

The inadvertent impact of EU Directives on cultural heritage and a possible solution.

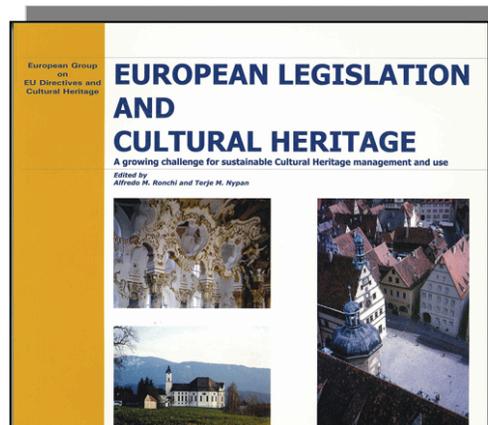
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1 The Working Group on EU Directives and Cultural Heritage.

I am pleased to be able to expose the topic of EU legislation in this European Heritage Heads Forum, at the invitation of the Czech Senate. The (growing) problem for the cultural heritage sector from international regulations and especially EU Directives was seen by many actors. In 2003 an initiative was taken in cooperation with the EU financed ARCHIP / ARIADNE project at The Institute of Applied and Theoretical Mechanics; Czech Academy of Science. At this meeting, in Prague, it was decided to establish a more permanent working group with the task to compile a list of problematic Directives and seek to find solutions to this challenge. The main objective of the Working Group was quickly seen to be to work to establish a permanent observatory function to monitor the legal processes in Brussels – ECHO - The European Cultural



“European Legislation and Cultural heritage”
Ed.: A.M. Ronchi, T.M. Nypan. Delewa editore, Milan 2006, ISBN88-88943-05-6.

Heritage Observatory. The Working Group for EU Directives and Cultural Heritageⁱ has done its job documenting and developing tools. Now it is time for action on the part of the competent national authorities and to implement a solution.

1.1 The economic importance of the cultural heritage sector.

Cultural heritage professionals are not part of a backward looking, economically uninteresting sector of society. Rather the contrary. The cultural heritage sector is part of the larger 'Cultural and Creative Industry' of Europe. Much of what considered built cultural heritage, even if not protected, generates economic activity under the industrial segment 'Real Estate Activities'. Both the Real estate activities and the Cultural and Creative industries are the two most important sector contributors to the EU GDP.

Industrial sector ⁱⁱ	Contribution to EU GDP 2004
Cultural & creative sector	2.6%
Real estate activities (development, buying, selling and letting of real estate),	2.1%
food, beverages and tobacco manufacturing	1.9%
textile industry	0.5%
chemicals, rubber and plastic products industry	2.3%



Transformed Warf house, Risør, Norway. Now a restaurant.
© Riksantikvaren, T. Nypan

The European built heritage generates a turnover in trade and services to Europe in the order of Euro 335 billion pr. year. Studies show that the built heritage is instrumental in assuring employment for app. 8 million persons (direct and indirect employment), that 1 Euro invested in maintenance and upkeep of CH buildings can generate a turnover to society of 10 Euro. Only 6-10% of visitors daily spending remains at the heritage site, 90% flows to society around the site.

Premium pricing is given for housing in rehabilitated historic neighbourhoods.

Finally, the European cultural heritage is essential as attractor for the tourist industry. It is probably a sine qua non factor. The tourist activity generates 30% of EU revenues from trade in external services, 5,5% of the EU GDP and employs 6% of the EU workforce. To this we must add to this the inestimable cultural and social values of this heritage.

1.2 Authenticity as market attractor and the objective of preservation.

If there is one major aspect of this heritage that creates such attraction it is (probably) authenticity. The cultural heritage objects are not modern 'Disneyland' creations. The preservation and care for this authenticity is our responsibility as cultural heritage professionals. In fact I would say the preservation and sustainable management of authenticity is our professional calling and our 'raison d'être' as institutions.

The importance of authenticity is outlined in all the conservation policy papers our profession shares. These are UNESCO documents, ICOMOS Charters and the Conventions of Granada, Valetta and Cultural Landscapesⁱⁱⁱ.

In the ICOMOS "*Principles for the Preservation of Historic Timber Structures*"^{iv}, art. 4 and 10 it is stated that the goal is to make the end result of interventions "look" as much as the original as possible, by replication of the materials, tools and processes that produced the original. The governments have also taken upon themselves the obligation "to adopt integrated conservation policies which (...) foster, as being essential to the future of the architectural heritage, the application and development of traditional skills and materials."^v; i.e. to promote traditional skills and traditional materials

This is the background for the challenge made by the EU and national legislation as these regulation have "Nevertheless, in a number of cases, legislation drawn up by the EU has - unwittingly - had a reverse effect on the safeguarding of Europe's cultural heritage."^{vi}

2 The effects of EU legislation

2.1 Example: Restoration of Danson House, Uk., using original interior colours.



Danson House is a listed Grade I object located 10 miles south-east of London, built in the 1760s by John Boyd a merchant whose family had made its fortune in the West Indies (sugar & slaves)^{vii}. In the Music Room he installed expensive mahogany books cases and had the walls were decorated in a dark green paint - which would have been very expensive as it contained the pigment verdigris.

English Heritage investigated the building and took the decision to conserve any original decorative finishes which survived and recreate original decorations which had been over painted in the intervening centuries. The dark green paint had been over



painted in a pale blue in 1800. This decision was justified by the fact that the house was 'a museum' - not anyone's home - and the presentation served an educational purpose in attempting to show how eighteenth century decorations were. This meant using lead based oil paints. This is possible because in the UK we have a *deregulation* which allows us to use lead white paint on Grade I and Grade II* buildings.

We could not have achieved the dark translucency, which is the beauty of the completed scheme using modern materials. The room is unique! We are fortunate in the UK in that we can use traditional materials in certain buildings. But we must consider carefully maintenance of decorative finishes which contain toxic material.

Finding the verdigris needed to tint paint for the Music Room was not possible and we had to make it ourselves. Copper Acetate was dissolved in an oil/resin mixture and let this dry and then ground to form a pigment which was added to a mixture of chalk and lead white. It was only through trials and error and following the exact formulation of the original 18th paint that we gained an insight into 18c painting practise and taste^{viii}.

2.2 Example: EU legislation forbidding the use of traditionally produced wood tar.



Left: Heddal stave church, Norway. Right: Weisskirch, Saxon fortified church, Romania. © Riksantikvaren, T. Nypan. Below: Kiln for producing traditional wood tar. © NBA, Finland.



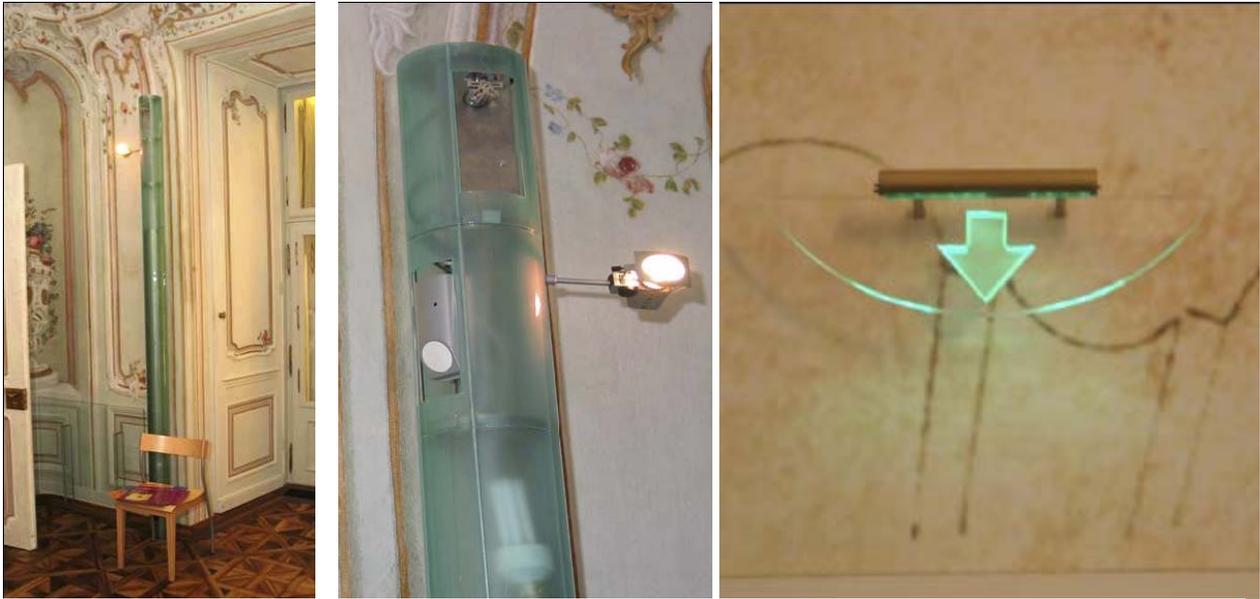
Traditional wood tar could not be bought or sold under the Provisions of the Biocidal Directive^x. The Norwegian cultural heritage authorities understood this consequence too late.

The stave churches in Norway and many wooden buildings in Scandinavia and elsewhere are maintained with wood tar. Some of these buildings are from the middle ages. It is impossible to find a substitute for protection of the outer surfaces. By not being able to use wood tar the buildings would lose authenticity. Further most buildings would probably show increased decaying by application of substitute protection materials. A prohibition against the commercial trade of wood tar would have made it impossible to correctly maintain the historic churches in the pictures above.

After working for 5 years and co-financing major research projects, Norway, Sweden and Finland could prove that wood tar, when applied to wood surfaces is not a biocide. Wood tar was removed from the directive's list of active substances in February 2007.

Traditional wood tar may now be sold as surface protection for wood. But to discover such things too late and then try to rectify them is not always possible. And if it is possible it costs an enormous amount of work and plenty of money, as this case proves.

2.3 Example: Fire protection, EU-Directives and their impact on authenticity of monuments.



Left: Purpose designed service column in Schönbrunn Palace Middle: Purpose designed service column in Schönbrunn Palace detail Right: Emergency exit signage in Schönbrunn Palace. © Dr. Wolfgang Kippes, Schonbrunn Castle.

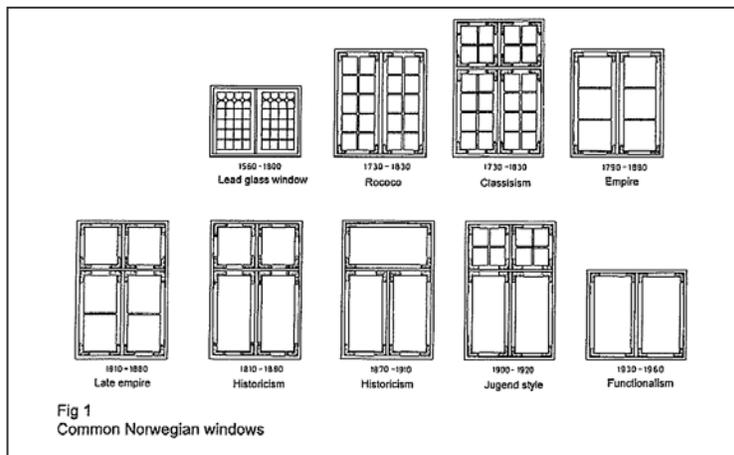
The problem is how to keep authenticity of a monument and to protect the monument and at the same time protect the people within it in case of fire. Does the fact of being prepared for disasters following given mandatory prescriptions always and automatically mean to destroy authenticity? How may we keep the authentic value of a monument and upgrade fire safety and improve safety aspects everybody using these objects at the same time?

There are solutions for these prima vista contradictory needs. The problems for our cultural heritage and its authentic values occur whenever **prescriptive standards** are made **mandatory**.

What is good and useful for new buildings and for the entire building industry usually presents a problem if we wish to keep our heritage. EU-directives are needed, but in order to keep the authenticity of monuments they will have to follow the performance based approach^x. A European cooperation in the COST 17 group has made major advances in the direction of developing such performance based alternatives. The alternatives are a must when discussing how to avoid that the prescriptive standards become mandatory also for the cultural heritage field. The cultural heritage sector does not need prescriptive standards; we need performance based standards that allow us to find adequate solutions based on the monument itself.

There are some similar problems with fire safety regulations and the rule that doors to buildings with public access must open outwards. If not other performance based solutions can be found the prescriptive standards mean that almost all doors to such buildings must be changed.

2.4 Example: Mandatory changing old windows and the energy efficiency directive.



The question of the mandatory need to change windows in historic buildings is an interesting case. The demand is based on the Energy Efficiency Directive^{xi}. To reduce energy consumption the EU will implement energy saving measures. At the national level mandatory changing of older windows with modern windows is considered an efficient and feasible measure to reduce energy

consumption. The NBA in Finland comments this by writing:

As a response of Energy Efficiency Directive 93/76/EEC 13.9.1993 and the Energy Performance in Buildings Directive 2002/91/EC, the Finnish Building Code C3 "Decree on thermal insulation in buildings" was renewed in the end of October last year^{xii}. Target for thermal insulation in new buildings was assessed higher than never before. Targeted U-values for a heated new building are listed in the following table: outer walls 0.25 W/m²C, roof-plus-ceiling 0.16 W/m²C, floor 0.20 W/m²C, windows and doors 0.14 W/m²C and window in a heated loft 1.5 W/m²C. It may be expected that these U-values will be made a rule in major repairs as well. In practice it means triple glazed windows - or even four glasses- with new aluminium or plastic frames. Outer doors must have mineral wool filling instead of solid wood. Thermal insulation materials has to be added to walls alternatively internally or externally.^{xiii}

The Energy Performance in Buildings 2002/91/EC has an *exemption in art. 4* for certain protected buildings. In some countries we have achieved that this is taken into consideration and exemptions have been made at the national level. In other countries no exemptions have been made.

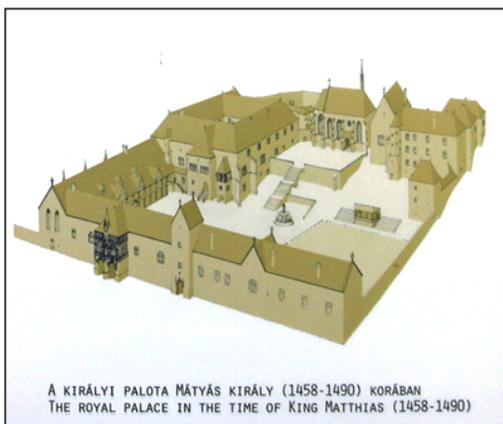
But the cultural heritage sector usually gets less than we need. In France, the Ministry of Culture and Communication requested exemptions for more than just protected buildings. They wished exemptions for protected environments (cultural & natural), the surrounding perimeter of historic monuments, for 'classed' sites, for UNESCO sites and for buildings protected by regional authorities, for buildings recognised as XX-century heritage, for apartment houses under art L123-1-2 of the urbanism code and for other apartments that have elements that are of historic interest. The end result was that the French regulations only granted exemption for buildings protected under the Cultural Heritage Act, when such changes would modify or change their character in an unacceptable manner^{xiv}.

Research shows that under a number of conditions new windows reduce the energy need of the residence, but only by 3-5%. Keeping the old windows and improving them with a new inner window, where such do not exist^{xv} achieves similar energy savings. These figures are the energy savings for the new window. It often happens that the new frame is badly fitted with ensuing energy loss and removing the energy earnings. To replace an old window you need to produce a new window. The energy consumption for this production is not included in the energy savings calculation. The energy cost for waste handling of the old windows is not included. Nor is the energy needed for the waste handling of the new windows included. And we know that the lifespan of a new window is much shorter than for older windows.

More energy can be saved more quickly by alterations that do not demand taking out the old windows. This is one example that re-use and continued use of material is a better environmental and energy saving option, than replacement by new industrially produced substitutes. But such solutions do not promote the production of new windows. So, most national legislation / regulations demand replacement of all older windows as this promotes industrial production. This case exemplifies that if a Clause of Special Consideration for cultural heritage was included in the EU legislation the national cultural heritage authorities would have had a better position in the negotiations with other sector authorities at the national level.

2.5 Example: Vyshegrad castle; public purchasing and certification of building material.

In September 2006 in the old Vyshegrad Royal palace (Hungary), the inner left wing suite of 3 rooms was ready to open for the public. The floors had been laid with new dark red tiles. In the innermost room was a square of app 1 m. x 1 m. on the floor which consisted of another type of tiles. These tiles were smaller, of a light mustard colour and clearly not new. These were the remaining usable original tiles that were found during the excavations. The Conservator explained that they had wanted to use tiles that looked more like the original historic tiles and, if possible were produced in a similar fashion. The conservator had found a producer in Spain who could make tiles. This Spanish skilled crafts production still made the tiles by an almost identical production process as used for



Ill.: Vyshegrad palace. Left: 1458-1490, poster at the site. Right: 2006. © T. Nypan / Riksantikvaren.

the original tiles! The Spanish tiles did not conform to EU rules for building materials and were not certified. The Hungarian Cultural heritage Act gives priority to historic and visual likeness to the original material and lack of certification should not be a problem. The tiles could be ordered.

But it was not to be so. When the purchasing invoice was presented to the Finance authorities who were to pay the bill they refused. According to the Finance authorities, they *could* not pay for 'none authorised' or non-certified building material.

So we see that even if the national Cultural Heritage Act permitted the Spanish tiles for conservation works, this became impossible due to other rules on public spending. So, here one regulation impedes on the other. Therefore all the rooms in this wing are now laid with red certified industrial tiles from Italy!

2.6 Example: Proposed energy demands in building regulations and log buildings.



Above left: 2007 advertising for tradition log cabin. Above right: Advertising for contemporary dwelling. Photos: from advertising brochures. Bottom: Raulandsstua, log building from 1300, Norwegian Folk Museum. One of the oldest buildings of the museum, treated with wood-tar. Foto: Jan Anderssen,

Proposed building regulation in Norway, would, inadvertently have prohibited building with the traditional logging techniques, due to demanded energy performance for the buildings.

The heritage authorities saw this as a major problem as we need to keep such traditional crafts alive because we need skilled craftsmen for work on the protected or historic buildings. They therefore commissioned research on

lifecycle energy consumptions of different building types.

The research results demonstrated that log houses were *not less energy efficient* in a life cycle perspective, than modern houses. The proposed regulations were subsequently modified.

Now 15 years later, traditional log houses are popular and extensively used for secondary country houses. Such construction activity constitutes both an important local economic activity and a pool of employment for the skilled craftsmen needed for works on historic and protected buildings.

2.7 Example: Historic varnishes, lacquers and paints and the VOC directive.



Helsinki Main Post office



Villaniemi

Some examples of the use of solvent based paints and varnishes used in 20th century architecture and new building. Without the special clause in the directive continued use of such paints and varnishes would not be possible. Notice the high gloss of the application. Photo: National Board of Antiquities, Finland.

When this directive^{xvi} to limit the use of volatile organic compounds (VOC) was nearing completions, the Working Group discovered that the directive presented a major problem for continued use of many traditional paints, lacquers and varnishes. English Heritage then lobbied for exceptions to the directive and achieved a Clause of Special Consideration by which the national competent authorities may make exceptions to the directive when that is necessary to preserve cultural heritage of particular historical and cultural value^{xvii}. Therefore paints and varnishes that contain VOC's may be still used for the restoration and maintenance of buildings which have particular historical and cultural value.

The ensuing procedure in Finland illustrates the process that was necessary at the national level. First a special order was needed for the implementation of the special clause. To do this the Nature Protection Act needed amended changes to allow the issue of an order. The legal texts were processed in co-operation with the Ministry of the Environment, Department of Nature Conservation and the NBA (National Board of Antiquities) which is the authority responsible for defining the (particular!) cultural and historical value of buildings in Finland. The order was signed in October 20.10.2005 and came into force nearly on 31.10.2005. During the procedure the NBA had to make a statement to the Environment Committee of the Parliament (of Finland) which is responsible for handling matters related to housing, planning, building, environmental protection and nature conservation in Finland.

For the Order the NBA had to define which buildings are of particular historical and cultural value in Finland. These were listed as:

1. Historic buildings protected by town plan
2. Conservation areas protected by town plan
3. Buildings, monuments and sites protected by
 - a. Building Protection Act 60/1985. b. Church Act 1054/1993, c. Antiquities Act 295/1963. d. Decree on the Protection of State-Owned Buildings 480/1985
4. Buildings, monuments and sites for which historical and cultural value has been recognised in national, regional or local inventories
5. Monuments and sites submitted to the list of UNESCO Nature and Cultural Heritage List

6. Buildings subsidised by the National Board of Antiquities or Regional Environment Centres due to their cultural and historical value
7. On a case by case basis, other buildings and monuments being of particular cultural and historical value considered equal to the buildings included into the points 1-6.

The order (art. 6, 7) gives the widest possible exemption for the sale and purchase of products which do not meet the requirements of the Directive. The list of buildings being of particular historical and cultural value is the absolutely widest possible definition of the protected buildings in Finland. In the NBA we considered this important because we wanted the paint manufacturers, most of which come from SME:s, to have the widest possible market.

The fact that a Clause of Special Consideration was included in the EU legislation made it possible for the Finnish national authorities to exploit this possibility to the benefit of the built cultural heritage. Without this clause the national regulations would definitely have been more restrictive.

2.8 The overview

Cultural Heritage policies are not part of the EU Treaty, but Cultural Heritage is funded and supported by the EU. The Commission states that:

“It is vital that a comprehensive strategy with regard to cultural heritage be adopted by the EU Institutions and Member States and that action benefiting cultural heritage be mainstreamed into all relevant EU policy and action areas.”^{xviii}

The challenge consists of a number of EU Directives – legal acts – that become incorporated into national legislations and which, to a greater or lesser extent have a detrimental affect on the sustainable preservation of the European cultural heritage. 25 directives have been reviewed by the “*European Working Group on EU Directives and Cultural Heritage*”. The waste majority of these present a challenge for conservation. A list of directives has been compiled with an indication of the problems created for conservation. The list shows a wide scope and diversity of the problematic effects. More research into the actual effects and both legal and mitigating measures is needed. (Refer Annex 1).

Legislation at the national level threatens to results in:

- Performance demands only to be solved by intrusive techniques and modern products.
- Problem for continued use of historic building techniques, which are either not allowed without damaging interventions and/or made too costly or cumbersome to be applicable.
- Obstructions and difficulties for use of traditional techniques and skills; for buildings as well as artefacts. Sometimes traditional skills become impossible to apply in practice.
- Obstructions and difficulties for production and procurement of traditional materials.
- Lengthy and costly specification procedures to be able to procure materials from specific geographic locations (due to free competition across Europe).
- Demands that traditional wood tar no longer be bought or sold, which again affects historic ships and wooden architecture.
- Prescriptive standards that are made mandatory where performance based demands would achieve the same results but with much more room for adjusted solutions. This leads to demands that all doors where public have access must open outwards, which implies changing the direction of the doors in almost all

historic buildings built before app. 1890. It leads to demands to change all historic windows where other solutions could have achieved similar or even better results.

- Stock fish can no longer hang on wood as has been tradition a thousand years. Favours capital intensive fisheries to the detriment of existing local fisheries and coastal culture.
- Pipe organs could not be repaired^{xix}.

The “*European Working Group on EU Directives and Cultural Heritage*” has been active in influencing the VOC directive and we have also exercised influence on other Directives, without achieving the wished Clause of Special Considerations. We see no sign that “*action benefiting cultural heritage be main-streamed into all relevant EU policy and action areas.*”^{xx} What is happening is something else as the examples illustrate. The challenges manifest in a diverse, sometimes indirect and complex fashion.

3 The challenge of modern / contemporary legislation

3.1 Legislative trends and EU development.

There are two main elements that challenge us. The first is the general trend: industrial and market legislation is based on modern materials is intended for modern buildings. The second is the process of legislative developments in Europe, which also tends towards the same industrial based solutions in the building industry and makes the criteria for new buildings applicable globally to all built structures.

This legislation makes mandatory the use of materials and techniques that are not compatible with the authenticity and structure of historic buildings. There is also an increasing use of standards as reference points in legislation and regulation. An increasing amount of national legislation is triggered by the incorporation of EU directives into national law.

In this process there are two phases in which the players may influence the end results of the legislation.

1. First there is the phase of drafting the EU legislation and processing it through the different decision making procedures.
2. After the EU Legislation is voted, it goes to the competent national authority for incorporation in national legislation. Here is the second point in time when the final wording may be influenced at the national level.

Of course a clear exemption for cultural heritage, or a Clause of Special Considerations would immediately allow for similar exception to the rules at national level. But it is sometimes possible to secure the necessary special treatment for cultural heritage, even without such clear statements on cultural heritage in the EU legislation. But it goes without saying that it is much easier to secure exemptions if such exemptions are already foreseen in the EU legislative texts.

When the EU legislation lacks such special considerations for cultural heritage, any exemptions in the national legislation are harder to achieve. Most of the time exemptions are then impossible to achieve. In very many cases sector bureaucrats ask us why such special considerations were not already incorporated in the EU legal text, if they are so important. We just have to recognise that many bureaucrats are unaware of the special position culture and cultural heritage has in the EU Treaty. There is therefore an evident advantage to influence the EU legislation if we need exemptions at the national level.

3.2 The EU Treaty and cultural heritage

Can the EU legislate in cultural matters at all? The organs of the EU have only those competencies which have been attributed to them (the principle of attributed powers). The organs of the EU have been attributed no power over cultural policies, which are the prerogative of the member nations. This is important for the EU competencies to regulate culture related questions. The EU legislation is not produced to be applied to cultural activities as such. But, the application of the rules concerning the 4 freedoms has a wide scope and may have indirect repercussions on the cultural sector. The difficult question is when it is within the policy fields of the EU Treaty and when it is not?

Cultural considerations are recognised in the EU Treaty and in the practice of the EU-Court as legitimate reasons for trade restrictive measures in areas not regulated by directives. Article 95 opens for member states to have other rules than those that follow from a directive, where this is necessary to preserve for example national treasures of (amongst others) historic values.

Art. 151.4 of the EU Treaty calls for the general inclusion of cultural aspects in all Community policies. This article gives the EU the right to initiate supportive measures, but not restricting measures. The article is an obligation on the EU to take cultural considerations in all policy matters and therefore also another reason for special treatment of cultural heritage.

The (growing) emphasis on cultural policy in Brussels was underlined when the EU Commissioner Jan Figel stated:

“a common vision for cultural heritage is an absolute necessity, especially in the light of art. 151-4 of the Treaty, which calls for the general inclusion of cultural aspects in all Community policies”. (...) [2]

But Mr. Figel also stated that he did not see any point in the EU reviewing or monitoring its activities in light of art. 151-4. Evidently, that would be up to the member states to do or to demand.

The conflicts ensuing from the implementation of the EU Directives, on one hand, and sound heritage conservation practice, on the other hand, takes place at *national*, rather than at *EU or international* level. The conflict stems from EU Directives for policy areas that are within the EU competencies; such as international trade competition, personal and public health, safety, and conservation of the natural environment.

3.3 The need for cultural heritage authorities to participate in legislative processes.

The problems created for cultural heritage by EU legislation has been observed by the European Parliament. In September 2006 the European Parliament stated clearly that it wanted more consideration for cultural heritage in the Commission policies. The Parliament passed a resolution asking the Commission to consider art. 151-4 and stated:
[The European Parliament] Calls on the Council to recognise explicitly the contribution made by the cultural heritage to European integration in terms of European identity and citizenship, sustainable economic and social development, intercultural exchanges and cultural diversity; (...). Calls on the Commission, (...) to implement effectively the horizontal clause of Article 151(4) of the EC Treaty (...) considering in depth the implications of the proposed legislation for culture and the cultural heritage. Calls on the Commission and Member States not to provide Community funding for projects which will demonstrably result in the destruction of valuable parts of our cultural heritage^{xxi}.

The member states are responsible for (change) in policies. It is clear that to achieve a better control with the legislation passed in Brussels we need to know more about it and the cultural heritage authorities need to be better informed. In many countries, maybe most countries, the cultural heritage administrations are not included in the national activities in Brussels. Maybe this is understandable since cultural heritage is not part of the EU Treaty. But the developing situation tells of a different practical need.

It is also necessary for the cultural heritage authorities to become more focused on, and participate in the legislative process of the different sector Ministries, at national level. Cultural heritage authorities need to be involved in all reviews of legislation before it is incorporated into national legislation. Only then may we discover where there are (inadvertent) threats to sustainable cultural heritage management.

Such close scrutiny of legislation is even more essential as many authorities also have a responsibility for a larger stock of cultural heritage objects that just those which are protected. We have witnessed examples where a EU legal act contains clauses that exempt cultural heritage, but the exemptions are omitted by the sector bureaucrats wording the national legislation.

4 4. The solution – Legislative observatory ECHO

4.1 What should an observatory do?

The work of the last 4 years has demonstrated the scope and diversity of the problem. In a few cases we were able to achieve improvements in the legislative texts. These few successes show that it is fully possible to achieve exemptions or special considerations for cultural heritage in the EU legislation. But it must be done at the correct time in the development process of the legislation.

The first step is for the competent national cultural heritage authorities, who are the government agencies and parties to the legal development, to follow more closely the EU legal processes. They need to be timely informed and to take action when a potential problem is discovered. The cultural heritage sector needs:

“...a permanent European-wide system which monitors all legislative bills being planned for implementation by the European Union. This will act as an early warning system for identifying any potential threats posed to cultural heritage by planned European legislation, and enable the monitoring agency to bring this to the attention of the competent national authorities”^{xxii}.

To cooperate on establishing such an observatory is an important challenge for the European heritage administrations. The establishment of a network of national correspondents for legal questions, as had been requested by the United Kingdom and Norway, is a step forward. But it is still a long way from an active observatory.

4.2 The legal tool to use - Clause of special considerations

Authorities and policy makers need a legal ‘instrument’ to use when problematic directives etc. are identified. We believe that the “Clause of Special Considerations” is the most appropriate legal instrument^{xxiii}.

In the ‘Clause of Special Considerations’ the legal authority in a field of EU competency is transferred to the “competent national authority” for cultural heritage, when the consequences of the directive impact on cultural policies. Or to state it differently; the EU recognises that EU competencies to legislate in specific areas may infringe on the prerogatives of national cultural policies and states that, if this is the case, the competent

national authorities for culture (and cultural heritage) may make exemptions from the directive. More legal research and clarification is welcomed to highlight the possible legal instruments.

5 5. How to realise this solution

5.1 Cooperation at the EU level

If all competent authorities would cooperate in operating a legal observatory an important step forward is made. This would make the financing and running of an observatory possible, without making it unreasonably expensive for each party. All participants would be informed in time and could initiate action for change at the national level and / or initiate cooperation at the EU level. The main immediate challenge is how to jointly finance the operation of such an observatory.

To influence the legislators and politicians we should also cooperate to develop instruments, forums, avenues and modes of communication that are attractive to the key players in the policy field and therefore stand a better chance of influencing their decisions. The economic dimension of cultural heritage, its importance as (main) attractor for the tourist industry etc. is one element of such a revised communication strategy.

5.2 Activity at the national level

Cultural heritage authorities should, in the future, assure that they are consulted in all legal procedures relevant to pollution control, environment, the common market, health and security at the working place, etc. This is the only manner in which competent authorities can ensure that necessary special considerations for cultural heritage, when taken in Brussels are implemented at the national level. We need to communicate with all sectors of the national administration in their legislative activities. And we need to make the politicians understand that this is necessary if they wish to sustain the cultural heritage.

Ministries or other national agencies do often argue that since the EU competencies do not cover the cultural heritage sector there is no need for such involvement. Our findings prove the opposite.

Of course, such involvement means an additional working burden on cultural heritage administrations. But refraining from such an involvement may, on the other hand, have very serious consequences. In national legislation, as in EU legislation, discovering problematic consequences after the legislation is enacted is too late!

6 Summary & Conclusions

The EU has no competencies in regulating the cultural heritage field. The EU legal acts that impact negatively on cultural heritage administration and conservation stem from areas inside EU competencies. The negative impact creates an increasing problem for the maintenance and conservation of the cultural heritage following the guidelines outlined in international Treaties, Conventions and Charters.

The cultural Heritage sector is not informed about the development and implementation of these legal acts. Therefore the competent cultural heritage administrations normally discover the detrimental effects too late.

This situation can be countered by operating a legal observatory serving and informing all cultural heritage administrations and other players. The cultural heritage sector may, when informed, influence the legal acts in time and on a pro-active basis. The competent national authorities can propose a Clause of Special Consideration for cultural heritage protection to be incorporated in the legal text.

To achieve control over these unintended consequences stemming from legal developments in other fields is necessary to safeguard Europe's cultural heritage for the future. Conservation and maintenance of cultural heritage is also necessary if the economic and other benefits to society from cultural heritage are to be sustainably harvested. The cultural heritage sector is among the most important European attractors and economic drivers today. The heritage generates millions of jobs and is an essential contributor to the 3 economic sectors which contribute most to EU GDP; the Cultural and Creative industries, the Real Estate activities and the Tourism industry.

If we cannot avoid a "Disney"-fication of Europe's heritage; as some would call it, then we will increasingly lose the cultural values and the economic and employment potential present in our European cultural heritage. Avoiding this can most efficiently be achieved by cooperation between the national competent authorities in the field of cultural heritage by establishing a common observatory facility.

7 Annex I. List of Directives reviewed by the working group.

Directive name & nr.	Detrimental effect on Cultural Heritage - Status
1. Biocidal Products 98/8/EC	Aiming to assess all biocidal products on the European market. Producers of wood tar are not able to produce product information required, leading to a prohibition on the market of this tar. Wood tar is used for preserving old boats, wooden buildings and staves churches in Norway, Sweden, Finland and Denmark. In 2005, a Nordic initiative to prove non-biocide effect in actual use and remove wood-tar from list of substances is initiated. Status: 2007: Wood tar has been removed from list of active substances of the directive by the Standing Committee, based on research result presented by a group of member states and the WG.
2. Construction Products 89/106/EEC	Requires standardisation of construction products. This is a threat to some traditional building materials and traditional conservation methods.
3. Energy Efficiency 93/76/EEC	Aims to limit carbon dioxide emissions. Requires application of ventilation in old buildings. General indoor climate requirements are hard to fulfil for old buildings without also affecting the cultural value.
4. Energy Performance in Buildings 2002/91/EC	Attempting to reduce the use of fuel in the EU. In many national legislations demands replacement of original windows in old buildings etc. Status: Has an <i>exemption in art. 4</i> for certain protected buildings, which has not been incorporated in all national legislations.
5. Environmental Impact Assessment 85/337/EEC	Assessing certain public and private projects on the environment. Controversial when related to mixed areas of cultural and natural heritage.
6. Health Conditions on Fishery Products	Requires the use of smooth surfaces when handling fish and fishery products. This creates difficulties for traditional wooden fisheries to continue their

91/493/EEC	production. It requires huge investments to satisfy the standards. Most owners cannot afford this.
7. Lifts 95/16/EEC	Concerning lifts permanently in service. Requirements for accessibility of disabled persons can be a problem fulfilling in protected buildings without also affecting authenticity and cultural value.
8. Machinery 98/37/EEC	Machinery shall be properly secured for the sake of workers. This is in some cases a challenge for building conservation.
9. Natural Habitats 92/43/EEC	Aiming to protect biodiversity. One consequence is that intrusive vegetation disturbing cultural heritage values in a habitat protected by the directive cannot be removed. Cultural heritage values in these areas must succumb to the conflicting nature interests.
10. Passenger Ship Safety 98/18/EC	Protected passenger vessels in service must apply to strict safety requirements that are non-adjustable. Application to certain passenger vessels also removes the cultural value of the ship.
11. Toxic Products 76/769/EEC	The removal of substances dangerous for the environment also affects materials and treatments of protected cultural heritage as they cannot be preserved in a traditional manner.
12. Working Places 89/391/EEC	Safety requirements for workers may damage protected buildings with e.g. scaffolding bolted into the wall surfaces or create problems for use of traditional tools and techniques.
13. Purchasing Directive (Directive COM (2003) 503)	Amending and consolidating Directives 92/50/EEC, 93/36/EEC, and 93/37/EEC coordinating the procedures for the award of public works contracts, public supply contracts and public service contracts. Poses serious and sometimes impossible problems for acquiring materials from a specific geo-location to replace damaged materials in protected monuments, buildings and sites.
14. Directive relevant to fire safety regulations	Source Directive not identified. Objective to improve security and escape routes for public. Negative consequences: All doors in buildings where the public has access must open outwards. Consequence: All doors in historic buildings open to public must be changed. Almost without exception doors in buildings built prior to 1900 have doors opening inwards due to the demand for security and escape as it was seen in those days.
Directive name & nr.	2005. Detrimental effect on Cultural Heritage - Status
15. EU-Directive 2000/60/EG, The water Directive	For improved water quality and reduced run-off from agriculture. Can have negative effect on canalisations, water related sites and some cultural landscapes. Special treatment of cultural heritage is indirectly authorised by the Directive when in keeping with the condition that a cost-benefit analysis is first used to decide removal or non removal of the object in question. The results of this analysis may, in any case, be overridden by “overriding public interest” or “legitimate use of the environment”, when no substantial pollution to, or additional deterioration of the water is caused thereby.
16. EU Draft Directive on reduced rates of VAT COM (2003) 397 final	This is a potential amendment to the EU Sixth VAT Directive 77/388. EC. Intends to harmonise use and levels of VAT in the EU. For several years an experimental “Annex K” in operation that has permitted the lower rate for repairs and maintenance of housing, but it ran out at the end of 2005. In 2006 the Annex K, was extended until 2010. But the timeframe for reporting use

	to Brussels was extremely short and discriminated many national actors from profiting from this possibility. Status: Was a positive possibility for labour intensive activities.
17. Proposal for Directive on Geographic information in the EU (INSPIRE) COM (2004)516	Wishes to establish a unified system for geographic information in Europe, for monitoring and safeguarding of nature areas and pollutions control. Cultural heritage objects and buildings not included, and consequently will not be included in the planning tools emerging from this unified GIS system. Status (05): Opening for including cultural heritage. Question is if national authorities / experts will 'push' to have it included. No general agreement that inclusion is advisable.

Directive name & nr.	2006. Detrimental effect on Cultural Heritage - Status
18. EU Directive 2002 95/EC, Restriction of Hazardous Substances	EU Directive 2002 95/EC RoHS (Restriction of Hazardous Substances) and EU Directive 2002 96/EC WEEE (Waste Electrical and Electronic Equipment). This combination of directives are stopping repairs of organs were some pipes need changing. Organ pipes are of lead or contain high quantities of lead. What about glass windows with lead? Ref.: http://www.pipes4organs.org/ Final status: EU Commission Wahlstrøm denied in 2006 that such interpretation could be drawn for from this EU legislation.
19. EU Directive 2002 96/EC Waste Electrical & Electronic Equipment	
20. REACH (EC) 1907/2006 and Directive 2006/121/EC	The REACH Regulation (EC) No 1907/2006 and Directive 2006/121/EC amending Council Directive 67/548/EEC REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the Registration, Evaluation, Authorisation and Restrictions of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC of the European Parliament and the Council and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC. COM(2006) 842 final. 2003/0256 (COD). Official Journal on 30 December 2006. The regulations come into force across the whole of the EU on the 1st June 2007. Status (07) REACH could be problematic. Extensive REACH demands for product labelling and testing, applicable to low volume historic rehabilitation materials used. Demands more detailed product and environmental data that what was the case for in the Biocide directive, which caused a commercial prohibition of traditional wood-tar. Status: situation unclear.
Directive name & nr.	2007. Detrimental effect on Cultural Heritage - Status
21. Directive of the European Parliament and of the Council on the assessment and management of flood risks, Common Position (EC) No 33/2006 of 23 November 2006	Directive of the European Parliament and of the Council on the assessment and management of flood risks. Common Position (EC) No 33/2006 of 23 November 2006 EURO-Lex reference 52006AG0033 <i>Official Journal C 311 E , 19/12/2006 P. 0010 - 0020</i> Status: Explicitly mentions cultural heritage as a beneficiary of this legislation. Article 1 states: <i>“The purpose of this Directive is to establish a framework for the assessment and management of flood risks, aiming at the reduction of the adverse consequences for human health, the environment, cultural heritage and economic activity associated with floods in the Community.”</i> Poses no major challenges for Cultural Heritage management but. Lacks a clear position on cultural heritage if a conflict between flood management and

Directive name & nr.	Cleared
	heritage buildings / installations should manifest.
22. Limitation of Volatile Organic Compounds 99/13/EC	<p>Intention is to reduce atmospheric and air pollution from volatile organic compounds. Limitation on use of VOCs reduces the possibility for using authentic paint and varnishes necessary for historical restoration and rehabilitation.</p> <p>Status: A clause of special consideration achieved in spring 2004, leaving national competent authorities make exceptions where cultural heritage buildings and objects.</p> <p><i>“For the purposes of restoration and maintenance of buildings⁴designated by competent authorities as being of particular historical and cultural value, Member States may grant individual licences for the sale and purchase in strictly limited quantities of products which do not meet the VOC limit values laid down in Annex II”[5]</i></p>
23. COM (2003) 319, on the management of waste from extractive industries	<p>Intends to curb pollutions from extractive industries. Cultural heritage values not mentioned in text, and it is apparently unrecognized that some sites of extraction are cultural heritage e.g. County of Cornwall, which is rich in historic mining and the World Heritage site of Røros in Norway.</p> <p>Status: will not affect closed down mining activities, follows from ‘use area’ and definitions of the directive as given in article 22. From this article it follows that the directive will not impact on ‘closed’ deposit sites.</p> <p>Status: Of no consequence.</p>
24. EU Directive 2004/35/EC. COM(2006) 232 final, Framework for the protection of soil	<p>Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for the protection of soil and amending Directive 2004/35/EC. COM(2006) 232 final</p> <p>CH included in the protection measures of the directive. Preamble makes it clear that the intention of the directive is to protect also the geological and archeological heritage. Directive has art. 175(1) of the EC Treaty as legal basis. Member states may have stricter rules than those set down in the Directive. In general the directive strengthens the position of cultural heritage.</p>

ANNEX II. List of members and correspondent of the Working Group.

1 United Kingdom; English Heritage. **2 Finland;** National Board of Antiquities, Department of Monuments and Sites. **3 Slovenia;** Institute for the Protection of Cultural Heritage of Slovenia, University of Ljubljana and Building, and Civil Engineering Institute. **4 Czech Republic;** Academy of Sciences, Ministry of Culture, Department of Movable Cultural Heritage, Preservation Museums and Galleries. **5 Norway;** Directorate for Cultural Heritage, **6 The Netherlands;** Monumentenwacht NL. **7 Sweden;** Riksantikvarieämbetet (National Heritage Board). National Property Board and Chalmers Technical University. **8 Italy;** Politecnico Milan. **9 France;** Ministry of Culture and Communication. **10 Poland,** General Conservators Office, Academy of Sciences. **11 Greece,** Technical University of Athens. **12 Austria;** Eutema Technologie Management (for the Ministry of Culture). **13 Germany,** Deutsche National Komitee für Denkmalschutz. **14 Denmark;** The National Cultural Heritage Agency. **16 Malta,** Heritage Malta. **17 Lithuania;** State Commission for Cultural Heritage. **18 Estonia,** Ministry of Culture. **19 Switzerland;** , Swiss Commission for the Preservation of Monuments in Switzerland. **ICOMOS;** ICOMOS, UK. **Europa Nostra.**

Correspondents:

Austria; The Office of the Austrian Conservator General. **20 Hungary;** Ministry of Culture, European affairs in the field of culture and National Cultural Heritage Board of

Hungary. **21 Portugal**; Instituto Portugues do Patrimonio Arquitectonico. **Council of Europe.**

Cooperation & support

Cultural Heritage Division of the Council of Europe, Mr Daniel Therond, EU supported Herein Project. European Commission MEDICI Framework of Cooperation.

1.12.2005

8 References.

- ¹ Mission Statement of the Working Group on EU Directives and Cultural Heritage.
<http://www.hmg.polimi.it/coop/>
- ² Culture Counts for Europe, Brussels December 7, 2005. Organised by Europa Nostra, in cooperation with the European Economic and Social Committee.
- ³ Ref. note 2. Proposal from Europa Nostra and Mr. J. Figel speech
http://www.europanostra.org/downloads/speeches/jan_figel_speech_forum_7december.pdf
- ⁴ The generic term for buildings would be cultural heritage buildings, sites, landscapes and other objects As designated by....
- ⁵ Refer list of directives, Directive COM (2002) 750, amending Directive 1999/13/EC, on the limitation of emissions of volatile organic compounds due to the use of organic solvents in decorative paints and varnishes and vehicle refinishing products.
- ⁶ as 4.
- ⁷ The clause of special considerations is quoted under Limitation of Volatile Organic Compounds 99/13/EC in the list of directives.

ⁱ For a list of members see Annex II

ⁱⁱ "The Cultural and Creative Industries", report to DG Culture, October 2006.

ⁱⁱ

Australia ICOMOS Burra Charter 1999ⁱⁱⁱ,

"Principles for the Preservation of Historic Timber Structures" PPHTSⁱⁱⁱ,

Granada Convention FOR THE PROTECTION OF THE ARCHITECTURAL HERITAGE OF EUROPE, Council of Europe, pts 121,

<http://conventions.coe.int/Treaty/en/Treaties/Word/121.doc>

Art 10.5 foster, as being essential to the future of the architectural heritage, the application and development of traditional skills and materials.

Art. 16 Each Party undertakes to promote training in the various occupations and craft trades involved in the conservation of the architectural heritage.

The Venice Charter, The Krakow Charter,

<http://www.international.icomos.org/charters/charters.pdf>

PPHTS "Principles for the Preservation of Historic Timber Structures", adopted by ICOMOS 1999.

<http://www.international.icomos.org/charters/charters.pdf>

Australia ICOMOS Burra Charter, 1999 (Burra Charter). <http://www.icomos.org/australia/burra.html>

. Art. 4.2 Traditional techniques and materials are preferred for the conservation of significant fabric.

NARA Document on Authenticity (2), which was developed in 1994 based in the spirit of the Charter of Venice. (3) from 1964, NARA Document on Authenticity 1994

^{iv} PPHTS "Principles for the Preservation of Historic Timber Structures", adopted by ICOMOS 1999. <http://www.international.icomos.org/charters/charters.pdf>

Art. 4. "Conservation of cultural heritage first and foremost requires regular maintenance."

Art. 10. "If traditional techniques are demonstrated to be inadequate the cultural heritage may be consolidated through modern techniques for restoration and construction techniques the efficacy of which has been shown by scientific data and proved by experience."

^v CONVENTION FOR THE PROTECTION OF THE ARCHITECTURAL HERITAGE OF EUROPE, Council of Europe, pts 121, <http://conventions.coe.int/Treaty/en/Treaties/Word/121.doc>

Art 10.5 foster, as being essential to the future of the architectural heritage, the application and development of traditional skills and materials.

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- Art. 16 Each Party undertakes to promote training in the various occupations and craft trades involved in the conservation of the architectural heritage.
- ^{vi} Working Group on EU Legislation and Cultural heritage. In *“European Legislation and Cultural heritage”* Ed.: A.M. Ronchi, T.M. Nypan. Delewa editore, Milan 2006, ISBN88-88943-05-6.
- ^{vii} Mr. Boyd, Later went bankrupt when the sugar prices fell. But when he was building the house he had a lot of money to spend and decorated all the main rooms very lavishly.
- ^{viii} Edited text from Chief Conservator, Helen Hughes. Pictures © English Heritage
- ^{ix} Biocidal Products 98/8/EC
- ^x Dr. Wolfgang Kippes . Schonbrunn Castle Director,. in “3.1.2 EU-Directives and their impact on authenticity of monuments. In *“European Legislation and Cultural heritage”* Ed.: A.M. Ronchi, T.M. Nypan. Delewa editore, Milan 2006, ISBN88-88943-05-6.
- ^{xi} Energy Efficiency 93/76/EEC
- ^{xii} This was then 2003.
- ^{xiii} 3.2.7 Building Regulations and the Conservation of Built Heritage in Finland. Seija Linnanmäki, Conservation officer at National Board of Antiquities. vice president of ICOMOS Finnish National Committee in *“European Legislation and Cultural heritage”*.
- ^{xiv} Décret no 2007-363 du 19 mars 2007 relatif aux études de faisabilité des approvisionnements en énergie, aux caractéristiques thermiques et à la performance énergétique des bâtiments existants et à l’affichage du diagnostic de performance énergétique. Section V, f).
- ^{xv} Such extra inner winter windows are standard in almost all buildings in Norway from before the 1930-ies. Exceptions to this rule being very old buildings or houses built by the poor.
- ^{xvi} Limitation of Volatile Organic Compounds 99/13/EC.
- ^{xvii} Clause of special considerations;
- ^{xviii} Press release “Culture Counts for Europe”, quote from Commissioner J. Figel. Brussels December 7, 2005. <http://www.europanostra.org/>
- ^{xix} But due to the direct intervention of the Commission the prohibition in the Uk did not come into force.
- ^{xx} Press release “Culture Counts for Europe”, same.
- ^{xxi} <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0355+0+DOC+XML+V0//EN> September 2006; On the *European natural, architectural and cultural heritage in rural and island regions. European Parliament resolution on the protection of the European natural, architectural and cultural heritage in rural and island regions (2006/2050(INI))*.
- ^{xxii} Mission statement of the Working Group on EU Directives and Cultural Heritage”
- ^{xxiii} “For the purposes of restoration and maintenance of buildings⁴designated by competent authorities as being of particular historical and cultural value, Member States may grant individual licences for the sale and purchase in strictly limited quantities of products which do not meet the VOC limit values laid down in Annex II”[5] Limitation of Volatile Organic Compounds 99/13/EC