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NOTE

From:	Presidency
To:	Delegations
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Subject:	Draft Council Conclusions on the fight against trafficking in cultural goods

Delegations will find attached a first revised version of the draft Council Conclusions on the fight against trafficking in cultural goods, to be discussed during the meeting of LEWP-Police on 18 April 2023.

DRAFT

COUNCIL CONCLUSIONS on the fight against trafficking in cultural goods

THE COUNCIL OF THE EU,

RECALLING the EU Security Union Strategy 2020-2025¹ and the EU Strategy to Tackle Organised Crime 2021-2025²,

RECALLING the Council Conclusions on EU Approach to Cultural Heritage in conflicts and crises³, as adopted in 2021,

HAVING REGARD to Resolutions 2253, 2199, 2462 and 2347 of the United Nations Security Council, which note with grave concern that terrorist organisations generate income from the trafficking of cultural goods, and to the 2018 Resolution of the United Nations General Assembly on the return or restitution of cultural property to the countries of origin,

HAVING REGARD to the European Parliament resolution of 17 January 2019 on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars,

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, COM/2020/605 final.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025, COM/2021/170 final.

³ 9837/21.

WELCOMING the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods⁴, which is an important step in the fight against this phenomenon and on which the Member States wish to build further,

ACKNOWLEDGING that trafficking in cultural goods is a lucrative business for organised crime and has a devastating and irreversible impact on cultural heritage within and beyond the EU, and therefore requires a tailor-made response at EU level,

STRESSING the need to organise our response around an improved crime prevention and detection by market participants and cultural heritage institutions, stronger law enforcement and judicial capabilities, better international cooperation and increased support of other key stakeholders, as proposed in the Action Plan by the Commission,

Prevention and detection of cultural goods trafficking by market participants and cultural heritage institutions

CONSIDERING that cultural goods market participants, collectors and cultural heritage institutions are well placed to help prevent and detect crimes related to cultural goods, and therefore need to be aware of the applicable legislation and other non-legislative tools that aim to prevent and detect such crimes,

MINDFUL that EU trade legislation plays an important role in preventing and detecting cultural goods trafficking due to its typically cross-border nature,

NOTING HOWEVER that scrutiny and control of trade in cultural goods can vary widely within the single market itself where traceability should be improved,

STRESSING the need for owners or managers of public and private collections to take voluntary measures to protect themselves better from property crimes, by thoroughly cataloguing their collections with for instance existing tools such as the International Council of Museum's (ICOM) Object-ID, and through better reporting of property crimes so that stolen cultural property appears rapidly and with a detailed description in national stolen art databases and Interpol's Stolen Works of Art Database,

⁴ 16107/22.

RECALLING the crucial importance of investigating the criminal networks and illicit money flows behind the individual trafficking cases as well as the fact that even legally acquired cultural goods can be misused by criminals for crimes such as money laundering or terrorism financing,

Strengthening capabilities of law enforcement and the judiciary

POINTING OUT that the current intelligence picture does not adequately reflect the prevalence and scope of cultural goods trafficking,

CONSIDERING that public authorities need to have an adequate understanding of the modus operandi of criminals, share information, be aware of intra- and inter-agency cooperation requirements and dispose of specific tools, including modern technologies such as software for registration and detection of illegal flows of cultural property or surveillance hardware to protect important sites,

RECALLING the need for better exchanges and cooperation between specialised national authorities dealing with this crime area,

NOTING that cultural goods traffickers profit from an uneven criminalisation of relevant offences across the EU,

Stepping up international cooperation and maximising stakeholder support

CONSIDERING the value of cultural heritage for society and its the vulnerability of cultural heritage to criminal harm in conflict and crisis regions

STRESSING the specific situation of Ukraine which calls for further action to safeguard Ukrainian cultural heritage in the context of Russia's war of aggression

CONSIDERING the limited public awareness –~~beyond the law enforcement and cultural heritage communities~~– of the harm that trafficking in cultural goods can bring

WELCOMES THE COMMISSION'S ACTION PLAN AND COMMITMENT INVITES THE COMMISSION TO ENGAGE IN THE FOLLOWING ACTIONS:

1. Launch a dialogue with the art market, in close cooperation with UNESCO, on the issues related to the protection and trade of cultural goods in the single market, including a High-Level event in 2023;
2. Develop and establish the electronic system for the import of cultural goods in the Union (the 'ICG system') and extend it in order to handle also the export of cultural goods, based on the conclusions of a feasibility study that has been carried out;
3. Continue to fund the development of solutions to enhance traceability and detection of cultural goods, ~~and launch a study with the aim of helping~~ **issue guidance for Member States on establishing sales registers (also covering online sales) and consider legislative measures to introduce an obligation for Member States to maintain a standardized national register of transactions with cultural goods, which could contain complete and verified identities of the seller and buyer, price of the item, information on authenticity, provenance and provenience, precise description of the item and quality photo, consistent with data provided in the context of an import subject to license or declaration;**
4. Explore measures for an EU-wide harmonisation and interconnection of Member States' databases of stolen cultural goods – including a linkage to Interpol's Stolen Works of Art Database **and other relevant databases;**
5. Cooperate with the ICOM to promote the ICOM Code of Ethics for Museums, improve capacities and provide training to staff in museums and cultural heritage institutions in several Member States, in order to better record and protect their collections.
6. Identify and facilitate more uniform categories for data collection with support from Europol, which could lead to EU-wide data collection via EUROSTAT in the future;

7. Add trafficking in cultural goods to the induction course for its standing corps officers for the detection of cross-border crime of Frontex;
8. Assess existing digital investigation tools (including those funded by the Commission) and foster Member States' access to these, ~~with~~ **and invite the European Clearing Board to assess whether this can be supported by** ~~from~~ Europol's Innovation Lab **and other initiatives in this field;**
9. Increase support to the protection of Ukrainian cultural goods from destruction **and theft and illicit export** by supporting **cataloguing and, if requested,** evacuation and physical protection of collections;
10. Boost third country capabilities for cross-border cooperation and investigations into money laundering related to cultural goods, notably by extending the scope of the EU Global Facility on Anti-Money Laundering to cover Asia and Latin America;
11. Provide financial support to ~~the~~ ICOM, to upgrade the ICOM Observatory, which centralises and disseminates **information and resources** ~~various instruments and materials~~ for international public understanding and policy orientation to protect cultural goods;
12. Support UNESCO in creating a manual for journalists on reporting on cultural heritage related crimes;
13. Support youth engagement initiatives via the Creative Europe, the EU Solidarity Corps, and the Erasmus+ ;

CALLS ON THE MEMBER STATES TO:

14. ~~Take measures~~ **Raise awareness** to ensure that public and private collections ~~duly register~~ **inventory** their possessions **and register them in the relevant** databases and report property crime cases to law enforcement, with help from internationally agreed standards and tools (such as the Object ID standard, **standards for libraries and archives** or Interpol's Stolen Works of Art Database);
15. **Where they do not exist, consider setting up** ~~Set up and duly managing~~ dedicated national databases of stolen cultural goods **property, and improve existing ones with consideration of possible interconnection with the Interpol Stolen Works of Art database**
16. Report stolen cultural goods to Interpol via its Stolen Works of Art database and share information on cultural goods trafficking cases with Europol and Interpol **and other competent authorities** to improve the intelligence picture;
17. Strengthen effective cooperation and information sharing among **competent authorities and** customs authorities, **including through the World Customs Organization**, and with the Commission⁵ through the Customs Information System in order to fight cultural goods related fraud;
18. Identify, assess and understand the risks of cultural goods trafficking **in the context of** money-laundering and terrorism financing as part of their national risk assessment under the anti-money laundering legislation, and to adopt adequate measures to mitigate these risks;
19. Raise awareness and issue guidance to the private sector on how best to comply with their obligations to prevent money laundering and terrorism financing in cooperation with the competent authorities;

⁵ See Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 082, 22/03/1997, p. 1 – 16.

20. Improve the cooperation between obliged entities from the art and antiquities market, financial sector, ~~and~~ Financial Intelligence Units **and specialized law enforcement authorities, which may involve customs authorities** by sharing knowledge and training on risks and types of illegal activities related to cultural goods, while taking into account the cooperation possibilities between public and private entities **as well as by considering to create a dedicated alert system when cultural goods are involved as part of financial transactions, pawns, loans or bonds;**
21. ~~Encourage~~ **Encourage** observance of due diligence obligation and transparency of transactions in line with the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM Code of Ethics for Museums.
22. Maximise the potential of EMPACT for cultural goods trafficking cases, including on investigations on the criminal networks and illicit money flows involved;
23. Take full advantage of Europol's as well as Eurojust's support and expertise for cross-border law enforcement and judicial cooperation;
24. Provide, **if deemed necessary,** adequate capacity building of national law enforcement and judicial authorities, for example by setting up and training specialised law enforcement units and specialised pools of prosecutors, and by providing a basic training for police, customs and border guard officers involved in routine checks;
25. **Consider to** ~~conclude~~ memoranda of understanding between relevant law enforcement authorities and relevant cultural heritage institutions to ensure the adequate handling and storage of seized or confiscated cultural goods;

26. Support the reinforcement and the continuity of the network EU CULTNET to use its full potential, including by seconding appropriate staff in order to create ~~an permanent~~-EU CULTNET contact point at Europol with the purpose to coordinate joint activities, liaise with international actors and contribute to the **operational and** strategic work in the fight against trafficking of cultural goods, and by developing common measures such as improving rapid access of law enforcement to the necessary expertise from archaeologists or art historians;
27. ~~Nominate~~ **Establish a network of heritage experts,** art experts and archaeologists able to provide input to criminal investigations **and** ~~which could form a sub-group of EU CULTNET and~~ benefit from the coordination by the EU CULTNET contact point at Europol;
28. **Consider signing, ratifying and implementing** the Council of Europe “Nicosia Convention”; **on “Offenses relating to Cultural Property”, or implementing its principles where this is considered more appropriate;**
29. Consider signing and ratifying the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;
30. Consider regulating an obligation to return a stolen object to the lawful owner regardless of the statute of limitations for criminal liability.

ENCOURAGES THE MEMBER STATES, IN COOPERATION WITH THE COMMISSION, TO:

31. ~~Explore the possibility to implement a compulsory standardised and digitalised register containing all necessary data on cultural goods entering and leaving dealers' stocks, taking due account of the outcome of the study announced by the Commission in the action plan, differences in national legislations and potential overlaps or synergies with the implementation of Regulation (EU) 2019/880 and in particular the operation of the ICG system after 28 June 2025; the register could contain complete and verified identities of the seller and buyer, price of the item, information on authenticity, provenance and provenience, precise description of the item and quality photo, consistent with data provided in the context of an import subject to license or declaration;~~
32. Conduct a mapping of Member States' national legislation criminalising the illicit trafficking of cultural property and the implementation of the Nicosia Convention, ~~and consider transforming the handling of stolen goods into a continuous offence, possibly together with a reversal of the burden of proof concerning objects from countries at war or in crisis;~~
33. Further pursue the implementation of the Council Conclusions on EU Approach to Cultural Heritage in conflicts and crises⁶ and continue to monitor the progress achieved;
34. Implement **the** Council Resolution on the EU Work Plan for Culture 2023-2026 by supporting exchange of information between cultural heritage professionals and ~~relevant~~ authorities **competent for the fight against trafficking in cultural goods** through a series of workshops and peer-learning activities;

⁶ **9837/21**

35. Consider the creation of a specific search engine to detect trafficking in cultural goods, or possibilities for combining existing IT capacities/databases, in cooperation with Europol's Innovation Lab, ~~and following an~~ **positive** opinion of the European Clearing Board of the Innovation Lab ~~according to established procedures~~, in order to realize a comprehensive IT instrument for the analysis of marketed cultural objects;
 36. Taking due account of ongoing work within this area, consider the role of non-fungible tokens (NFT) in the fight against trafficking in cultural goods, especially regarding transactions involving digital works of art;
 37. Follow up and **take stock of** the implementation of the actions in the present Council Conclusions **after five years from the adoption.**
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