

Subgroup on Prevention of Theft and Illicit Trafficking

RECOMMENDATION ON DUE DILIGENCE

The Member States of EU,

Knowing how important it is for the European cultural heritage the understanding and respect of the cultural heritage of each Member State,

Concerned about the illicit trafficking and trade of cultural objects and the irreparable damage this causes to the national and European cultural heritage,

Emphasizing that particularly the pillage of archaeological sites results to the great loss of irreplaceable archaeological, historical and scientific information,

Determined to contribute to the fight against illicit traffic and trade of cultural goods by adopting the minimum common legal and ethical standards, as these are provided by the legal and ethical framework at European and International level,

Knowing that in a Community without internal frontiers the free movement of cultural goods is ensured in accordance with the provisions of the Treaty,

Acknowledging that the enhancement of the mobility of collections among Member States is of great priority, as it creates bridges between Europe's common heritage and helps citizens in Europe to understand and enjoy the diversity of their common European cultural heritage,

Recognizing that to enhance this mobility it is essential to promote best practices while fully respecting the Member States' legal framework to protect national treasures possessing artistic, historic or archaeological value,

Realizing that it is absolutely essential for every Member State to become increasingly aware of the moral obligations to respect its own cultural heritage and that of other states,

Determined to contribute to the prevention of theft and illicit trafficking of cultural goods by adopting best practices and therefore ensure that cultural institutions, museums, libraries, archives, collectors/possessors apply *due diligence* and ethical standards during acquisition or borrowing process and dealers during their transactions,

Acknowledging due diligence is establishing the full history of a cultural object from discovery or production and therefore consists one of the main means for preventing the illicit trafficking and the loss of important information,

Taking into consideration the provisions on *due diligence* of ICOM Code of Ethics and of the International 1970 Unesco Convention and Unidroit Convention and other European and international relevant ethical texts and guidelines,

Taking also into consideration the study and report on *due diligence* of the subgroup on the Prevention of theft and illicit trafficking set up within the framework of the MOC WG,

ARE RECOMMENDING

Member States are encouraged to adopt relevant provisions concerning acquisitions by museums/libraries/archives/possessors, as almost half of the Member States have provisions which is not sufficient for the promotion of the “due diligence” practice by professionals.

To this effect it is vital Member States to incorporate or adopt provisions of Codes of Ethics, relevant to due diligence to be exercised by museums/libraries/archives/possessors.

Transparency is strongly recommended in the acquisition procedures followed by the Member States, since the exercise of due diligence by cultural institutions/museums/libraries/archives/possessors prevents the illicit trafficking of cultural goods and the loss of important historic scientific and archaeological information, both for the national and European cultural heritage.

Realizing that the control of acquisition process by a national authority is not the norm, Member States are asked to introduce a scheme for overviewing the acquisition procedure by the afore mentioned institutions.

For the prevention of theft and illicit trafficking of cultural goods it is essential Member States to examine the introduction of import policy and import certificate along with the introduction of a dispatch certificate from one Member State to another for the protection of their national treasures in accordance with article 36 of the Treaty.

Although many member states have not ratified the Unidroit Convention, this should not be a deterrent for Member States to adopt the ethical framework of the Convention as a guiding principle for the matter of acquisitions of cultural goods and the practice of due diligence.

Member States, particularly those that have ratified the 1970 UNESCO Convention, are urged to inform institutions/museums/libraries/archives/possessors and dealers of the Convention’s provisions on acquisitions, export authorisation and obligations of dealers, all of them very important provisions for the implementation of due diligence.

Member states are advised to seek attestation from more than one databases for stolen objects before proceeding with acquisition of an object. The Interpol database is strongly 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 the Interpol's database, by checking regularly the incoming of new information, by means of tools provided by the Interpol headquarters (provisions of usernames and passwords to authorised users).

The answers to the questionnaire on due diligence addressed to all Member States bring to light the need common standards to be followed concerning the required documentation before acquisition of a cultural good by cultural institutions/museums/libraries/archives/possessors and dealers as for example those provided by the 1970 Unesco Convention the Unidroit Convention and by the *Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material*.

The adoption by Member States of a certain procedure (as very few have one), when an object is offered for sale, bequest or donation and is suspected or it is proved to be tainted, is very 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.

Specific penal or administrative sanctions imposed, when a cultural institution/museum/library/archive/collectors/possessor has acquired a tainted object, have a effect on deterring the aforementioned institutions from obtaining dubious objects and on preventing in extend the illicit traffickers from depriving a country of origin from its cultural heritage

Transparency into the lending process is necessary to be promoted among EU museum institutions and collectors or possessors. This is relevant to the Immunity from seizure.

Loan contracts can incorporate terms regarding the search by the lender regarding the objects' provenance.

It is inferred that the research by the lending museums into the provenance and the history of the participating objects in another MS' exhibition, and the withdrawing from the exhibition are mechanisms of pressure upon the organising museum institutions to be more scrupulous with matters of provenance. They prevent in this way the recognition of a dubious collection or object.

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/museums/libraries/archives/collectors/possessors or dealers.

Member States are encouraged to oblige dealers to maintain register book, as this is provided by the 1970 Unesco Convention (article 10b), recording details of history and provenance of an object including photographs.

Member States are encouraged to adopt penal sanctions when a dealers/auction house promotes on sale a tainted object.

Member States are advised to inform dealers/auction houses to use the Interpol database on stolen objects as it is more reliable.