



## Recommendation 612 (1970)<sup>1</sup>

# Draft outline law for the active protection of immovable property in Europe

Parliamentary Assembly

The Assembly,

1. Recalling its [Recommendation 365 \(1963\)](#), the resolutions adopted by the Committee of Ministers on the basis of the "Symposia" organised by the Council for Cultural Co-operation (CCC), the European Convention on the conservation and rehabilitation of the cultural heritage of monuments and sites, and the resolutions adopted by the Conference of European Ministers responsible for the conservation and rehabilitation of the cultural heritage of monuments and sites held in Brussels in November 1969.
2. Considering that the proceedings of the recent General Assemblies of "Europa Nostra" have brought to light disparities and inadequacies in the legislation at present in force in many member countries with regard to the conservation of that heritage ;
3. Considering, moreover, that the heritage in question is an integral part of the general cultural heritage, and recalling that, in Article 1 of the European Cultural Convention, the Contracting Parties agreed to take appropriate measures to safeguard their national contributions to the common cultural heritage of Europe ;
4. Believing it to be in the interests of all States that have acceded to the European Cultural Convention that they should be endowed with laws designed to provide the greatest possible safeguard for the said heritage of monuments and sites ;
5. Considering, therefore, that a draft outline law for the active conservation of the immovable cultural property of European States, based on a comparative analysis of the principal national Systems of legislation, should be proposed ;
6. Considering, moreover, that historical and artistic monuments and sites are a source of leisure and relaxation, and therefore a remedy to the physiological and psychological imbalance caused by the rapid urbanisation of society ;
7. Having regard to the report by its Committee on Culture and Education ([Doc. 2819](#)),
8. Recommends that the Committee of Ministers :
  - a. call on the governments of member States to adapt their legislation where necessary to the general principles defined in the appended draft outline law ;

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1. Assembly debate on 23 September 1970 (16th Sitting) (see [Doc. 2819](#), report of the Committee on Culture and Education). Text adopted by the Assembly on 23 September 1970 (16th Sitting).



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- b. instruct the Committee on European Co-operation for the conservation and rehabilitation of the cultural heritage of monuments and sites to study the draft outline law, in the light of the observations of governments and in consultation with the main international governmental and non-governmental organisations concerned.

*Draft outline law for the active protection of immovable cultural property in Europe*

**SECTION I**

*Definition*

*Article 1*

For the purpose of this act, the immovable cultural property of any State consists of its monuments, its groups and areas of buildings of historic or artistic interest and its sites (here-inafter referred to as "monuments and sites").

*Article 2*

A monument is a work of architecture or of monumental sculpture of archaeological, historic or artistic interest.

*Article 3*

A group or area of buildings of historic or artistic interest is a collection of isolated buildings or a group of buildings whose architectural unity and character as a feature of the landscape justify its protection and revival as an amenity.

*Article 4*

A site is a topographical feature which is the work of nature (landscapes) or of nature and man together (mixed sites), whose harmonious character and artistic, aesthetic, historic, ethnographical, literary or legendary interest justifies its protection and revival as an amenity.

More specifically, archaeological sites are those in which remains of civilisations have been or may yet be discovered ; scientific sites are features of interest to the various sciences

**SECTION II**

*Guiding principles for State action*

*Article 5*

The laws and regulations drawn up by States for their immovable cultural property shall be founded on the principles set out hereunder.

*Article 6*

States shall be fully responsible for their immovable cultural property and shall take such measures as are necessary to prevent the disappearance of the irreplaceable spiritual, cultural and economic assets which are their heritage.

*Article 7*

For each State, its immovable cultural property constitutes a unified whole comprising, in addition to individual architectural features of public interest from the archaeological, historic or artistic points of view, more modest items which have acquired a cultural value with the passage of time. As a general rule, a building has significance solely in relation to the group of buildings or site of which it is a part.

*Article 8*

Where necessary, States shall reinforce their laws and regulations for the protection of individual monuments and circumscribed sites and shall also introduce measures to safeguard groups of buildings of historic or artistic interest and sites other than those referred to above.

*Article 9*

States shall reinforce their existing prohibitions where this seems necessary and shall take complementary measures to promote the active integration of their immovable cultural property in the context of their physical planning and development schemes.

*Article 10*

The active integration of the immovable cultural property of States shall be designed to further the physical and spiritual development of man and shall devolve in each State upon the authorities responsible for protecting cultural property, in constant collaboration with the physical planning authorities.

*Article 11*

The active preservation of monuments and groups of buildings of historic or artistic interest shall consist, above all, in rehabilitating them by conferring on them a function compatible with present and future needs, without detracting from their cultural value.

*Article 12*

Action by States to protect their immovable cultural property shall be taken thanks to the adoption of administrative, legal and financial measures based on the principles set out in Sections III, IV and V hereunder.

*SECTION III*

*Administrative measures*

*Article 13*

The administrative measures applied by the appropriate authorities shall ensure that the immovable cultural property of the State is given an active function in national life, present and future ; their mode of application shall vary according to the constitutional provisions and administrative traditions of each State.

*Article 14*

The features of each State's immovable cultural property to be protected and rehabilitated shall be specified by means of a list containing all particulars necessary for its identification, with a view in particular to determining the use to which such property might be put and to prepare the way for its inclusion in State planning projects.

To this end, each State shall draw up a protective inventory of its immovable cultural property listing sites and monuments, together with their setting.

In drawing up the protective inventory, particular attention shall be paid :

- a. to buildings which, although not of outstanding importance, are an integral part of their setting,
- b. to archaeological sites threatened with destruction by demographic and economic expansion.

*Article 15*

In order to ensure that active account is taken of immovable cultural property in State planning, the authorities responsible shall make topographical studies and maps showing monuments and sites prior to drawing up their plans.

*Article 16*

The authorities responsible for the protection of cultural property shall work in close co-operation with the planning authorities from the earliest stages of planning.

*Article 17*

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Full account shall be taken of monuments and sites in studies and planning at all levels ; national, regional or provincial and local, wherein technicians of cultural property protection services shall co-operate with specialists in the human sciences concerned.

*Article 18*

Local authorities shall normally be consulted when planning and development schemes are drawn up which affect monuments, groups of buildings or sites of cultural value.

In particular, according to the machinery of government in each State, they may be required to draw up such plans at regional, provincial or local level, in order to ensure the participation of all concerned and especially of the owners of the land or monuments affected.

*Article 19*

To facilitate the drawing up of plans which affect monuments and sites, States shall map their monumental and natural assets on the basis of the particulars provided by the protective inventory referred to in Article 14 above.

*Article 20*

The administrative machinery for the protection of a State's immovable cultural property may take various forms :

- a. a centralised System ;
- b. a decentralised System ;
- c. a mixed System, with responsibility shared by the central government, its regional or local services and local government authorities.

The powers of local government authorities may be exercised at different levels and they may be empowered to take decisions or simply to put forward proposals.

*Article 21*

The constitutional and administrative rules in force in each State shall determine which System seems preferable. With this reservation, considering that the problems of conservation require specialist knowledge and experts in that sphere are in short supply, States should see that functions are shared judiciously among the central or federal authorities and the regional or local authorities with a view to maximum efficiency. Central or federal authorities shall encourage local authorities by publishing the protective inventory and by issuing directives or at least giving advice.

Whatever administrative machinery a given State adopts, it shall be worked out with the greatest care, because on it depends the drawing up and the application of regulations for the safeguard of immovable property.

*Article 22*

Within the administrative framework peculiar to each country, the authorities responsible for the protection of immovable cultural property shall be :

- a. specialised departments under the authority of the Minister responsible for cultural property ;
- b. planning authorities, in so far as their plans take account of monuments and sites.

*Article 23*

Executive organs at the highest level shall confer on the Minister responsible for immovable cultural property a position equal to that of other Ministers, especially of those exercising functions which may affect monuments and sites.

To ensure that monuments and sites are not sacrificed to other interests, the Minister responsible for immovable cultural property shall be empowered to oppose the adoption of any plan which might gravely prejudice them, subject to an appeal to a supreme national authority.

*Article 24*

At all levels : national, regional and local, permanent bodies shall co-ordinate work of cultural property and planning authorities and so enable the Minister responsible for immovable cultural property to take an active part in the drawing up of plans as well as to keep abreast at the study stage of any development plans which might threaten monuments or sites and to step in effectively to settle difficulties in pursuance of Article 23 above.

*Article 25*

Services specialising in the protection of immovable cultural property, whatever their position in the administrative machinery of the State :

1. shall see that administrative, legal, technical and financial decisions for the protection of monuments and sites are taken and carried out ;
2. shall defend the interests of monuments and sites in the permanent co-ordinating bodies referred to in Article 24 above.

To this end, the specialised services must have sufficient properly qualified permanent administrative and technical staff. They must also be able to call on specialists in the various human sciences at the stage of the studies preparatory to the integration of the active protection of immovable cultural property with planning at national, regional or local level.

*Article 26*

An agency, incorporating an owners advisory service if desired, shall be set up to act as a clearing-house for prospective buyers and sellers or lessors and lessees of ancient monuments or other historic buildings.

*Article 27*

The use of land as a scrap-yard, car or rubbish dump, shall be subject to official authorisation which may be accompanied by conditions to the advantage of monuments and sites. Such authorisation shall be refused where prejudice to monuments and sites would result.

*Article 28*

Local authorities shall be encouraged to provide ground for scrap-yards, old cars and refuse in conditions which will cause no prejudice to monuments or sites.

*Article 29*

Local authorities shall remove scrap and wreckage from waste-land or the public highway after final notice thereof has been served to their owner, if known.

*Article 30*

Specialist bodies shall advise the executive authorities in the exercise of their responsibilities towards immovable cultural property.

These bodies shall take the form of committees, sitting at national, regional or local level, whose function shall be to express opinions or make recommendations on any questions concerning monuments or sites. Their membership shall consist of representatives of the major organisations working for the protection of monuments and sites together with representatives of the public authorities concerned, in proportions consistent with the proper representation of all those interested in the preservation of immovable cultural property.

*Article 31*

An annual report on the work of protecting monuments and sites shall be presented to the parliament of each State.

#### *SECTION IV*

##### *Legal measures*

##### *Article 32*

According to their degree of archaeological, historic or artistic interest, monuments shall be protected by a two-tier System of individual measures whose names may vary, for example : classification and registration, protection A and B, class 1 and 2, statutory list and supplementary list etc. The decision to protect shall be taken either at the request of the owner, or on the initiative of the Minister in charge of immovable cultural property. In the latter case, the Minister shall notify the owner of the building or his representative of the proposal to issue a protection order, specifying the time-limit for the lodging of any objection.

##### *Article 33*

In the absence of the owner's consent, the decision shall be taken in such a manner as to guarantee fully his rights of ownership. The decision may carry entitlement to compensation for the owner where the curtailment of his rights or the obligations imposed result in a change in the condition or use of the premises causing direct and undesirable material loss.

##### *Article 34*

From the date of the official notification to the owner of the proposed issue of a protection order, the effects of protection shall apply in full to the property concerned. They shall cease to apply, however, if after 12 months the order has not been issued.

##### *Article 35*

Monuments which are the property of corporate bodies, public or private, and which can be classified, thanks to objective criteria, in identifiable categories, such as abbeys, ramparts, castles etc. shall be presumed to be protected unless the Minister responsible for immovable cultural property decides otherwise.

##### *Article 36*

Where the preservation of a protected monument is seriously compromised by failure to carry out repairs or maintenance, the Minister responsible for immovable cultural property may order the owner to carry out the work within a given time. The order shall be accompanied by the offer of a State contribution to the cost of the work.

##### *Article 37*

Where the owner fails to carry out the work in question, the Minister may have it done by his department, in which case the owner shall be required to repay the cost of the work carried out by the State up to such sum as would have been payable by him had he carried out the work himself.

##### *Article 38*

To ensure in the absence of agreement with the owners that urgent work of reinforcement, repair or upkeep is carried out on a protected monument, the authorities may order the temporary occupation of the building or of the neighbouring properties.

##### *Article 39*

Protected monuments may be compulsorily acquired by public authorities, or they may be transferred by mutual agreement to corporate bodies or individuals in the interests of their preservation and in conformity with conditions laid down in the conveyance.

##### *Article 40*

Supersonic flights over certain protected monuments shall be banned by common consent of the competent authorities in each State, among whom shall be the Minister responsible for immovable cultural property, who shall draw up the list of monuments to be so protected.

*Article 41*

"Rehabilitation zones" may be established and demarcated by the Minister responsible for immovable cultural property and the Minister for Equipment or Building, where the preservation, restoration and rehabilitation of all or part of a group of buildings, as defined in Article 3 above, so require.

At the stage of the inquiry conducted to determine whether an area of buildings is to be declared a "rehabilitation zone", individuals should be associated with the authorities in making the preliminary study. Among these public or private bodies and individuals shall be, in addition to the Ministers referred to in paragraph 1 of this article, the Minister for Planning, local government representatives and representatives of the population affected.

*Article 42*

A permanent protection, development and rehabilitation plan shall be drawn up for each "rehabilitation zone".

*Article 43*

Sites shall be protected individually by a three-tier system. Grade 1 protection shall be afforded to sites of outstanding interest, which must remain inviolable. Grade 2 protection shall be given where preservation is the first consideration. Grade 3 protection shall be for sites where development is a major consideration. Grade 2 and Grade 3 protection may be combined if need be.

*Article 44*

Monuments and sites shall be protected by law against bill-posting, advertising, luminous and other signs, camping, the erection of electricity pylons and telegraph poles, electric cables and telephone wires, television aerials, motor traffic and car parking, road signs and urban amenities.

*Article 45*

Whereas if need be public authorities may be given powers of direct action (compulsory acquisition, temporary occupation, action in place of the owner etc.) to save a threatened monument or site, methods of inducement shall normally be preferred since owners are generally the best protectors of their property.

*Article 46*

A change of ownership shall not affect the protection of a monument. Any person relinquishing possession of a protected monument shall inform the purchaser of the existence of the protection order.

*Article 41*

No protected monument or any part thereof may be destroyed or removed, nor may it be restored, repaired or altered in any way without the consent of the competent authority. Work authorised shall be carried out under official supervision.

*Article 48*

No new building may be erected next to a protected monument without special authorisation.

*Article 49*

No building situated in the vicinity of a protected building, in principle within a radius of 500 metres thereof, may be added to, demolished, cleared of trees, converted or altered in any way that would change its appearance without the prior approval of the competent authority.

*Article 50*

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The effects of the setting-up of a rehabilitation zone shall stem from the permanent protection, development and rehabilitation plan referred to in Article 42 above. This shall take the place of any detailed town planning scheme and shall lay down the architectural specifications for the preservation of buildings and their ancient setting. It shall lay down rules for land use, road layout and new building and shall determine the buildings to be preserved and the conditions of their preservation.

The rehabilitation plan shall determine the new function to be conferred on the zone as a whole, and the links to be established between it and the new town, if any.

*Article 51*

Any work of modernisation or restoration affecting a building in a rehabilitation zone shall require official authorisation, which shall be granted only if the work is compatible with the permanent protection, development and rehabilitation plan. The permit issued shall specify the conditions with which the owner shall comply.

The preservation of the character of an area of buildings shall have regard, on the one hand, to the control of changes within its circumference, and on the other, to the preservation of views of it from outside and from it to the surrounding area.

*Article 52*

The effects of the protection of sites shall vary according to the nature of the protection afforded, as follows :

- a. Grade 1 protection : the site shall remain inviolable except for necessary maintenance clearing, farming and forestry.
- b. Grade 2 protection : here conservation shall be the first consideration. However, where the site is a large one, certain parts of it may be developed under strict supervision and on condition that the main site does not suffer thereby.
- c. Grade 3 protection : here development is a major consideration and the site may be modified or even transformed. However, the authorities shall retain control over building so that the character of the site may as far as possible be preserved.

*Article 53*

The character of rural houses shall be respected and changes to their external appearance shall require official authorisation.

*Article 54*

Articles 36 and 37 above shall apply, where necessary, to protected sites. Man's interference with the natural environment shall be so ordered as to prevent the exhaustion or injudicious exploitation of natural resources.

*Article 55*

Where a tree that is protected for its intrinsic value or which forms part of the setting of a group of buildings or of a site dies or is destroyed or removed, the owner of the land or the manager of the site shall be required to plant another tree of appropriate size and species in the same place within a reasonable time.

*Article 56*

Certain legal measures shall have effects common to all immovable cultural property. Legal curtailment of ownership affecting a monument or site shall be applicable only with the previous consent of the Minister responsible for immovable cultural property. Where a protection or rehabilitation plan has been approved, no development work may be undertaken or administrative decision taken which contravenes its provisions for the protection of monuments and sites.

*Article 57*

The regulations issued by the authorities in the matters enumerated in Article 44 shall specify their effects in respect of monuments and sites, as, for example, bans on parking, or even on all motor traffic in certain streets of a protected area or in the vicinity of a protected monument or a site.

## SECTION V

### *Financial provisions*

#### *Article 58*

The protection and rehabilitation of monuments and sites shall as far as possible be the responsibility of their owners. States shall introduce tax measures designed to give substantial aid to the owners of such property.

Special provisions shall apply to such owners in respect both of capital tax and of income tax, having regard to the cost to them of keeping their property in good condition or in using it for a purpose suited to its character.

#### *Article 59*

Since the active conservation of monuments and sites imposes a greater financial burden than their simple upkeep, financial resources commensurate with the importance of each State's immovable cultural property shall be allocated to the competent authorities for carrying out work on the monuments and sites for which they are responsible.

#### *Article 60*

Grants shall be given to the owners of monuments and sites in order to encourage them to carry out the work of upkeep, conservation, development, modernisation and rehabilitation of their property. Grants may be made to owners in compensation for the extra expenditure imposed by the authorities in application of the protection regulations.

#### *Article 61*

Provision shall be made in the budgets of government and local authorities for saving monuments or areas of cultural interest endangered by large-scale public or private works.

#### *Article 62*

A tax for the removal of disused vehicles shall be levied when a vehicle is first sold and paid into a common fund to cover the cost to local authorities of removing and destroying abandoned vehicles.

#### *Article 63*

In order to facilitate the preservation, rehabilitation and improvement of monuments and sites, long-term low-interest loans shall be granted to their owners.

#### *Article 64*

The financial assistance granted to owners may carry certain advantages to the public, such as the total or partial opening of the premises to visitors.

#### *Article 65*

To avoid population changes in rehabilitated zones, allowances shall be paid to enable the original occupants to pay higher rents without moving from their homes.

The amount of such allowances, of a temporary nature only, shall be fixed according to income.

#### *Article 66*

To facilitate the rehabilitation of monuments and sites it is necessary that :

- a. the authorities concerned earmark special funds for this work in their budgets ;

b. steps be taken to prevent any speculative rise in the price of the land concerned.

*Article 67*

To encourage financial participation by private persons or companies, particularly industrial firms, it is desirable to set up public bodies such as "Monuments and Sites Fund", or private foundations or associations with legal personality. Such bodies may receive donations for use as needed for the benefit of immovable cultural property.

*Article 68*

A private or public "Loans Fund" receiving help from public funds and credit institutions shall be set up to furnish private owners with the loans they require to carry out the work referred to in Article 60 above.

*SECTION VI*

*Penalties*

*Article 69*

Whatever their administrative or judicial System, States shall exercise their jurisdiction to ensure that effect is given to decisions by public authorities relating to the protection or active integration of immovable cultural property.

*Article 70*

Any administrative decision taken in violation of the regulations applicable to immovable cultural property shall be open to review and if need be revocation by the competent institutions of the State concerned, namely administrative tribunals where such exist.

*Article 71*

Public authorities shall be held liable where they do not comply with the legal measures adopted for the protection and rehabilitation plans.

*Article 72*

Any person destroying, mutilating or defacing a monument or site shall be liable to a fine and imprisonment, whose amount and duration respectively shall be determined by the laws of each State.

*Article 73*

Any person abandoning a vehicle on waste-land or on the public highway shall be liable to a fine whose amount shall be determined as prescribed in Article 72 above.

*Article 74*

Any breach of the ban on unauthorised alterations to a monument or site or of the obligations imposed by the laws and regulations in force shall be punishable by a fine whose amount shall be determined as prescribed in Article 72 above.

*Article 75*

Any person found guilty of defacing a monument or site shall be ordered to restore it to its former condition or to comply with such other instructions as the competent authority may decide.

*Article 76*

An order to restore a monument or site to its former condition may be combined with a criminal conviction or may be independent thereof.

*Article 77*

In either case, the magistrate may make an order coupled with a daily fine for delay in execution.

*Article 78*

An award for services rendered to cultural property shall be instituted for persons having contributed to protecting or rehabilitating a monument or site.

In each State, the Minister responsible for immovable cultural property shall lay down the conditions in which the said award shall be made.

Other recompenses may be instituted by the State for the benefit of persons having contributed voluntarily to the preservation or rehabilitation of monuments and sites.