Basic information

1996/0085(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	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	ZIMMERLING Jürgen (PPE-DE)	19/03/2001

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs and Internal Market	ZIMMERLING Jürgen (PPE-DE)	25/05/2000
JURI Legal Affairs, Citizens' Rights	PALACIO VALLELERSUNDI Ana (PPE)	24/04/1996

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2210	1999-10-28
Competitiveness (Internal Market, Industry, Research and Space)	2248	2000-03-16
Competitiveness (Internal Market, Industry, Research and Space)	2163	1999-02-25
Competitiveness (Internal Market, Industry, Research and Space)	1929	1996-05-28
Agriculture and Fisheries	2339	2001-03-19
Agriculture and Fisheries	2276	2000-06-19
Budget	2368	2001-07-20

Key events

Date	Event	Reference	Summary
		COM(1996)0097	Summary

13/03/1996	Legislative proposal published		
08/05/1996	Committee referral announced in Parliament, 1st reading		
28/05/1996	Debate in Council		
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
12/03/1998	Modified legislative proposal published	COM(1998)0078	Summary
25/02/1999	Debate in Council		
28/10/1999	Debate in Council		
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

Procedure reference	1996/0085(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also 2012/2038(INI)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	CODE/5/14566

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0030/1997 OJ C 085 17.03.1997, p. 0004	22/01/1997	
Text adopted by Parliament, 1st reading/single reading		T4-0147/1997 OJ C 132 28.04.1997, p. 0068-0088	09/04/1997	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0370/2000 OJ C 232 17.08.2001, p. 0010	28/11/2000	
Text adopted by Parliament, 2nd reading		T5-0560/2000 OJ C 232 17.08.2001, p. 0079-0173	13/12/2000	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A5-0235/2001	22/06/2001	
Text adopted by Parliament, 3rd reading		T5-0370/2001 OJ C 065 14.03.2002, p. 0023-0045 E	03/07/2001	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	07484/1/2000 OJ C 300 20.10.2000, p. 0001	19/06/2000	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1996)0097 OJ C 178 21.06.1996, p. 0016	13/03/1996	Summary
Modified legislative proposal	COM(1998)0078 OJ C 125 23.04.1998, p. 0008	12/03/1998	Summary
Commission communication on Council's position	SEC(2000)1516	15/09/2000	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2001)0047	24/01/2001	Summary
Non-legislative basic document	COM(2011)0878	14/12/2011	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1507/1996 OJ C 075 10.03.1997, p. 0017	18/12/1996	Summary

CSL/EP	Joint text approved by Conciliation Committee co-chairs	3628/2001	06/06/2001	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Directive 2001/0084 OJ L 272 13.10.2001, p. 0032	Summary

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

1996/0085(COD) - 27/09/2001 - Final act

PURPOSE : to adopt a Directive on the resale right for the benefit of the author of an original work of art. COMMUNITY MEASURE : Directive 20014/84 /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 /herdeath. 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.

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

1996/0085(COD) - 24/01/2001 - Commission opinion on Parliament's position at 2nd reading

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

1996/0085(COD) - 15/09/2000 - Commission communication on Council's position

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

1996/0085(COD) - 03/07/2001 - Text adopted by Parliament, 3rd reading

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

1996/0085(COD) - 18/12/1996 - Economic and Social Committee: opinion, report

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

1996/0085(COD) - 19/06/2000 - Council position

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

1996/0085(COD) - 13/12/2000 - Text adopted by Parliament, 2nd reading

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

1996/0085(COD) - 12/03/1998 - Modified legislative proposal

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

1996/0085(COD) - 09/04/1997 - Text adopted by Parliament, 1st reading/single reading

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

1996/0085(COD) - 13/03/1996 - Legislative proposal

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

1996/0085(COD) - 14/12/2011

In accordance with the provisions of Directive 2001/84/EC (the Resale Right Directive) the Commission presents a report on the implementation and effect of the Directive.

It recalls that at the time the Directive was agreed, 4 of the then 15 Member States did not apply the resale right in national law: Austria, Ireland, the Netherlands and the UK. These Member States enjoyed a transitional period to 1 January 2010 during which they could choose not to apply the resale right to the works of eligible deceased artists. These Member States, together with Malta, made use of this provision, and of the option to extend the derogation period for a further 2 years. **This derogation comes to an end on 1 January 2012**, at which point the Directive must be fully implemented in all Member States. This Report examines in particular the impact of the Directive on the internal market and the effect of the introduction of the resale right in those Member States that did not apply the right in national law prior to the entry into force of this Directive. It pays particular attention to the position of the Community in relation to relevant markets that do not apply the resale right, assesses the role of the Directive in the fostering of artistic creativity and reviews the situation with regard to the management procedures in the Member States.

The resale right affects directly only trade in works by EU living artists, or by EU artists deceased within 70 years of sale. Works subject to the resale right accounted for around EU 2.1 billion in auction sales in 2010 globally. In the EU these works accounted for 50% of the value of fine art auction sales in 2010, compared with 35% of sales in the US, 25% in Switzerland and 3% of sales in the rest of the world.

Bearing in mind the expectation that unharmonised application of the resale right contributed to "displacement of sales" within the EU, the Commission sought to identify:

- whether any **trade diversion** away from those Member States that introduced the resale right for the works of living artists the first time in 2006 and towards other Member States had arisen;
- whether those Member States which have derogation until 1 January 2012 appeared to have a **comparative advantage** in the sales of works of deceased artists. The Commission looked at available data sets for the period 2005 – 2010.

Auction sales of the works of living and deceased artists: art markets across the EU differ in their nature and make-up. For example, while the UK has the highest EU market share by value of auction sales in works eligible for the resale right (64% in 2010), followed by France (12%) and Germany (5%), the greatest volume of transactions was in France (26%).

In all, some 65,000 auction transactions were eligible for the resale right in 2010, of which roughly two thirds sales of works of deceased artists, and one third sales of living artists.

Looking at both the value and the volume of auction sales of works by living artists over the period 2005-2010 **no clear patterns can be established that would indicate that trade diversion** has systematically occurred within the EU away from those Member States which introduced the right for living artists in 2006.

The UK lost market share relative to 2005 for sales of both living and deceased artists. The UK also lost EU market share between 2008 and 2010 for works of living artists eligible for resale, though the UK market share peaked at a high of 61% in 2008 i.e. three years after the coming into force of the Directive. However, other Member States that implemented the resale right for the first time (Austria, Netherlands, and Italy) also gained market share at the expense of the UK during this period. It is also noted that the UK lost EU market share for the works of deceased artists both over the period 2005-2010 and 2008-2010. Of the Member States that already implemented the resale right, France and Germany both slightly gained market share over 2008-2010 for sales of living EU artists (from 5% to 7% and from 3% to 4% respectively), while the share of the "rest of the EU" remained stable at 2%. As regards works of deceased artists, market shares remained stable.

Changes in overall market share: similarly, with regard to market share as a whole (beyond auctions) over the period 2005-2010 no clear patterns can be established. Austria, the Netherlands and Italy saw a slightly increased share of the EU market for the works of living artists, while the UK's share decreased significantly, in line with the broader UK market contraction.

The changes in market shares for trade in the works of deceased artists show a similarly mixed picture. The UK market share decreased by the same degree as the broader market contraction. The market shares of Germany and the Netherlands declined slightly, while those of France, Austria and Italy rose.

Conclusions: no clear patterns can be established to link the loss of the EU's share in the global market for modern and contemporary art with the harmonisation of provisions relating to the application of the resale right in the EU on 1 January 2006. Neither can any clear patterns currently be established that would indicate systematic trade diversion within the EU away from those Member States which introduced the right for living artists in 2006. Nevertheless, there are **clearly pressures on European art markets**, in all price ranges, and for both the auction and dealer sectors, and it is recalled that the scope of the application of the resale right will be significantly expanded following the ending of the derogation for the works of deceased artists on 1 January 2012.

At the same time, the **quality of the administration of the resale right** appears to vary considerably across the EU, bringing costs to art market professionals and artists alike. The burden can be particularly high for those at the lower end of the market who are proportionately more deeply affected by the costs of administering the right, which have been **estimated at up to EUR 50 per transaction**. The biggest single factor appears to be the determination of qualifying artists. While collecting societies in some Member States maintain excellent records others do not maintain such data or make it available in an efficient manner.

The Commission recognises, furthermore, that in some Member States inefficient administration of the resale right presents a not insignificant burden on art market professionals and may also lead to unnecessarily high deductions from the royalties due to artists and their successors. The report states that:

- in view of the economic significance of the sector, the Commission considers that market developments should be kept under review and will undertake a further reporting exercise and deliver its results in 2014;
- the Commission will also pursue its commitment to persuading third countries to implement the resale right;
- in view of the volume of transactions subject to the resale right, the Commission also considers that there would be benefit in the exchange of best practice at European level so as to minimise the administrative costs in all Member states. To this end it intends to establish a Stakeholder Dialogue, tasked with making recommendations for the improvement of the system of resale right collection and distribution in the EU.

Lastly, the Commission is concerned that **collecting societies should operate to a high standard of governance and transparency** with regard to their members and to commercial users, and will bring forward a proposal in this regard during 2012 to apply in equal measure to collecting societies administering the resale right.