

STATUTORY INSTRUMENTS

S.I. No. 312 of 2006

European Communities (Artist's Resale Right) Regulations 2006

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S.I. No. 312 of 2006

European Communities (Artist's Resale Right) Regulations 2006

I, MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive No. 2001/84/EC of the European Parliament and of the Council of 27 September 2001¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Artist's Resale Right) Regulations 2006.

Definitions, interpretation and application.

2. (1) In these Regulations:

“author”, in relation to an original work of art, means the person who creates the work;

“contract date”, in relation to a sale, means the time at which the contract of sale was made;

“Council Directive” means Council Directive No.2001/84/EC of the European Parliament and of the Council of 27 September 2001¹;

“resale” is to be construed in accordance with Regulation 5;

“resale right” means the resale right established in Regulation 3;

“resale royalty” has the meaning given in Regulation 3;

“sale price” has the meaning given in Regulation 3.

(2) A word or expression that is used in these Regulations and in the Council Directive has, unless the contrary intention appears, the meaning it has in the Council Directive.

(3) A court shall construe these Regulations in a manner that gives effect to the Council Directive, and for this purpose the court shall have regard to the provisions of that directive, including the preambles.

¹ O.J No. L272, 13.10.01, p.32.

(4) These Regulations apply in respect of original works of art notwithstanding that the works sold may have been made before the commencement of these Regulations.

Artist's resale right.

3. (1) The author of an original work of art shall, in accordance with these Regulations, have a right ("resale right") to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author ("resale royalty").

(2) The royalty is an amount based on the sale price and shall be calculated in accordance with Regulation 9.

(3) The sale price is the price (in euro) obtained for the sale, net of any tax payable on the sale.

Resale right is inalienable.

4. (1) Resale right is an inalienable right and is not assignable.

(2) A charge on a resale right is void.

(3) A waiver of a resale right has no effect.

(4) An agreement to share or repay resale royalties is void.

Resale.

5. (1) The sale of an original work of art may be regarded as a resale even if the first transfer of ownership was not made for any consideration (money or otherwise).

(2) The sale of an original work of art may be regarded as a resale only if both of the following conditions are met:

(a) the buyer, the seller or, if the sale takes place through an agent, the agent of the buyer or the seller, is acting in the course of a business of dealing in works of art;

(b) the sale price is not less than €3,000.

Nationality of author.

6. Resale right may be exercised in respect of a sale only if the author of the work sold is, on the contract date of the sale, a national of a Member State, Iceland, Liechtenstein or Norway.

Liability to pay resale royalty.

7. (1) On completion of the sale, the seller is liable to pay the resale royalty due in respect of the sale.

(2) However, the seller under paragraph (1) may withhold payment until sufficient evidence of entitlement to be paid the resale royalty is produced.

(3) Any liability to pay resale royalty in respect of resale right belonging to more than one person as joint authors is discharged by a payment of the total amount of the royalty to one of those persons.

Right to obtain information.

8. (1) The author of an original work of art may request a person involved in the sale of the work who meets the condition set out in Regulation 5(2)(a) to provide the author with any information that may be necessary for the author to secure payment of the resale royalty.

(2) The person to whom a request is made under paragraph (1) shall make every effort to provide the information to the author within 90 days from the date of the request.

(3) If information is not provided in accordance with paragraph (2), the author may apply to the High Court for an order requiring the person to whom the request was made to provide the information.

(4) A request under this regulation shall be made within 3 years from the date of the sale to which it relates.

Amount of resale royalty payable.

9. (1) Subject to the limit established in paragraph (2), the resale royalty payable on the resale of an original work of art shall be the sum of the following amounts, being percentage amounts of consecutive portions of the sale price:

<u>Portion of the sale price</u>	<u>Percentage amount</u>
Up to €50,000	4%
From €50,000.01 to €200,000	3%
From €200,000.01 to €350,000	1%
From €350,000.01 to €500,000	0.5%
Exceeding €500,000	0.25%

(2) The total amount of royalty payable on the sale shall not in any event exceed €12,500.

(3) For the purposes of this Regulation, if the sale price in the contract of sale is not in euro, the price shall be converted into euro at the European Central Bank reference rate prevailing on the contract date.

Duration of resale right.

10. Resale right in an original work of art subsists during the lifetime of the author but is extinguished on his or her death.

L.S.

GIVEN under my Official Seal,
This 13th day of June, 2006.

MICHEÁL MARTIN

Minister for Enterprise,
Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations transpose into Irish law Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art. This will allow creators of original works of visual and plastic art, through a system of royalty payments, to benefit from resales of those works when they are sold through the professional art market.