DIRECTIVE 2001/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 June 2001

amending Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty [2],

Whereas:

(1) The establishment of Economic and Monetary Union and the changeover to the euro have an effect on the last subparagraph under heading B of the Annex to Council Directive 93/7/EEC [3] laying down the values, expressed in ecu, of the cultural goods subject to the application of the Directive. That subparagraph lays down that the date for the conversion of such values into national currencies is to be 1 January 1993.

(2) Pursuant to Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro [4], any reference to the ecu in legal instruments became, as from 1 January 1999, a reference to the euro, after conversion at the rate of one to one. Without an amendment to Directive 93/7/EEC, and hence to the fixed exchange rate corresponding to the rate in force on 1 January 1993, the Member States having the euro as their currency would continue to apply different amounts converted on the basis of the exchange rates of 1993, and not the conversion rates irrevocably fixed on 1 January 1999, and this situation would persist as long as the conversion rule remained an integral part of the Directive.

(3) The last subparagrah under heading B of the Annex to Directive 93/7/EEC should therefore be amended in such a way that, as from 1 January 2002, the Member States having the euro as their currency directly apply the values in euro laid down in Community legislation. For the other Member States, which will continue to convert these thresholds into national currencies, an exchange rate should be adopted on an appropriate date before 1 January 2002, and provision should be made for those Member States to adapt that rate automatically and periodically in order to compensate for variations in the exchange rate between the national currency and the euro.

(4) It would appear that the value 0 (zero) under heading B of the Annex to Directive 93/7/EEC, applicable as the financial threshold for certain categories of cultural objects, could be interpreted in such a way as to jeopardise the effective application of the Directive. Whereas this value 0 (zero) means that goods belonging to the categories in question, whatever their value — even if it is negligible or zero — are to be considered 'cultural objects' within the meaning of the Directive, certain authorities have interpreted it in such a way that the cultural object in question has no value at all, thereby depriving those categories of goods of the protection afforded by the Directive.

(5) To avoid any confusion in this respect, therefore, the figure 0 should be replaced by a clearer expression which leaves no doubt as to the need to protect the goods in question,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In the Annex to Directive 93/7/EEC, the text under heading B is hereby amended as follows:

1. The title 'VALUE: 0 (zero)' shall be replaced by:

   'VALUE:

   Whatever the value'

2. The last subparagraph, relating to the conversion into national currencies of the values expressed in ecus, shall be replaced by the following:

   'For the Member States which do not have the euro as their currency, the values expressed in euro in the Annex shall be converted and expressed in national currencies at the rate of exchange on 31 December 2001 published in the *Official Journal of the European Communities*. This countervalue in national currencies shall be reviewed every two years with effect from 31 December 2001. Calculation of this countervalue shall be based on the average daily value of those currencies, expressed in euro, during the 24 months ending on the last day of August preceding the revision which takes effect on 31 December. The Advisory Committee

[1] OJ C 120 E, 24.4.2001, p. 182.
[2] Opinion of the European Parliament of 14 February 2001 and Council Decision of 14 May 2001.
[3] OJ L 74, 27.3.1993, p. 74. Directive as amended by Directive 96/100/EC of the European Parliament and of the Council (OJ L 60, 1.3.1997, p. 59).
[4] OJ L 162, 19.6.1997, p. 1.