

TRANSPOSITION NOTE

Transposition Note for 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 Directive”)

1. This Transposition Note outlines how the Directive is transposed in the Return of Cultural Objects (Amendment) Regulations 2015 (“the Regulations”).
2. The Directive recasts Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member State (“the 1993 Directive”), by repealing the 1993 Directive and its amending Directives, and replacing it, with amendments.
3. Because the Directive is a recast of existing law, much of the Directive was already implemented, by the Return of Cultural Objects Regulations 1994 (“the 1994 Regulations”). Amendments made to the 1993 Directive in 1996 and 2001 were implemented in amendments to the 1994 Regulations made in 1997 and 2001, but those amendments are no longer relevant given the changes made by the Directive.
4. The 2015 Regulations amend the 1994 Regulations to the extent necessary to make the changes brought about by the Directive. The Regulations do not go beyond what is necessary to implement the relevant provisions of the Directive.
5. The table below outlines the changes made by the Regulations to implement the changes brought about by the Directive. It only deals with those parts of the Directive where there has been a substantive change to the position under the 1993 Directive. The table uses the term “the Amended Regulations” to refer to the 1994 Regulations as amended by the Regulations. Unless otherwise noted, a reference to a numbered regulation is to a provision in the Regulations, and a reference to a numbered Article is to a provision in the Directive.

TRANSPOSITION OF DIRECTIVE

Article	Objective of Article	Implementation
Article 1	The Article summarises what the Directive applies to.	No specific transposition is necessary, as the Amended Regulations apply only to the objects described in Article 1.
Article 2	The Article defines terms used in the Directive, with amendments to the terms as defined in the 1993 Directive. The definition in Article 2 of “cultural object” has changed from the 1993 Directive, as has the definition of “public	Regulation 2(3) amends regulation 2(2) of the 1994 Regulations to cross-refer to Article 2 so that expressions assigned a meaning by Article 2 have that meaning under the Amended Regulations.

	collections” and there have been small changes to the text of other definitions.	<p>Regulation 2(12) deletes the Schedule from the 1994 Regulations, as it is no longer relevant given the new definition of “cultural object” under the Directive.</p> <p>Regulation 3 revokes the regulations that amended in the 1994 Regulations in 1997 and 2001, as those amending regulations are no longer relevant given the new definition of “cultural object”.</p>
Article 5(3)	The provision sets out the time period following an application, within which Member States’ competent national authorities may be required to take measures to preserve objects or to prevent action to evade the return procedure set out in the Directive. The period under the 1993 Directive was two months; under the Directive it is six months.	Regulation 2(5) amends regulation 3(5) of the 1994 Regulations to change the period from two months to six months.
Article 5 (second paragraph)	The provision requires central authorities of Member States to use a module of the Internal Market Information System (“the IMI”) to cooperate and consult with each other.	This does not require specific implementation as it is already an obligation under Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (“the IMI Regulation”).
Article 7 (third paragraph)	The provision requires the exchange of information on the initiation of proceedings to be done via the IMI.	This does not require specific implementation as it is already an obligation under the IMI Regulation.
Article 8(1) (first paragraph)	The provision sets out the limitation period for Member States to take proceedings for the return of cultural objects. The limitation period under the 1993 Directive was one year; under the Directive it is three years. The period under the 1993 Directive	Regulation 2(6) amends regulation 6(6)(a) of the 1994 Regulations to change the limitation period to three years and to change the starting point to the competent central authority’s awareness.

	<p>began when the requesting Member State became aware of the location of the cultural object and the identity of its possessor or holder; under the Directive the period begins when the competent central authority of that Member State becomes aware.</p>	
<p>Article 8(1) (third paragraph)</p>	<p>The provision sets out categories of objects in respect of which a limitation period of 75 years applies. These categories have changed under the Directive, as compared to the 1993 Directive. The 75-year limit applies in respect of objects forming part of “public collections”, and the definition of that term has changed under the Directive. Further, the 1993 Directive applied the 75-year time limit to “ecclesiastical goods”, whereas the Directive applies it to “objects belonging to inventories of ecclesiastical or other religious institutions”.</p>	<p>Regulation 2(7) amends the cross-reference in regulation 6(7)(a) of the 1994 Regulations so that it refers to the location of the new definition of “public collections” in the Directive.</p> <p>Regulation 2(8) replaces the words “ecclesiastical goods” with the new category of goods referred to in Article 8(1).</p>
<p>Article 10 (first paragraph)</p>	<p>The Article provides that where the court orders return of a cultural object it must award the possessor “fair compensation according to the circumstances of the case”. Under the 1993 Directive the requirement had been for such compensation as the court deemed fair according to the circumstances of the case.</p> <p>The requirement for compensation is subject to the proviso that the possessor must demonstrate that he exercised due care and attention in acquiring the object. Under the 1993 Directive the proviso was that the court be satisfied that the possessor had exercised due care and attention in acquiring the object.</p>	<p>Regulations 2(9) and (10) amend regulations 7(1) and (2) of the 1994 Regulations to bring the wording of the Amended Regulations into line with the compensation provisions under the Directive.</p>
<p>Article 10 (second paragraph)</p>	<p>The second paragraph of Article 10 is a new provision that was not present in the 1993 Directive. It</p>	<p>Regulation 2(11) inserts a new regulation 7(2A) into the 1994 Regulations, requiring the</p>

	<p>sets out matters that are to be considered when determining whether the possessor exercised due care and attention. It says that all the circumstances of the acquisition are to be considered, and 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.</p>	<p>competent court to give consideration to all these matters.</p>
<p>Article 17(1)</p>	<p>This provision creates an obligation for the Member States to report to the Commission on the application of the Directive by 18 December 2020 and every five years thereafter (the Directive had said 18 December 2015, but a Corrigendum to the Directive changed this to 2020).</p> <p>The obligation under the 1993 Directive had been to send reports every three years.</p> <p>The Commission has an obligation to report on the application and effectiveness of the Directive every five years (three years under the 1993 Directive) to the European Parliament, the Council and the European Economic and Social Committee.</p>	<p>No specific transposition is necessary, as the Member State obligation continues to be implemented administratively.</p>
<p>Article 19(1) (first paragraph)</p>	<p>This imposes an obligation on Member States to 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</p>	<p>Regulation 1 provides that the Regulations come into force on 18 December 2015.</p> <p>This note explains how the provisions mentioned in Article</p>

	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 the Directive by 18 December 2015.	19(1) (first paragraph) are brought into force.
Article 19(1) (second paragraph)	This requires Member States to communicate the text of the measures bringing into force the measures mentioned in the first paragraph to the Commission	The Regulations, the 1994 Regulations, and this Transposition Note are to be provided to the Commission.
Article 19(1) (third paragraph)	<p>This provision requires Member States' implementation measures to contain or be accompanied by a reference to the Directive.</p> <p>The provision requires the Member States, when adopting implementing measures, to state that references in existing laws, regulations and administrative provisions to the 1993 Directive are to be construed as references to the Directive.</p>	<p>Regulation 2(2) amends regulation 2(1) of the 1994 Regulations to refer to the Directive. In addition, the Explanatory Note to the Regulations explains that they implement the Directive.</p> <p>Given the amendment made by regulation 2(2), and the revocations under regulation 3, there will no longer be any reference in existing laws or regulations to the 1993 Directive.</p> <p>There are no administrative provisions to the 1993 Directive.</p>
Article 19(2)	This requires the Member States to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the Directive.	The Regulations, the 1994 Regulations, and this Transposition Note are to be provided to the Commission.