

*RETURN OF CULTURAL OBJECTS UNLAWFULLY
REMOVED FROM THE TERRITORY OF A MEMBER
STATE OF THE EUROPEAN UNION*

[S.L.445.04

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SUBSIDIARY LEGISLATION 445.04

**RETURN OF CULTURAL OBJECTS UNLAWFULLY
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STATE OF THE EUROPEAN UNION REGULATIONS**

9th September, 2003

*LEGAL NOTICE 246 of 2003, as amended by Legal Notices 46 of 2005,
426 of 2007 and 306 of 2015.*

1. The title of these regulations is the Return of Cultural Objects unlawfully removed from the Territory of a Member State of the European Union Regulations.

Title.

2. In these regulations, unless the context otherwise requires:

Interpretation.

"the Act" means the Cultural Heritage Act;

Substituted by:

L.N 46 of 2005;

L.N. 306 of 2015.

Cap. 445.

"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 of the Treaty on the Functioning of the European Union;

"cultural property" means movable or immovable property forming part of the cultural heritage as defined in the Act;

"holder" means the person physically holding the cultural object for third parties;

"Member State" means any member state, including Malta, of the European Union;

"national treasure" means cultural property;

"possessor" means the person physically holding the cultural object on his own account;

"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;

"requesting Member State" means the Member State from whose territory the cultural object has been unlawfully removed;

"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;

"return" means the physical return of the cultural object to the territory of the requesting Member State;

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"the Superintendence" means the Superintendence of Cultural Heritage established in article 7 of the Act;

"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 on the export of cultural goods; or
- (b) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.

Scope.
Amended by:
L.N. 306 of 2015.

3. (1) These regulations shall give effect to the repeal of the provisions of European Council Directive 93/7 of the 15 March 1993 and shall give effect to the provisions of European Council Directive 2014/60/EU of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State.

(2) These regulations shall apply to cultural objects unlawfully removed from the territory of a Member State on or after the 1st January, 1993:

Provided that each Member State may apply the arrangements provided for in Directive 2014/60/EU to requests for the return of cultural objects unlawfully removed from the territory of other Member States prior to 1 January 1993.

(3) These regulations apply to the return of cultural objects classified or defined as being among national treasures, as referred to regulation 2, which have been unlawfully removed from the territory of any Member State.

(4) The arrangements provided for in these regulations towards the return of cultural objects may be made applicable to cultural objects, including any item falling under the definition of cultural property.

Return of Cultural
Objects.

4. Cultural objects which have been unlawfully removed from the territory of a Member State of the European Union shall be returned in accordance with the procedure and in the circumstances provided for in these regulations and in the Directive.

Establishment of
the competent
authority.
Substituted by:
L.N 46 of 2005.

5. The Superintendence of Cultural Heritage, established by article 7 of the Act shall be the competent authority appointed to carry out the duties provided for in these regulations.

Proceedings to
seek cultural
objects.
Substituted by:
L.N 46 of 2005;
L.N. 306 of 2015.

6. (1) The Superintendence shall -

- (a) 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 shall include all information needed to facilitate the search, with particular reference to the actual or presumed location of the object;

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- (b) 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;
- (c) 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 paragraph (b). If it is not made within the stipulated period, paragraphs (d) and (e) shall cease to apply;
- (d) take any necessary measures, in cooperation with the Member State concerned, for the physical preservation of the cultural object;
- (e) prevent, by the necessary interim measures, any action to evade the return procedure;
- (f) 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 regulation 7, 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.

(2) In order to cooperate with and consult 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 these regulations.

7. (1) A requesting Member State may initiate, before the competent court in the requested Member State, proceedings against the possessor or, in default, the holder, with the aim of securing the return of a cultural object which has been unlawfully removed from its territory.

Proceedings before competent court.
Substituted by:
L.N 46 of 2005;
L.N. 306 of 2015.

(2) 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; and
- (b) a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

(3) 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

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the aim of securing the return of the object in question.

(4) The competent central authority of the requested Member State shall forthwith inform the central authorities of the other Member States.

(5) 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.

Return of object to requesting Member State.

Amended by:
L.N. 46 of 2005;
L.N. 306 of 2015.

8. (1) Where the return of the cultural object is ordered, the competent court in Malta shall award the possessor such compensation as it deems fair according to the circumstances of the case, provided that it is satisfied that the possessor has acted in good faith and exercised due care and attention in acquiring the object.

(2) 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.

(3) The requesting member state shall pay such compensation upon the return of the object.

(4) Expenses incurred in implementing a decision ordering the return of a cultural object, for the safe-keeping and conservation of the said object and for the costs of the measures adopted in regulation 6(1)(d), shall be borne by the requesting Member State.

(5) Payment of the fair compensation and the expenses referred to in sub-regulations (1) to (4) shall be without prejudice to the right of the requesting Member State 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.

National Laws of Member States.

Amended by:
L.N. 46 of 2005;
L.N. 306 of 2015.

9. (1) Any action undertaken by virtue of these regulations shall be without prejudice to any civil or criminal proceedings that may be brought, under the national laws of Malta, by the requesting Member State and, or the owner of a cultural object that has been stolen.

(2) In the exercise of the powers established by these regulations the burden of proof shall be governed by Maltese law.

Civil law status.

Amended by:
L.N. 46 of 2005.
Substituted by:
L.N. 306 of 2015.

10. (1) 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.

(2) Return proceedings under these regulations may not be

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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.

(3) Such proceedings may, in any event, not be brought more than thirty years after the object was unlawfully removed from the territory of the requesting Member State.

(4) In the case of objects forming part of public collections 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 seventy-five 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 seventy-five years.

(5) 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.

11. The superintendence shall keep a register of cultural goods illegally removed from Malta, and of the requests from other Member States to return cultural objects unlawfully removed from their territory.

Superintendence to keep register.
Amended by:
L.N. 46 of 2005.

12. (1) If the returned cultural object does not belong to a public collection, the Superintendence has the duty to provide for its custody until the delivery to its rightful owner can be affected.

Other duties of Superintendence.
Amended by:
L.N. 46 of 2005.

(2) The delivery of the cultural object is subject to the reimbursement to the Superintendence of the expenses sustained for the temporary custody, conservation and restitution of the said object.

(3) When the person to whom the cultural object has to be returned is unknown, the Superintendence shall publish a notice in the Gazette.

(4) If the rightful owner does not claim the cultural object within five years from the publication of the said notice in sub-regulation (3), the good becomes the property of the Malta which has an obligation to conserve it and make the most profitable use of it possible.
