

EVA

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VISUAL
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Droit de Suite Management in the EU

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PREFACE

EVA represents European collecting societies for fine arts, photography and other visual works. Its members and permanent observers manage copyrights, including *droit de suite*, for over 50.000 artists.

This document comments on EU Directive 84/2001 which harmonises *droit de suite* at the EU level and gives comments and advice based on the experience of EVA societies. It also offers interpretation of the Directive and some necessary tools for efficient management at the national and international levels.

For stakeholders in those Member States where the right will be introduced for the first time an optional solution is proposed in the document entitled "Droit de Suite Lump-Sum Option" attached to the main document as ANNEX A. It describes a frame contract for creating a common body between collecting societies and art market professionals. Lump-sum agreements may facilitate management, save costs and prevent law suits by self-regulation between the parties involved. However, in other Member States market structures have already been developed which are either functioning or require different approaches other than those contained in the proposed lump-sum option. The proposal may also serve as a model for the parties concerned in those of the 10 new EU Member States where the legislation may have to be adapted.

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DROIT DE SUITE MANAGEMENT IN THE EU

I. EXECUTIVE SUMMARY

More than 80 years ago *droit de suite* was introduced for the first time in France and in Belgium. While in many other copyright fields the landscape has changed considerably, due to the introduction of new technologies, this is not the case for *droit de suite* which remains the most important right for authors of fine arts. The situation remained the same because market structures have not changed: artists still create original works which they sell. Once the work is in other hands, *droit de suite* is the only way to ensure that the author can benefit when the original work reappears on the market and others profit from its resale.

The Berne Convention introduced it in Article 14ter, as an optional right, together with a reciprocity clause, in order to encourage Member States of the Berne Convention to also introduce the right.

Artists' associations and collecting societies have advocated the EU-wide harmonised introduction of *droit de suite* since the late 70s. Within the EU obstacles to the smooth functioning of the internal art market were caused by differences in national legislation in significant areas such as threshold, rates and others, and more significantly, by the fact that four countries, UK, Ireland, The Netherlands and Austria had not introduced the right at all. Finally, the European Court ruling, in the Phil-Collins-case¹, increased the pressure on the EU lawmakers to harmonise *droit de suite*.

The Directive 84/2001² was adopted after many years of fierce debate and bickering in the Council. Though author's rights have suffered some significant setbacks, the adoption of the Directive is one of the biggest successes in recent years for authors, because it was reached despite strong lobbying campaigns by art market professionals. Once the Directive is implemented and the right will has been introduced in the UK, Ireland, Austria and the Netherlands, practical experiences will finally prove that the damaging effects feared and predicted by some art market professionals were hugely exaggerated. The parallel case of introducing the import VAT in the UK elicited similar sentiments however the Commission study on the tax's economic impact stated that such small additional costs do not have a negative effect on the market.³

Even though some aspects of the Directive might deserve a modification, looking back on the long and tiresome process of creating the Directive a revision is not desirable. Damages to authors might be reduced to a minimum, if Member States make use of options reserved in the Directive in a way which introduces the right on a high level of copyright protection.

¹ Rs. C-92/92 and C-326/92

² Annex C

³ Annex B

These provisions include the too high minimum threshold of € 3 000 with the option for Member States to introduce or keep a lower threshold, which is expected to be the case in most of the Member States which already practise the right. Following the research of artprice.com 49% of all catalogued sales⁴ are concluded at prices at or below €1.000. A threshold three times as high will exclude the resale of works of young and emerging artists and work categories, which regularly sell below such levels, regardless of economic success, for example graphic art and photography. It would also exclude nearly all resale in the new member countries where prices hardly reach such amounts.

Intellectual property rights are recognised as an incentive for encouraging creativity. The rationale for the high minimum threshold was the claim that administration costs would be too high in relation to income. However, with collective management the total costs rise only very little when the threshold is low. Relative costs are even reduced.

Consequently, different thresholds will continue to entice collectors and art dealers to preferably sell in countries where *droit de suite* is practically excluded because of a high threshold, an obstacle to the smooth functioning of the internal art market will remain.

Other issues to be reconsidered are the tapering scale of rates with very low rates of beneath 1% for the higher shares of prices and the ceiling of € 12 500 which is an unfair limitation without precedent in the entire field of intellectual property rights. In order to counterbalance to a certain extent these unjustified reductions of authors' incomes, member countries should use the option of introducing a rate of 5% for the first price band, which lies between the minimum threshold and €50 000.

Member States that introduce the right for the first time should not adopt the option to exclude works of deceased artists. This exception is in conflict with the EU Directive 93/98 which harmonised the term of protection on 70 years *post mortem auctoris* and with the Berne Convention which sets a minimum standard term of protection of 50 years after the author's death.

The economic rationale behind this option is to exclude works which regularly sell at higher prices. However, this aim is sufficiently covered by the tapering scale of rates and the ceiling.

Without exclusion of these works reliable figures on the economic impact of the right on the market may not be expected before several years after the Directive will be fully introduced. An announced first report by the Commission by 2009 appears to be too optimistic, due to the long implementation deadline and the three year period for the expiry of the right.

Finally, Member States should introduce collective management, preferably as the compulsory form of management, because *de facto* they are obliged to it. Only collective management can ensure the right to be handled effectively and cost efficiently on national and international level. Administering *droit de suite* by collecting societies guarantees further that parts of the turnover go to social and cultural funding to the benefit of young and / or needy artists. In some Member States legal regulations oblige collecting societies to deduct shares of the income for social and cultural funds.

Collecting societies are open to find self-regulating solutions with art market professionals in their national frame in case no other efficient structures have been built up in the past.

⁴ Artprice.com February 2003, ArtMarketInsight, "The top end of the market shrugs off the economic slump; the figure cover all catalogued sales of fine art works, including first sales and sales of unprotected works.

II. DEFINITIONS OF RIGHT AND WORKS

1) INALIENABLE RIGHT

Article 1.1 defines *droit de suite* as *inalienable right, which cannot be waived, even in advance*. This clause is essential because it protects the authors against unfair contracts. Authors find themselves regularly in a weak bargaining position feeling urged to easily accept to waive their rights because they are mainly interested in the dissemination of their works. The intention of the right is to provide them with a future remuneration when they or their heirs might need it.

2) DEFINITION OF WORKS

Article 2 defines works which are alleageable to *droit de suite*. This definition appears to cover appropriately all original works that should fall under the provision. Member States should take into consideration that all copyright protected works of art which are recognised in the art market as original works should be covered without exception. The market may change in the future, as the example of photographs shows. They are covering an important part of the art market in recent years. Most auction houses today regularly organise sales dedicated to artistic photography. Therefore, it is important that this and other work categories are included in all national definitions. Provisions should also be flexible to cover new categories which may result from future developments in the visual arts.

III. STRUCTURE OF ADMINISTRATION

Administration of the right requires different steps, which can be divided into three major chapters: obtaining information from art market professionals on sales of works, calculation and invoicing of royalties and finally distributing the totals to artists and heirs on a national and international level.

For all three steps only collective management offers the necessary structures because it provides clear advantages compared to individual management both in cost savings and efficiency. Therefore, Member States should introduce mandatory collective management. This conclusion is based on experiences made by European collecting societies within the past 20 years and may have led to an outspoken support of collective management in the Directive, because recital 20 states "*effective rules should be laid down based on experience already gained at national level...*"

It also matches with the interests of art market professionals because a standardised procedure worked out by a collective society requires lower administration efforts on both sides.

Also the recent Commission's Communication on copyright management⁵ comes to this conclusion: "*Collective management appears also to be the de facto basis for the operation of artists' resale right under Directive 2001/84/EC, even if it is not mandatory.*"⁶

⁵ "The management of Copyright and Related Rights in the Internal Market" COM (2004) 261 final

⁶ see above, footnote 3 and page IV

The Directive clearly promotes collective management, though Article 6 leaves it to Member States to opt for collective management – whether compulsory or optional. But following recitals 28 and 30, Member States are *de facto* obliged to introduce mandatory collective management. These recitals remind of what in fact all Member States being subject to any EU Parliament and Council Directive are generally bound to do: the obligation to introduce efficient provisions which implement accurately contents of internal market directives. In the case of the above mentioned recitals this is described in more detail as regulations for an efficient management including collection and distribution of royalties due for artists abroad. Individual management cannot fulfil these conditions.

1) INFORMATION RIGHT

a) CONTENTS

The Directive recognises the importance of the information right and dedicates a separate article to it. Article 9 provides that “*any information that may be necessary in order to secure payment of royalties...*” may be required from any art market professional. The author or his representative needs to know whether a work of his has been resold, which price has been reached and the details of the person liable for payment. The information right is key to a successful management of *droit de suite*. Authors and collecting societies remain in a rather weak position unless *droit de suite* is subject to mandatory collective management and strong enforcement tools are applicable.

Necessary information is only available from the art market professional involved or from other participants in the resale, such as seller and buyer. Only in case of auctions the achieved results at a public sale are published to a certain extent. Moreover, it is difficult to get access to such information.

Art market professionals will not be motivated to grant information to authors and their representatives, if they do not risk facing negative consequences in case they do not furnish the information while if they do, they will have to pay a royalty.

An author or representative can only successfully claim his information right and the depending claim of royalties on his own, if he already has the information and if he can proof it. Such proof could be realised by documents such as invoices and information from the accounts of the participating parties or in case the buyer and/or seller testify the resale. All these cases are highly unlikely, because documents are out of reach of the artist and buyer's and seller's details are unknown to him. Usually authors and their representatives only receive the vague information that a work might have been resold, because it disappeared from a sales exhibition. Due to the burden of proof the author regularly has no success at this first stage of claims.

b) ENTITLED PERSONS AND COLLECTING SOCIETIES

Article 9 of the Directive provides the persons entitled under Article 6 with the right of information, which expires three years after the resale. The persons entitled following Article 6.1 are the author or his heirs. But the information right is not limited to these persons, because Article 9 refers to the entire Article 6. In its second paragraph Article 6 enables the Member States to provide for collective management. The extension to third parties including collecting societies is further clarified by recital 30 second phrase: *“This implies also a right on the part of the author or his authorised representative to obtain any necessary information (...).”*

Recital 30 obliges the Member States to introduce *“appropriate procedures for monitoring transactions (...)so as to ensure by practical means that the resale right is effectively applied.”*, and in the last phrase it is stated that *“Member States which provide for collective management of the resale right may also provide that the bodies responsibleshould alone be entitled to obtain information.”* This phrase applies to optional and compulsory collective management.

If a member state, despite its *de facto* obligation, does not provide for collective management of *droit de suite* in general, it should at least provide for mandatory collective management of the information right. This is the clear result of comparing collective and individual management as regards the information right.

The landscape of art market professionals differs from country to country. In Germany only four organisations represent approximately 90% of them. In the UK, the BAMF gathers the great majority of art dealers and auctioneers. In Denmark there are two organisations representing the art market professionals. But in Spain they are hardly organised at all, which makes it much more difficult to follow their activities. In Greece and Portugal the situation is even more in-transparent. In the candidate countries new auction houses and dealers are starting-up and changing the landscape quickly.

Differing national regulations and the lack of representatives of art market professionals in many countries renders it impossible for any individual author to claim information from all players who might have resold his works.

Collecting societies can specialise on the legal and economic situation in one territory. Through reciprocal and other representation contracts with other collecting societies they build an international network.

Collecting societies systematically address all art market professionals in their territory requiring information on all resale of works of artists belonging to the international repertoire within a certain period of time.

Collecting societies can also more easily verify whether information received by art market professional is complete and correct. Direct contact to auction houses and galleries, visits to the national modern arts fairs, control of sales catalogues and publication of results may be a costly activity even for the rather small collecting societies in the visual arts field, but still possible, while individual authors have to fail.

c) ENFORCEMENT TOOLS

However, also collective management efficiency strongly depends on the construction of the right and its enforcement tools. This includes all aspects of the right and in particular the information right. It is unlikely that all art market professionals will reply correctly, if they can put pressure on the individual authors to waive their claim and if there are no penalties at hand; on the contrary: it would work as an incentive to give no or incomplete information, if this were helping to save from paying royalties without the risk of being fined and other penalties.

In the Californian *droit de suite* regulation, the art market professional is obliged to inform the author. In practise the dealer or auctioneer will have to check whether a resold work falls under *droit de suite* and then has to pass the information to the author or his estate. But there are few reported cases of such information having been passed and, therefore, the authors have the burden of proof. There are very few cases of *droit de suite* payments under the Californian law.

Provisions in EU Member States legislations differ considerably and have direct impact on *droit de suite* management efficiency. In Germany the resale right only became manageable since the legislator clarified in 1972 that the artists' information right was solely to be exercised by a collecting society. This regulation put an end to lengthy disputes with art market professionals on who were mandated and the practise of some menacing authors in order to cause them to withdraw claims. It also led to the effect that the art market associations accepted the German collecting society as a partner to negotiate simplifications of administration, which finally resulted in a lump-sum agreement.

In Denmark *droit de suite* is solely to be exercised by a collecting society appointed by the Ministry of Culture. In accordance with Danish legislation it is possible to safeguard evidence through enforcement proceedings. Since 2001 the collecting society may on behalf of the author claim the right to look into the accounts when it is likely that resale cases covered by the right took place but are not reported. The same applies in case doubts on accuracy or completeness of information. This tool, which is also used in other cases of infringements of intellectual property rights, is highly efficient and should be introduced by all Member States.

In Spain the legislator provided authors, not the collecting society, directly with an information right. In addition the art market professionals in their majority are not represented in professional organisations and therefore hard to track down. It is not surprising that in Spain the resale right is administered only with great difficulties. Obtaining information on resale is a costly and time-consuming task, if the only way of receiving information is - at least in some cases - that of personal inquiries of eyewitnesses. Information received that way will regularly be incomplete and difficult to prove without any documents. Artists are in a difficult situation, because they regularly fear resentment, if they track down art market professionals' proceedings. Like in other Member States with comparable provisions, the Spanish legislator has to improve the information right considerably in order to render the right's management efficient. Otherwise, national and international artists will further on be deprived of their right and are likely to pursue the enforcement of their right on EU level.

2) PERSON(S) LIABLE FOR PAYMENT

Following Article 1.3. the *royalty shall be payable by the seller. Member States may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.*

For the administration of *droit de suite* it is not essential to know details of sellers provided that intermediary art market professionals act as reliable partners. Therefore, Member States should only make use of this option, if on one hand they grant a strong information right and efficient enforcement tools on the other.

Otherwise, it is not advisable to make use of this option, which might be abused and render the legal situation unclear.

Although details on the seller are not essential for rights' administration, it would be useful for the authors' personal and business interest to receive information on where his works can be found and to track the different stations on the art market. Some national legislation provide artists with a right of access to his or her work, which cannot be exercised when the actual owner of the work is unknown.

3) THRESHOLD, RATES AND CALCULATION BASIS

a) THRESHOLD

Article 3 of the Directive introduces a minimum threshold at € 3 000 and provides the Member States with the option to reduce the threshold to a lower amount.

At present in most Member States the application threshold is much lower than € 3 000 without having any negative effect on the rights' administration efficiency. In Denmark the threshold lies at € 270, in Finland at € 250, in Germany at € 51 and in France actually at € 15. Administration costs are in general at between 10% and 20%.

Following recital 22 the minimum threshold should "*avoid disproportionately high collection and administration costs compared with the profit for the artist*". However, collective management costs do not rise with the threshold decreasing. On the contrary, relative costs sink because of a larger number of alleged resale. Since collective management is *de facto* required by the Directive, Member States should keep the much lower thresholds in order to cover a majority of authors – including young, emerging and needy artists and all work categories.

Collecting societies send out requests for information on resale of protected works once per year and to all art market professionals based in their territory. They have to undertake this effort independently of the level of application threshold. Even if it is fixed at € 3 000 collecting societies have to address all possible art market professionals and, therefore, no costs are saved compared to a situation of a lower threshold applied.

In the next step, the art market professionals' replies are inserted in the collecting societies' data systems and invoices are prepared. Even if the right will be introduced for the first time, collecting societies are not unprepared: They already dispose of the necessary structures and qualified staff, because they administer other rights, such as

reproduction rights, broadcasting rights and others. All collecting societies administering *droit de suite* do this with a small number of staff of about 2 to 3 full time employees. Additional work resulting from a lower threshold is easily covered with a few supplementary work hours per year. Other fixed costs are unlikely to increase noticeably and the very low possible extra costs are likely to be absorbed by the higher income, while costs in general will become relatively lower.

The same is right for the art market professionals: Higher costs are unlikely, because they are already obliged to monitor their activities for obligations under other laws such as tax. There is no corresponding tax threshold existing in any of the Member States.

b) RATES

At present Member States provide for one fixed rate applying to all resale cases which ranges between 3% and 5%. Article 5 of the Directive introduces a complicated tapering scale of rates for price bands. It ranges between 4% for the lowest price band between the application threshold and € 50 000 with the option for all Member States pursuant Article 4.3. to lift this rate to 5%. For price bands above € 350 000 the applicable rate slips even below 1% with 0,5% until € 500 000 and only 0,25% for the price band above. In Article 4.1 last phrase a ceiling is fixed at € 12 500 which means this is the highest amount ever payable. Such measures are unknown in intellectual property rights, which basically recognise authors as owners of moral significance and economic outcome of their works.

The rationale for the tapering scale of rates is reflected in Recital 24 phrase 2: "*It is important to reduce the risk of sales relocating (...)*". However, these fears expressed by art market professionals appear to be strongly exaggerated. The parallel case of EU-wide introduction of import vat proved the opposite: introduction of a small additional cost has no impact on the art market at all⁷.

c) INVOICING

aa) LUMP SUM AGREEMENTS

The application of the scale with different percentages at different price bands is an unnecessary complication of the right. Further complications will result from the option for Member States that introduce *droit de suite* for the first time, to exclude works of deceased artists until 2010 and under certain conditions even for as long as 2012.

Individual management of the right appears to be impossible under conditions like that. For collecting societies higher costs will also accrue from adapting existing accountancy programs. In the different EU Member States different provisions will be adopted related to the level of minimum threshold and the percentage for the lowest price band. This will make calculation even more complicated and costly.

Collecting societies are open to negotiate with art market professionals agreements to facilitate calculation, for instance by lump sum agreements. Such models have been

⁷ See ANNEX B

developed in Sweden and in Germany, where costs are particularly low (10%). In member countries introducing the right for the first time, such agreements will be useful as a model, while in other countries structures might have been built up that should be continued.

Any collecting body faces the problem of obtaining proper information and the problem of art market professionals being hardly motivated to co-operate unless strong enforcement rules are at hand. These problems can be solved with a collection based on a lump-sum agreement.

In Germany such a lump sum model has successfully been operated since the early 1980s. The lump sum agreement has been concluded as a blanket agreement with the four major art market associations, providing for the individual members of the associations to conclude individual contracts directly with the German collecting society. The collecting society and the art market associations formed a common independent body to collect and distribute resale right remuneration, under the name of *Ausgleichsvereinigung Kunst*. It is administered at the premises of the collecting society.

The lump sums are roughly calculated for two different categories of the art market: auction houses and galleries. For each category a rate is calculated which applies to the annual turnover achieved by resale of works of art having been created after 1900. The rates reflect the ratio of sales of works that are subject to resale right to the annual turnover with fine arts objects.

The percentages for the *droit de suite* part differ from one year to the other; in 2004 for example they are 2,6 % for auctions and 1,7 % for galleries.

Art market professionals who are members inform *Ausgleichsvereinigung Kunst* about their annual turnover and deliver lists with the sales effectuated. Due to this information *Ausgleichsvereinigung Kunst* figures out the sales falling under the resale right or the obligation following the social insurance. It is one of the main incentives for art market professionals that this way they are no longer obliged to check their transaction files themselves for sales falling under the resale right. The lists are usually identical with the filing system obligatory for reports to tax and customs authorities. This saves a lot of administration costs. On the other hand the collecting society receives reliable information about the resale.

Another important aspect is the character of *Ausgleichsvereinigung* as a common body of co-operation of art market associations and the collecting society. The art market associations and VG Bild-Kunst meet once a year to discuss (and solve) whatever administration problems or conflicts with individual members may have developed. In these annual meetings rates for the different art market categories mentioned above (auction houses and galleries) are agreed upon according to the statistics deriving from the information given to *Ausgleichsvereinigung*. Because the system is based on negotiation and co-operation between the art market associations and the collecting society, it enjoys high acceptance in the art market.

The Swedish lump sum agreement has been negotiated with the Swedish Association of Art and Antique dealers and it includes a package of rights related to arts sales.

With lump sum agreements both sides – art market professionals and collecting society – have overcome the former administration difficulties by simplifying the information flow and accounting.

bb) CALCULATION BASIS

Following Article 5 the royalty is calculated on “*the sales price net of tax.*”

At present the resale right is calculated in most countries on the hammer price in case of auctions and the sales prices net of VAT in other kinds of resale. Additional costs related to the resale, such as the seller’s commission or other costs for services of the art market professional, a cost of expertises, insurances and shipping costs are not included in the calculation basis, nor is VAT ⁸ for national members and members of international sister societies.

Other costs and taxes on any side of the resale should not be deducted; there is no hint in the Directive to do so. If other taxes were covered, it would become difficult to control and monitor the correct information on the resale. More information about personal and financial situations of buyers and sellers would be necessary to be able to control effected deductions.

Collecting societies experienced in the past that art market professionals and collectors have an interest in not transferring such information to third parties as is subject of Article 1.3 of the Directive. Art market professionals who advocate deduction of other taxes should be aware that the consequences contradict their own and their client’s desire for a discreet treatment.

4) DISTRIBUTION

The royalties collected need to be distributed to the author or his or her heirs individually. In case of collective management reciprocal agreements between the societies already provide an international network. Deductions for administration costs and for special funds are common practice before transferring the results to the member. A special situation occurs in case of compulsory collective management when royalties are collected for artists who are not members of a collecting society.

a) DEDUCTION OF ADMINISTRATION COSTS

At present, administration costs range between 10% and 25%. In the beginning of administration of any right, costs of administration will reach a higher level and may be reduced after some years. Legal disputes between the different players unfortunately are no uncommon phenomenon when new laws are introduced. Case law needs to be developed before routine matures. However, Member States play a key role and have the opportunity to limit the extent of legal procedures by introducing clear regulations.

In Sweden the law was introduced in 1996 and a legal procedure on the question of which society would rightfully claim artists’ representation was closed as recently as in 1999. In competition to the Swedish collecting society BUS a consortium of art dealers claimed the right to collect *droit de suite* remuneration. After the ruling of the high court

⁸ It is clearer to refer to the net price by describing what costs are not included than trying to define it by the total price the seller has to pay and speak about deductions. This perspective causes confusion. The collecting societies generally do not know the total price because the sale’s price (without the seller’s and buyer’s commission pp.) or the hammer prices are reported.

a lump sum agreement was concluded between BUS and the Association of Art and Antique's Dealers which clarifies the situation and facilitates the management of the right.

In Germany, several lawsuits were needed to clear the legal situation in the 70ths.

In Spain, lawsuits have been fought, but without clarifying the legal situation for authors. Basically the information right is not strong enough to entitle authors to receive the basic information needed to claim their right through their collecting society. (See above, page 4/5)

Costs may also be reduced by way of agreements between collecting societies and the art market professionals (see above pages 8/9 on lump sum agreements). Furthermore, a strong position of authors and their collecting society based on a clear law and effective enforcement tools, in particular for the information right, are additional assets. In countries where art market professionals lack good representation by a limited number of professional associations, such bargaining power, based on a stronger legal position, is essential.

Social insurances for artists do not exist in a majority of countries. Where they are introduced, all players envisage combining this obligation with the resale right.

b) OTHER DEDUCTIONS

Most collecting societies are obliged by law to contribute special turnover shares to social and cultural projects for artists. Independent bodies usually receive these amounts and their boards consisting of artists and cultural experts decide on how to distribute the money. Since in most countries artists of fine art and photographers have no or only insufficient access to other social resources, collecting societies provide an important tool to correct a lack of cultural and social spending without requiring taxpayer's support.

Therefore, *droit de suite* also supports the more needy and young artists. Other legal constructions were no road to success. The Greek law for instance, gave art market professionals the right to opt out from the resale right, if cultural projects were funded instead. The law was inefficient and there are no reports on the collection of *droit de suite* or on substituted funding cultural projects.

c) TREATMENT OF ROYALTIES COLLECTED FOR AUTHORS WHO ARE NOT REPRESENTED

In some countries, depending on their legal situation, royalties may be collected for authors who are not members of a collecting society. Agreements with art market professionals might include a clause that they are free of future charges by authors not represented. In that case, the lump sum has also to cover these additional payments. In some Nordic countries the principle of extended licenses leads to the same effect.

In the past, these cases have not caused any difficulties, because authors or their heirs always accepted the unexpected payment. Collecting societies already possess data bases comprising authors' details, which are not members of collecting societies, or estates that represent authors independently, thus being an important additional service for all users and the authors' community and linked to raising awareness of copyright protection.

Through their national net works as a part of the cultural scene including museums, art market professionals and all kinds of users and their international net work collecting societies have at their disposal the best tool to track down any author or heir. In case an author still remains unknown, collecting societies would undertake the utmost to find the rights holder and save respective amounts for several years depending on the applicable

legal obligations to distribute moneys after certain periods. After expiry of the provided period, unpaid amounts are likely to go to social and culture funds.

IV. CONCLUSIONS

- a) We urge Member States to introduce mandatory collective management of *droit de suite* because it is the only efficient way of managing this right ,it ensures reliable collection and distribution of amounts due to foreign authors and facilitates procedures also for art market professionals
- b) Following EU Directive 84/2001 collective management is *de facto* obligatory.
- c) The information right should be an exclusive right of the Collecting society and strong tools for its enforcement have to be at hand.
- d) To counterbalance the unjustified cuttings due to gross exaggerations of the alleged impact of *droit de suite* on the art market, the right is best implemented on a high level, for which the Directive leaves options to Member States.
- e) The threshold for application should be much below the minimum of €3 000, because it would exclude young and needy artists, certain work categories regardless of economic success and art markets of the emerging EU member countries.
- f) The rate for the lowest price band should be fixed at 5% in all countries in order to obtain a high degree of harmonisation, preventing persisting obstacles for the internal art market and counterbalancing the unjustified cuttings at higher rates and the ceiling.
- g) Further deficits of the Directive should be subject to self regulation between market players.

DROIT DE SUITE MANAGEMENT IN THE EU

ANNEX A

DROIT DE SUITE LUMP-SUM OPTION

1) INTRODUCTION

Droit de suite is broadly recognised as a right that can only be administered efficiently by a collective management society, not by an individual author. Tasks like monitoring the art market and collecting information of re-sales from the entire art market require a highly specialised tool and an excellent international network such as only collective management societies for works of fine art are offering. Also, from the perspective of the art market professionals it is desirable to be addressed only by one familiar institution.

The Droit de Suite Lump-Sum Option is a pro-active management system which reduces costs significantly to the benefit of all parties involved. It does not replace the rates provided by national laws and the EU Directive 84/2001. Authors will receive royalties in compliance with copyright laws. However, provisions in the before-mentioned Directive on rates, ceilings and exceptions are known to be complicated and make the right's administration under the strict regime of the EU legislation a hard challenge to any of the players involved.

The Droit de Suite Lump-Sum Option offers best practice solutions based on self-regulation by all parties. It will only have an impact inside a common body to be created by the collective management society on one side and the art market professionals on the other. Because the system is based on negotiation and co-operation between the art market associations and the collecting society, it will enjoy high acceptance in the art market.

Compromises for related contentious issues should be included in the lump-sum agreement where they are useful to achieve legal certainty, damages are limited to a justifiable extent and they are in the interest of the artists.

2) STRUCTURE

The proposed Droit-de-Suite-Lump-Sum-Option goes one step beyond usual collective management and offers an administration system based on a frame agreement between collective management societies representing the authors on one side and associations representing the art market professionals on the other. An agreement like that would create an independent common body of both parties to be responsible for the different administration steps possibly differing from normal procedures. Usually the collecting societies will assume the administration. The steps are:

- Collection of information on sales
- Invoicing and payment of lump sum
- Evaluation of data
- Distribution of royalties by collective management societies to individual artists and photographers

To exercise the administration steps the common body will mandate the collective management society because of its highly specialised staff and net work.

Further on, this body would be in charge of disputing settlement procedures between the parties and negotiation of the annual rate to calculate the lump sum.

Individual art market professionals are free to join the mutual body by individual contracts.

Art market professionals who decide to remain outside the system will be approached directly by the collective management society and have to comply with the legal obligations without the advantage of simplified procedures.

3) COLLECTION OF INFORMATION ON SALES

A strong information right is essential for any efficient administration of *droit de suite*. Compulsory collective management at least for the information right is strongly recommended.

Beyond the lump sum agreement art market professionals would have to evaluate their sales records before delivering the required information to the collecting society. In a lump sum agreement this obligation would be reduced to deliver information which is already recorded for other reasons, such as the obligatory information for tax authorities. Thus, costs of art market professionals are strongly reduced.

Complete lists of the sales of works created after the year 1900 are easy to create by art market professionals. At the same time they include all information necessary to find out which sale is covered by the right and to calculate the legal amount of royalty due to each author.

The art market professional should also inform about the annual turn-over with works created after the year 1900, because the lump sum payable by each art market professional is based on this figure.

4) INVOICING AND PAYMENT OF LUMP-SUM

The common body will invoice the art market professional on grounds of a rate applied on its annual turn-over with works created after 1900. There are different rates for each category of art market professional which reflect the different degree of involvement in *droit de suite* affected re-sales. The rate for galleries is lower than the one for auction houses because galleries are more involved in primary sales of works of art. The rates are re-negotiated inside the common body every year.

The total amount of moneys invoiced by the common body will correspond to the amount needed to cover the royalties due by law.

5) EVALUATION OF DATA

On behalf of the common body the collective management society will evaluate the data received by the art market professionals. Thus, the most costly step of administration is in the hands of that body which naturally disposes of necessary know-how and net-works. All sales affected by *droit de suite* are listed and the corresponding amount of royalties is calculated. Evaluation and total amount of royalties are then transferred to the collective management society.

6) DISTRIBUTION OF ROYALTIES TO COLLECTIVE MANAGEMENT SOCIETIES

The collecting society puts royalties and data into its existing network. It distributes to its members and, by means of reciprocal agreements with other societies, to authors abroad.

7) NEGOTIATION OF RATE AND DISPUTE SETTLEMENT

The members of the common body, art market professionals and collective management society, will meet annually to discuss and solve any problems in the administration or conflicts with individual members. In these meetings the rates for the different art market categories mentioned above are agreed upon according to the statistics deriving from the evaluation of information transferred to the common body.

Disputes with individual members may be solved by the meetings of the common body that are consisting of experts in the art market domain. Thus, the agreement also contributes to prevent costly law suits.

Import VAT Introduction Had No Economic Impact On EU Art Market

Directive 84/2001 provides for low rates on high price bands and a ceiling. The intention is to prevent shifting of the market to countries outside the EU. In fact, there is no reason to fear shifting just because of the introduction of a low royalty. The clustering effect of independent dealers, auction houses, experts, manufacturers, insurances in one place, in particular in London, cannot be overestimated. It is impossible to shift the whole market of numerous independent players that attract the greatest number of collectors in the world.

It is still argued that introduction of the import VAT in the UK resulted in strong reactions by the art market and shifting to other countries. Droit de suite would be an additional burden with the same effect. However, the studies on the effect of import VAT give no prove on such effect. To the contrary it is the most likely interpretation that introduction of such low rate has no effect on the market.

Despite introduction of a 2,5% rate of import VAT in the UK in 1995, sales in the UK increased at 50% - comparing figures of the years before and after implementation (1993/1994 and 1996/97). This figure is clearly above the world average at 36% for the same period of time and shows the health of the UK art market.⁹

The theory that introduction of a low rate of 2,5% and an approaching rise of the rate to 5% 2 and a half years later could cause strong reactions on the UK art market follows an MTIC report. Permanent imports declined to 45% after tax introduction and rose suddenly again, to 113% 2 years later, just before the tax rate was increased. Still, this is no reason to conclude that physical import figures changed. The figures are more likely to show a decrease and increase in declarations of imports as temporary or permanent while the physical imports remained unchanged.

The categories of permanent and temporary imports existed before in the UK, but the delay for exemption of temporary imports from VAT was extended from 6 months to 2 years with the introduction of import VAT on works of art. 2 years is equally the interval of time between the miraculous decrease and increase in declared permanent imports. The most likely reason for a decline in permanent imports at 1993/94 and the increase 2 years later is that there are not changes in physical imports, but in declaration towards tax authorities which entitle the art market professionals to delay tax obligations for 2 years. ¹⁰

The cuttings in the directive of the artists' rights are unfairly based on the argument that the art market could shift because it lacks the necessary evidence. The low rates of 0,5% and 0,25% and the ceiling would deserve to be deleted. A revision of the law is clearly not desirable but national governments should make use of the options to introduce or keep a lower threshold and to introduce a rate of 5% the benefit of living artists.

⁹ Report from the Commission to the Council on the examination of the impact of the relevant provisions of Council Directive 94/5/EC on the Competitiveness of the Community Art Market compared to third Countries' Markets, COM(1999) 185 final

¹⁰ Unfortunately, the theory of MTIC is repeated in the study by the ACE, page 74/75, without further considering changes in delays for permanent and temporary imports.

DROIT DE SUITE MANAGEMENT IN THE EU

ANNEX C

**Directive 2001/84/EC of the European Parliament and of the Council
of 27 September 2001 on the resale right for the benefit of the
author of an original work of art**

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(2),

Acting in accordance with the procedure laid down in Article 251 of the Treaty(3), and in the light of the joint text approved by the Conciliation Committee on 6 June 2001,

Whereas:

(1) In the field of copyright, the resale right is an unassignable and inalienable right, enjoyed by the author of an original work of graphic or plastic art, to an economic interest in successive sales of the work concerned.

(2) The resale right is a right of a productive character which enables the author/artist to receive consideration for successive transfers of the work. The subject-matter of the resale right is the physical work, namely the medium in which the protected work is incorporated.

(3) The resale right is intended to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art. It helps to redress the balance between the economic situation of authors of graphic and plastic works of art and that of other creators who benefit from successive exploitations of their works.

(4) The resale right forms an integral part of copyright and is an essential prerogative for authors. The imposition of such a right in all Member States meets the need for providing creators with an adequate and standard level of protection.

(5) Under Article 151(4) of the Treaty the Community is to take cultural aspects into account in its action under other provisions of the Treaty.

(6) The Berne Convention for the Protection of Literary and Artistic Works provides that the resale right is available only if legislation in the country to which the author belongs so permits. The right is therefore optional and subject to the rule of reciprocity. It follows from the case-law of the Court of Justice of the European Communities on the application of the principle of non-discrimination laid down in Article 12 of the Treaty, as shown in the judgment of 20 October 1993 in Joined Cases C-92/92 and C-326/92 *Phil Collins and Others*(4), that domestic provisions containing reciprocity clauses cannot be relied upon in order to deny nationals of other Member States rights conferred on national authors. The application of such clauses in the Community context runs counter to the principle of equal treatment resulting from the prohibition of any discrimination on grounds of nationality.

(7) The process of internationalisation of the Community market in modern and contemporary art, which is now being speeded up by the effects of the new economy, in a regulatory context in which few States outside the EU recognise the resale right, makes it essential for the European Community, in the external sphere, to open negotiations with a view to making Article 14b of the Berne Convention compulsory.

(8) The fact that this international market exists, combined with the lack of a resale right in several Member States and the current disparity as regards national systems which

recognise that right, make it essential to lay down transitional provisions as regards both entry into force and the substantive regulation of the right, which will preserve the competitiveness of the European market.

(9) The resale right is currently provided for by the domestic legislation of a majority of Member States. Such laws, where they exist, display certain differences, notably as regards the works covered, those entitled to receive royalties, the rate applied, the transactions subject to payment of a royalty, and the basis on which these are calculated. The application or non-application of such a right has a significant impact on the competitive environment within the internal market, since the existence or absence of an obligation to pay on the basis of the resale right is an element which must be taken into account by each individual wishing to sell a work of art. This right is therefore a factor which contributes to the creation of distortions of competition as well as displacement of sales within the Community.

(10) Such disparities with regard to the existence of the resale right and its application by the Member States have a direct negative impact on the proper functioning of the internal market in works of art as provided for by Article 14 of the Treaty. In such a situation Article 95 of the Treaty constitutes the appropriate legal basis.

(11) The objectives of the Community as set out in the Treaty include laying the foundations of an ever closer union among the peoples of Europe, promoting closer relations between the Member States belonging to the Community, and ensuring their economic and social progress by common action to eliminate the barriers which divide Europe. To that end the Treaty provides for the establishment of an internal market which presupposes the abolition of obstacles to the free movement of goods, freedom to provide services and freedom of establishment, and for the introduction of a system ensuring that competition in the common market is not distorted. Harmonisation of Member States' laws on the resale right contributes to the attainment of these objectives.

(12) The Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - common system of value added tax: uniform basis of assessment⁽⁵⁾, progressively introduces a Community system of taxation applicable inter alia to works of art. Measures confined to the tax field are not sufficient to guarantee the harmonious functioning of the art market. This objective cannot be attained without harmonisation in the field of the resale right.

(13) Existing differences between laws should be eliminated where they have a distorting effect on the functioning of the internal market, and the emergence of any new differences of that kind should be prevented. There is no need to eliminate, or prevent the emergence of, differences which cannot be expected to affect the functioning of the internal market.

(14) A precondition of the proper functioning of the internal market is the existence of conditions of competition which are not distorted. The existence of differences between national provisions on the resale right creates distortions of competition and displacement of sales within the Community and leads to unequal treatment between artists depending on where their works are sold. The issue under consideration has therefore transnational aspects which cannot be satisfactorily regulated by action by Member States. A lack of Community action would conflict with the requirement of the Treaty to correct distortions of competition and unequal treatment.

(15) In view of the scale of divergences between national provisions it is therefore necessary to adopt harmonising measures to deal with disparities between the laws of the Member States in areas where such disparities are liable to create or maintain distorted conditions of competition. It is not however necessary to harmonise every provision of the Member States' laws on the resale right and, in order to leave as much scope for national decision as possible, it is sufficient to limit the harmonisation exercise to those domestic provisions that have the most direct impact on the functioning of the internal market.

(16) This Directive complies therefore, in its entirety, with the principles of subsidiarity and proportionality as laid down in Article 5 of the Treaty.

(17) Pursuant to Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights⁽⁶⁾, the term of copyright runs for 70 years after the author's death. The same period should be laid down for the resale right.

Consequently, only the originals of works of modern and contemporary art may fall within the scope of the resale right. However, in order to allow the legal systems of Member States which do not, at the time of the adoption of this Directive, apply a resale right for the benefit of artists to incorporate this right into their respective legal systems and, moreover, to enable the economic operators in those Member States to adapt gradually to the aforementioned right whilst maintaining their economic viability, the Member States concerned should be allowed a limited transitional period during which they may choose not to apply the resale right for the benefit of those entitled under the artist after his death.

(18) The scope of the resale right should be extended to all acts of resale, with the exception of those effected directly between persons acting in their private capacity without the participation of an art market professional. This right should not extend to acts of resale by persons acting in their private capacity to museums which are not for profit and which are open to the public. With regard to the particular situation of art galleries which acquire works directly from the author, Member States should be allowed the option of exempting from the resale right acts of resale of those works which take place within three years of that acquisition. The interests of the artist should also be taken into account by limiting this exemption to such acts of resale where the resale price does not exceed EUR 10000.

(19) It should be made clear that the harmonisation brought about by this Directive does not apply to original manuscripts of writers and composers.

(20) Effective rules should be laid down based on experience already gained at national level with the resale right. It is appropriate to calculate the royalty as a percentage of the sale price and not of the increase in value of works whose original value has increased.

(21) The categories of works of art subject to the resale right should be harmonised.

(22) The non-application of royalties below the minimum threshold may help to avoid disproportionately high collection and administration costs compared with the profit for the artist. However, in accordance with the principle of subsidiarity, the Member States should be allowed to establish national thresholds lower than the Community threshold, so as to promote the interests of new artists. Given the small amounts involved, this derogation is not likely to have a significant effect on the proper functioning of the internal market.

(23) The rates set by the different Member States for the application of the resale right vary considerably at present. The effective functioning of the internal market in works of modern and contemporary art requires the fixing of uniform rates to the widest possible extent.

(24) It is desirable to establish, with the intention of reconciling the various interests involved in the market for original works of art, a system consisting of a tapering scale of rates for several price bands. It is important to reduce the risk of sales relocating and of the circumvention of the Community rules on the resale right.

(25) The person by whom the royalty is payable should, in principle, be the seller. Member States should be given the option to provide for derogations from this principle in respect of liability for payment. The seller is the person or undertaking on whose behalf the sale is concluded.

(26) Provision should be made for the possibility of periodic adjustment of the threshold and rates. To this end, it is appropriate to entrust to the Commission the task of drawing up periodic reports on the actual application of the resale right in the Member States and on the impact on the art market in the Community and, where appropriate, of making proposals relating to the amendment of this Directive.

(27) The persons entitled to receive royalties must be specified, due regard being had to the principle of subsidiarity. It is not appropriate to take action through this Directive in relation to Member States' laws of succession. However, those entitled under the author must be able to benefit fully from the resale right after his death, at least following the expiry of the transitional period referred to above.

(28) The Member States are responsible for regulating the exercise of the resale right, particularly with regard to the way this is managed. In this respect management by a collecting society is one possibility. Member States should ensure that collecting societies operate in a transparent and efficient manner. Member States must also ensure that amounts intended for authors who are nationals of other Member States are in fact collected

and distributed. This Directive is without prejudice to arrangements in Member States for collection and distribution.

(29) Enjoyment of the resale right should be restricted to Community nationals as well as to foreign authors whose countries afford such protection to authors who are nationals of Member States. A Member State should have the option of extending enjoyment of this right to foreign authors who have their habitual residence in that Member State.

(30) Appropriate procedures for monitoring transactions should be introduced so as to ensure by practical means that the resale right is effectively applied by Member States. This implies also a right on the part of the author or his authorised representative to obtain any necessary information from the natural or legal person liable for payment of royalties.

Member States which provide for collective management of the resale right may also provide that the bodies responsible for that collective management should alone be entitled to obtain information,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

Subject matter of the resale right

1. Member States shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. Member States may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed EUR 10000.
4. The royalty shall be payable by the seller. Member States may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.

Article 2

Works of art to which the resale right relates

1. For the purposes of this Directive, "original work of art" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art.
2. Copies of works of art covered by this Directive, which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art for the purposes of this Directive. Such copies will normally have been numbered, signed or otherwise duly authorised by the artist.

CHAPTER II

PARTICULAR PROVISIONS

Article 3

Threshold

1. It shall be for the Member States to set a minimum sale price from which the sales referred to in Article 1 shall be subject to resale right.
2. This minimum sale price may not under any circumstances exceed EUR 3000.

Article 4

Rates

1. The royalty provided for in Article 1 shall be set at the following rates:

- (a) 4 % for the portion of the sale price up to EUR 50000;
- (b) 3 % for the portion of the sale price from EUR 50000,01 to EUR 200000;
- (c) 1 % for the portion of the sale price from EUR 200000,01 to EUR 350000;
- (d) 0,5 % for the portion of the sale price from EUR 350000,01 to EUR 500000;
- (e) 0,25 % for the portion of the sale price exceeding EUR 500000.

However, the total amount of the royalty may not exceed EUR 12500.

2. By way of derogation from paragraph 1, Member States may apply a rate of 5 % for the portion of the sale price referred to in paragraph 1(a).

3. If the minimum sale price set should be lower than EUR 3000, the Member State shall also determine the rate applicable to the portion of the sale price up to EUR 3000; this rate may not be lower than 4 %.

Article 5

Calculation basis

The sale prices referred to in Articles 3 and 4 are net of tax.

Article 6

Persons entitled to receive royalties

1. The royalty provided for under Article 1 shall be payable to the author of the work and, subject to Article 8(2), after his death to those entitled under him/her.

2. Member States may provide for compulsory or optional collective management of the royalty provided for under Article 1.

Article 7

Third-country nationals entitled to receive royalties

1. Member States shall provide that authors who are nationals of third countries and, subject to Article 8(2), their successors in title shall enjoy the resale right in accordance with this Directive and the legislation of the Member State concerned only if legislation in the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Member States and their successors in title.

2. On the basis of information provided by the Member States, the Commission shall publish as soon as possible an indicative list of those third countries which fulfil the condition set out in paragraph 1. This list shall be kept up to date.

3. Any Member State may treat authors who are not nationals of a Member State but who have their habitual residence in that Member State in the same way as its own nationals for the purpose of resale right protection.

Article 8

Term of protection of the resale right

1. The term of protection of the resale right shall correspond to that laid down in Article 1 of Directive 93/98/EEC.

2. By way of derogation from paragraph 1, those Member States which do not apply the resale right on (the entry into force date referred to in Article 13), shall not be required, for a period expiring not later than 1 January 2010, to apply the resale right for the benefit of those entitled under the artist after his/her death.

3. A Member State to which paragraph 2 applies may have up to two more years, if necessary to enable the economic operators in that Member State to adapt gradually to the resale right system while maintaining their economic viability, before it is required to apply the resale right for the benefit of those entitled under the artist after his/her death. At least 12 months before the end of the period referred to in paragraph 2, the Member State concerned shall inform the Commission giving its reasons, so that the Commission can give an opinion, after appropriate consultations, within three months following the receipt of such information. If the Member State does not follow the opinion of the Commission, it shall within one month inform the Commission and justify its decision. The notification and justification of the Member State and the opinion of the Commission shall be published in the Official Journal of

the European Communities and forwarded to the European Parliament.

4. In the event of the successful conclusion, within the periods referred to in Article 8(2) and (3), of international negotiations aimed at extending the resale right at international level, the Commission shall submit appropriate proposals.

Article 9

Right to obtain information

The Member States shall provide that for a period of three years after the resale, the persons entitled under Article 6 may require from any art market professional mentioned in Article 1(2) to furnish any information that may be necessary in order to secure payment of royalties in respect of the resale.

CHAPTER III

FINAL PROVISIONS

Article 10

Application in time

This Directive shall apply in respect of all original works of art as defined in Article 2 which, on 1 January 2006, are still protected by the legislation of the Member States in the field of copyright or meet the criteria for protection under the provisions of this Directive at that date.

Article 11

Revision clause

1. The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee not later than 1 January 2009 and every four years thereafter a report on the implementation and the effect of this Directive, paying particular attention to the competitiveness of the market in modern and contemporary art in the Community, especially as regards the position of the Community in relation to relevant markets that do not apply the resale right and the fostering of artistic creativity and the management procedures in the Member States. It shall examine in particular its impact on the internal market and the effect of the introduction of the resale right in those Member States that did not apply the right in national law prior to the entry into force of this Directive. Where appropriate, the Commission shall submit proposals for adapting the minimum threshold and the rates of royalty to take account of changes in the sector, proposals relating to the maximum amount laid down in Article 4(1) and any other proposal it may deem necessary in order to enhance the effectiveness of this Directive.

2. A Contact Committee is hereby established. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the Chairman or at the request of the delegation of a Member State.

3. The task of the Committee shall be as follows:

- to organise consultations on all questions deriving from application of this Directive,
- to facilitate the exchange of information between the Commission and the Member States on relevant developments in the art market in the Community.

Article 12

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 13

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 27 September 2001.

For the European Parliament

The President

N. Fontaine

For the Council

The President

C. Picqué

(1) OJ C 178, 21.6.1996, p. 16 and OJ C 125, 23.4.1998, p. 8.

(2) OJ C 75, 10.3.1997, p. 17.

(3) Opinion of the European Parliament of 9 April 1997 (OJ C 132, 28.4.1997, p. 88), confirmed on 27 October 1999, Council Common Position of 19 June 2000 (OJ C 300, 20.10.2000, p. 1) and Decision of the European Parliament of 13 December 2000 (OJ C 232, 17.8.2001, p. 173). Decision of the European Parliament of 3 July 2001 and Decision of the Council of 19 July 2001.

(4) [1993] ECR I-5145.

(5) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 1999/85/EC (OJ L 277, 28.10.1999, p. 34).

(6) OJ L 290, 24.11.1993, p. 9.