



## **A RESPONSE FROM THE BRITISH ACADEMY TO THE EUROPEAN COMMISSION CONSULTATION ON POSSIBLE REVISIONS TO COUNCIL DIRECTIVE 93/7/EEC**

The British Academy welcomes the opportunity to respond to the consultation on **COUNCIL DIRECTIVE 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.**

The British Academy is the national body for the humanities and social sciences and has an academic fellowship drawn from these disciplines. The study and treatment of cultural objects is of concern to many Fellows, in particular in the disciplines of archaeology, geography, and history. Accordingly, the British Academy has been a co-signatory to evidence submitted to the Chilcot Inquiry on the importance of protecting heritage in Iraq. It also published a report, *History for the taking? Perspectives on material heritage*, in May 2011, part of which focused on the trade in illicit antiquities.<sup>1</sup>

Several Fellows with an interest and expertise in the treatment of cultural objects have composed this short response, which highlights the most urgent points they feel the European Commission should address.

1. Directive 93/7/EEC was put in place in 1993 and makes provisions to ensure the return of national treasures removed from an EU member country and now located in another EU country. It aims to reconcile the fundamental principle of the free movement of goods, as laid down by Article 34 of the Treaty on the functioning of the European Union (TFEU), with the protection of national treasures, as set out in Article 36 of the TFEU.
2. The Academy understands that the Directive has not been working as intended, for a number of reasons, primarily relating to the one-year limit on states bringing cases, and to the list of items which fall within the remit of the Directive.
3. The starting point for any discussion of the matter should, in the Academy's view, be the principle that where illegal activity has occurred, whether theft, illicit excavation, or similar actions, and the items thus acquired have been moved from one member state to another, those in receipt of such illegally acquired objects should be required to return them, with the minimum of delay.
4. The limit of one year for actions to be brought is much too short and should be extended. Three years would seem an acceptable time limit which would allow for the discovery of an illegal move, as well as the identification of the object in question and the location of its new owner.
5. The list of items covered by the Directive should be reviewed. We understand that certain areas have proved controversial in the past; we maintain that where there is clear

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<sup>1</sup> The full report can be found at <http://www.britac.ac.uk/policy/History-for-the-taking.cfm>.

evidence of illicit activity there should be no doubt about what items are covered by the Directive and no question of member states avoiding their obligations.

6. The further point which the European Commission urgently needs to consider relates to the situation of cultural objects EITHER removed from a member state and transferred to a non-member state, particularly Switzerland (where a number of notorious cases have occurred); OR objects brought into member states from outside the EU, in particular from “source countries” such as Iraq or Afghanistan.
  7. One further point is that independent quasi-governmental organisations, such as national museums, are not necessarily subject to government policy with regard to national heritage law. The Commission should consider what its approach should be in such cases.
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