

Open Method of Coordination –  
“Prevention of Theft and Illicit Traffic” Subgroup  
Final report – Draft document  
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## **I. Introduction**

Because of its pivotal physical location on the world stage, its wealth of public and private art collections and its economic resources, the European Union (EU) is greatly affected by illicit trafficking of cultural goods and theft of art works and goods from museums as well as from archaeological sites and historic monuments.

The concerns of Member States over the prevention of illicit trafficking of cultural goods (which is the world's third largest illicit traffic after weapons and drugs) and the prevention of thefts from museums have been increasing over recent years.

The cultural goods market is a particularly sensitive sector. The theft and trafficking of cultural goods affects both public actors (museums, police and customs) and the private sector (art traders and collectors).

Globalisation has facilitated the illicit trade of cultural goods both number and quality.

In 2008, the French Presidency of the EU provided an opportunity for action at EU level in the field of fighting against this illicit traffic. The meeting of Ministers of Culture in Versailles in July 2008 played a decisive role in launching discussions on the issue of the prevention of the theft and illicit trafficking of cultural goods and determining actions to be taken at EU level. Moreover, a meeting of representatives of museums and collections of the 27 Member States of the European Union took place in the Orsay Museum, Paris, in October 2008. It identified three approaches:

- developing prevention,
- working towards the convergence of legislation and procedures in the different Member States,
- taking action to find and return stolen works.

## **II. Working method**

Within the Open Method of Co-ordination (OMC), it has been decided to continue the work conducted in 2004 and 2007 by two research projects on the issue of cultural-good traceability. These studies were carried out by a private contractor commissioned by the European Commission (Directorate-General for the Internal Market).

However, there is a significant difference in scale, because the EU includes now 27 Member States, and the members of the OMC are all professionals working in different national administrations and responsible for the management of cultural goods - whether public (museum collections, archives, archaeological sites) or private (art market, etc.).

The starting point of this work was the directive 93/7/CEE on the return of cultural objects unlawfully removed from the territory of a Member State as well as the study document on the prevention of illicit trafficking of cultural property produced by the first meeting of the European Crime Prevention Forum organised on the 17<sup>th</sup> and 18<sup>th</sup> May 2001 in Brussels.

The Prevention of Theft and Illicit Traffic Subgroup is co-chaired by France and Italy. Germany, Cyprus, Finland, Greece, the Netherlands, Portugal, Romania, United Kingdom, Sweden, Spain participate to this work.

The aim of the subgroup is to provide practical solutions to prevent the theft and illegal trafficking of cultural goods. The **main objectives are to:**

1. **Exchange best practice** on prevention of theft, return of stolen goods and the trafficking of collections;
2. **Examine methods of improvement**, including application of the relevant Community law.

The starting point of this work was a review of the existing situation and needs in the Member States based on studies on the traceability of cultural goods developed by the European Commission in 2004 and 2007. A questionnaire on the improvement of traceability was circulated within the OMC group in summer 2009 with the aim of identifying developments in national frameworks in response to the studies' recommendations (appendix).

Based on the answers provided by this work, three themes were identified and formed the subject of new, specific consultations:

- Due diligence - questionnaire and summary report prepared by Greece (appendix).
- Cultural goods and Internet sales (online sales sites) - questionnaire and summary report prepared by Cyprus (appendix).
- Interoperability of databases - questionnaire and summary report prepared by Romania (appendix).

A short presentation of the work carried out in relation to each of these themes.

### III. Recommendations

#### RECOMMENDATION TO MEMBER STATES AND CULTURAL INSTITUTIONS (museums, libraries, archives...)

<i><b>DUE DILIGENCE</b></i>	
<b>CONCLUSIONS</b>	<b>RECOMMENDATIONS</b>
Almost half of the Member States have provisions concerning acquisitions by cultural institutions. Although this is a good indication, still it is not sufficient enough for the promotion of the “due diligence” practice by professionals. Member States are encouraged to adopt relevant provisions.	To this effect it is vital that Member States incorporate or adopt provisions of Codes of Ethics relevant to due diligence to be exercised by cultural institutions.
The 1970 UNESCO Convention contains important provisions on acquisitions, export authorisation and obligations of dealers.	Member states are urged to disseminate these provisions to cultural institutions.
The exercise of due diligence by cultural institutions prevents the illicit trafficking of cultural goods and the loss of important historic scientific and archaeological information, both for the national and European cultural	Transparency in collection policy is strongly recommended in the acquisition procedures followed by the Member States. Member States need to examine the

heritage.	possibility to introduce common standards to be followed concerning the required documentation before acquisition of a cultural good by cultural institutions and dealers as for example those provided by the 1970 Unesco Convention the Unidroit Convention.
	Elaborate european guidelines on due diligence taking exemple of <i>Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material</i> .
Control of acquisition process by a national authority is not the norm	Member States are asked to introduce a procedure for overiewing the acquisition by the cultural institutions When an object is offered for sale, bequest or donation and is suspected or it is proved to be tainted, it is important, as this deters the illicit trafficking of cultural goods and contributes to the return of an object to its country of origin (EU M-S or third country) in accordance with European and international legislation.
A small number of member states have import and/or movement policy within EU	In order to improve the traceability of cultural goods, member states should examine the introduction of an import and/or movement certificate or a kind of passport of cultural goods.
Many member states have not ratified the Unidroit Convention which contains a broad set of recommendations for due diligence practice	Member states should not be deterred from being inspired by the Unidroit Convention and to adopt its ethical framework as a guiding principle for the matter of acquisitions of cultural goods and the practice of due diligence.
Databases for stolen cultural goods (particularly Interpol's) are very important tools for checking the provenance and history of cultural goods	Member states are urged to stimulate the use of more than one database for stolen objects before proceeding with acquisition of an object. The Interpol database is particularly recommended as a reliable source of information and member states should put special effort to feed it with updated information. Member states should also make sure that their data is correctly incorporated into these databases
Thefts of cultural objects can occur both in cultural institutions and private houses	Member states should encourage the registration of cultural goods by private owners/possessors.

Unesco Convention provides that art dealers should maintain a register of cultural goods	Member States should oblige dealers to fully implement the provisions of the 1970 Unesco Convention regarding the recording and maintenance of registers for cultural objects.
The implementation of a procedure seems to be very important when there is a suspicion that an object promoted for sale, bequest or donation might be tainted.	To deter illicit trafficking, member state should be encouraged to adopt a procedure that follows a set of actions/steps: I. safe deposit of the tainted object II. research III. confiscation IV. legal procedure V. restitution VI. compensation buyer in good faith
Specific sanctions may have a effect i] on deterring cultural institutions-collectors/possessors and art dealers from obtaining dubious objects, and ii] on preventing the illicit traffickers from depriving a country of origin from its cultural heritage	Member states are encouraged to explore measures including penal or administrative sanctions when a cultural institution/ collectors/possessor or art dealer are proved to have acquired or to have promoted for sale a tainted object
1/3 member states follow a procedure for the search of provenance and history of a cultural good before borrowing it on loan for a temporary exhibition	Member states are encouraged to be more alert on the necessity to check the provenance of cultural objects before borrowing or lending them for temporary exhibition purposes or long term loans. In practical terms regarding the responsibility of practicing due diligence, loan contracts can incorporate terms regarding the search by the lender regarding the objects' provenance

### **INTEROPERABILITY**

<b>CONCLUSIONS</b>	<b>RECOMMENDATIONS</b>
The development of the classified cultural goods (national treasury DB) cultural databases is very unequal at E.U. level (varying from local databases to integrated national wide and multi-institutional systems). The existence of centralised databases of classified cultural goods (national treasury DB) supports both the national activities of monitoring the circulation of cultural goods as well as the international cooperation in fighting the theft and illicit trafficking of MS cultural goods. The centralised DB are also an important step towards the desired interoperability of DB at E U level.	Sustain the development of centralized databases of classified cultural goods (national treasury DB) and insure wide access to these DB.
The development of an EU DB/platform focused on the circulation of cultural goods is a project that would potentially come to life to a later stage. Its development should be based on DB developed at national level.	Develop DB related to the circulation of cultural goods (export licenses/certificates);
While few of the databases developed by the MS are	Impose/ Sustain the usage of common

using internationally known standards to record the information related to the cultural goods others are built on nationally developed standards. Since the interoperability of DB should be based on compatible or similar standards of information that could be interrogated through a single, all compatible, mechanism, the usage of different standards interferes in a negative way with the data transferability and future interoperability of DB.	standards and insure transferability of data from local/national DB.
	Financially sustain the development of centralized national treasury databases.

<b><i>SALE OF WORKS OF ART ON INTERNET</i></b>	
<b>CONCLUSIONS</b>	<b>RECOMMENDATIONS</b>
Most countries do not have a standardised process for tracking down cultural goods which are products of illicit trade.	Member States could formulate standardized procedure for specific actions to be undertaken
Only a small number of member states have trained personnel dealing with illicit trafficking on the internet.	Member States are encouraged to induce further research and studies of the internet based sales of illicit nature and to organize training of personnel for this purpose.
Co-operation between internal organizations within Member states and the provision of legal advice is common practice.	Co-operation between relevant institutions or government departments should be encouraged and enhanced for a more efficient action in relation to tracing and dealing with illicit trafficking of cultural goods on the internet.
A small proportion of Member States have an understanding with internet based sites in order to make them aware of the need to exercise due diligence before acquiring objects for sale.	Member States are encouraged to follow the same policy and come into contact with websites which deal with the cultural goods. Internet auction houses and private collectors should be required to submit a list of past and present auctions of cultural objects and to retain such lists for an adequate period of time before and after the auction, in the way that regular auction houses are required to act in some countries.
Most countries have developed a standardised description of objects for the documentation of cultural objects for the purposes of identification but more information is required on the history of the objects' provenance.	Member States are encouraged to create a kind of a passport for cultural objects with details of its provenance (see point 6 due diligence).
Public awareness is cultivated by various means on the illicit trafficking of cultural goods in general, but only a small number of Member States have undertaken any action concerning the cultivation of awareness for the illicit trafficking of cultural goods on the internet.	Member States are encouraged to inform the public and private collectors and encourage them to ask for full documentation before making a purchase. It would be advisable to take such measures

	as to request the introduction or insertion of a flag or notification that contains the regulations on the protection of cultural property when a prospective buyer is trying to buy.
As far as import certificates are concerned only a very few countries issue an import certificate for objects purchased on the internet	Member States are encouraged to implement more systematic checks at customs or other national authorities, to require copies of the export and/ or movement licenses or certificates.
The questionnaire has indicated that the majority of Member States either have inefficient means to control illicit trafficking on the internet or have not devised any means to do so at all	Member States should try to increase efficiency of tracing or searching for missing objects with the development of advanced software for the purpose

## RECOMMENDATION TO THE EUROPEAN COMMISSION

CONCLUSIONS	RECOMMENDATIONS
<p>The approach of the European Commission as regards the prevention of illicit trafficking of cultural there is compartmentalisation among different relevant directorates-general of the Commission (mainly the EAC, JLS, ENTR and TAXUD DGs).</p> <p>It is also important to mention the Committee for the Exportation and Return of Cultural Goods, part of the TAXUD DG, which does very useful work, but statutorily cannot operate outside the framework assigned to it by its documents of reference: i.e. managing problems related to the application of regulations governing the exportation of cultural goods and the return directive.</p> <p>There is a growing need for interdisciplinary exchange among professionals involved in the fight against trafficking in cultural property is not satisfied or do so very punctual and / or bilateral.</p> <p>We must improve the traceability of cultural goods that circulate within the EU through a joint document to Member States and secure</p>	<p>It would be appropriate to set up a European observatory or European committee for the fight against trafficking of cultural goods and prevention of theft. This type of organisation would enable an overall approach to all the aspects of the issue, with flexible operation and the proper participants.</p> <p>Setting up specific transnational training courses on the security and management of public collections, both for state departments responsible for museums and those of local authorities.</p> <p>Studying the feasibility of a certificate or Community circulation document for import and export, enabling the traceability of cultural goods to be improved within and beyond the Community customs area, while providing protection for national cultural goods.</p>

## ***DUE DILIGENCE***

<b>CONCLUSIONS</b>	<b>RECOMMENDATIONS</b>
<p>Directive 93/7/EEC is the main instrument of EU for the Return of Cultural Goods, still we cannot have conclusive evidence whether informing the relevant national authorities for its implementation is put into actual practice. One thing is the legal obligation of each Member State, another thing is their efficiency and readiness in its application. Detailed reporting on this matter can be requested by the <i>ad hoc</i> Working Group to the Export and Return Committee for the Recasting of Directive 93.</p>	<p>In the case an object is offered for sale or as a bequest or donation and is suspected to be or it is proved to be tainted, central authorities responsible for the implementation of the Directive 93/7/EEC should be informed by the cultural institutions/collectors/possessors or dealers.</p>

<b><i>INTEROPERABILITY</i></b>	
<b>CONCLUSIONS</b>	<b>RECOMMENDATIONS</b>
<p>While being viewed as a strategic step towards an improved traceability of cultural goods, the problematic raised by the interoperability of databases requires a technical approach. Several issues need to be taken into consideration when evaluating the potential for interoperability of the databases: the technical compatibility, the standards compatibility (standards used for the data record), the language compatibility (including the possibility of using terms thesauri for an easier translation), the management of access restrictions (as the databases might have different access/restrictions of access policies).</p> <p>The assesment of the technical compatibility of the various databases existing across the E.U. must be performed by IT specialists, in a more thorough manner. In this respect, the technical information collected by the subgroup should serve as a starting point for a more in-depth research. In this respect the collection of contact information of the databases administrators was intended to support a future approach of this nature.</p>	<p>Launch a relevant technical study at EU level that would provide a thorough technical assessment of the existing databases at MS level and to evaluate the feasibility of a mechanism that would interoperate the existing databases. This activity should be conducted by it specialists in cooperation with relevant representatives of national authorities.</p>
<p>The 2007 C.E. study (<i>Analysis of structures and mechanisms for disseminating the data which authorities require to ensure that the directive on cultural property is being enforced</i>) proposed an European DB/platform focused on the circulation of cultural goods. Such an instrument would sustain the efficiency of the European Regulations on the export of cultural goods and of the Directive 93/7/CEE on the return of cultural goods;</p> <p>The study performed within the subgroup study acknowledged a poor development of DB related to the circulation of cultural goods at national level and no readily available instruments to support the monitoring of the legal circulation of cultural goods.</p>	<p>Create technical and financial premises for the establishment of an European DB/platform focused on the circulation of cultural goods ;</p>

## **VII. Appendices**

Questionnaires on improving the traceability of cultural goods and summary reports.

Summary report on the Interoperability of Databases,  
Summary report on Internet Sales,  
Summary report on due diligence.