the objects;
5. Calls on the Commission to issue forthwith its own interpretation of Article 36 of the EEC Treaty, having regard to developments in the cultural debate and in the legal instruments dealing with this problem which have meant that the concept of 'historical, artistic and archaeological heritage' is considered as covering a wide variety of objects and remains and that Article 36 of the EEC Treaty must be interpreted in the light of this fact, and intends for its part to examine more closely the limits of the scope of the policy outlined in Article 36 of the EEC Treaty;
6. Hopes that forms of cooperation will be established with international bodies such as UNESCO and the Council of Europe to strengthen and perfect the international instruments instituting cooperation between states in this field;
7. Calls on the Commission to propose that the Community as such becomes a contracting party to the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the 1985 Council of Europe Convention on offences relating to cultural property, and calls on Member States which have not yet done so to ratify those conventions;
8. Considers that the laws governing the safeguarding of cultural objects in the Member States should lay down appropriate criteria for identifying objects which belong to the national heritage and whose sale may be prohibited by the national authorities;
9. Stresses that cultural objects cannot be compared with any other form of merchandise and must therefore be given a special status, as is the case in certain important international conventions;

10. Calls on the Member States to maintain data banks pooling all the information contained in national, regional and local catalogues of cultural objects;
11. Considers that customs staff dealing with national legislation and European coordination should be given specialized training in view of the requirements of the single market as regards the movement of cultural objects, and underlines the need for better cooperation with the police forces and special customs directorates dealing with the import of works of art;
12. Considers that the Member States should consider themselves called upon to help combat the illicit trade in cultural objects by refusing to allow proceedings against offences (such as theft and speculation) involving such objects to be barred by time;
13. Calls on the Member States to ensure effective protection of their artistic heritage within the context of the highest respect for the tangible evidence of the culture of regions and nations and respect for the differences between the various cultures;
14. Calls on the Commission to keep it informed, at regular intervals and in an appropriate form, of the progress it is making in this field, and calls on the Council to consult it before adopting its policy or any other position on the matter;
15. Instructs its President to forward this resolution to the Commission, the Council and the Member States of the European Community.

EXPLANATORY STATEMENTI. INTRODUCTION

1. In its Communication to the Council of 22 November 1989 (COM(89) 594 final), the Commission of the European Communities drew attention to the need for protection of national treasures possessing artistic, historic or archaeological value in the context of the abolition of internal frontiers with effect from 1 January 1993.

It points out the implications this will have for the protection of the cultural heritage and for the implementation of national legislation, and declares its readiness to set in train negotiations between the Member States and to take account of the results thereof.

2. This matter was also discussed at the Council of Ministers responsible for Cultural Affairs of 18 May 1990. An interim report by the Irish Presidency (6350/90) lists the most significant issues not yet resolved (points 6 to 12) and calls for closer examination of the available options. The Council continued its deliberations on the subject at its meeting of 19 November 1990.

3. The European Parliament has also turned its attention to Article 36 of the EEC Treaty on a number of occasions.

II. THE ISSUES INVOLVEDBackground

4. A primary characteristic of the European cultural heritage is its great diversity. This must be maintained, and a key role in this is played by measures to protect the national artistic, historic or archaeological heritage of the Member States. The EEC Treaty makers took account of this and made 'the protection of national treasures' a special case.<sup>1</sup>

5. Under the Single European Act the internal market must be completed by 1993. The European Community is to become an area without internal frontiers in which the free movement of goods, persons, services and capital is guaranteed.

6. The movement of and trade in objects that are part of our cultural heritage constitutes a major exception to this principle. Pierre Pescatore, a member of the Court of Justice, thus wrote: 'Article 36 is more than an exception to the rules of free trade: it sets a limit to the competence of the Community.'<sup>2</sup> (See also the note by the Legal Service of the European

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<sup>1</sup> In its resolution of 12 July 1990 on the principle of subsidiarity, the European Parliament decided, among other things, that 'far-reaching competences will remain with the Member States in the fields of ... culture, ...' (PE 143.504 of 12 July 1990, p. 13)

<sup>2</sup> Le commerce de l'art et le Marché Commun in Revue trimestrielle du droit européen 1985, p. 451 ff.

Parliament of 26 July 1990). This heritage consists of objects and forms of artistic expression which the Member State concerned designates as objects of cultural interest, which contribute or have contributed to the present identity of a people or group in any way whatsoever and which are characteristic of them (see Doc. A2-104/89). It goes without saying that Article 36 should not be abused for goods which are not covered by the article. The Court of Justice needs to guard against this.

7. Cooperation amongst the Member States and harmonization and Community-wide application of procedures offer the only possibility of safeguarding the 'national' rules on protecting the European heritage. The Commission has offered its services to help the Member States reach agreement.

Article 36 of the EEC Treaty states that 'prohibitions or restrictions on imports, exports or goods in transit' may be implemented by the Member States on grounds of 'the protection of national treasures possessing artistic, historic or archaeological value'.

Member States have interpreted the rules, some more assiduously than others, but their primary purpose is to prevent the export of certain objects of cultural interest. (This should also apply in equal measure to imports from third countries of cultural objects from those countries.) These restrictions apply both to intra-Community trade and to trade with third countries. The lack of clear rules or non-implementation of rules has already resulted in catastrophic losses, which we can call cultural theft, for the culture of Europe. As a result of the ineffectiveness of national laws, the lack of cooperation, the unwillingness to apply restrictions, the high values of certain paintings, etc., the 'exporting' countries with little clout look on helplessly as they are plundered, and a debatable attempt to remove incentives for exporting cultural objects by levying taxes was quashed by the Court of Justice (Case 7/68, Commission v. Italy, [1989] ECR 617, 10 December 1968).

8. Completion of the single market and the abolition of physical and fiscal barriers at external frontiers does not mean that the procedures, bans and restrictions which currently apply to the export of cultural property will be lifted. On the contrary, Article 36 will remain in force and will be accompanied by a statement incorporated in the Single Act and signed by all Member States whose purpose is to spur the Member States to implement laws and checks to combat the traffic cultural objects. The removal of checks at internal frontiers will serve to encourage illicit traffic and may open a floodgate, making it very difficult to prevent the export of cultural property. Open borders after 1993 will make it physically even easier to remove the treasures of peoples and groups illegally to other Member States and to offer them there for export to third countries.

Under Article 11 of Regulation (EEC) No. 2603/69, OJ L No. 324, each Member State may apply national laws for the protection of its own heritage at its external frontiers. (Article XX, f, of the GATT agreement contains a similar provision). The conflicting claims of the countries with a rich and sought-after heritage, the 'exporting' countries, and of the importing countries in the Community have given rise to widely divergent legal measures. As a result, after 1 January 1993 the Community will have twelve different sets of regulations at its external frontier. It is thus also likely that the customs offices of Member States where the laws are favourable will be sought out. If no measures are taken, the Member State where the objects of cultural interest



are offered for export will have to apply its own legislation to cultural objects from another Member State.

This is a pressing issue because of the increase in art thefts occurring in the exporting countries<sup>3</sup>.

The huge and artistically indefensible sums paid for works of art have encouraged the development of a whole illegal art network. Specialized customs officials can help to combat this, but without proper cooperation structures they too are helpless.

9. One subject which could be discussed is whether or not the concept of the 'bona fide buyer' should be retained once new coordinated rules for exports have been enforced and the buyer has been properly informed and given a clear indication of the provenance of a work of art. A compromise must be found here between genuine free trade and measures by the Member States to protect their cultural treasures.

### III. GUIDELINES PROPOSED BY THE EUROPEAN COMMISSION

10. The Commission of the European Communities sets out several specific guidelines in its Communication COM(89) 594 final. In particular, it seeks a balance between genuine free trade and measures by the Member States to protect their cultural heritage, especially after 1992.

In this interim report, the Committee on Youth, Culture, Education, the Media and Sport will draw up a number of proposals for consideration by the European Parliament.

#### 11. National measures

Criminal law has to be strengthened in the Member States. Fines need to be higher than the value of the illegally exported cultural object. Dealers found to have taken part in illicit trade in cultural objects should be temporarily suspended or permanently excluded from their profession.

Closer monitoring of the art market is required.

#### 12. Measures at EEC external frontiers

The common export rules could be supplemented with a requirement that the export declaration for any item of cultural property be accompanied by an export authorization issued by the Member State of origin. Such a measure would, according to the Commission, presuppose that clear rules be drawn up on the objects concerned and the method of determining the Member State of origin, which would be responsible for issuing the authorization. The Commission proposes to use a reference date for this purpose.

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<sup>3</sup> Every year at least 60 000 works of art are stolen in Europe. More than 90% of thefts of art treasures handled by Interpol involve EEC Member States, 40% of these involving Italy alone. See for example B. Flamand, Le vol des biens culturels dans l'Europe Communautaire, Université de Paris, 1989, I, p. 13

The exporter would have to request authorization from the Member State in which the object was located on the reference date, unless it had subsequently been lawfully dispatched to another Member State, which would then become the Member State responsible. The Member State responsible would then have to examine whether under its legislation the object could be exported to a non-member country. If so, it would issue an authorization. If the exporter were unable, through lack of information, to indicate the Member State responsible, he could be required to send a request for authorization to the administrations of the other Member States, which would have a set period within which to take any action. Such a system would take account of the interests of the Member State of origin; illegal export could not take place because the exporter would have an authorization from neither the Member State of origin nor the second Member State.

### 13. Measures relating to free movement within the Community

#### Distinction between authorization to export and authorization to dispatch

Such a distinction would be meaningful only if common rules are introduced at external frontiers. The result would be that the first Member State would remain the 'Member State of origin', although the object would be lawfully located in the territory of another Member State.

#### Mutual recognition of national laws

This involves the mutual recognition of the prohibitions and restrictions enshrined in the national laws of the Member States, whereby an illegally exported object may more easily be returned. This presupposes (a) that agreement be reached on the principle, scope and, where appropriate, conditions of such mutual recognition, and (b) that clear rules be drawn up for determining to what national heritage a given object in the Community belongs or has belonged.

#### Ratification of international agreements

The Commission proposes that the UNESCO Convention of 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the European Convention of 1985 should be ratified.

#### A harmonized documentation system for cultural property

Introduction of a system of identification sheets to accompany items of cultural property. This should contain a declaration that the object has been present in the territory of a Member State since at least the reference date. The identification sheet would also have to constitute an assurance that the object is not stolen.

#### A mandatory documentation system for cultural property

This should make recourse to the concept of 'good faith' unnecessary. A purchaser can know from the identification sheet whether an object has been stolen and whether the transaction is legal.

## Registers of national treasures

All Member State registers could be grouped together to form a European register.

### IV. GUIDELINES PROPOSED BY THE COUNCIL

14. In an interim report by the Irish Presidency of 18 May 1990 (6350/90) the most significant outstanding issues are succinctly recapitulated. The Council sets out the following considerations:

15. In the light of the situation which will prevail after 1992, the effectiveness of reinforced national measures to prevent undesirable export of cultural objects must be assessed. Member States may decide to revise their basic legislation protecting their national heritage.

16. A study must also be undertaken of whether cooperation between the Member States is possible. Despite the great differences in national laws, an attempt must be made to introduce practical cooperation between the Member States. Measures must be taken at Community level if they are more effective than national laws.

17. The following ideas are put forward:

- common customs regulations at EEC external frontiers in which national laws can be subsumed;
- mutual recognition of national legislation, with harmonization of applications and methods;
- a Community decision regarding declarations that the sale and purchase of foreign cultural objects are illegal on EEC territory wherever the national legislation on the cultural property of the Member State of origin is violated;
- ratification of the UNESCO Convention of 1970 and of the European Convention of 1985 on offences relating to cultural property;
- assessment of the circumstances in which restitution can be accomplished by simple means;
- measures for the recognition of national verification systems to replace the system currently located at internal frontiers;
- assessment of how a standard certificate can be introduced as proof that a cultural object can be freely traded;
- customs authorities at the Community's external authorities should be supplied with registers of protected works of art and other cultural objects.

## V. INTERNATIONAL CONVENTIONS

18. The report emphasizes the primary importance of the UNESCO Convention of 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the European Convention of 1985 on offences relating to cultural property, and gives two reasons for their importance<sup>4</sup>:

19. First, the European Parliament has already urged repeatedly that these conventions should be ratified<sup>5</sup>. The Council and Commission now both consider that ratification of one or both of the conventions can contribute to resolving the problem.

20. Second, the two conventions form a good starting point for an approach to resolving the problems in question. They have shortcomings which must be rectified, for which purpose use can be made of the draft convention drawn up by UNIDROIT (International Institute for the Unification of Private Law).

### 21. UNESCO Convention of 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property

This convention is a compromise between the exporting and importing countries aimed at combatting the illegal traffic in objects of cultural interest without restricting the international art trade. Governments accept that their role is to protect objects of cultural interest and to respect the heritage of other countries. But they believe that trade in cultural objects is a significant means of achieving mutual understanding between peoples.

The key features of this convention are:

- the obligation on the importing country to return stolen property to the country of origin. This applies only to publicly owned cultural property, whilst the other provisions of the convention apply to all cultural property whether privately or publicly owned. Protection is, however, limited to objects which are regarded as significant in the country concerned;
- restitution is linked with fair compensation for the bona fide purchaser. This procedure must be regarded as an additional legal method supplementary to the other methods of restitution.

Various protective measures are taken to prevent illicit import, export and transit of cultural objects:

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<sup>4</sup> The discussion of the two Conventions is based on RODOTA, Le commerce de l'art, Council of Europe, report by the Committee on Culture and Education and other contributions, Strasbourg, 1988, pp. 110-116

<sup>5</sup> Motion for a resolution on the protection of the cultural heritage in the Community (B2-789/88, 10.10.1988); motion for a resolution on the conservation of the Community's architectural and archaeological heritage (A2-192/88, OJ No. C 309, 5.12.1988, p. 423); motion for a resolution on the return of objects of cultural interest to their country of origin (A2-104/89, OJ No. C 158, 26.6.1989, p. 346)

- (a) the introduction and/or improvement of a national protection service, responsible for drawing up a register of significant objects of cultural interest;
- (b) introduction of an export certificate which must always accompany the object of cultural interest;
- (c) a system of checking imports, depending on the scope offered by national legislation;
- (d) prevention and cooperation as means of combatting illegal trade, including the imposition of fines for infringements.

This is a framework convention: supplementary implementing legislation by the signatory states will thus be necessary in order to translate their commitment into specific measures for application. The convention frequently refers back to national legislation, for example as regards:

- (a) the interpretation of the measures,
- (b) the definition of illegality,
- (c) the organization of restitution.

This reference back to the national laws of signatory states is a handicap for acceptance and application of the convention, because:

- there is scope for discrepancies between the commitments undertaken in the convention and the private law requirements of signatory states;
- conflicting criteria may be applied;
- the UNESCO Convention and federal-type legal systems may prove to be incompatible.

By 31 March 1990 69 countries had ratified the convention; disappointingly, Italy, Greece, Portugal and Spain are the only EEC Member States to have done so.

## 22. European Convention of 1985 on offences relating to cultural property

This convention is confined in scope to the criminal law aspects of the illegal trade in cultural property. Its objective is to supplement the existing legal instruments for European legal cooperation in the criminal law fields of extradition, mutual legal assistance, enforcement of judgments handed down in foreign courts and transmission of prosecutions.

The convention distinguishes several categories of cultural objects and offences to which it mandatorily applies. The Member States may extend its field of application.

Unlike the UNESCO Convention, no distinction is made between publicly and privately owned property: both enjoy equivalent protection.

The convention also considers the problem of restitution:

- (a) general obligation on the Member States to return cultural objects which have been illegally exported;

- (b) the party required to return property may not refuse to do so, attempting to retain the object as a guarantee;
- (c) restitution is subject to the conditions set out in the law of the party required to return property.

This convention, too, embodies recourse to the national laws of the Member States.

23. After briefly examining the two conventions, we now return to the problem of restitution of objects obtained in good faith.

In the UNESCO Convention, provision is made for compensation of the bona fide purchaser. But payment of compensation can also give rise to additional problems: Who is to pay? Who is to receive payment? In the European Convention, restitution is governed by the legal provisions of the country required to return property. Problems of application arise in connection with the type of legislation involved. In legal systems based on Roman law the emphasis is on protection of the party who has been robbed, but common law systems protect the purchaser and thus promote trade.

24. The lack of clear criteria for defining the concept of 'good faith' led UNESCO to ask UNIDROIT to study the scope for harmonization.

UNIDROIT<sup>6</sup> put forward several proposals with the basic objective of reconciling the freedom of the international art trade with maximum protection of the cultural heritage. It retains the concept of the 'bona fide purchaser' but seeks to qualify it: 'Good faith involves the reasonable belief that the seller is entitled to dispose of the object in accordance with the contract'.

25. The purchaser must therefore take precautions and proceed cautiously when acquiring a work of art or any object of cultural interest. The importance attached to the concept of 'good faith' in the event of a dispute will depend on the type of property in question, the situation of the person in possession and the particular circumstances of the contract. If the purchaser cannot demonstrate his good faith, he must return the property without compensation; if he can, he will get his money back.

## VI. ASPECTS FOR CONSIDERATION AND DISCUSSION

26. With effect from 1 January 1993 goods are to be able to move freely in the Community. Article 36 of the EEC Treaty provides protection for cultural objects that are part of a country's national artistic, historical or archaeological heritage.

The ways in which the Member States define their respective objects of cultural interest should not of course give rise to abuse of Article 36 in order to remove ordinary objects from free trade.

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<sup>6</sup> UNIDROIT based its analysis on a draft convention 'Loi uniforme sur l'acquisition de bonne foi' (LUAB, Rome 1974)

27. Every Member State has its own legislation to protect its cultural heritage, whether or not it originates in the national territory. These laws need to be improved in various ways, or for example, in Belgium, be accompanied by implementing orders.

28. Mutual recognition of laws in force in the Member States is a first step to effective cooperation and coordination, which will be needed to combat further illegal activities and the plundering of Europe's cultural treasures.

29. The Committee on Youth, Culture, Education, Information and Sport believes that the Member States and the Community as a whole should ratify the UNESCO Convention of 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, and the European Convention of 1985 on offences relating to cultural property. Acceptance of both conventions would lay a basis for improved cooperation with European countries which are not members of the EEC but are part of the same cultural area.

30. An effective Community verification system needs to be established. Models have been proposed for certificates, identification systems and registers (e.g. in Jean Duquesne, Le régime des échanges de biens culturels dans l'Europe des neuf (1975)), which could be used when the Commission actually embarks on what it has planned for some time, viz. to assist the Member States in solving their coordination problems.

The Member States must play their part in combating the illicit trade in cultural objects by not allowing offences (theft, receiving, speculation or other unlawful acts) involving such objects to be barred by time.

31. Training for specialized customs officers dealing with national legislation and European coordination is needed now more than ever. Developments in trade in cultural property and the effectiveness of measures taken could be assessed on the basis of annual reports from customs services to Member State governments and the European Community. Cooperation between the customs and police services of the Member States must also be encouraged.

32. As is customary with other matters affecting the population of the Community (drugs, the environment, etc.), a national and Europe-wide information campaign could be launched in order to encourage respect for and the preservation of our cultural heritage.

33. Consideration should be given to the possibility of granting EC subsidies for the acquisition of protection systems.

34. Member States could be encouraged to increase the funds of public museums for new acquisitions.

35. The Commission is urged to give priority to cooperation and harmonization of procedures and their Europe-wide implementation. It should also propose that the Council ratify the UNESCO Convention and the European Convention of 1985 without delay and urge the Member States to follow suit.

36. The European Parliament will do everything in its power to endorse the above proposals, participate with the Council and Commission in carrying them out and initiate any activity which it considers necessary to this end.

MOTION FOR A RESOLUTION (Doc. B 3-880/90) tabled by Mr Kostopoulos pursuant to Rule 63 of the Rules of Procedure on protecting works of art more fully against vandalism

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The European Parliament,

- A. whereas the recent attack on Rembrandt's painting 'The Night Watch' in the Rijks Museum in Amsterdam is one more act of vandalism perpetrated against artistic creation itself,
- B. whereas similar acts of destruction of art treasure, which occur mainly in European countries, are a constant, serious threat which, as the latest occurrence in Amsterdam shows, has not yet been dealt with effectively,
- C. whereas the protection of works of art, which are the outstanding expression of the artistic creativity of our continent, cannot be left to chance,
  - 1. Considers that it is necessary to review the ways and means of protecting Europe's artistic heritage so that every possible step is taken to prevent such attacks from occurring;
  - 2. Proposes that the relevant national laws be thoroughly reviewed and that a special Community directive be drawn up setting out specific guidelines to minimize the risks;
  - 3. Instructs its President to forward this resolution to the Commission the Council and the governments of the Member States.



## O P I N I O N

of the Committee on Economic and Monetary Affairs and Industrial Policy

Letter from the chairman of the committee to Mr BARZANTI, chairman of the Committee on Youth, Culture, Education, the Media and Sport

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Brussels, 30 October 1990

Subject: Draft interim report on the circulation of the works of art in the perspective of the internal market (PE 145.065)

Rapporteur: Mr Marc GALLE

Dear Mr Barzanti,

At its meeting of 29-30 October 1990, the Committee on Economic and Monetary Affairs and Industrial Policy considered the above subject and expressed the wish to make the following observations.

The above-mentioned draft interim report and the communication from the Commission on the protection of national treasures<sup>7</sup> raise important, general and specific issues that require an in-depth study. Some of these issues and related aspects, though not exhaustively dealt with in the following paragraphs, concern the interpretation of specific articles of the EEC Treaty and the Community's legal framework regulating the free movement of works of art.

A first concern relates to the implementation of Article 8a of the Treaty on the establishment of the internal market which has been interpreted by the Commission<sup>8</sup> to mean dismantling physical frontiers and tax barriers. This, in effect, means that Member States will lose some of the means of verification, such as checks on goods, export formalities and tax checks. However, Article 36 of the Rome Treaty will continue to apply the restrictions arising from 'the protection of national treasures possessing artistic, historic or archaeological value'.

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<sup>7</sup> See communication from the Commission to the Council on the protection of national treasures possessing artistic, historic or archaeological value: needs arising from the abolition of frontiers in 1992 (COM(89) 594 final, 22.11.1989).

<sup>8</sup> See White Paper on completion of the internal market, COM(85) 310 final

A second aspect connected with the completion of the single market is the decision of the Court of Justice in its judgement of 10 December 1968 (Case 7/68, Commission v. Italy); it declares that all goods, including items such as works of art fall within the competence of Articles 30 and 34 of the EEC Treaty relating to the free movement of goods. Yet when the Single European Act was signed, a General Declaration was adopted effectively recognizing the right of Member States to take the necessary measures to combat illicit trading in works of art and antiques.

A third issue of interest is the intention of the Commission to propose specific measures to be taken at Community level relating to the movement of works of art. Such measures should be seen in the context of the conclusions, based on the 'Palma document', of the European Council in Madrid in June 1989.

A fourth subject concerns the proposals made by the rapporteur, Mr GALLE; in the field of mutual recognition of national legislations, the creation of an office for Community culture, a Community system of controls at external frontiers and the adhesion of the Community to the UNESCO Convention of 14 November 1970 concerning the illicit import, export and transfer of ownership of cultural property.

All the above issues merit the fullest possible consideration of our committee. Although the committee supports the guidelines and main theme of the GALLE interim report, it reserves its right to give a fuller opinion on the forthcoming draft report. This will be particularly important if the draft report contains proposals or suggestions on taxation with regard to the movement, both within and outside the Community, of the items to which it refers.

Yours sincerely,

Bouke BEUMER

The following were present for the vote: Mr Beumer, chairman; Mr Fuchs, vice-chairman; Mr Barton, Mr Cassidy, Mr Caudron, Mr Colom I Naval, Mrs Hoff, Mr Patterson, Mr Pinxten, Mrs Randzio-Plath, Mrs Read, Mr Siso Cruellas, Mr Turner (for Mr Stevens).