It is common ground that market integration does not constitute the sole method applied to attain the objective of the creation of the Community’s internal market. A double-edged approach is rather followed with policy integration complementing the results obtained via market integration. EC-level legislation is adopted in order to replace or align national rules to the extent necessary for the proper functioning of the internal market. Harmonisation, initially extremely detailed and subsequently more focused on the mechanism of mutual recognition,\(^1\) seeks to prevent market fragmentation by approximating or coordinating domestic rules that form a barrier to trade.

In enacting harmonising legislation on the basis of Articles 40, 47(2), 57(2), 93, 94 and 95 EC—the main internal market legal bases of the Treaty—the question of the balance to strike between public policy considerations, including cultural policy concerns, and the Community goal of ensuring free circulation of goods, persons, services and capital arose on a number of occasions. The constitutional legitimacy of pursuing cultural policy objectives through internal market legislation was discussed extensively in chapter 2. Accordingly, this topic will not be considered further here. The aim of this chapter is to investigate whether, following the entry into force of the EC Treaty, Article 151(4) EC has served to intensify pre-Maastricht efforts deployed to integrate a cultural reasoning in the rules enacted.


of a Member State. Enacted to promote completion of the internal market, these seek to reconcile the fundamental principle of free circulation of goods with domestic cultural policy concerns linked to heritage protection.

The adoption of both Regulation and Directive may be explained by considering the implications of removal of custom controls between the Member States for domestic protective cultural heritage regimes. Under the terms and within the limits of Article 30 EC, Member States would retain, after 1992, the right to define their cultural treasures and take the necessary measures for their protection. However, the opening of internal Community customs frontiers risked increasing the illegal trafficking of works of art. With a view to counteracting such trends, while guaranteeing that divergences in domestic heritage laws do not impede full realisation of the common market, it was decided to impose uniform controls at external borders, and make arrangements allowing Member States to secure the return of cultural goods unlawfully removed from their territory.

In accordance with Council Regulation (EEC) No. 3911/92, export of cultural goods outside the customs territory of the Community is subject to an export licence, issued by the competent authority of the Member State

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3 The Directive was adopted on the basis of Article 95 EC. The legal foundation of Regulation (EEC) 3911/92 was Article 133 EC, which concerns the Community’s common commercial policy. According to the first indent of the Regulation, ‘in view of the completion of the internal market, rules on trade with third countries [were] needed for the protection of cultural goods’.

4 It was feared that cultural goods, moved from the territory of a Member State and presented to the customs offices of Member States with more relaxed export controls, could be easily exported to third countries.