

Procedure file

| Basic information | |
|---|---------------------------------------|
| COD - Ordinary legislative procedure (ex-codecision procedure) Directive | 1996/0085(COD) Procedure completed |
| Intellectual property, original works of art: resale right for the benefit of the author See also 2012/2038(INI) | |
| Subject 4.45.10 Literary and artistic property | |

| Key players | | | |
|---|---|---|------------|
| European Parliament | Committee responsible | Rapporteur | Appointed |
| | DELE EP Delegation to Conciliation Committee | | 19/03/2001 |
| | | PPE-DE ZIMMERLING Jürgen | |
| | Former committee responsible | | |
| | JURI Legal Affairs, Citizens' Rights | | 24/04/1996 |
| | | PPE PALACIO VALLELERSUNDI Ana | |
| Council of the European Union | JURI Legal Affairs and Internal Market | | 25/05/2000 |
| | | PPE-DE ZIMMERLING Jürgen | |
| | Council configuration | Meeting | Date |
| | Budget | 2368 | 20/07/2001 |
| | Agriculture and Fisheries | 2339 | 19/03/2001 |
| | Agriculture and Fisheries | 2276 | 19/06/2000 |
| Competitiveness (Internal Market, Industry, Research and Space) | 2248 | 16/03/2000 | |
| Competitiveness (Internal Market, Industry, Research and Space) | 2210 | 28/10/1999 | |
| Competitiveness (Internal Market, Industry, Research and Space) | 2163 | 25/02/1999 | |
| Competitiveness (Internal Market, Industry, Research and Space) | 1929 | 28/05/1996 | |

| Key events | | | |
|------------|---|----------------------|---------|
| 13/03/1996 | Legislative proposal published | COM(1996)0097 | Summary |
| 08/05/1996 | Committee referral announced in Parliament, 1st reading | | |
| 28/05/1996 | Debate in Council | 1929 | |

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|------------|--|---|---------|
| 22/01/1997 | Vote in committee, 1st reading | | Summary |
| 22/01/1997 | Committee report tabled for plenary, 1st reading | A4-0030/1997 | |
| 08/04/1997 | Debate in Parliament |  | Summary |
| 09/04/1997 | Decision by Parliament, 1st reading | T4-0147/1997 | Summary |
| 12/03/1998 | Modified legislative proposal published | COM(1998)0078 | Summary |
| 25/02/1999 | Debate in Council | 2163 | |
| 28/10/1999 | Debate in Council | 2210 | |
| 19/06/2000 | Council position published | 07484/1/2000 | Summary |
| 20/09/2000 | Committee referral announced in Parliament, 2nd reading | | |
| 28/11/2000 | Vote in committee, 2nd reading | | Summary |
| 28/11/2000 | Committee recommendation tabled for plenary, 2nd reading | A5-0370/2000 | |
| 12/12/2000 | Debate in Parliament |  | |
| 13/12/2000 | Decision by Parliament, 2nd reading | T5-0560/2000 | Summary |
| 19/03/2001 | Parliament's amendments rejected by Council | | |
| 10/04/2001 | Formal meeting of Conciliation Committee | | |
| 31/05/2001 | Final decision by Conciliation Committee | | Summary |
| 06/06/2001 | Joint text approved by Conciliation Committee co-chairs | 3628/2001 | |
| 22/06/2001 | Report tabled for plenary, 3rd reading | A5-0235/2001 | |
| 02/07/2001 | Debate in Parliament |  | |
| 03/07/2001 | Decision by Parliament, 3rd reading | T5-0370/2001 | Summary |
| 20/07/2001 | Decision by Council, 3rd reading | | |
| 27/09/2001 | Final act signed | | |
| 27/09/2001 | End of procedure in Parliament | | |
| 13/10/2001 | Final act published in Official Journal | | |

Technical information

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|------------------------|--|
| Procedure reference | 1996/0085(COD) |
| Procedure type | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| | See also 2012/2038(INI) |
| Legal basis | EC Treaty (after Amsterdam) EC 095 |

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|----------------------------|---------------------|
| Stage reached in procedure | Procedure completed |
| Committee dossier | CODE/5/14566 |

Documentation gateway

| | | | | |
|---|---|------------|--------|---------|
| Legislative proposal | COM(1996)0097 OJ C 178 21.06.1996, p. 0016 | 13/03/1996 | EC | Summary |
| Economic and Social Committee: opinion, report | CES1507/1996 OJ C 075 10.03.1997, p. 0017 | 18/12/1996 | ESC | Summary |
| Committee report tabled for plenary, 1st reading/single reading | A4-0030/1997 OJ C 085 17.03.1997, p. 0004 | 22/01/1997 | EP | |
| Text adopted by Parliament, 1st reading/single reading | T4-0147/1997 OJ C 132 28.04.1997, p. 0068-0088 | 09/04/1997 | EP | Summary |
| Modified legislative proposal | COM(1998)0078 OJ C 125 23.04.1998, p. 0008 | 12/03/1998 | EC | Summary |
| Council position | 07484/1/2000 OJ C 300 20.10.2000, p. 0001 | 19/06/2000 | CSL | Summary |
| Commission communication on Council's position | SEC(2000)1516 | 15/09/2000 | EC | Summary |
| Committee recommendation tabled for plenary, 2nd reading | A5-0370/2000 OJ C 232 17.08.2001, p. 0010 | 28/11/2000 | EP | |
| Text adopted by Parliament, 2nd reading | T5-0560/2000 OJ C 232 17.08.2001, p. 0079-0173 | 13/12/2000 | EP | Summary |
| Commission opinion on Parliament's position at 2nd reading | COM(2001)0047 | 24/01/2001 | EC | Summary |
| Joint text approved by Conciliation Committee co-chairs | 3628/2001 | 06/06/2001 | CSL/EP | |
| Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading | A5-0235/2001 | 22/06/2001 | EP | |
| Text adopted by Parliament, 3rd reading | T5-0370/2001 OJ C 065 14.03.2002, p. 0023-0045 E | 03/07/2001 | EP | Summary |
| Non-legislative basic document | COM(2011)0878 | 14/12/2011 | EC | Summary |

Additional information

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|---------------------|-------------------------|
| European Commission | EUR-Lex |
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Final act

[Directive 2001/84](#)
[OJ L 272 13.10.2001, p. 0032](#) Summary

Intellectual property, original works of art: resale right for the benefit of the author

OBJECTIVE: the proposal for a European Parliament and Council directive seeks to establish harmonized legal arrangements governing the resale right for the benefit of the author of an original work of art. SUBSTANCE: the proposal for a directive includes the following provisions: - on the basis of the Berne Convention for the Protection of Literary and Artistic Works, the proposal for a directive determines the subject

matter of the right. The Member States provide, for the benefit of the author of an original work of art, an artist's resale right defined as an inalienable right to receive a percentage of the sale price obtained from any resale of the work, with the exception of transactions effected by individuals acting in their private capacity; - definition of an original work of art: manuscripts and works of plastic art (pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics and photographs), provided that they are made by the artist himself or are copies considered to be original works of art according to professional usage in the Community; - the resale right is collected when the sale price is equal to or higher than ECU 1000. Member States may fix a national threshold which is lower than the Community threshold; - the royalty collected is set at the following rates: 4% of the sales price for the band between ECU 1000 and ECU 50 000; 3% for the band between ECU 50 000 and ECU 250 000; 2% for sums in excess of ECU 250 000. This royalty is payable by the seller; - the royalty collected is payable to the author of the work and, after his death, to those entitled under him; - entitlement to the resale right is restricted to EU nationals and foreign authors whose countries grant similar protection to Community authors; - the resale right will last until 70 years after the artist's death, in accordance with Directive 93/98/EEC on the protection of copyright; - finally, suitable procedures for the monitoring of transactions will help to ensure the effective enforcement of the resale right; for example, the author or his authorized representative may obtain information from the person liable to pay royalties. The monitoring procedures must apply without prejudice to the provisions governing the protection of private life. ?

Intellectual property, original works of art: resale right for the benefit of the author

The Committee welcomes the provisions of the proposal, which remove distortions of competition within the single market. EU harmonization of the resale right would be a first step towards extending the right to all EEA countries, and to the countries of central and eastern Europe, the Baltic States and the independent states of the former USSR, which are linked to the European Union via association, partnership or cooperation agreements. Whilst this provision is wise, it does not excuse the Commission from arguing forcibly, in international arenas and in multilateral and bilateral negotiations with third countries, for worldwide extension of the artist's resale right, in the interests both of artists and authors, and of art dealers. The Committee feels that collective management of the artist's resale right is the most appropriate solution to protect the author's interests. The Committee welcomes the extension to third countries of the principle of reciprocal treatment. A monitoring procedure of this kind seems fully in order for the proper implementation of the artist's resale right. The Committee feels, however, that if the collation of information is to be efficient and avoid hindering the smooth operation of the agencies concerned, it must be governed by appropriate measures. The Committee would stress the positive role which authors' copyright associations could play in collating information. The Committee welcomes the provision that the Commission is to present to the European Parliament, the Council and the Economic and Social Committee, on or before 1 January 2004 and then every five years, a report on the implementation of the directive, and will, where appropriate, put forward proposals for adjusting the minimum threshold and the rates of the royalties to take account of changes in the sector. ?

Intellectual property, original works of art: resale right for the benefit of the author

Following the vote to adopt the draft report by Mrs Ana PALACIO (PPE, E), the Legal Affairs Committee withdrew manuscripts from the list proposed by the Commission. It also considered that protection should be limited to no more than ten copies of original works of art. The committee considered that it was up to the Member States to set a minimum threshold of no more than ECU 1000 for sales subject to resale rights. Artists' resale rights would vary from 1.5 to 4%, depending on the price (with provision made for three price bands). Mrs PALACIO considered that the adoption (subject to amendment) of this proposal for a directive was "a clear success in an ill-defined area". ?

Intellectual property, original works of art: resale right for the benefit of the author

By admitting that the price rate bands and rates applicable for the calculation of the resale right is one of the most difficult issues to resolve in this proposal, the rapporteur stated that the range of rates set by the Commission do not correspond to market realities; this is why the rapporteur is presenting, among other things, an amendment proposing a reduced rate for sales exceeding ECU 100 000. Commissioner Mario Monti accepted most of the amendments presented by the Legal Affairs Committee, but is decidedly against all of the amendments which aim to increase or reduce the level of percentages and amend the price bands proposed concerning resale rights. The Commissioner is also against the proposal favouring a calculation on the basis of added value, as well as the harmonisation of categories of works of art or operations to which resale rights apply, which is contrary to the objectives of the internal market in the field of contemporary artistic creation. Lastly, Mario Monti rejected an amendment aiming to limit the entry into force of the directive to the realisation of a detailed study of the impact on the market of the resale of works of art within the Union, as well as between the Union and third countries, which would not conform with the institutional balance established by the Treaty on the Union. COD960085 08/04/97 DSP EN By admitting that the price rate bands and rates applicable for the calculation of the resale right is one of the most difficult issues to resolve in this proposal, the rapporteur stated that the range of rates set by the Commission do not correspond to market realities; this is why the rapporteur is presenting, among other things, an amendment proposing a reduced rate for sales exceeding ECU 100 000. Commissioner Mario Monti accepted most of the amendments presented by the Legal Affairs Committee, but is decidedly against all of the amendments which aim to increase or reduce the level of percentages and amend the price bands proposed concerning resale rights. The Commissioner is also against the proposal favouring a calculation on the basis of added value, as well as the harmonisation of categories of works of art or operations to which resale rights apply, which is contrary to the objectives of the internal market in the field of contemporary artistic creation. Lastly, Mario Monti rejected an amendment aiming to limit the entry into force of the directive to the realisation of a detailed study of the impact on the market of the resale of works of art within the Union, as well as between the Union and third countries, which would not conform with the institutional balance established by the Treaty on the Union. ?

Intellectual property, original works of art: resale right for the benefit of the author

In adopting the report by Mrs Ana PALACIO VALLELERSUNDI (EPP, Esp), the European Parliament amended the proposal for a directive on the resale right for the benefit of the author of an original work of art. By means of its amendments, Parliament made it clear that the artist's

resale right is inalienable and can never be given up, even in advance. It calls for the directive to cover works of art intended to be viewed, such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics and photographs, provided that they are original works of art which may under no circumstances be produced in series of more than 12. Parliament deleted manuscripts from the list proposed by the Commission. It also takes the view that it is incumbent on the Member States to fix the minimum threshold above which transfers are subject to the author's resale right; that threshold may not exceed ECU 500. Parliament proposes that the amount of the author's resale right should be determined by taking the difference between the purchase prices paid by the person liable for resale right and the amount invoiced; the purchase price would be the sum obtained after deduction of taxes, restoration costs and other costs not linked to the creation of the work of art. Parliament also fixed the resale right at 3% of the sale price for the band between ECU 50 000 and ECU 100 000 (the Commission went as far as ECU 250 000) and at 1% for sums in excess of ECU 100 000 (the Commission advocated 2% for sums above ECU 250 000). Finally, the Commission is asked to submit by 1 January 2002 at the latest, and every three years thereafter, a detailed report on the implementation of the directive, paying particular attention to its impact on the European market in modern and contemporary art. ?

Intellectual property, original works of art: resale right for the benefit of the author

The Commission's amended proposal takes into account a number of the European Parliament's amendments. The substantive amendments made to the initial proposal concern: -the exclusion of manuscripts from the original works of art concerned by resale right; -the introduction of a minimum rate (4%) where a national threshold lower than the Community threshold is applied (ECU 1 000); - the extension of the period during which the author or his authorized representative may request the information necessary in order to secure payment under the resale right (three years from the date of the transaction). Other changes relate to the following points: - the unassignable and inalienable nature of the resale right, and the basis of resale right; - the integral inclusion of a recital on the definition of resale right and of a recital calling for the introduction, in a binding manner, of resale rights at international level; - the advantage of harmonizing resale right with a view to ensuring the proper functioning of the internal market; - the transactions giving rise to resale right; - the composition of the sale price bands and the tapering scale of rates; - the term of resale right, in conjunction with Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights; - the procedures for the revision clause; - the procedures for managing the sums paid. However the Commission did not accept the amendments concerning: -the exemption of the first transfer of ownership between dealers or between a dealer and a final purchaser, provided that the transfer takes place within three years of the acquisition of the work of art by the dealer; - the use, as a basis for calculation, of the difference between the price obtained when the work of art is sold and the purchase price initially paid by the seller (excluding loss-making transactions); - the restriction of entitled parties to the author's legal heirs; - the new price bands and the reduction of the rates applicable to resale right; - the inclusion of glass among original works of art giving rise to resale right; - the limitation to twelve copies maximum of works of art considered to be original; - the procedures for the revision clause (date of the first report and the frequency of subsequent reports). ?

Intellectual property, original works of art: resale right for the benefit of the author

The Council's common position takes on board the substance of the majority of the amendments proposed by the European Parliament. The Commission accepts all points of the Council's common position, except for the length of the transitional period that some Member States will be allowed to apply resale right to deceased artist's successors in title (Article 8(2)). The Council would stress that that period lasts a maximum of ten years and could be shortened in the circumstances described in Article 8(3). More specifically, the Council has added, deleted or amended a number of recitals, mainly in order to reflect changes made to the articles of the Directive. ?

Intellectual property, original works of art: resale right for the benefit of the author

The Commission considers that the adoption by the Council of this common position on the resale right represents an important step towards the establishment of a Community art market. It also points out that the protection of the resale right is designed to extend the benefits of the internal market to authors of works of graphic and plastic art. The Council generally endorsed the approach adopted by the Commission in its amended proposal by incorporating, in full or in part, virtually all of the first-reading amendments. That is why the Commission deplores the fact that certain amendments made by the Council make it impossible to put in place, within a reasonable period, a resale right which is as effective as it would have wished. Consequently, as far as the effectiveness of the resale right is concerned, the Commission regrets for the reasons set out above the introduction of a high application threshold and a ceiling which artists will no longer be eligible to a resale right commensurate with their success. The Commission would have been able to accept these aspects, however, if a more satisfactory solution had been found to the issue of the periods for implementation of the Directive. Under these circumstances, and despite all its efforts to reach an agreement, the Commission was unable to accept the text of the common position, which does not provide for reaching a satisfactory level of harmonisation within a reasonable period of time. The Commission will continue to explore, with other institutions concerned, possible ways of finding a better solution within the context of this Directive to the issue of the application periods for this Directive.?

Intellectual property, original works of art: resale right for the benefit of the author

The committee adopted the recommendation for second reading (codecision procedure) by Jürgen ZIMMERLING (EPP-ED, D) broadly approving the Council's common position, subject to a few amendments. Whereas the Council text left it to the Member States to set a minimum sale price above which sales would be subject to resale rights, the committee suggested - with a view to harmonisation - a uniform minimum price of EUR 1000. It wanted to delete the provision setting a ceiling on royalty levels to be received by the artist, arguing that successful artists should not be penalised. Furthermore, it felt that the rate of the royalty (i.e. the percentage of the sale price) should never be lower than 1% of the sale price for amounts exceeding EUR 200 000. Lastly, the committee proposed that a transition period of 24 months (rather than 5 years as laid down in the proposal) be established for Member States to implement the directive. ?

Intellectual property, original works of art: resale right for the benefit of the author

By adopting the text drafted by Mr Jürgen ZIMMERLING (EPP/ED, D), the European Parliament approved the Council's common position laying down common rules entitling artists to benefit from the re-sale of paintings and other works of art, together with a number of amendments. (Refer to the previous document). In addition, the Parliament points out that the process of internalisation of the Community market in modern and contemporary art makes it advisable to open negotiations with a view to making Article 14 of the Berne Convention binding.?

Intellectual property, original works of art: resale right for the benefit of the author

The Commission accepts the amendments which aim to: - modify Recital 7, which calls on the Commission to enter into negotiations with a view to making Article 14ter of the Berne Convention compulsory because of the growing international dimension of the art market; - introduce a new Recital 7a explaining the need for transitional provisions, in order to maintain the competitiveness of the European market; - to fix the threshold for the application of the Directive to EUR 1 000, as provided for in the original and amended proposals from the Commission, rather than the EUR 4 000 as proposed in the common position; - to reduce to 2 years the transitional period of 10 years proposed by the Council; - modify Article 9 on the right to collect information in order to make the date of the transaction, rather than 1 January of the following year, the reference date for the three years during which the beneficiaries of the resale right are entitled to request information; - to modify Article 11 (1) in order to include the ceiling among the issues to be reviewed when the Directive is revised; - reduce to 2 years the deadline for implementation of the Directive which the Council has changed to 5 years in its common position. On the other hand, the Commission cannot accept the amendments aiming to: - make the threshold of EUR 1 000 compulsory; - specify the persons entitled to inherit the resale right; - oblige the Commission to publish each year a list of third countries that apply the resale right. ?

Intellectual property, original works of art: resale right for the benefit of the author

The Conciliation Committee reached a final agreement by exchange of letters on the proposal for a directive. A compromise was reached on the key questions where there had been major differences between Parliament and Council, namely, the threshold value and the transposition and transitional periods. The agreement was as follows: - the minimum sale price above which authors may demand a resale right will be EUR 3 000. However, in accordance with the principle of subsidiarity, Member States will be allowed to establish national thresholds lower than the Community threshold; - the deadline for implementation of the directive (the transposition period) will be 4 years (1 January 2006); - those Member States which do not apply the resale right on the entry into force date of the directive 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 death. A supplementary period of two more years is foreseen to enable economic operators in those Member States to adapt gradually to the resale right system. In addition, the total amount of the royalty may not exceed EUR 12 500, with the Commission authorised to review this figure in the future. ?

Intellectual property, original works of art: resale right for the benefit of the author

The European Parliament approved, by 405 votes to 101 with 32 abstentions, the report by Mr Jürgen ZIMMERLING (EPP-ED, D) on resale rights for the benefit of the author of an original work of art. (Please refer to the previous text).?

Intellectual property, original works of art: resale right for the benefit of the author

PURPOSE : to adopt a Directive on the resale right for the benefit of the author of an original work of art. **COMMUNITY MEASURE :** Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art. **CONTENT :** with regard to the scope of the Directive, 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. This right 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. Member States may provide that the right referred to above 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. The royalty shall be payable by the seller. Member States may provide that one of the specified natural or legal persons other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty. As regards the works of art to which the resale right relates, these include 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. Moreover, 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. 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. This minimum sale price may not under any circumstances exceed EUR 3000. The royalty provided for 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. 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 %. By way of derogation, those Member States which do not apply the resale right on 13/10/2001, 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. 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. **ENTRY INTO FORCE :** 13/10/2001. ?

