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(framlagt av kommissionen)

EXPLANATORY MEMORANDUM

I.Introduction

1. This Directive seeks to introduce harmonized legal arrangements for the artist's resale right (often referred to as "*droit de suite*").

   The artist's resale right can be defined as the right for the author, or after his death for his heirs or other beneficiaries, to receive a percentage of the price of a work - being usually a work in the field of the graphic and plastic arts - when it is resold by public auction or through an agent.

2. The artist's resale right seems to have been adopted originally for reasons of equity, to prevent a situation from arising in which a struggling young artist sells his works cheaply and does not share, once he has become famous, in the - sometimes substantial - profits earned by art dealers.

3. This social justification may seem out of date in some Member States of the European Union given the level of prices, subsidies and social security benefits there. Nevertheless, the artist's resale right retains its full legitimacy where it has the effect of redressing the balance between the economic situation of the authors of graphic and plastic works and that of other creators who benefit from successive exploitations of their works.

   In the musical and literary fields, authors are involved in the multiple exploitations of their works through reproduction, performance, adaptation, etc.

   The authors of original graphic and plastic works, on the other hand, have more limited opportunities for exploiting them than do authors of other types of work. In the fine arts field, a work is exploited essentially by being sold and is no longer under the artist's control once the transaction is completed.

4. Accordingly, some legislators have felt that, in order to strike a balance between the various categories of creator, the authors of graphic and plastic works must be allowed to receive a share of the sale price each time the work changes hands. The artist's resale right is therefore a right to remuneration, that is to say an exclusive right in diluted form.

5. The artist's resale right is designed so that the author shares in the profits to be earned from his creation alone - hence its being a right to remuneration. Besides being classed as a type of copyright, the right does not fall within the domain of taxation as it does not give rise to the collection of any dues for the benefit of the exchequer.

6. Eleven of the 15 Member States recognize the artist's resale right in principle, and eight already apply it in practice. In each of these jurisdictions, the artist's resale right is included in the legislation on copyright and is classed as a property right. It is of limited duration.

7. An analysis of Member States' laws providing for the artist's resale right reveals substantial differences as regards the works covered by the right, the holders of the right, the transactions giving rise to payment of a royalty, and other details of payment.

8. The divergences between Member States' laws on the artist's resale right do nothing to ensure a harmonious legal environment promoting the smooth functioning of the market in works of contemporary and modern art in the European Union. Consequently, following the publication in January 1991 of its working programme in the field of copyright and neighbouring rights entitled "Follow-up to the Green Paper"[1], in which the question of the advisability of a Community initiative on the resale right was raised in Chapter 8.5, the Commission carried out a number of consultation exercises based on questionnaires and public hearings in July and November 1991, August 1994 and February 1995. In addition, it conducted studies into the economic and legal aspects of the matter, taking as a basis a survey of the features of the art market. The key findings of these studies are reproduced below.

II. Analysis of the relevant market

1. First of all, it should be pointed out that, owing to the limited duration of protection, the art market affected by the artist's resale right is, generally speaking, the market in contemporary art. Exceptionally, the artist's resale right may also affect works of modern art owing to the longevity of their authors.

2. It is important to bear in mind the various players on the market inasmuch as different people operate on the art market and exert, one after the other and in various capacities, an influence on prices. They are: art dealers, art galleries, auction houses, major collectors and the State.

   A distinction must also be drawn between the primary market and the secondary market. The primary market is that in which original works are sold for the first time. The secondary market is that in which works are resold, and it is this market alone that is affected by the artist's resale right.

3. The Community art market is strongly influenced by the world market. Artistic works in the upper price range attract an international clientele. This constitutes a floating mass in search of places offering the best return, the clients (buyers and sellers) being internationally mobile.

   At the international level, the leading centres for the sale of works of art are New York and London, followed by Paris. Frequently, neither the seller nor the buyer is resident in the countries in which these centres are located.

   The flow of imports and exports of works of art is therefore substantial. Being very fluid, the market can move easily from one country to another.

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(1) COM(90) 584 final, 17.1.1991.

4. It is very difficult to gauge precisely the scale of the world art market in view of the almost total lack of statistics on transactions, save in the case of auction sales and external trade. Consequently, the market can be evaluated only on the basis of estimates of the total number of transactions worldwide.

These estimates, which are arrived at by applying a coefficient to the price of works sold by auction, lay in 1989, according to the various coefficients used, somewhere in the ECU 25-60 billion range[2].

That same year, the origin of the chief buyers on the world market could be broken down as follows:

-United States: 50%
-Japan: 25%
-Europe: 20%.

5. It is apparent from OECD statistics on data concerning imports/exports of paintings, drawings, engravings and sculptures for 1992 that works of art originating in the Belgian, French, German and Spanish markets are sold mainly in Switzerland, the United Kingdom and the United States[3] (Table 1).

Table 1: Volume of trade in paintings, drawings, engravings and sculptures ($ '000) (main markets in OECD Member States)

	D	F	I	NL	B/L	UK	E	CH	US
D	/	42.494	10.628	23.351	16.507	97.019	14.915	186.600	72.307
F	23.211	/	6.282	4.780	15.876	53.134	7.061	126.203	104.445
I	11.572	8.443	/	1.002	1.941	4.296	3.116	15.323	11.424
NL	12.839	11.120	1.519	/	20.294	37.345	20.065	11.652	19.164
B/L	6.136	18.017	781	14.698	/	79.707	3.085	16.098	8.229
UK	8.773	206.781	35.035	151.321	29.813	/	64.406	407.439	585.567
E	3.505	13.247	197	2.559	785	14.821	/	8.206	3.896
CH	105.068	136.222	11.827	27.238	6.539	125.942	26.495	/	252.359
US	105.565	59.074	13.299	28.727	8.620	126.851	24.007	161.779	/

6. Public auction sales of works of art reached their height worldwide in 1989/90. The economic recession, which hit modern and contemporary paintings hardest, brought them down to a much lower level in 1991/92. Since then, there has been a recovery in both economic activity and art sales (Table 2).

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(2) Observatoire des mouvements internationaux d'oeuvres d'art, Paris, 1993.

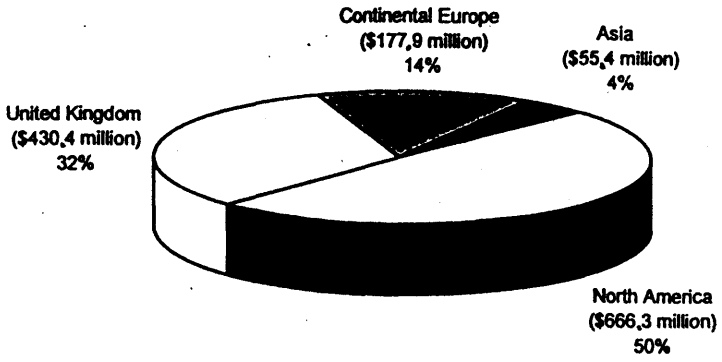
(3) Study entitled "*Le droit de suite dans l'Union européenne, Analyse juridique, Elements économiques*", Brussels 1995, p. 112 (Study carried out by the Commission).

Table 2: Fluctuations in the world market for works of art (public sales)[4] on the basis of turnover in £				
Years	1989/90 - 1988/89	1990/91 - 1989/90	1991/92 - 1990/91	1992/93 - 1991/92
Annual variations	+ 57.5 %	- 69.8 %	- 21.3 %	+ 23.4 %

At the international level, public sales are dominated by the leading auction houses, such as Sotheby's and Christie's. A breakdown by country reveals the preponderance of the United States and the United Kingdom.

7. Of public sales by Sotheby's in 1994, 50% took place in North America, 32% in the United Kingdom and 14% in continental Europe. Of this volume of sales, 6% concerned works by contemporary artists and 14% impressionist works and works of modern art (Table 3)[5].

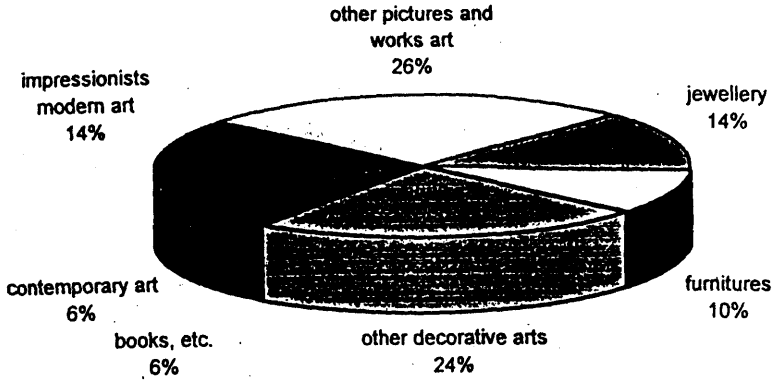
Table 3: Public sales by Sotheby's in 1994
Geographical breakdown



(4) Source: Art Sales Index; study by the ifo Institut für Wirtschaftsforschung, *Das Folgerecht der bildenden Künstler*, 1994, p. 79.

(5) Source: Sotheby's, 1995.

Breakdown by category



8. As can be seen below (Table 4)[6], Christie's turnover breaks down in the same way as Sotheby's. It is clear from the statistical data that the combined share of the United Kingdom and the United States alone accounts for more than 80% of the firm's public sales.

Table 4: Geographical breakdown of Christie's turnover - (public sales)

	1992 % for each country	£ million		1993 % for each country	£ million
United Kingdom	37.8	240.2		37.5	273.4
United States	44.7	284.3		42.7	311.6
Switzerland	6.9	44.1		8.3	61.3
Netherlands	2.3	15.2		2.2	19.9
Hong-Kong	2.3	15.2		2.7	19.9
Italy	1.5	10.8		0.8	6.6
Monaco	2	13		3.7	27.7
Australia	2	13		3.7	27.7
Others	-	-		0.8	6.4
	100	635.6		100	728.3

Between 1989 and 1993, contemporary art accounted for between 5.6% and 9% of Christie's total turnover. In 1989 and 1990, a record-breaking period, the share accounted for by impressionist works and works of modern art came to 39.4 and 35.3% respectively, whereas in subsequent years it fell back to between 13% and 19%[7].

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(6) Source: Christie's, 1994; study carried out for the Commission, 1995.

(7) Ibid.

9. The constraints that have had an impact on the financial conditions obtaining on the art market include - besides the artist's resale right - social security contributions for artists (which exist only in some Member States), sales commission, the tax on the increase in value as part of income tax, and VAT.

III. The legal position

A. The Berne Convention

The wide legislative diversity that reigns in the field of the artist's resale right is due among other things to the flexibility of the provisions of the Berne Convention for the Protection of Literary and Artistic Works (as revised by the 1971 Paris Act), pursuant to which countries of the Berne Union are free to decide whether or not to introduce the right into their domestic law. Article 14ter of the Convention provides as follows:

"1. The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

2. The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

3. The procedure for collection and the amounts shall be matters for determination by national legislation."

B. Application of the artist's resale right in the Member States

As indicated above, there are numerous differences between the domestic laws of the Member States of the European Union, and some countries have not made use of their discretionary power to introduce the artist's resale right into their national legal system. Some laws have remained a dead letter, whereas others are highly detailed. Broadly speaking, the position is this:

1. <u>France</u>

The artist's resale right was recognized for the first time in France by an Act of 1920, supplemented by a decree and various orders. But it was not until a 1957 Act that the right was enshrined in the law on copyright. The Act currently in force (1992 codification) no longer limits the artist's resale right to auctions, but instead extends it to include private sales through a dealer. The extension has, however, remained without practical effect owing to the absence of an administrative implementing regulation. Such a regulation is also lacking in the case of sales by public auction, but the right is nevertheless exercised in accordance with established practice.

2. Belgium

In Belgium the artist's resale right was adopted, almost at the same time as it was enshrined in law in France, by a 1921 Act introducing a right to remuneration in respect of public sales of works of art. Unlike the French law, the text was not inserted in the old Belgian Copyright Act of 1886. Notwithstanding this, the artist's resale right has been effectively enforced ever since it was legally recognized.

In 1994 the Belgian Parliament adopted a new Act on copyright and related rights. The Act contains fresh provisions on the artist's resale right. It repeals the 1921 Act but makes this repeal subject to the application of certain articles the entry into force of which is in turn dependent on the - still awaited - adoption of a royal decree.

3. Italy

The existence of the artist's resale right was also confirmed in Italy. However, the 1941 Act lays down such complex and sophisticated rules that the right has never been enforced. It is interesting to note that the rules also cover private sales and that the amount payable is based on the increase in value. The amendments made by a 1979 decree have done little if anything to improve matters. The legal provisions therefore have a purely formal value.

4. Germany

Although it was not until 1965, when it adopted the Act on copyright and related rights, that the German Parliament introduced the artist's resale right, the system that has been set up is highly effective. Following a reform dating from 1972, the statutory rate of remuneration, which is applied to a maximum number of transactions with the exception of those between individuals, has been increased considerably. To a large extent, the artist's resale right is managed in accordance with a 1980 inter-branch agreement between the relevant collecting society and the association of art-market professionals.

Members of the "*Ausgleichsvereinigung Kunst*" pay a standard royalty by virtue of the artist's resale right and as a contribution towards the artists' social security scheme (*Künstlersozialabgabe*). Outside the framework of the inter-branch agreement, non-members of the *Ausgleichsvereinigung* are liable to make payment as provided for by law.

5. Portugal

In Portugal the artist's resale right was introduced by a 1966 Act. The new Copyright Act of 1985 bolstered it by extending the categories of objects covered to include manuscripts.

6 Luxembourg

A 1972 Act provides that a resale royalty is payable on sales by public auction or through dealers. However, the necessary implementing regulation has not been adopted, so the artist's resale right has never been of any practical effectiveness in this Member State.

7. Spain

In Spain the artist's resale right was recognized for the first time by an Act adopted in 1987. The domestic rules cover any resale by public auction, through art galleries or privately through a dealer. Works of applied art are excluded. Under a 1992 Act, heirs may receive royalties.

8. Denmark

In Denmark, a reform of the Copyright Act in 1989 made possible the introduction of the artist's resale right as from 1990. Royalties are collected by the "*Billedkunst*" section of the "Copy-Dan" collecting society.

9. Greece

The 1993 Greek Copyright Act establishes an artist's resale right that is applicable to sales by public auction and to any resale. Following the Act's amendment later that year, the person liable for payment of a royalty may instead make a donation. Under this rule, the provisions on collection of the royalty do not apply where those liable for its payment *"make a donation of an amount at least equal to that part of their remuneration which comes from the reseller on condition that: (a) the legislation in force provides in respect of the donation for exemption from the tax on donations; (b) the sum involved is deposited in an account opened specially for that purpose by the donor with the Deposits and Loans Office or with a bank operating lawfully in Greece; and (c) the document evidencing the deposit contains (aa) data concerning the donor and donee, (bb) the amount of the donation, (cc) the date of the deposit, and (dd) the signature of the donor or of his legal representative".*

10. Finland

In Finland the artist's resale right was introduced as part of a law reform exercise in 1995. Under the Finnish rules, a royalty is payable in respect of any professional or public resale of a work of art with the exception of architectural and photographic works, handicraft products and products mass-produced to an industrial design. The right is managed by the Kuvasto collecting society. The provisions on the artist's resale right apply uniformly to any national or any resident of another Member State or of a Contracting Party to the Agreement on the European Economic Area.

11. Sweden

In Sweden an Act of 7 December 1995 introduced, with effect from 1 January 1996, arrangements for the establishment of the artist's resale right. The provisions in question are similar to the rules in force in the other Nordic Member States. This holds true, in particular, for the categories of work and the transactions concerned, the rate, and the manner in which the right is administered.

12. Overview

The legislative disparities that exist in relation to the artist's resale right within the Community, to the extent that the right is recognized, are described synoptically below (Tables 5 and 6).

Table 5: Legal provisions applicable; categories of works and transactions covered by the artist's resale right

Member State	Acts	Entry into force	Categories of works	Transactions
France	1920, 1957, 1992	1920	Works of the graphic and plastic arts	Public sales or sales by a dealer[1]
Belgium	1921, 1994	(1921) 1996?[2]	Works of the plastic arts	Sales by public auction
Italy	1941	[3]	Pictures, paintings, sculptures, drawings, engravings and manuscripts	Public and private sales[4]
Germany	1965, 1972	1965	Works of the plastic arts[5]	Sales by public auction or through a dealer
Portugal	1966, 1985	1966	Original works of art, manuscripts	Any resale
Luxembourg	1972	2.3.	Works of the graphic and plastic arts	Public sales and sales by a dealer
Spain	1987, 1992	1987	Works of the plastic arts[5]	Public sales and sales via a commercial establishment or through a dealer or commercial agent
Denmark	1989	1990	Originals and copies of works of art, works of applied art[6]	Any commercial resale (auctions, by shops, or any other way)
Greece	1993	1993[7]	Original works	Sales by public auction and any resale through a dealer
Finland	1995	1995	Works of the fine art[8]	Public and professional sales
Sweden	1995	1996	Works of the fine arts[9]	Any commercial resale

1 In practice, no amount is collected on sales by a dealer.
2 The implementing order has not yet been adopted.
3 Not applicable in practice.
4 Subsequent to the first sale.
5 With the exception of works of applied art and architectural works.
6 Excluding mass production.
7 Not applicable in the event of a donation.
8 With the exception of architectural and photographic works, works of applied art and products produced in series to industrial designs.
9 With the exception of architectural works and works of applied art produced in series.

Table 6: Rates, application thresholds and collection of royalties			
Member State	**Statutory rate**	**Application threshold**	**Collection**
France	3%	> FF 100[1]	By collecting society or individually
Belgium	4%	BFR 50 000	[1]
Italy	First public sale: 1-5% of the sale price; successive sales: 2-10% of the increase in value; private sales: 5-10% of the increase in value	Public sales: >/= LIT 1 000/5 000/10 000 according to category of work; non-public sales: >/=LIT 4 000/30 000 /40 000 according to category of work[2]	Recourse to collecting society compulsory
Germany	5% of the sale price[3]	DM 100	Recourse to collecting society not compulsory[4]
Portugal	6% of the remuneration for the transaction[5]		
Luxembourg	Maximum rate: 3%		
Spain	3%	>/=PTA 300 000	
Denmark	5% of the sale price[6]	>/=DKR 2 000	Recourse to collecting society compulsory
Greece	5% of the sale price		Recourse to collecting society not compulsory
Finland	5% of the sale price[6]	FIM 100[7]	Recourse to collecting society compulsory
Sweden	5% of the sale price[6]	1/20th of the basic amount provided for by the General Insurance Act	Recourse to collecting society compulsory

1 For want of an implementing order, the earlier legislation is still applied in practice.
2 Provided the sale price exceeds the price of the first sales operation multiplied by five.
3 Cf. inter-branch agreement.
4 The right to information about transactions giving rise to payment of the amount in question may be exercised onlyby the competent collecting society.
5 Taking the inflation index into account.
6 Including commission but excluding VAT.
7 Not provided for by law. Fixed by the competent collecting society.

C. The situation in the other Member States

In the other Member States - Austria, Ireland, the Netherlands and the United Kingdom - the artist's resale right is currently not recognized.

In **Austria**, Parliament has provisionally rejected proposals - based on the German rules - aimed at recognizing the right's existence, in the light of the judgment of the Court of Justice of 20 October 1993 in the Phil Collins case[8].

The Court held here that requirements of reciprocity cannot be upheld in the Community context. Consequently, authors who are nationals of Member States which do not recognize the artist's resale right qualify, under Article 6 of the Treaty, for national treatment and may invoke the right when their works are resold in the territory of a Member State which does recognize it.

The Austrian legislator considered, when the 1994 Copyright Act was being reformed[9], that it was unacceptable that the artist's resale right should be conferred on nationals of Member States, e.g. the United Kingdom, which did not apply the right, and preferred to postpone its introduction until such time as it was harmonized within the European Union.

In the **United Kingdom**, political and legal objections have stood in the way of the artist's resale right being inserted in the UK Copyright Act 1988. The Whitford Committee, which was set up by Parliament to consider this matter among others, had refused to endorse it in its 1977 report.

It was stated in this connection that the effectiveness of the artist's resale right depended first and foremost on the inalienable nature of the right, but that the concept of inalienability was contrary to British practice in the copyright field. Moreover, the so-called impossibility of monitoring private sales, coupled with the desire not to discriminate against public sales, was a further obstacle to introducing the right. Lastly, the Committee considered that the practical effect of the artist's resale right was minimal compared with the - sometimes exorbitant - costs of collection and management. It accordingly came to the conclusion that the artist's resale right was neither equitable, logical nor practicable.

Ireland, which also adheres to the copyright tradition, has adopted a somewhat hesitant stance regarding the possible incorporation of an artist's resale right in its domestic law.

D. The situation in certain third countries

1. Western Europe outside the Community

During the 1993 law reform drive in **Switzerland**, the National Council voted by a narrow majority against introducing the artist's resale right. The decision was based inter alia on economic considerations, including the wish to promote Switzerland as a place for selling works of modern and contemporary art.

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(8) Joined Cases C-92/92 and C-326/92.

(9) 1563 of the Annexes to the shorthand minutes of the National Council, 15.4.1994, pp. 9-10.

In **Norway**, a 1948 Act, which was reformed in 1989, provides for a system whereby every commercial sale of a work of art gives rise to payment of an amount equal to 3% of the sale price into a solidarity fund for the benefit of those working in the plastic arts.

Iceland has had a similar set of rules since 1987.

2. Central and eastern Europe

Since they reformed their copyright laws in 1993 and 1994, most countries of central and eastern Europe now recognize the artist's resale right. Currently, Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland and Slovenia recognize the right. Romania, where a bill has been presented to Parliament on the subject, is contemplating introducing it.

3. The United States

In the **United States**, public hearings were held in 1992 to consider whether the artist's resale right should be introduced at federal level in accordance with the Visual Artists Rights Act, 1990. The exercise was based among other things on the experience of California, which has had rules on the subject since 1977, and on that of France, Germany and Belgium in relation to the practical effect of collecting royalties. The Copyright Office produced a report in which it concluded that, at that stage, there were insufficient economic and political grounds for establishing the artist's resale right in the USA. However, still according to the report, Congress might have to reconsider introducing the resale right in the event of harmonization within the European Community[10].

To cater for that eventuality, the Copyright Office has prepared a model designed to facilitate implementation of a set of arrangements making it possible to attain the objective of helping artists more, without significantly harming the interests of the art market.

4. Rest of the world

As far as the rest of the world is concerned, Algeria, Brazil, Burkina Faso, Ivory Coast, Chile, Congo, Costa Rica, Equador, the Russian Federation, Guinea, Madagascar, Morocco, Peru, the Philippines, Senegal, Tunisia, Turkey and Uruguay recognize the artist's resale right in principle.

In the vast majority of cases, royalties are not actually collected, either because of the weakness of the markets or because of the inefficiency of the collection arrangements.

IV. The need for action

In order to determine whether it is appropriate to harmonize the artist's resale right at European Union level, an analysis of the economic impact of the legislative disparities relating to the right is indispensable. What is more, the importance of the subsidiarity principle must be taken into account and the appropriate legal basis must be chosen.

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[10] Droit de suite: The Artist's Resale Royalty, a report of the Register of Copyrights, December 1992, pp. 149 et seq.

A. The economic impact of the disparities, distortion of competition

1. First of all, the Commission is bound, in the exercise of its power of initiative in the copyright field, to safeguard the objectives set out in Article 7a of the Treaty, namely the functioning of the internal market.

   The second paragraph of Article 7a of the Treaty defines the internal market as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty".

2. In relation to the free movement of goods and distortions of competition, it is clear that the substantial differences between the various laws of the Member States and the uncertainty about the application of the artist's resale right in the various provisions of the Member States may have a harmful effect on the functioning of the internal market in works of art.

3. Contemporary or modern works of art in the upper price range tend to be resold in countries where transaction fees are on the whole lower. Clearly, the non-collection of a royalty which in some cases may be as high as 5-6% of the sale price favours places where the artist's resale right is not recognized. At Community level, there is a noticeable shifting of sales of works of art towards countries where no royalties are collected or where taxes are lower.

4. The data on public sales reveal that sales of high-priced works by contemporary artists with a worldwide reputation take place more often than not in London or New York. "Minor" works by the same artists sold in their country of origin usually fetch only small amounts.

5. The attractiveness of low-tax countries where the artist's resale right is not applied is understandable in the case of such valuable works. A substantial saving can be made in this way.

6. As can readily be seen, the turnover of the leading auction houses is divided between those countries where the artist's resale right is non-existent and those where royalties, though provided for by law, are not collected (see II., points 6, 8 and 9). The available data show that works of art coming from the Belgian, French, German and Spanish markets are sold primarily in the United Kingdom, the United States and Switzerland.

7. The non-existence of the artist's resale right in some Member States is, of course, not the only factor influencing the choice of place of sale. However, the disparities in the collection of royalties induce operators to seek ways of circumventing the payment rules. Thus, for example, three works by the contemporary German artist Joseph Beuys were sold by auction in London in 1988 for £462 000 (DM 1 418 340). The seller and the buyer were both German collectors. Owing to the territoriality of the artist's resale right and the resulting impossibility of collecting the royalties abroad, the saving made was of the order of DM 71 000[11].

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[11] BGH, judgment of 16 June 1991 - I ZR 24/92, GRUR 1994, p. 798.

8. Although they are present in all the Member States, the leading auction houses do most of their selling in three countries where the artist's resale right is not recognized. It would appear that they gather together works of art whose resale in the territory of the country of origin would give rise to payment of a royalty with a view to selling them in London or New York.

9. According to some art dealers, the act of introducing the artist's resale right in those Member States which currently do not recognize it would affect the competitive position of the domestic art market, in particular vis-à-vis the United States and Switzerland, the reason being that the countries concerned compete more with third countries which do not recognize the right than with other Member States.

   This is borne out by the fact that, in the import and export statistics of the said Member States (see Table 1), the United States is the main trading partner, followed by Switzerland.

10. The same interests maintain that, since the artist's resale right creates distortions of competition, its harmonization within the European Union would cause a contraction of the art market in those countries which do not recognize the right. The supply of modern and contemporary art would switch from the markets of those Member States where the right did not previously exist, more to the United States and Switzerland.

11. In advancing such an argument, however, these interests are implicitly acknowledging the real - though admittedly not exclusive - impact of the artist's resale right on the art market.

12. As to the actual risk of sellers switching to the markets of certain third countries, account must be taken of a number of factors which have the effect of increasing the costs borne by the vendor in the event of a work being exported from the Community. It would appear, therefore, that the problem boils down in reality to what the detailed rules of application are, and in particular the level at which royalties are set.

13. The costs incurred in the event of a work originating in France being exported to and auctioned in Switzerland are as follows (Table 7):

Table 7: Auction in Switzerland of a modern painting measuring 150 x 100 cm not subject to a cultural object certificate (being less than 50 years old)

Price of the work	Costs borne by seller[1]				Costs borne by buyer[2]	
	Private seller		VAT-registered seller			
FF 500 000	Increase in value	7.00%			Buyer's costs	10.00%
	Sale costs	10.00%	Sale costs	10.00%	Swiss VAT/total	
	Miscellaneous[3]	5.00%	Miscellaneous[3]	5.00%	sale price	
	Transport	2.00%	Transport	2.00%		7.15%
	Insurance	0.30%	Insurance	0.30%		
	Total	24.30%	Total	17.30%	Total	17.15%
FF 1 000 000	Increase in value	7.00%			Buyer's costs	10.00%
	Sale costs	10.00%	Sale costs	10.00%	Swiss VAT/total	
	Miscellaneous[3]	5.00%	Miscellaneous[3]	5.00%	sale price	
	Transport	1.00%	Transport	1.00%		7.15%
	Insurance	0.30%	Insurance	0.30%		
	Total	23.30%	Total	16.3%	Total	17.15%
FF 1 500 000	Increase in value	7.00%			Buyer's costs	10.00%
	Sale costs	10.00%	Sale costs	10.00%	Swiss VAT/total	
	Miscellaneous[3]	5.00%	Miscellaneous[3]	5.00%	sale price	7.15%
	Transport	0.65%	Transport	0.65%		
	Insurance	0.30%	Insurance	0.30%		
	Total	22.95%	Total	15.95%	Total	17.15%

Source: Chambre nationale des commissaires-priseurs, 1995.

1 French seller supposed to bear the cost of transport (approximately FF 10 000).

2 Swiss buyer pays Swiss VAT at a rate of 6.5% (unless exempted).

3 Assuming that the miscellaneous sale costs (advertising, catalogue, carriage, etc.) come to approximately 5%.

14. The costs relating to the auctioning in France of an identical work are as follows (Table 8):

Table 8: Auction in France of a modern painting measuring 150 x 100 cm not subject to a cultural object certificate (being less than 50 years old)

Price of the work	Costs borne by seller[1]				Costs borne by buyer[2]	
	Private seller		VAT-registered seller[4]			
FF 500 000	Increase in value	4.50%			Legal expenses	9.00%
	Sale costs	11.86%	Sale costs	11.86%	net of tax	
	Miscellaneous[3]	5.93%	Miscellaneous[3]	5.93%	VAT on legal expenses[4]	1.85%
	Total	22.29%	Total	17.79%	Total	10.85%
FF 1 000 000	Increase in value	4.50%			Legal expenses	9.00%
	Sale costs	11.86%	Sale costs	11.86%	net of tax	
	Miscellaneous[3]	5.93%	Miscellaneous[3]	5.93%	VAT on legal expenses[4]	1.85%
	Total	22.29%	Total[5]	17.79%	Total	10.85%
FF 1 500 000	Increase in value	4.50%			Legal expenses	9.00%
	Sale costs	11.86%	Sale costs	11.86%	net of tax	
	Miscellaneous[3]	5.93%	Miscellaneous[3]	5.93%	VAT on legal expenses[4]	1.85%
	Total	22.29%	Total[5]	17.79%	Total	10.85%

Source: Chambre nationale des commissaires-priseurs, 1995.

1 French seller supposed to bear transport costs (approximately FF 10 000)

2 Swiss buyer pays Swiss VAT at a rate of 6.5% (unless exempted).

3 Assuming that the miscellaneous sale costs (advertising, catalogue, transport, etc.) come to approximately 5%.

4 Assuming that the sale is taxed on the margin at a rate of 18.6% (excluding the case of taxation of the total sale price).

5 The VAT-registered seller will have to repay the VAT on the sale.

15. It is clear from this comparison that auctions in Switzerland are not always financially more favourable than in France. This is borne out by comparable figures for sending a work originating in Germany to Switzerland or the United States with a view to its being auctioned in Basel, Geneva or New York (Tables 9 and 10).

Table 9: Auction of a modern painting measuring 100 x 120 cm, value DM 100 000	
Transport from Cologne to Basel or Geneva (temporary importation)	
- Cost of collection:	DM 165
- Cost of wrapping:	DM 42
- German customs:	DM 195
- Cost of transport to Basel:	DM 480
- Cost of transport to Geneva:	DM 680
- Fixed costs DE*:	DM 35
- Swiss customs:	SF 175
- Commission:	SF 38
- Fixed costs CH**:	1.95‰
* Documents, telecommunications costs ** Guarantees, handling	

Table 10: Auction of a modern painting measuring 100 x 120 cm, value DM 100 000	
Transport by air from Cologne to New York	
- Cost of collection:	DM 165.00
- Cost of wrapping:	DM 42.00
- German customs:	DM 195.00
- Container 120 x 20 x 140 cm:	DM 340.00
- Transport to the airport:	DM 115.00
- Handling:	DM 78.00
- Cost of air transport 56 kg:	DM 271.04
- AWB costs:	DM 45.50
- Commission transfer charge:	DM 75.00
- Fixed costs DE*	DM 38.50
- Administration:	DM 65.00
- US customs**:	$ 480.00
- Custom bond:	$ 263.25
- Custom user fee:	$ 170.10
* Documents, telecommunications costs ** Including reception and unpacking	

Source: Arbeitskreis deutscher Kunsthandelsverbände, 1995.

16. To conclude, the artist's resale right has an impact on competition both at Community level and internationally. Like any fiscal or parafiscal charge, it is one of the factors to be taken into account by a person wishing to sell a work of art. In a number of cases, it is most certainly one of the factors contributing to a distortion of competition and a shifting of sales within the European Union.

17. It is interesting to note that recently the Council, taking the view that the disparities between the tax arrangements applicable inter alia in the art field cause distortions of competition and deflections of trade between Member States, adopted Directive 94/5/EC[12] supplementing the common system of value added tax and amending Directive 77/388/EEC. The Council has thus decided to put an end to these divergences while enabling legislation to be gradually adapted.

18. From the point of view of establishing an internal market, measures confined to the tax field are insufficient for the purpose of guaranteeing free movement of artistic works in Europe. Once the tax obstacles have been removed, the major distortion of competition that remains is that caused by the lack of harmonization of the artist's resale right. The disparities between national copyright laws will continue to distort competition in the art market. Consequently, the objective of the harmonious functioning of the internal market in works of art cannot be attained without simultaneously harmonizing the artist's resale right. The need for this is even greater since the Phil Collins judgment.

B. Subsidiarity and political desirability

1. There is reason to believe that the Phil Collins judgment, with its application of the principle of non-discrimination on grounds of nationality, has a significant impact in the European Union when coupled with the prohibition on applying the principle of reciprocity.

2. Henceforth, private or public art dealers will have to pay royalties on works by nationals of certain Member States even if the countries concerned do not recognize the artist's resale right.

3. Member States can eliminate this inequality at national level only if they are prepared to repeal their laws introducing the artist's resale right. At the hearing on 24 February 1995 a majority of Member States were far from ready to contemplate this, being of the opinion that a generalized application of the artist's resale right would put an end to the inequality of treatment of contemporary artists in the various Member States while promoting a harmonious development of the art market. Most Member States therefore came out in favour of a Commission initiative aimed at harmonizing the right.

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[12] OJ No L 60, 3.3.1994, p.16.

C. The appropriate legal basis

1. At a hearing of non-governmental international organizations devoted to harmonization of the artist's resale right in the 1980s, and in certain programmes and memoranda, the Commission indicated that, when the time was ripe, a proposal for a Directive approximating Member States' laws on the artist's resale right might be envisaged in accordance with Article 100 of the EEC Treaty.

2. At that time, the Economic and Social Committee and the European Parliament were also concerned about the problem and supported an initiative based on this Treaty provision enabling the approximation of Member States' laws and regulations having a direct impact on the establishment and functioning of the common market.

3. The rules on the establishment of the common market are laid down in Article 7 of the EC Treaty. The common market was to have been established by the end of the third stage of the transitional period, i.e. in 1969. Its establishment is, therefore, no longer a present-day issue.

4. Since then, the 1987 Single European Act and the 1992 Treaty on European Union have changed the primary legislation by inserting a number of new legal bases both in the Treaty chapter on approximation of laws and elsewhere.

   Article 100a(1) of the Treaty as amended by the Treaty on European Union stipulates that:

   "By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 7a. The Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market".

5. However, some interests concerned have consistently proposed, at recent hearings on the subject of the artist's resale right, that it would be appropriate, in the event of a legislative initiative by the Commission, to base the proposal on Article 100 of the Treaty. This provision requires the Council to act unanimously on the proposal.

6. The authorities of one Member State suggested, during the most recent round of consultations, that Article 128 of the Treaty, as inserted by the Treaty on European Union in the Title on culture, is the appropriate legal basis. Whilst it is true that the Community is required to take cultural aspects into account in its action under other provisions of the Treaty (Article 128(4)), any harmonization of the laws and regulations of the Member States is expressly excluded (first indent of Article 128(5)).

7. Owing to the differences between the legal arrangements applicable to the artist's resale right, and bearing in mind the unequal conditions of protection and the resulting impact on competitive conditions within the art market, the Commission is of the opinion that this situation may have an adverse effect on the functioning of the internal market. It follows that Article 100a is the appropriate legal basis for the present proposal. Attention may be

drawn in this respect to the judgment of the Court of Justice of 13 July 1995 in Case C-350/92, Spain v Council, in which the Court expressly confirms that Article 100a is the correct legal basis for a harmonization measure in the field of intellectual property rights pursuing the objectives set forth in Article 7a of the EC Treaty.

V. Particular provisions

1. The purpose of the proposal for a Directive is to harmonize the artist's resale right. On the basis of Article 14ter of the Berne Convention for the Protection of Literary and Artistic Works (as revised by the 1971 Paris Act), the Directive determines the subject-matter of the right. In this respect, provision is made for excluding private transactions between private individuals from the scope so as to avoid the practical problems stemming from the difficulty of monitoring such operations.

2. The decisive factor when it comes to enforcing the artist's resale right is the type of exploitation to which works are subject, namely resale by public officers, auction houses or other commercial agents. In principle, royalties are payable on any transaction involving the ownership of works apart from the first sale.

3. The effectiveness of the artist's resale right is necessarily conditional on the right's inalienability and the impossibility of waiving it.

4. At the hearings, the vast majority of participants considered that public auctions should not be the only operations subject to the artist's resale right, but that sales and exchanges effected through dealers or commercial agents should also be covered. The fact that, basically, the same types of work change hands in galleries and at public sales suggests that they should be placed on an equal footing.

5. The works subject to the artist's resale right must be specified if the right is to be applied uniformly. The concept of original work must therefore be defined more closely. A unique copy of a work is without a doubt embraced by the concept. Certain categories of work made in a limited number of copies must be able to confer entitlement to payment of royalties on condition that they are copies considered to be such according to professional usage.

6. Royalties should be payable on the sale price. Any attempt to limit the assessment basis to the increase in value compared with the purchase price would encounter considerable regulatory difficulties. Artists' resale royalties, like any other royalty, must be payable by reason of the exploitation of the work, irrespective of the success it achieves.

7. The amount on which the royalty is based must not be too high lest the right become the preserve of the best-known artists. A threshold of ECU 1 000 is an average amount compared with the various national thresholds currently laid down.

8. The Commission considers it appropriate that Member States should be given the option of applying the artist's resale right from a threshold lower than the Community threshold, despite the fact that this derogation is not a unifying factor.

If a Member State avails itself of this opportunity, the artist's resale right will apply also to a category of works with a low market value. Any disparity created is not likely to affect trade to an appreciable extent within the internal market. The introduction of a lower national threshold may be justified on manifest social grounds.

9. The rate of the royalty should not be too high. Being the average of the rates adopted by the various Member States, a basic rate of 4% seems reasonable.

10. Harmonization of the artist's resale right should not have the effect of encouraging sales of works of contemporary art outside the Community.

11. Some interests concerned have accordingly proposed that royalties be imposed on exports to non-Community countries to prevent people from evading payment when a work is sold. Apart from the practical problems involved in policing exports, such an approach conflicts with the principle of the territoriality of the artist's resale right. Royalties cannot therefore be charged on sales in third countries.

12. The Commission considers it would be preferable to provide for a tapering scale of rates of royalty based on three price bands. The rate proposed for amounts in excess of ECU 250 000, i.e. 2% of the sale price net of tax, approximates to the additional expenses incurred in the event of a work being exported with a view to evading royalties.

13. As to those entitled to receive royalties, it was suggested at the hearings on the subject that the number of persons eligible after the author's death be limited. However, in the light of the subsidiarity principle, any initiative affecting Member States' laws of succession should be avoided, all the more so since the matter is not such as to affect the functioning of the internal market.

14. The rules on managing the artist's resale right should be flexible. A number of Member States require that the right be managed by a national performing right society. In principle, it can be managed by a public authority, by collecting societies or by the owner of the right himself, in which case he must be free to decide how to exercise it. The proposal confines itself to providing for the possibility of Member States' making recourse to a collecting society mandatory. In that event, the necessary conclusions must be drawn from the Phil Collins judgment, with collecting societies being obliged to treat authors from other Member States equally.

15. Enjoyment of the artist's resale right must be restricted to nationals of Member States of the European Union and foreign authors whose countries afford such protection to Community authors.

16. The duration of the artist's resale right should be up to 70 years after the author's death, as provided for in Directive 93/98/EEC on the term of protection for copyright. At this stage, it is not appropriate to introduce, as was proposed by some interests concerned, a rule whereby a work becomes public property provided a given royalty is paid to the author when it is resold (*domaine public payant*).

17. Lastly, in the interests of effective application of the artist's resale right, suitable procedures are laid down for monitoring transactions, including the introduction of a right for the author or his authorized representative to obtain information from the person liable for payment of a royalty. Any monitoring procedures must apply without prejudice to provisions designed to safeguard privacy.

Förslag till

EUROPAPARLAMENTETS OCH RÅDETS DIREKTIV

om upphovsmannens rätt till ersättning vid vidareförsäljning av originalkonstverk (följerätt)

EUROPAPARLAMENTET OCH EUROPEISKA UNIONENS RÅD HAR ANTAGIT DETTA DIREKTIV

med beaktande av Fördraget om upprättandet av Europeiska gemenskapen, särskilt artikel 100a i detta,

med beaktande av kommissionens förslag[1],

med beaktande av Ekonomiska och sociala kommitténs yttrande[2],

i enlighet med det angivna förfarandet i artikel 189b i fördraget[3], och

med beaktande av följande:

1. Följerätten inom området upphovsrätt är en icke överlåtbar rätt som ger upphovsmannen till ett originalkonstverk eller ett originalmanuskript rätt till del i de försäljningar av verket som företas efter upphovsmannens första överlåtelse.

2. Syftet med följerätten är att tillförsäkra upphovsmännen en andel av det ekonomiska utbyte som handeln med deras verk ger upphov till. Denna rätt syftar till att skapa en jämvikt i den ekonomiska situationen för dessa konstnärer jämfört med andra upphovsmän som uppbär ersättning för det löpande utnyttjandet av sina verk.

3. Följerätten utgör en integrerad del av upphovsrätten och utgör en väsentlig förmånsrätt för upphovsmännen. Det är nödvändigt att införa en sådan rätt i samtliga medlemsstater för att säkerställa en lämplig och likformig skyddsnivå för upphovsmännen.

4. Enligt artikel 128.4 i fördraget skall gemenskapen beakta de kulturella aspekterna då den handlar enligt andra bestämmelser i fördraget.

5. I Bernkonventionen för skydd av litterära och konstnärliga verk föreskrivs att följerätten endast kan göras gällande om lagstiftningen i upphovsmannens hemland medger det. Följerätten är således frivillig och omfattas av regeln om ömsesidighet. Det framgår av EG-domstolens rättspraxis avseende tillämpningen av icke-diskrimineringsprincipen i artikel 6 i fördraget, såsom detta fastslogs i domen av den 20 oktober 1993 i de sammanförda målen C-92/92 och C-326/92, Phil Collins m.fl,[4] att nationella bestämmelser som innehåller klausuler om ömsesidighet inte kan åberopas för att vägra att tillerkänna

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(1) EGT nr C

(2) EGT nr C

(3) Europaparlamentets yttrande av den

(4) REG 1993, s. I-5145

medborgare från andra medlemsstater rättigheter som tilldelats landets egna medborgare. Tillämpningen av sådana klausuler i gemenskapssammanhang är i strid med principen om likabehandling som grundas på förbudet mot all diskriminering på grund av nationalitet.

6. För närvarande finns bestämmelser om följerätt i de flesta medlemsstaternas nationella lagstiftningar. En sådan lagstiftning företer, i de fall den förekommer, vissa olikheter, särskilt när det gäller vilka verk som omfattas av rätten, rättsinnehavarna, tillämplig procentsats, vilka vidareförsäljningar som omfattas av rätten samt beräkningsgrunden för ersättningen. Tillämpning eller inte av en sådan ersättning påverkar i betydande grad konkurrensvillkoren på den inre marknaden. På samma sätt som varje skatteliknande avgift utgör den en faktor som envar person som önskar försälja ett konstverk med nödvändighet tar hänsyn till. Denna rätt är för övrigt en av de bidragande orsakerna till såväl snedvridning av konkurrensen som förflyttningar av konstförsäljningsaktiviteter inom gemenskapen.

7. Sådana skillnader i tillämpningen av följerätten i medlemsstaterna har direkt negativ inverkan på genomförandet av en väl fungerande inre marknad för konstverk enligt vad som föreskrivs i artikel 7a i fördraget. Artikel 100a i fördraget utgör den lämpliga rättsliga grunden i ett sådant fall.

8. Gemenskapens mål som de anges i fördraget omfattar upprättandet av en allt fastare sammanslutning mellan de europeiska folken, stärkandet av förbindelserna mellan gemenskapens medlemsstater samt säkerställandet av ekonomiska och sociala framsteg i medlemsländerna genom gemensamma åtgärder för att undanröja de barriärer som delar Europa. För att uppnå dessa mål föreskrivs fördraget upprättande av en inre marknad som innebär avskaffande av hindren för den fria rörligheten för varor, friheten att tillhandahålla tjänster och fri etableringsrätt såväl som tillskapande av en ordning som säkerställer att konkurrensen inte snedvrids på den gemensamma marknaden. Harmonisering av medlemsstaternas lagstiftningar avseende följerätt bidrar till att uppnå dessa mål.

9. Genom rådets direktiv 77/388/EEG[5], ändrat genom direktiv 94/5/EG[6] tillägg till det gemensamma mervärdesskattesystemet införs gradvis ett gemensamt system för skatter som bl.a. är tillämpligt på konstföremål. Enbart åtgärder på skatteområdet är inte tillräckliga för att säkerställa en väl fungerande konstmarknad. Detta mål kan endast uppnås om en harmonisering av följerätten genomförs.

10. Det är nödvändigt att avskaffa de olikheter i de gällande lagstiftningarna som har snedvridande effekter på den inre marknadens funktion och att förhindra uppkomsten av nya olikheter. Det är emellertid inte nödvändigt att avskaffa eller hindra uppkomsten av sådana olikheter som inte skulle kunna påverka den inre marknadens funktion negativt.

11. Det är inte nödvändigt att harmonisera samtliga bestämmelser om följerätt i medlemsstaternas lagstiftningar. Det är tillräckligt att begränsa harmoniseringsarbetet till de nationella bestämmelser som har störst direkt inverkan på den inre marknadens funktion. Målen för detta begränsade harmoniseringsarbete kan dock inte i tillräcklig grad uppnås genom medlemsstaternas egna åtgärder. De föreslagna åtgärderna går dock inte utöver vad

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(5) EGT nr L 145, 13.6.1977, s. 1.

(6) EGT nr L 60, 3.3.1994, s.16.

som är nödvändigt för att uppnå de ovan nämnda målen i enlighet med bestämmelserna i artikel 3b tredje stycket i fördraget. Detta förslag är sålunda helt i överensstämmelse med subsidiaritetsprincipen och proportionalitetsprincipen.

12. Upphovsrättens giltighetstid enligt bestämmelserna i rådets direktiv 93/98/EEG[7] uppgår till 70 år efter upphovsmannens död. Det är lämpligt att föreskriva samma giltighetstid för följerätten. Endast samtida eller moderna originalverk kommer sålunda att omfattas av följerätten. I allmänhet är samtida eller moderna konstverk relativt blygsamt representerade vid försäljningar på allmänna auktioner.

13. Följerätten bör tillämpas vid all slags vidareförsäljning med undantag för vidareförsäljningar av konstverk mellan privatpersoner efter upphovsmannens första försäljning. Rättigheten avser all yrkesmässig vidareförsäljning av konstverk såsom auktionsförsäljning, galleriförsäljning och, allmänt, all vidareförsäljning via konsthandlare.

14. Det är nödvändigt att införa en effektiv ordning som grundas på vunna erfarenheter på det nationella planet i fråga om följerätt. Följerättsersättningen bör beräknas som en procentandel av försäljningspriset och inte på ett konstverks mervärde i förhållande till ursprungsvärdet.

15. Det är nödvändigt att harmonisera kategoriseringen av konstverk som omfattas av följerätten. Det har visat sig att alster av brukskonst bör undantas.

16. Fastställande av ett lägsta belopp inom gemenskapen för tillämpning av följerätten skall göras med beaktande av den inre marknadens krav. Medlemsstaterna bör dock ges möjlighet att fastställa lägre nationella beloppsgränser än gemenskapens för att stödja unga konstnärer.

17. Genom att inte tillämpa följerätten vid försäljningssummor som understiger den lägsta beloppsgräns som fastställts, undviks oproportionerligt höga uttags- och förvaltningskostnader.

18. De procentsatser som bestäms av de olika medlemsstaterna för tillämpning av följerätten varierar för närvarande betydligt. För att den inre marknaden för samtida eller moderna konstverk skall fungera tillfredsställande är det nödvändigt att fastställa enhetliga procentsatser.

19. Ett system med avtagande procent för tillämpning av följerätten i olika prisskikt kan bidra till att förhindra att gemenskapslagstiftningen i fråga om följerätt kringgås. Dessa procentsatser bör både avspegla såväl konstnärernas som konstmarknadens intressen.

20. Det belopp som tas ut med stöd av följerätten skall betalas av säljaren. Säljaren är antingen den person eller det företag i vars namn försäljningen har genomförts.

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[7] EGT nr L 290, 24.11.1993, s. 9.

21. Det är önskvärt att införa en ordning med möjlighet till en löpande, periodvis anpassning av lägsta beloppsgränser och procentsatser. För detta ändamål är det lämpligt att ge kommissionen i uppdrag att utarbeta periodvisa rapporter över de praktiska verkningarna av tillämpningen av följerätten, och att, i förekommande fall, föreslå ändringar av beloppsgränser och procentsatser.

22. Det måste fastställas vilka de ersättningsberättigade följerättsinnehavarna är, samtidigt som subsidiaritetsprincipen iakttas. Det är följaktligen inte lämpligt att genom detta direktiv ingripa i medlemsstaternas arvsrättslagstiftning. Upphovsmannens rättsinnehavare bör dock fullt ut kunna bli ersättningsberättigade avseende följerätten efter upphovsmannens död.

23. Det bör överlåtas åt medlemsstaterna att själva bestämma formerna för uttag och förvaltning av de belopp som betalats enligt följerätten. Härvidlag är förvaltning via ett gemensamt förvaltningsorgan en bland andra möjliga lösningar. Medlemsstaerna måste emellertid säkerställa uttag, indrivning och utbetalning av ersättningar som tagits ut till förmån för upphovsmän från andra medlemsstater.

24. Rätten till ersättning enligt följerätten bör begränsas till medborgare från medlemsstaterna och utländska upphovsmän, vars hemländer ger upphovsmän som är medborgare i medlemsstaterna motsvarande skydd.

25. Lämpliga och praktiska förfaranden som tillåter kontroll av försäljningstransaktioner måste införas för att säkerställa att medlemsstaterna faktiskt tillämpar följerätten. Detta innebär att upphovsmannen eller dennes befullmäktigade ombud skall ha rätt att inhämta de nödvändiga upplysningarna från dem som är skyldiga att betala följerättsersättningen.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

KAPITEL I
Tillämpningsområde

Artikel 1
Föremålet för följerätten

Medlemsstaterna skall, till förmån för upphovsmannen till ett originalkonstverk, införa en följerätt som definieras som en icke överlåtbar rätt till ersättning med en procentandel av försäljningspriset vid all vidareförsäljning av verket, med undantag av försäljningstransaktioner som genomförs av en person som handlar i egenskap av privatperson, efter upphovsmannens första överlåtelse.

Artikel 2
Konstverk som omfattas av följerätten

I detta direktiv avses med *originalkonstverk*: manuskript och bildkonstverk såsom tavlor, collage, målningar, teckningar, kopparstick, gravyrer, litografier, skulpturer, vävda tapeter eller bonader, keramiska föremål och fotografier i den mån de utgör alster som helt utförts av konstnären eller om det rör sig om exemplar som anses som originalkonstverk enligt sedvänja inom konstbranschen i gemenskapen.

KAPITEL II
Särskilda bestämmelser

Artikel 3
Beloppsgräns

1. Ersättning enligt artikel 1 skall erläggas när försäljningspriset när detta är lika med eller överstiger 1 000 ecu.

2. Medlemsstaterna skall ha rätt att fastställa en nationell beloppsgräns som är lägre än den beloppsgräns som föreskrivs i punkt 1.

Artikel 4
Procentsats och uttag

Den ersättning som tas ut med tillämpning av artikel 1 bestäms enligt följande:

a) 4 % av försäljningspriset för belopp mellan 1 000 och 50 000 ecu.

b) 3 % av försäljningspriset för belopp mellan 50 000 och 250 000 ecu.

c) 2 % av försäljningspriset för belopp som överstiger 250 000 ecu.

Denna ersättning skall betalas av säljaren.

Artikel 5
Beräkningsunderlag

Det försäljningspris som avses i artiklarna 3 och 4 skall vara priset före skatter och avgifter.

Artikel 6
Ersättningsberättigade följerättsinnehavare

1. Den ersättning som tas ut med tillämpning av artikel 1 skall tillfalla upphovsmannen till verket och, efter upphovsmannens död, dennes rättsinnehavare.

2. Medlemsstaterna har rätt att föreskriva om kollektiv förvaltning av de belopp som utbetalas enligt följerätten. De skall fastställa närmare föreskrifter för uttag och fördelning av dessa belopp när upphovsmannen är medborgare i en annan medlemsstat.

Artikel 7
Ersättningsberättigade följerättsinnehavare i tredje land

Medlemsstaterna skall föreskriva att upphovsmän som är medborgare i tredje land skall omfattas av följerätten enligt bestämmelserna i detta direktiv under förutsättning att upphovsmän som är medborgare i medlemsstaterna omfattas av motsvarande rätt i tredje länderna i fråga.

Artikel 8
Följerättens varaktighet

Följerätten skall gälla under den tid som fastställts i artikel 1 i direktiv 93/98/EEG.

Artikel 9
Rätt att inhämta uppgifter

Upphovsmannen eller dennes befullmäktigade ombud skall från alla konsthandlare, försäljningsansvariga eller offentliga auktionsförrättare kunna begära alla uppgifter som är nödvändiga för att kunna beräkna de belopp som skall erläggas enligt följerätten avseende försäljning av originalkonstverk under föregående år.

KAPITEL III
Slutbestämmelser

Artikel 10
Uppföljningsbestämmelser

Senast den 1 januari 2004 och därefter vart femte år skall kommissionen överlämna en rapport till Europaparlamentet, rådet och Ekonomiska och sociala kommittén om genomförandet av detta direktiv samt i förekommande fall förslag till justering av lägsta beloppsgräns och procentsats avseende följerättsersättningen med hänsyn till situationen inom branschen.

Artikel 11
Genomförande

1. Medlemsstaterna skall sätta i kraft de lagar och andra författningar som är nödvändiga för att följa detta direktiv före den 1 januari 1999.

   När en medlemsstat antar dessa bestämmelser skall de innehålla en hänvisning till detta direktiv eller åtföljas av en sådan hänvisning när de offentliggörs. Närmare föreskrifter om hur hänvisningen skall göras skall varje medlemsstat själv utfärda.

2. Medlemsstaterna skall till kommissionen överlämna texterna till de bestämmelser i nationell lagstiftning som de antar inom det område som omfattas av detta direktiv.

Artikel 12
Ikraftträdande

Detta direktiv träder i kraft den tjugonde dagen efter det att det har offentliggjorts i *Europeiska gemenskapernas officiella tidning*.

Artikel 13

Detta direktiv riktar sig till medlemsstaterna.

Utfärdat i Bryssel den

På Europarlamentets vägnar

Ordförande

På rådets vägnar

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