



DG TAXUD

**Fighting illicit trafficking in
cultural goods: analysis of
customs issues in the EU**

Final report

June 2017

Deloitte.

EUROPEAN COMMISSION

Directorate-General for [Name of the policy]

Directorate [Directorate letter] – [Directorate name -see organigramme]

Unit [Directorate letter.Unit number, e.g. A.1] – [Unit name -see organigramme]

Contact: [First name Last name]

E-mail: [...]@ec.europa.eu (functional e-mail if existing, or)
[First name.Last name]@ec.europa.eu

European Commission
B-1049 Brussels

***EUROPE DIRECT is a service to help you find answers
to your questions about the European Union***

Freephone number (*):
00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you)

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2014

Print	ISBN [number]	ISSN [number]	doi:[number]	[Catalogue number]
PDF	ISBN [number]	ISSN [number]	doi:[number]	[Catalogue number]
EPUB	ISBN [number]	ISSN [number]	doi:[number]	[Catalogue number]

© European Union, 2017

Reproduction is authorised provided the source is acknowledged.

PRINTED IN [COUNTRY]

PRINTED ON ELEMENTAL CHLORINE-FREE BLEACHED PAPER (ECF)

PRINTED ON TOTALLY CHLORINE-FREE BLEACHED PAPER (TCF)

PRINTED ON RECYCLED PAPER

PRINTED ON PROCESS CHLORINE-FREE RECYCLED PAPER (PCF)

Image(s) © [artist's name + image #], Year. Source: [Fotolia.com] (unless otherwise specific)

Table of Contents

Table of Contents	6
Abstract (EN)	2
Résumé (FR)	3
Abstrakt (DE)	4
Executive summary (EN)	5
Background to this report	5
Current regulatory and operational framework	5
Policy options for an EU legal framework on imports of cultural goods	7
Assessment of the Customs control mechanisms	10
Note de synthèse (FR)	12
Contexte de ce rapport	12
Le cadre réglementaire et opérationnel actuel	12
Les options politiques possibles pour un cadre juridique de l'UE sur les importations de biens culturels 15	
Évaluation des mécanismes de contrôle douanier	18
Kurzfassung (DE)	20
Hintergrund	20
Der aktuelle rechtliche und operationelle Rahmen	20
Grundsatzoptionen für einen EU-Rechtsrahmen für die Einfuhr von Kulturgütern	22
Bewertung der Zollkontrolle-Mechanismen	26
1 Introduction	27
1.1 Purpose of the document	27
1.2 Context of the assignment	27
1.3 Objectives of the study	30
2 Our approach and methodology	32
2.1 Overall approach	32
2.2 Methodological tools	34
2.2.1 Data collection	34
2.2.2 Data analysis	35
3 Problem assessment	36
3.1 Introduction	36

3.2	Historical background.....	36
3.3	Current regulatory and operational framework	37
3.3.1	International level	37
3.3.1.1	Existing regulatory framework.....	37
3.3.1.1.1	Hague Convention 1954.....	37
3.3.1.1.2	UNESCO Convention 1970	39
3.3.1.1.3	UNIDROIT Convention 1995.....	41
3.3.1.2	Regulatory framework – recent initiatives	42
3.3.1.2.1	Resolutions of the UN General Assembly	42
3.3.1.2.2	Resolutions of the UN Security Council	44
3.3.1.2.3	Council of Europe Criminal Law Convention to Combat Illicit Trafficking in Cultural Property.....	45
3.3.1.2.4	Resolution of the Customs Co-Operation Council on the Role of Customs in Preventing Illicit Trafficking of Cultural Objects	46
3.3.1.2.5	Conclusion of the 13 th Meeting of the INTERPOL Expert Group on Stolen Cultural Property.....	47
3.3.1.2.6	Bonn Declaration of the UNESCO World Heritage Committee	48
3.3.1.2.7	Statement of the third Meeting of States Parties to the UNESCO 1970 Convention.....	48
3.3.1.2.8	Protecting Cultural Heritage – An Imperative for Humanity: Acting Together Against the Destruction and Trafficking of Cultural Property by Terrorist Groups and Organized Crime.....	48
3.3.1.2.9	Declaration of Abu Dhabi.....	49
3.3.1.2.10	Joint Declaration of the Minister of Culture of G7 – Declaration of Florence..	50
3.3.1.2.11	Regional initiatives.....	50
3.3.1.3	International cooperation.....	51
3.3.1.4	EU-level.....	53
3.3.1.4.1	Regulation No 116/2009.....	53
3.3.1.4.2	Regulations on Iraq and Syria	54
3.3.1.4.3	Directive No 2014/60/EU.....	55
3.3.1.5	Currently available operational tools to combat trafficking	56
3.3.1.5.1	ICOM Red List.....	56
3.3.1.5.2	Archeo.....	56
3.3.1.5.3	INTERPOL database of Stolen Works of Art.....	57
3.3.1.5.4	Art Loss Register	57
3.3.1.5.5	Psyche	57
3.3.1.5.6	EU CULTNET	58

3.3.1.5.7	ICOM Code of Ethics	59
3.4	Analysis and comparison of the current EU Customs legislation protecting cultural goods from the Member States (Regulation No 116/2009)	60
3.4.1	Implementation of Regulation No 116/2009.....	60
3.4.1.1	General assessment of the export license system	60
3.4.1.2	Definition and assessment of a cultural good	61
3.4.1.3	Issuing export licenses	63
3.4.1.4	Burden of implementation	66
3.4.1.5	Effectiveness and improvement of the export license system	67
3.4.1.6	Conclusions on the implementation of Regulation No 116/2009	69
3.5	Identification and analysis of national legislation currently in force in the EU Member States 70	
3.5.1	Introduction.....	71
3.5.2	National legislation and practice	72
3.5.2.1	Ratification and implementation of international instruments	72
3.5.2.1.1	1970 UNESCO Convention	72
3.5.2.1.2	1995 UNIDROIT Convention.....	73
3.5.2.2	National interpretation of 'cultural goods'	78
3.5.2.2.1	Definition laid down in international instruments	78
3.5.2.2.2	National definition of cultural goods / property	79
3.5.2.3	Importation of cultural goods.....	84
3.5.2.3.1	Germany.....	91
3.5.2.3.2	France	93
3.5.2.3.3	Conclusions on the national legislation on importation of cultural goods.....	93
3.5.2.4	Competent agencies in the Member States	94
3.5.2.5	Expertise	95
3.5.2.6	Conclusions on the analysis of national systems currently in place	97
3.6	Examination of the performance of EU ad hoc measures: the protection of cultural goods illegally exported from warzones (Syria and Iraq).....	98
3.6.1	Introduction.....	98
3.6.2	Analysis of the EU ad hoc measures	99
3.6.2.1	Enforcement	99
3.6.2.2	Seizure	100
3.6.2.3	Improvement	102

3.6.2.4	Cooperation.....	103
3.6.3	Conclusions on the EU ad hoc measures for Syria and Iraq.....	103
3.7	Identification and analysis of national customs legislation of key third countries, i.e. United States of America, Turkey and Switzerland on the topic of import of cultural goods.....	104
3.7.1	Introduction.....	104
3.7.2	Switzerland.....	105
3.7.2.1	Regulatory framework on cultural goods	105
3.7.2.2	Definition and assessment of ‘cultural goods’	105
3.7.2.3	Illicit importation of cultural goods.....	106
3.7.2.4	Enforcement and seizure	106
3.7.3	Turkey	107
3.7.3.1	Regulatory framework on cultural goods	107
3.7.3.2	Definition and assessment of ‘cultural goods’	108
3.7.3.3	Enforcement and seizure	108
3.7.4	United States of America	108
3.7.4.1	Regulatory framework on cultural goods	108
3.7.4.2	Definition and assessment of ‘cultural goods’	109
3.7.4.3	Illicit importation of cultural goods.....	109
3.7.4.3.1	Procedure.....	109
3.7.4.3.2	Implementation of import restrictions.....	109
3.7.4.3.3	Ad hoc measures.....	110
3.7.4.4	Enforcement and seizure	110
3.7.5	Joint analysis on import of cultural goods.....	110
3.8	Problem tree.....	111
3.8.1	Current situation	114
3.8.1.1	The old collection issue.....	114
3.8.1.2	Small multiple artefacts	114
3.8.1.3	Impact of civil wars and conflicts on cultural heritage.....	115
3.8.1.4	Free ports issue.....	115
3.8.2	External factors	116
3.8.2.1	3.8.2.1. Transport networks	116
3.8.2.2	3.8.2.2. Telecommunication	116
3.8.2.3	3.8.2.3. Technological development	117
3.8.2.4	3.8.2.4. Political and economic instability – regions in distress	117

3.8.3	Drivers	118
3.8.3.1	3.8.3.1. Absence of regulation regarding the import of cultural goods	118
3.8.3.2	3.8.3.2. Absence of practical restrictions to trafficking.....	119
3.8.3.3	3.8.3.3. Lack of common understanding on the definition of cultural goods.....	119
3.8.3.4	3.8.3.4. Profitable EU commerce with high demand for cultural goods	119
3.8.4	Effects	120
4	Policy objectives	121
5	Policy options.....	123
5.1	Introduction.....	123
5.1.1	Comprehensive set of options.....	124
5.1.2	The rationale of the policy option	124
5.1.3	Content of the policy options	124
5.1.4	The scope of the policy options.....	124
5.1.5	Coherence of actions of the different stakeholders.....	125
5.2	Types of policy options.....	126
5.2.1	Baseline scenario – no action	126
5.2.2	EU Supportive measures	128
5.2.2.1	Examples of EU Member States supportive measures in relation to the protection of cultural goods and prevention of illicit trafficking thereof	128
5.2.2.2	EU awareness raising campaigns on the importance of cultural heritage and the effects of trafficking in cultural goods	129
5.2.2.3	EU coordinating department on ‘Trafficking of Cultural Goods’	131
5.2.2.4	Cooperation between relevant authorities	132
5.2.2.5	Training for Customs officers and economic operators	133
5.2.2.6	EU expert group	134
5.2.2.7	Creation of a central authority monitoring sales over the internet	135
5.2.2.8	Creation of an EU data portal.....	136
5.2.3	EU soft law measures	137
5.2.3.1	EU guidelines and recommendations	137
5.2.3.2	Open Method of coordination and recommendations on the use of the tools	137
5.2.4	EU binding legal instrument	138
5.2.5	Legal instrument.....	138
5.2.4.1.1.	Directive	138
5.2.4.1.2.	Regulation	139

5.2.4.2.	Definition	140
5.2.4.2.1.	1970 UNESCO Convention / 1995 UNIDROIT Convention	140
5.2.4.2.2.	Regulation 116/2009	140
5.2.4.2.3.	Directive 2014/60/EU	141
5.2.4.3.	Scope of restricted goods	142
5.2.4.3.1.	Goods of which the export is prohibited under the rules applying in the country of shipment and/or origin.....	142
5.2.4.3.2.	Stolen goods	143
5.2.4.3.3.	Goods originating in certain countries / regions	143
5.2.4.3.4.	Specific EU definition (description of goods).....	144
5.2.4.4.	External geographical scope (field of application for legal instrument).....	145
5.2.4.4.1.	Specific territories and countries only – to be decided by COM	145
5.2.4.4.2.	Global reach	145
5.2.4.5.	Internal scope	146
5.2.4.5.1.	Coverage of imports for EU free circulation goods only.....	146
5.2.4.5.2.	Cultural goods in free zones	146
5.2.4.5.3.	Coverage of domestic (EU) transactions/collections	147
5.2.4.6.	Control instrument	147
5.2.5.1.1	Trader declaration accompanied by (Cultural Good passport or Object ID)	148
5.2.5.2	Mechanism	148
5.2.5.3	Accompanying measure: obligation of cultural goods Object ID	149
5.2.4.6.2.	License (import certificate or export certificate)	152
5.2.4.7.	Enforcement	156
5.2.4.7.1.	Responsible institutions	156
5.2.4.7.2.	Burden of proof	158
5.2.4.7.3.	Use of existing technologies	158
5.2.5.4	5.2.4.8. Sanctioning	158
5.2.5.5	5.2.4.9. Reporting obligations of the Member States.....	159
6	Assessment of the policy options	160
6.1	Impact assessment criteria	160
6.2	Effectiveness	161
6.3	SWOT analysis – Efficiency and coherence	163
6.4	Comparison of the options	170
6.5	Preferred option	170
	Annex I – Survey (sample to selected third countries)	173

Annex II – Literature	178
Annex III – National level cultural goods legislation in EU member states (resources)	183

Table of Figures

Figure 1 - Systematic cooperation	51
Figure 2 - Systematic cooperation with international organisations	52
Figure 3 - Thresholds (age and value)	61
Figure 4 - Value threshold (market assessment)	62
Figure 5 - Documentation accompanying application	62
Figure 6 - Evaluating the value	63
Figure 7 - Standard licenses granted (EU level) Standard licenses issued (EU 2011-2013)	64
Figure 8 - Standard licenses issued (per annum)	64
Figure 9 - Licenses issued (per annum)	65
Figure 10 - Publication of export licenses	65
Figure 11 - - Customs expertise (market assessment)	66
Figure 12 - Responsible authority	66
Figure 13 - Charging of a fee	67
Figure 14 - Current export license system	68
Figure 15 - Assessment by the market	69
Figure 16 - Member States' views on protection of cultural goods	71
Figure 17 - Operators' views on protection of cultural goods	72
Figure 18 - Ratification and implementation of international instruments	74
Figure 19 - Definition of cultural goods	79
Figure 20 - Investigation of suspicious shipments	96
Figure 21 - Assessment of a cultural good	97
Figure 22 - Ensuring provenance by the market	97
Figure 23 - Impact of the Regulations on cultural goods from Iraq and Syria	100
Figure 24 - Seizure of cultural goods	101
Figure 25 - Systems in place on Iraqi / Syrian cultural goods	102
Figure 26 - Assessment of the system	103
Figure 27 - Exchange of information on ad hoc measures	103
Figure 28 - Problem tree	113
Figure 29 - Drivers	118

Figure 30 - Effects: available evidence	120
Figure 31 - Objectives pursued of new policy	121
Figure 32 - Objectives tree.....	122
Figure 33 – Action on the demand side	123
Figure 34 -Cultural goods trade - Declaration system (illustration).....	150
Figure 35 – Cultural goods trade – Certification system (illustration)	154
Figure 36 - Mechanism	160
Figure 37 - Mechanism (assessment of the market)	160

Table of Tables

Table 1 Ratification of Unesco 1970 and UNIDROIT 1995 conventions by EU member states	74
Table 2 - Applicable legislation on exportation and importation of cultural goods in EU member states	75
Table 3 - EU Member States' national definition of cultural goods applicable to exportation or intracommunity trade.....	79
Table 4 - support / use of the ICOM Object ID Standard by selected EU member states	85
Table 5 - National regulatory framework and import license requirement in EU member states	86
Table 6 - competent agencies in EU member states	94
Table 7 Effectiveness of policy options	162
Table 8 – SWOT elements per customs control instrument	164
Table 9 – Comparison of the Customs control instruments.....	170

Abstract (EN)

This study provides for an analysis of the regulation of imports of cultural goods into the EU, relevant in the fight against illicit trafficking of cultural goods from third countries into the EU. The analysis consists of an assessment of the nature and extent of current practices in designing and implementing legislation that protects cultural heritage goods and fights against illicit trafficking in cultural goods. The study pays particular focus on the legislative framework, the control mechanisms as well as the definition regarding the import of cultural goods into the EU. The analysis and recommendations are intended to contribute to an impact assessment for a possible European Commission Proposal for EU measures in this area.

The key finding from the analysis is that, despite the political commitment, the required common policy approach is lacking to effectively combat illicit trafficking of cultural goods from third countries into the EU. A growing trend towards different legal frameworks in EU Member States is visible, which are diverse in scope and application. The analysis also pointed towards the importance of a common understanding on the definition of cultural goods for the purpose of efficient and uniform application of EU level rules. The study concludes with recommendations focusing on possible solutions for the main problem of illicit trafficking of cultural goods from third countries into the EU, which include introduction of an EU-level legislative framework, together with an appropriate control mechanism.

Résumé (FR)

Cette étude fournit une analyse du cadre juridique et les solutions possibles pour gérer l'importation des biens culturels dans l'Union Européenne, qui sont appropriés à la lutte contre le trafic illicite de biens culturels provenant de pays tiers. L'analyse comprend une évaluation de la nature et la portée des pratiques actuelles dans l'élaboration et la mise en œuvre des lois qui protègent les biens du patrimoine culturel et de la lutte contre le trafic illicite des biens culturels. L'étude met l'accent sur la mise en œuvre du cadre juridique, les mécanismes de contrôle, ainsi que sur la définition concernant l'importation de biens culturels dans l'UE. L'analyse et les recommandations visent à contribuer à une évaluation d'impact pour une éventuelle proposition de la Commission Européenne dans l'élaboration de mesures de l'UE dans ce domaine.

La conclusion principale de cette analyse, c'est que malgré l'engagement politique, il manque une démarche de politique commune, nécessaire à une lutte efficace contre le trafic illicite de biens culturels provenant de pays tiers dans l'Union européenne. Une tendance croissante est visible parmi les États membres à adopter des cadres juridiques différents, qui sont variés dans leur portée et leur application. L'analyse a également mis en évidence l'importance d'une compréhension commune sur la définition des biens culturels afin de mettre en œuvre de manière efficace et uniforme des règles au niveau de l'Union Européenne. L'étude se termine par des recommandations mettant l'accent sur les solutions possibles concernant la problématique principale du trafic illicite des biens culturels provenant de pays tiers dans l'Union européenne, qui comprennent la mise en place d'un cadre juridique au niveau de l'UE, accompagné d'un mécanisme de contrôle approprié.

Abstrakt (DE)

Diese Studie enthält eine Analyse der Rechtsgrundlage und der vorhandenen Möglichkeiten, um die Einfuhr von Kulturgütern in die EU zu regeln, was für die Bekämpfung des illegalen Handels mit Kulturgütern aus Drittländern in die EU relevant ist. Die Analyse besteht aus einer Einschätzung der Art und des Umfangs der derzeitigen Praktiken bei der Gestaltung und Ausführung von Rechtsvorschriften, mit denen das kulturelle Erbe geschützt und der illegale Handel mit Kulturgütern bekämpft werden. Die Studie konzentriert sich auf die Einführung einer Rechtsgrundlage, von Kontrollmechanismen sowie der Definition der Einfuhr von Kulturgütern in die EU. Die Analyse und die Empfehlungen sollen die Folgen abschätzen, die ein möglicher Vorschlag der Europäischen Kommission hinsichtlich EU-Maßnahmen in diesem Bereich haben würde.

Zu den wichtigsten Ergebnissen der Analyse zählt, dass der erforderliche gemeinsame politische Ansatz, den illegalen Handel mit Kulturgütern aus Drittländern in die EU wirksam zu bekämpfen, trotz des politischen Willens weiterhin fehlt. Stattdessen lässt sich in den EU-Mitgliedstaaten eine wachsende Tendenz zu unterschiedlichen rechtlichen Rahmenbedingungen mit voneinander abweichenden Anwendungsbereich und Anwendung erkennen. Die Analyse stellte außerdem die Bedeutung eines gemeinsamen Verständnisses der Definition von Kulturgütern heraus, um eine effiziente und einheitliche Anwendung von Vorschriften auf EU-Ebene zu ermöglichen. Die Studie schließt mit Empfehlungen ab, die sich auf mögliche Lösungen des Hauptproblems – dem illegalen Handel mit Kulturgütern aus Drittländern in die EU – konzentrieren, einschließlich der Einführung einer EU-weiten Rechtsgrundlage und eines entsprechenden Kontrollmechanismus.

Executive summary (EN)

Background to this report

The illicit trafficking in cultural goods is generally recognized as one of the biggest criminal trades. Following recent events in Iraq and Syria and considering the call for action from the United Nations Security Council, the issue of illicit trafficking in cultural goods has received widespread political visibility. It has negative effects such as the development of organized crime, money laundering, the financing of warring factions and terrorism activities, and the destruction of the cultural goods and cultural identity. Also legitimate trade in cultural goods (on the EU internal market) is affected by the phenomenon of illicit trafficking.

The illicit trafficking in cultural goods has a number of causes (or 'drivers') and consequential effects, facilitating the problem. In terms of drivers, four main types of challenges served as point of departure for this study:

- ✘ The absence of regulation regarding the import of cultural goods;
- ✘ The absence of practical restrictions to trafficking;
- ✘ The lack of common understanding on the definition of cultural goods;
- ✘ The existence of a profitable commerce for cultural goods in the EU, with high demand.

This study provides for an analysis that may contribute to an impact assessment for a Commission Proposal for EU measures that would regulate the import of cultural goods into the EU in order to tackle the issue of trafficking in cultural goods imported from third countries.

Looking at the regulation of imports of cultural goods, this study focuses (mainly) on the first three aspects: the legislative framework, the control mechanisms as well as definition regarding the import of cultural goods into the EU. The analysis consists of an assessment of the nature and extent of current practices in designing and implementing legislation that protects cultural heritage goods and fights against illicit trafficking in cultural goods.

Current regulatory and operational framework

The current regulatory and operational framework is analysed with regard to the following aspects:

- ✘ Analysis and comparison of the current EU Customs legislation protecting cultural goods from the Member States (Regulation No 116/2009);
- ✘ Identification and analysis of national legislation currently in force in the EU Member States that addresses the issue of illicit trafficking in cultural goods;
- ✘ Examination of the performance of EU *ad hoc* measures: the protection of cultural goods illegally exported from warzones (Syria and Iraq); identification and analysis of national customs legislation of key third countries, i.e. United States of America, Turkey and Switzerland on the topic of import of cultural goods.

Enforcement mechanisms set up by EU Member States, as well as in third countries, are identified and analysed throughout this chapter.

Current regulatory framework: international level

The current international regulatory framework (in particular the 1954 Hague Convention and its protocols, the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, but also recent initiatives) provides for valuable insights in the international community stepping up against illicit trafficking in cultural goods, with a visibly growing interest over the last couple of years. The fact that, despite several calls for action, still 3 EU Member States did not ratify the 1970 UNESCO Convention, is worrying. The ratification of the 1995 UNIDROIT Convention, with a broader scope than the 1970 UNESCO Convention and containing important principles on due diligence, the burden of proof, and return and restitution of cultural goods, should gain more attention from the EU Member States than is currently the case.

Current regulatory framework: European Union

The European Union has taken both regulatory and operational measures to monitor the trade in order to tackle and prevent illicit trafficking in cultural goods. Legislation on the export of cultural goods from the customs territory of the EU and on the return of cultural objects unlawfully removed from the territory of a Member State is part of the EU regulatory framework. Currently, however, the EU legislation does not provide for any framework on cultural goods entering the customs territory of the Union. With the exception of the adoption of two *ad hoc* measures restricting the import of goods from Iraq and Syria (resp. Regulation 1210/2003 and Regulation 36/2012), which are measures encompassed in the broader restrictive measures imposed against Iraq and Syria. Upon importation, cultural goods from third countries other than those territories are treated like any other good and are subject to a customs declaration. Controls carried out on the importation of cultural goods are limited.

Recently, in the context of the European Agenda for Security, and the Action Plan to strengthen the fight against terrorist financing (presented in February 2016), the European Commission has identified trade in cultural goods as a primary source of revenue for terrorists.

Consequently, the necessity arises to have a common policy approach towards the importation of cultural goods. This need for a common policy approach is strengthened by the common responsibility to protect and preserve world cultural heritage. In this regard, all respondent EU Member States unanimously express that they consider it important to tackle and prevent the illicit importation of cultural goods into the European Union.

EU legal framework: common and individual (Member State) actions

Analysis of the benefits and shortcomings of the current existing tools on EU level provide for insights in the development of such action on importation side.

The existing regulatory framework has to cope with a diversity of practical issues. After illicit importation, goods are often attributed by unscrupulous merchants to old collections, leaving it to the authorities to prove otherwise. Small items are easily exchanged across border without being declared. The multiplication of insurrections and civil wars leaves world cultural heritage sites unprotected and exposed to looting.

The outcome of the analysis relates in particular to the following matters: the complexity of adequately defining a cultural good and the costly and difficult identification of such goods in practice, the benefits of the use of digital tools for administrative processing and the exchange of information, the issues regarding the burden of proof authorities are confronted with (e.g., on the provenance of a cultural good) and the need for coherence with already existing tools and regulations on a national, supranational and international level.

Several Member States already took individual action by enacting national legislation on the importation of cultural goods from third countries or are in the process of enacting such legislation in the absence of any further EU initiatives on this matter. Considering the single market and the supranational or even global scope of the current threats, however, such initiatives are inclined to miss their intended target. Member States maintain a large discretion in developing their individual policy on what should be considered illicit and how should illicit movement of cultural goods be tackled, particularly when it comes to the import of cultural goods.

There are different legal frameworks available in the Member States, which are very diverse in scope and field of application. Some Member States do not have any regulations in place on the importation of cultural goods. Others rely entirely on international instruments available (in particular UNESCO Convention, UNIDROIT Convention, ICOM code of ethics). Finally, some developed a proper policy on the importation of cultural goods from third countries, either entirely prohibiting the importation – e.g., Austria – or subjecting the importation to a requirement of prior certification – e.g. France.

Perspectives from non-EU countries

Similar to some EU Member States, the United States of America, Turkey and Switzerland took unilateral measures to take action against trafficking in cultural goods. Next to that, the United States of America and Switzerland have entered – similar to several EU Member States – into bilateral agreements with third countries to jointly combat the illicit trade in cultural goods. For the importation of cultural goods from third countries, both the US and the Swiss system provide for a reversal of the burden of proof, whereby it is up to the importer to declare the good and to prove that the good is not subject to an export permit in the third country. The Swiss system considers imports illicit where such import is carried out in violation of a bilateral treaty or a unilateral measure from the Federal Council. The US system relies mainly on the country of origin, notwithstanding the possibility to also issue emergency import restrictions. The importer has to prove that the export has been carried out in compliance with the laws of the country of origin. All three examined countries foresee in seizure and returning of the cultural goods, after illicit importation has been proved.

International cooperation when it comes to the combat against trafficking in cultural goods has grown substantially over the last couple of years. European agencies/organizations and Member States work actively with other international organizations in several ways. Not only are intelligence and resources provided to actively tackle illicit trafficking, also substantial contributions are provided in the regulatory environment. The success of the Pandora operation, demonstrates the importance of taking collaborative action on an international level through a harmonized approach. with several national and international agencies involved (national police officers, Interpol, WCO, UNESCO, and the authorities of both EU Member States and third countries).

Policy options for an EU legal framework on imports of cultural goods

Addressing the challenges that were identified through research as well as stakeholder interviews and questionnaires, this study proposes regulatory and policy options which would support the overall objective of combating the illicit trafficking in cultural goods by addressing the importation of those goods into the European Union. The policy options cover a wider set of instruments, encompassing both legislative options, as well as supportive measures. The options may also demand control mechanisms as well as supportive measures to ensure effective implementation of the legislation, which are proposed as part of this study.

Overall, this study found that a wide range of comprehensive policy options (i.e. package of different and mutually supportive instruments) is to be considered in order to avoid pre-empting for one specific option without considering possible alternatives. In the set of policy options presented, supportive measures (minimalist approach), soft laws (medium approach) and EU binding instruments (maximalist approach) are considered. A comparative analysis of the options, departing from the baseline scenario, provided for insights into the possible added value (advantages and disadvantages) of each option.

Non-binding instruments

With regards to the **baseline scenario**, taking the position that there is a need for action in this area, it is found that the current frameworks in place, such as *ad hoc measures* at EU level as well as the international 1970 UNESCO Convention will not be adequate enough to solve the problem of illicit trafficking of cultural goods into the EU. Additional actions will be needed.

Second, combining the baseline scenario, with the supportive measures, the '**soft law approach**' of a Council Recommendation was considered. Due to their non-binding nature, the lack of clear obligations (i.e. penalties for non-compliance) mean that guidelines and recommendations would however not prove effective in combating illicit trafficking of cultural goods.

Third, the study highlights the potential value of additional **supportive measures** to support the efficiency of an EU regulatory framework and combat illicit trafficking of cultural goods. The measures would support the protection of third country cultural goods and cultural heritage of mankind (cultural policy instrument), as well as prevent trafficking of cultural goods into the EU and the negative consequences thereof (foreign and commercial policy). Apart from awareness raising, training, promotion of databases (such as for the storage and sharing of cultural goods passports or Object IDs), a continued focus should be on strengthening cooperation between EU Member States and the partnership between the EU with existing international organisations assistance programmes (UNESCO, WCO, ICOM, INTERPOL).

Binding legal instrument

From the input to the surveys, this study found that EU Member States would support the further harmonisation of the legal framework combating trafficking in cultural goods. The European Commission could consider proposing a legal instrument on the import of cultural goods, in particular in order to strengthen the fight against financing of terrorism and organised crime. The main objective of the legal instrument would be to facilitate the work of EU customs authorities in identifying and intercepting cultural goods that enter the customs territory of the EU illegally and, in this manner, protect world cultural heritage, combat illicit trafficking of cultural goods and prevent terrorists from deriving income from this activity.

The legal instrument would lay down a framework of rules to be complied with when bringing goods into the territory of the EU, and on the basis of which both importers and authorities are in a better position to identify and assess the legitimacy of the cultural goods traded. The framework would provide for homogeneity when dealing with cultural goods imports from third countries in the EU.

With regard to the content and scope of the framework, this study highlights the considerations to be taken into account for effective development and implementation of a binding legal instrument:

- The *definition* of cultural goods, i.e., which goods are subject to the legislative measure;
- The *scope of restricted goods* of the legal instrument, i.e., which cultural goods (as defined in the instrument) will (not) be allowed to enter the EU market;

- ✔ The *external geographical scope*, i.e., the geographical field of application of the instrument;
- ✔ The *internal scope*, i.e., the good falling under the application of the legal instrument after entry into the customs territory of the Union;
- ✔ The *means* used to achieve the aims of the legal instrument, i.e., a certification mechanism or a declaration / object ID mechanism;
- ✔ The *sanctioning* mechanism;
- ✔ The follow-up on the legal instrument through *information gathering and reporting obligations* of the EU Member States.
- ✔ The *administrative cooperation* within Member States, involving Customs, police, judicial authorities and cultural authorities, as well as economic operators.

Two main types of binding legal instruments were analysed for this study: the Directive and the Regulation. With regard to the Directive option, requiring the individual Member States to achieve certain goals within a set timeframe and allowing a certain sovereignty to develop their national solutions such as with respect to sanctioning (in accordance with that Directive), the study found that a Directive would result in a too minimum level of harmonisation among the Member States, where a basic layer of protection is agreed upon by all Member States.

Looking at overall benefits of the Regulation option, this study found that this binding legal instrument with direct application in the Member States offers substantial advantages in light of the problem: illicit trafficking of cultural goods into the EU. As a result of a Regulation, a system of common rules would be introduced across the EU with regards to importing cultural goods. Implementing or delegated acts would allow for the application of practical modalities of the system laid down in the Regulation, including the control mechanism.

Definition

Looking at the aspect of definition of cultural goods, the study found that the aspect of definition of cultural goods can be a major hurdle as well as facilitator to effective implementation.

When defining cultural goods in the context of a common EU legislative framework on the import of cultural goods, it should be considered that the definition should (i) create a common understanding of which goods are considered as cultural goods, (ii) harmonize between the available legal instruments as much as possible, not to further create a distinction between the existing mechanisms to combat illicit trade, and (iii) make the assessment whether a good is a cultural good as easy as possible for both market operators and customs officers in practice.

In this respect, the study recommends to make use of (elements of) already existing definitions. The common set of categories of goods in the UNESCO and UNIDROIT Conventions is the result of a consensus of the international community and could serve as a basis for a definition in future instruments. The study found that the major advantage of a common EU binding legal instrument would be that these could clarify the definition of a cultural good, by using categories (CN codes) as well as additional characteristics such as age thresholds.

Control instruments

In order to implement the import legislative framework, customs authorities would require a control instrument to contribute effectively to the implementation of the legislation. This study recommends that different elements are to be considered, such as: the stringency of conditions to be met by applicants (importer or exporter), the ease of dealing with procedural aspects under responsibility of selected

customs authority or institution (in importing or exporting country), the scope of goods covered (geographical, value thresholds, etc.).

A total of four options are proposed and analysed in this study for a control mechanism supporting the EU binding legal instrument on the illicit trafficking of Cultural Goods into the EU.

- declaration by the importer accompanied by cultural passport (e.g. ObjectID) ;
- declaration by the exporter accompanied by cultural passport (e.g. ObjectID) ;
- Import licence;
- Export certificate.

Findings from the surveys and research undertaken for this study, found the following insights on the possible **added value of these control instruments**.

First, under a **declaration** obligation, to be imposed on the importer (option 1a) or on the exporter (option 1b), the trader declares through a signed declaration that cultural goods have been purchased or sold and traded legally between the source-country and the EU. As an accompanying obligation with the trader declaration, the following accompanying measure for a cultural goods passport (e.g. Object ID) can be considered. Through the combined approach of the Object ID and the trader declaration, whether signed by the importer or the exporter, all cultural goods imported into the EU would be traceable, as well as the owner (or holder/possessor) known to Customs Authorities. Relatively low costs would be imposed on economic operators as well as on the side of public institutions. The findings of this study point towards the advantages of the first (importer declaration), and the severe limitations and challenges of the second option (exporter declaration) to successfully support implementation of the EU binding legal instrument.

Second, under a **certificate** obligation, the objective would be to ensure that economic operators seeking to import cultural goods into the EU or export cultural goods to the EU would apply for a certification (also called respectively an import license or an export certificate) to be issued by a competent authority either in the EU (import license) or in the source country (export certificate). Through a certification mechanism, the authority will authorize the importer to introduce in the EU the cultural goods from third countries (import license) or to export outside the third country the cultural goods (export certificate).

Based on experience with existing certification schemes governed by the EU and involving trades from third countries, it can be said that the role and capacity of domestic public institutions in issuing the certificates is crucial to the success of the certification system. Apart from the obligation to accompany the cultural goods by a certificate validated by the competent authority, the **conditions and procedures** for obtaining a cultural goods import certificate (option 1a) or export license (option 1b) are essential to effective implementation. Based on existing EU import licensing systems (such as for agricultural products, or rough diamonds), there are valuable lessons to be drawn. As result of the surveys and research, the option for a certificate control mechanism points towards the additional costs and capacity required to implement such a mechanism, both in the case of the certificate issued by the EU or by the source country authority (or by an independent institution). The burdens for traders are found to be elevated, compared to the declaration option.

Assessment of the Customs control mechanisms

The policy options have to be assessed towards the same assessment criteria:

- **Effectiveness** in achieving the specific policy objectives. The Study has made this analysis for all tools/options;
- **Efficiency**, i.e. qualitative assessment of the effort (time and cost) needed to reach the objectives;
- **Coherence** with existing policies and legal/institutional frameworks.

The study has conducted a high-level qualitative assessment of the possible Customs control instruments to estimate the best cost benefit ratio.

Looking at different criteria, it follows from this assessment that the option '**declaration signed by the EU importer**' seems the most suitable control instrument, especially looking at effectiveness and efficiency and taking into account the need to control and manage the instrument by EU customs administrations. The option of an '**import license issued by EU authorities**' was assessed as relatively suitable (neutral), related to the fact that the positive assessment with regards to the effectiveness criteria is somewhat downplayed by the efficiency criteria, due to the need to allocate additional efforts (time and cost) to reach the objectives. The control instrument which requires an '**exporter certificate issued by third countries**', was assessed as less efficient due to the need to invest and scale up cooperation with (and potentially capacity of) third country Governments. Similarly, a '**declaration signed by the exporter**' may seem relatively efficient in terms of effort (time and cost), but provides shortcomings in terms of follow-up.

With a view to the broader challenges outlined in this study, the successful implementation of an EU legislative framework on import of cultural goods, as recommended under the preferred option '**declaration signed by the EU importer**', would merit additional support measures to be put in place. Inter alia, to be fully effective, the study recommends that a system should be developed to store and share the object declarations between all EU countries, potentially beyond the EU in the long term. This system will probably deserve EU financing in order to connect the national databases containing the object declarations or at least to ensure that the requests for information smoothly circulate between customs authorities.

Note de synthèse (FR)

Contexte de ce rapport

Le trafic illicite de biens culturels est communément reconnu comme l'un des commerces illicites les plus ancrés. Suite aux événements récents en Irak et en Syrie, et compte tenu de l'appel à l'action par le Conseil de sécurité de l'ONU, le problème du trafic illicite des biens culturels a obtenu une plus grande visibilité politique. Il a des effets négatifs tels que le développement du crime organisé, le blanchiment d'argent, le financement des groupes armés et des activités terroristes, ainsi que la destruction des biens et des identités culturels. Par ailleurs, le commerce légitime des biens culturels (au sein du marché unique de l'UE) est également touché par le phénomène du trafic illicite.

Le trafic illicite de biens culturels est le résultat d'un certain nombre de causes (ou « éléments moteurs ») et des effets indirects qui facilitent le problème. En ce qui concerne les éléments moteurs, quatre principaux types de défis ont servi comme point de départ à cette étude :

- ❑ l'absence de réglementation concernant l'importation de biens culturels ;
- ❑ l'absence de restriction concrète au trafic ;
- ❑ l'absence de consensus sur la définition des biens culturels ;
- ❑ l'existence d'un commerce rentable pour les biens culturels au sein de l'UE avec une forte demande.

Cette étude fournit une analyse qui pourrait être utilisée dans une étude d'impact pour une proposition d'ensemble de mesures de l'UE par la Commission. Celles-ci serviront à réglementer l'importation de biens culturels dans l'UE afin de s'attaquer au problème du trafic des biens culturels importés de pays tiers.

En considérant la réglementation des importations de biens culturels, cette étude se focalise (principalement) sur les trois premiers points : le cadre juridique, les mécanismes de contrôle ainsi que la définition de l'importation de biens culturels dans l'UE. L'analyse comprend une étude sur la nature et l'étendue des pratiques actuelles dans la conception et la mise en œuvre des lois qui protègent les biens du patrimoine culturel et luttent contre le trafic illicite des biens culturels.

Le cadre réglementaire et opérationnel actuel

Le cadre réglementaire et opérationnel actuel est évalué par rapport aux points suivants :

l'analyse et la comparaison de la législation douanière de l'UE actuelle, protégeant les biens culturels des États membres (règlement N° 116/2009) ;

l'identification et l'analyse de la législation nationale en vigueur dans les États membres qui s'attaquent au problème du trafic illicite des biens culturels ;

l'évaluation de l'efficacité des mesures *ad hoc* de l'UE : la protection des biens culturels exportés illégalement de zones de conflits (Syrie et Irak) ; l'identification et l'analyse de la législation douanière nationale des principaux pays tiers, c'est-à-dire les États-Unis, la Turquie et la Suisse par rapport à l'importation de biens culturels.

Les mesures coercitives mises en place par les États membres, ainsi que dans les pays tiers, sont identifiées et analysées tout au long de ce chapitre.

Cadre réglementaire actuel au niveau international

Le cadre réglementaire international actuel (en particulier la Convention de la Haye de 1954 et ses protocoles, la Convention de l'UNESCO de 1970 et la Convention d'UNIDROIT de 1995, et de récentes initiatives) donne un éclairage estimable sur la manière dont la communauté internationale intensifie sa lutte contre le trafic illicite des biens culturels, avec un intérêt visiblement croissant au cours de ces dernières années. Il est inquiétant de constater que malgré plusieurs appels à passer à l'action, il reste encore trois États membres de l'UE qui n'ont pas ratifié la Convention de l'UNESCO de 1970. La ratification de la Convention d'UNIDROIT de 1995, avec un cadre plus étendu que la Convention de l'UNESCO de 1970 et contenant des principes importants sur la vérification préalable, la charge de la preuve et le retour et la restitution des biens culturels, devrait attirer davantage l'attention des États membres que ce n'est actuellement le cas.

Le cadre réglementaire actuel : Union Européenne

L'UE a pris des mesures réglementaires et opérationnelles pour surveiller le commerce afin de combattre et entraver le trafic illicite de biens culturels. La législation sur l'exportation de biens culturels en provenance du territoire douanier de l'UE et sur le retour de biens culturels ayant été déplacés illicitement du territoire d'un État membre, fait partie du cadre réglementaire de l'UE. Toutefois, la législation communautaire actuelle ne prévoit aucun cadre juridique pour les biens culturels introduits sur le territoire douanier de l'UE, à l'exception de l'adoption de deux mesures *ad hoc* qui restreignent les importations des biens en provenance de l'Irak et de la Syrie (voir Règlement 1210/2003 et Règlement 36/2012) et qui sont comprises dans un ensemble de mesures restrictives imposées à ces deux pays. À l'importation, les biens culturels provenant de pays tiers autres que ces derniers territoires, sont traités comme tout autre bien et font l'objet d'une déclaration en douane. Les contrôles effectués à l'importation de biens culturels sont limités.

Récemment, dans le contexte de l'Agenda européen pour la sécurité et le Plan d'Action pour renforcer la lutte contre le financement du terrorisme (présenté en février 2016), la Commission européenne a identifié le commerce des biens culturels comme une des principales sources de financement pour les groupes terroristes.

Par conséquent, il en découle la nécessité d'avoir une démarche de politique commune envers l'importation de biens culturels. Ce besoin d'avoir une démarche de politique commune est renforcée par la responsabilité partagée de protéger et préserver le patrimoine culturel mondial. À cet égard, tous les États membres déclarent unanimement qu'il est important de s'attaquer et empêcher l'importation illicite de biens culturels dans l'UE.

Cadre juridique de l'UE : mesures individuelles et communes (État membre)

L'étude des avantages et des défauts des outils existants et actuellement utilisés au niveau de l'UE nous donne un aperçu sur le développement des mesures prises à l'importation.

Le cadre réglementaire existant doit faire face à une diversité de problèmes pratiques. Après l'importation illicite, les biens sont souvent attribués par des marchands peu scrupuleux à d'anciennes collections, contraignant les autorités à prouver le contraire. Les articles de petites tailles sont facilement échangés au-delà des frontières sans être déclarés. La multiplication des soulèvements et des guerres civiles laissent les sites du patrimoine culturel mondial sans protection et exposés au pillage.

Le résultat de l'analyse concerne en particulier les questions suivantes : la complexité à définir de manière adéquate un bien culturel, la difficulté et le coût élevé à identifier de tels biens en pratique, les avantages à utiliser des outils numériques pour le traitement administratif et l'échange d'informations, les problématiques liées aux charges de la preuve à laquelle les autorités sont confrontées (par exemple, sur la provenance d'un bien culturel) et la nécessité d'assurer la cohérence des outils et des réglementations nationaux, supranationaux et internationaux déjà existants.

Plusieurs États membres ont déjà pris des mesures individuelles en promulguant des lois nationales relatives à l'importation de biens culturels provenant de pays tiers ou sont en cours de promulguer de telle loi en l'absence de toutes autres initiatives de l'UE à ce sujet. Compte tenu du marché unique et la portée supranationale et même mondiale des menaces actuelles, de telles initiatives ont toutefois tendance à manquer leur cible visée. Les États membres maintiennent une grande discrétion dans le développement de leur politique nationale sur ce qui devrait être considéré comme illicite et sur comment s'attaquer aux déplacements illicites de biens culturels, en particulier en ce qui concerne l'importation de ces biens.

Il y a différents cadres juridiques à la disposition des États membres qui sont très divers dans leur portée et leur champ d'application. Certains États membres n'ont aucune réglementation en vigueur sur l'importation de biens culturels. D'autres s'appuient entièrement sur des instruments internationaux déjà disponibles (en particulier la Convention de l'UNESCO, la Convention d'UNIDROIT, le code de déontologie ICOM). Et par ailleurs, certains pays ont mis au point une politique appropriée à l'importation de biens culturels de pays tiers, soit en interdisant entièrement l'importation – par exemple, l'Autriche – soit en soumettant l'importation à l'exigence de certification préalable, comme la France.

Du point de vue des pays non membres de l'UE

De manière similaire à certains États membres de l'UE, les États-Unis, la Turquie et la Suisse ont pris des mesures unilatérales pour agir contre le trafic de biens culturels. En plus de cela, les États-Unis et la Suisse ont conclu - de manière semblable à plusieurs États membres de l'UE - des accords bilatéraux avec des pays tiers pour lutter conjointement contre le commerce illicite de biens culturels. Pour l'importation de biens culturels en provenance de pays tiers, le système des États-Unis et de la Suisse prévoit un renversement de la charge de la preuve, où c'est de la responsabilité de l'importateur à déclarer le bien et à prouver que celui-ci n'est pas soumis à une autorisation d'exportation dans le pays tiers. Le système suisse considère les importations illicites lorsqu'elles sont effectuées en violation d'un traité bilatéral ou d'une mesure unilatérale du Conseil fédéral. Le système américain s'appuie principalement sur le pays d'origine, même s'il existe également la possibilité d'émettre des restrictions d'importation d'urgence. L'importateur doit prouver que l'exportation a été effectuée conformément aux lois du pays d'origine. Les trois pays étudiés prévoient la saisie et le retour des biens culturels après que l'importation illicite ait été démontrée.

La coopération internationale en matière de lutte contre le trafic de biens culturels s'est considérablement accrue au cours de ces deux dernières années. Les agences/organisations européennes et les États membres travaillent activement avec d'autres organisations internationales de plusieurs manières. Non seulement des renseignements et des moyens sont fournis pour lutter activement contre le trafic illicite, mais des contributions significatives sont également apportées au cadre réglementaire. Le succès de l'opération Pandora démontre l'importance d'œuvrer conjointement au niveau international dans une démarche harmonisée, impliquant plusieurs organismes nationaux et internationaux (agents de police nationale, Interpol, OMD, UNESCO et les autorités des États membres de l'UE et des pays tiers).

Les options politiques possibles pour un cadre juridique de l'UE sur les importations de biens culturels

Pour affronter les défis identifiés au cours de l'enquête ainsi que les entretiens avec les parties prenantes et les questionnaires, cette étude propose des options réglementaires et politiques potentielles qui favoriseraient l'objectif global de lutte contre le trafic illicite de biens culturels en s'attaquant à l'importation de ces produits dans l'UE. Les options comprennent un large ensemble d'instruments couvrant à la fois des options législatives ainsi que des mesures d'accompagnement. Les options peuvent également exiger des mécanismes de contrôle ainsi que des mesures d'accompagnement pour s'assurer de l'efficacité de la mise en œuvre des lois qui sont proposées dans le cadre de cette étude.

Nous avons constaté au cours de cette étude, qu'en règle générale, un éventail complet d'options possibles (c'est-à-dire un ensemble d'instruments différents et d'accompagnement mutuels) est à prendre en compte afin d'éviter d'anticiper une option en particulier sans tenir compte des solutions alternatives possibles. Dans l'ensemble des options politiques possibles présentées, des mesures de d'accompagnement (approche minimaliste), de droit mou (approche intermédiaire) et d'instruments à force obligatoire de l'UE (approche maximaliste), ont été prises en compte. Une analyse comparative des options, s'affranchissant du scénario de base, fournit un éclairage sur la valeur ajoutée possible (avantages et désavantages) de chaque option.

Instruments juridiquement non-contraignants

Par rapport au **scénario de base**, avec partie pris de la nécessité d'intervenir dans ce domaine, il a été constaté que les cadres actuels en vigueur, tels que *des mesures ad hoc* au niveau européen ainsi que la Convention internationale de l'UNESCO de 1970, seront insuffisants pour résoudre le problème du trafic illicite des biens culturels introduits dans l'UE. Des démarches supplémentaires seront nécessaires.

Deuxièmement, la combinaison du scénario de base avec des mesures de soutien et « **l'approche de droit mou** » d'une recommandation du Conseil, a été envisagée. Compte tenu du caractère non contraignant, l'absence d'obligations claires (c'est-à-dire des pénalités en cas de non-conformité) signifie que les directives et les recommandations ne s'avèreraient cependant pas efficaces dans la lutte contre le trafic illicite de biens culturels.

En troisième lieu, l'étude souligne la valeur potentielle **de mesures de d'accompagnement** supplémentaires qui favoriseraient l'efficacité d'un cadre réglementaire européen de lutte contre le trafic illicite de biens culturels. Les mesures soutiendraient la protection des biens culturels de pays tiers et du patrimoine culturel mondial (instrument de la politique culturelle) et entraveraient le trafic des biens culturels dans l'UE et les conséquences négatives de ce trafic en matière de politique étrangère et commerciale. Mise à part le travail de sensibilisation, de formation, de promotion des bases de données (par exemple, pour le stockage et le partage des passeports de biens culturels ou Objet ID), il faudrait continuer à porter l'attention à renforcer la coopération entre États membres et le partenariat entre l'UE avec les programmes d'aide existants des organisations internationales (UNESCO, OMD, ICOM, INTERPOL).

Instrument juridique à force obligatoire

Sur la base des retours d'enquête, cet étude a trouvé que les États membres de l'UE sont favorables à la poursuite de l'harmonisation du cadre juridique de la lutte contre le trafic des biens culturels. La Commission européenne pourrait envisager de proposer un instrument juridique relatif à l'import de

biens culturels, notamment afin de renforcer la lutte contre le financement du terrorisme et le crime organisé. L'objectif principal de l'instrument juridique serait de faciliter le travail des autorités douanières de l'UE dans l'identification et l'interception des biens culturels qui sont introduit illégalement sur le territoire douanier de l'UE et, de cette manière, protéger le patrimoine culturel mondial, lutter contre le trafic illicite de biens culturels et empêcher les terroristes de tirer profit de cette activité.

L'instrument juridique établirait un cadre de règles à respecter lors de l'importation des biens sur le territoire de l'UE et sur la base duquel les importateurs et les autorités seront mieux capables de déterminer et d'évaluer la légitimité des biens culturels vendus. Le cadre fournirait un caractère homogène pour traiter l'importation des biens culturels de pays tiers dans l'UE.

En ce qui concerne le contenu et la portée du cadre, cette étude met en évidence ce qui est à prendre en compte pour un développement et une mise en œuvre efficace d'un instrument juridique à force obligatoire :

- la *définition* des biens culturels, c'est-à-dire les biens qui sont soumis aux mesures juridiques ;
- la *portée de l'instrument juridique* sur les biens interdits, c'est-à-dire les biens culturels (tels que définis dans l'instrument) qui (ne) seront (pas) autorisés à être introduits dans le marché de l'UE ;
- la *portée géographique externe*, c'est-à-dire le champ d'application géographique de l'instrument ;
- la *portée interne*, c'est-à-dire le bien qui est soumis à l'instrument juridique après avoir été introduit sur le territoire douanier de l'UE ;
- les *moyens* utilisés pour accomplir l'objectif de l'instrument juridique, c'est-à-dire un système de certification ou de déclaration/système Objet ID ;
- le *système de sanction* ;
- l'*obligation* des États membres de l'UE à faire de *la collecte d'informations et de rendre des comptes* pour assurer le contrôle de l'instrument juridique ;
- la *coopération administrative* au sein des États membres impliquant les services douaniers, la police, les autorités judiciaires et les autorités culturelles ainsi que les acteurs économiques.

Deux principaux types d'instruments juridiques à force obligatoire ont été analysés pour cette étude : la Directive et la Réglementation. En ce qui concerne l'option de la Directive, exigeant chaque État membre à atteindre certains objectifs dans un délai déterminé et autorisant à une certaine souveraineté dans le développement de solutions nationales, telles qu'en matière de respect de sanction (conformément à cette Directive), l'étude a révélé qu'une Directive résulterait en un niveau d'harmonisation minimum trop bas entre les États membres, où ces derniers se mettent tous d'accord sur un niveau de protection de base.

En prenant en considération l'ensemble des bénéfices que présente l'option de la Réglementation, cette étude a révélé que cet instrument juridique à force d'obligatoire avec application directe dans les États membres offre des avantages considérables compte tenu de la problématique : le trafic illicite de biens culturels dans l'UE. Sous l'effet d'une Réglementation, un système de règles communes serait introduit à travers toute l'UE à l'égard de l'importation de biens culturels. La mise en œuvre ou les actes délégués permettraient d'appliquer les modalités pratiques du système énoncé dans la Réglementation, y compris le mécanisme de contrôle.

Définition

En considérant la définition de biens culturels, l'étude a constaté que les différents aspects de cette définition peuvent à la fois être un obstacle majeur tout comme un moyen favorisant l'efficacité de la mise en oeuvre.

En définissant les biens culturels dans le contexte d'un cadre juridique commun de l'UE sur l'importation de ces biens, il convient de considérer que la définition devrait (i) créer une compréhension commune sur quels biens sont considérés comme biens culturels, (ii) harmoniser autant que possible les instruments juridiques disponibles, sans créer de distinction supplémentaire parmi les systèmes de lutte contre le commerce illicite déjà existants, et (iii) rendre l'évaluation d'un bien comme étant un bien culturel aussi facile que possible en pratique tant pour les acteurs du marché que pour les douaniers.

À cet égard, l'étude recommande d'utiliser (des éléments) des définitions déjà existantes. L'ensemble commun des catégories de biens aux conventions de l'UNESCO et UNIDROIT est le résultat d'un consensus par la communauté internationale et pourrait servir de base à une définition dans les instruments futurs. L'étude a révélé que le principal avantage d'un instrument juridique à force obligatoire commun à l'UE, serait qu'il pourrait clarifier la définition d'un bien culturel en utilisant des catégories (codes CN) ainsi que des caractéristiques supplémentaires telles que les seuils de datation.

Instruments de contrôle.

Afin d'appliquer le cadre législatif à l'importation, les autorités douanières requièrent un instrument de contrôle qui contribuerait à mettre en application la législation de manière efficace. Cette étude recommande que différents éléments soient pris en considération, tels que : la rigueur des exigences à respecter par les demandeurs (importateur ou exportateur), la facilité à prendre en charge les aspects procéduraux dont les services douaniers ou les organismes sélectionnés (dans le pays d'importation ou d'exportation) sont responsables, le champs d'application des biens couverts (seuils géographiques, de valeur, etc.).

Un total de quatre options sont proposées et analysées dans cette étude pour un mécanisme de contrôle soutenant l'instrument juridique à force obligatoire dans l'UE sur le trafic illicite de biens culturels dans l'UE :

- ☒ déclaration de l'importateur accompagnée d'un passeport culturel (par exemple, Objet ID) ;
- ☒ déclaration de l'exportateur accompagnée d'un passeport culturel (par exemple, Objet ID) ;
- ☒ certificat d'importation ;
- ☒ certificat d'exportation.

Les résultats des enquêtes et des recherches menées pour le compte de cette étude ont fourni les éclairages suivants concernant la **valeur ajoutée** potentielle **de ces instruments de contrôle**.

Premièrement, en vertu d'une obligation de **déclaration**, à rendre obligatoire à l'importateur (option 1a) ou à l'exportateur (option 1b), le commerçant déclare par une déclaration signée que les biens culturels ont été achetés ou vendus légalement entre le pays d'origine et l'UE. À titre d'obligation complémentaire, on peut envisager que la déclaration du commerçant soit accompagnée d'un passeport de biens culturels (par exemple, Objet ID). La combinaison de l'Objet ID et de la déclaration du commerçant, qu'elle soit signée par l'importateur ou l'exportateur, permettrait ainsi d'avoir une traçabilité de tous les biens culturels importés dans l'UE, ainsi que du propriétaire (ou titulaire/possesseur) connu des autorités douanières. Des coûts relativement faibles seraient imposés

aux acteurs économiques et aux organismes publics. Les résultats de cette étude mettent en évidence les avantages de la première option (déclaration de l'importateur) et les sérieux limites et défis de la deuxième option (déclaration de l'exportateur) pour favoriser la réussite de la mise en application de la force obligatoire de l'instrument juridique de l'UE.

Deuxièmement, en vertu d'une obligation de **certificat**, l'objectif serait de s'assurer à ce que les acteurs économiques cherchant à importer des biens culturels dans l'UE ou à exporter des biens culturels vers l'UE, fassent une demande de certificat (également appelée respectivement certificat d'importation ou certificat d'exportation) qui serait délivrée par une autorité compétente soit dans l'UE (certificat d'importation), soit dans le pays d'origine (certificat d'exportation). Grâce à un mécanisme de certification, l'autorité accordera à l'importateur le droit d'introduire dans l'UE des biens culturels provenant de pays tiers (certificat d'importation délivré par une autorité compétente dans l'État membre d'entrée) ou d'exporter des biens culturels hors du pays tiers (certificat d'exportation délivré par l'autorité compétente du pays exportateur).

Sur la base d'expérience avec les systèmes de certification existants gérés par l'UE et concernant le commerce des pays tiers, on peut dire que le rôle et la capacité des autorités publiques intérieures à délivrer les certificats est la clé de la réussite d'un système de certification. Outre l'obligation d'accompagner les biens culturels d'un certificat validé par l'autorité compétente, les **conditions et procédures** pour l'obtention d'un certificat d'importation de biens culturels (option 1a) ou d'un certificat d'exportation (option 1 b) sont essentielles à une mise en application efficace. Il y a de précieux enseignements à tirer des systèmes de certificats d'importation de l'UE existants (par exemple en ce qui concerne les produits agricoles ou les diamants bruts). À l'issue des enquêtes et des recherches, l'option pour un mécanisme de contrôle par certificat met en évidence des coûts et des moyens supplémentaires requis pour mettre en place un tel mécanisme, tant dans le cas du certificat délivré par l'UE que par l'autorité du pays d'origine (ou par un organisme indépendant). Pour les commerçants, les charges se révèlent être élevées comparées à l'option de déclaration.

Évaluation des mécanismes de contrôle douanier

Les options politiques doivent être appréciées avec les mêmes critères d'évaluation :

- **L'efficacité** à concrétiser les objectifs spécifiques de la politique. L'étude a effectué cette analyse pour tous les outils/options ;
- **L'efficience**, c'est-à-dire une évaluation qualitative de l'effort nécessaire pour réaliser les objectifs en temps et en coût;
- **Cohérence** avec les politiques et les cadres juridiques/institutionnels existants.

L'étude a mené une évaluation qualitative de haut niveau des éventuels instruments de contrôle douanier dans le but d'estimer le meilleur rapport coût/bénéfice. En considérant tous les différents critères, il en ressort que l'option «**déclaration signée par l'importateur de l'UE**» semble être l'instrument de contrôle le mieux adapté, notamment d'un point de vue efficacité et efficience, et en prenant en compte la nécessité pour les administrations douanières de l'UE de pouvoir contrôler et gérer l'instrument. L'option «**licence d'importation délivrée par les autorités de l'UE**» a été évaluée comme étant relativement adaptée (neutre), compte tenu du fait que l'évaluation positive par rapport au critère d'efficacité est quelque peu affaiblie par le critère de l'efficience en raison de la nécessité de fournir des efforts supplémentaires (temps et coût) pour atteindre les objectifs. L'instrument de contrôle qui requiert un «**certificat d'exportation délivré par des pays tiers**» a été jugé moins efficace parce

qu'il faut investir et développer la coopération avec (et potentiellement la capacité) des gouvernements de pays tiers. De même, une «**déclaration signée par l'exportateur**» qui pourrait sembler relativement efficace en termes d'effort (temps et coût) présente cependant des défauts en matière de suivi.

Dans le cadre des défis plus larges exposés dans les grandes lignes de cette étude, la réussite de la mise en œuvre d'un cadre juridique de l'UE sur l'importation de biens culturels, tel que recommandé par l'option préférée «**déclaration signée par l'importateur de l'UE**», mérite des mesures de soutien supplémentaires pour être mise en place. Par ailleurs, pour être pleinement efficace, l'étude recommande qu'un système soit développé pour stocker et partager les déclarations d'objets entre pays de l'UE, et à long terme potentiellement au-delà des frontières de l'UE. Ce système mériterait probablement un financement de l'UE afin de relier les bases de données nationales contenant les déclarations d'objet ou tout du moins s'assurer que les demandes d'informations s'échangent entre autorités douanières sans accroc.

Kurzfassung (DE)

Hintergrund

Der illegale Handel mit Kulturgütern ist allgemein als eines der größten Kriminalgeschäfte anerkannt. Nach den jüngsten Ereignissen in Irak und Syrien sowie der Handlungsaufforderung des Sicherheitsrates der Vereinten Nationen wurde der illegale Handel mit Kulturgütern politisch äußerst sichtbar. Seine negativen Auswirkungen beinhalten die Entwicklung des organisierten Verbrechens, Geldwäsche, Finanzierung von kriegführenden Fraktionen und Terrorismusaktivitäten sowie die Zerstörung von Kulturgütern und kulturellen Identitäten. Auch der legitime Handel mit Kulturgütern (auf dem EU-Binnenmarkt) ist von dem Phänomen des illegalen Handels betroffen.

Der illegale Handel mit Kulturgütern hat eine Reihe von Ursachen und Folgen. Vier Haupttypen von Ursachen bzw. Triebkräften dienten als Ausgangspunkte dieser Studie:

- Fehlende Regulierung des Kulturgut-Imports;
- Fehlende praktische Hürden für den illegalen Handel;
- Fehlende gemeinsame Definition des Begriffes „Kulturgut“;
- Große Anfrage für Kulturgüter in der EU, und damit hohe Profitabilität.

Die Analyse in dieser Studie kann im Rahmen des Kommissionsvorschlags zur Folgenabschätzung von EU-Maßnahmen beitragen, welche die Einfuhr von Kulturgütern in die EU regeln würden, um den illegalen Handel mit Kulturgütern aus Drittländern zu bekämpfen.

Mit Blick auf die Regulierung der Einfuhr von Kulturgütern konzentriert sich diese Studie (vor allem) auf die ersten drei Aspekte: den gesetzlichen Rahmen, die Kontrollmechanismen bei der Einfuhr sowie die Definition der Kulturgüter. Die Analyse beinhaltet eine Einschätzung der Art und des Umfangs der derzeitigen Gestaltung und Umsetzung von Rechtsvorschriften, die das kulturelle Erbe schützen und gegen den illegalen Handel mit Kulturgütern kämpfen.

Der aktuelle rechtliche und operationelle Rahmen

Der aktuelle rechtliche und operationelle Rahmen wird in Bezug auf folgende Aspekte analysiert:

- Analyse und Vergleich aktueller EU-Zollverordnungen, die Kulturgüter aus den Mitgliedsstaaten schützen (Verordnung No 116/2009);
- Identifikation und Analyse aktueller nationaler Gesetzgebung in Bezug auf den illegalen Handel mit Kulturgütern in EU-Mitgliedstaaten;
- Untersuchung der von der EU *ad hoc* durchgeführten Maßnahmen: Schutz der aus Kriegsgebieten illegal exportierten Kulturgüter (Syrien und Irak); Identifikation und Analyse nationaler Gesetzgebung in Bezug auf den Import von Kulturgütern in relevanten Drittstaaten, z.B. den Vereinigten Staaten, der Türkei und der Schweiz.

Die in den EU-Mitgliedstaaten sowie in Drittländern eingerichteten Durchsetzungsmechanismen werden in diesem Kapitel identifiziert und analysiert.

Aktueller Rechtsrahmen: international

Der derzeitige internationale Regulierungsrahmen (insbesondere das Haager Übereinkommen von 1954 und seine Protokolle, das UNESCO-Übereinkommen von 1970 und das UNIDROIT-Übereinkommen von 1995, aber auch die jüngsten Initiativen) bietet wertvolle Einblicke in die

Geschichte des Kampfes der internationalen Gemeinschaft gegen den illegalen Handel mit Kulturgütern. Sichtbar wachsendes Interesse ist in den letzten Jahren zu verzeichnen. Die Tatsache, dass trotz mehrerer Handlungsaufforderungen 3 EU-Mitgliedstaaten das UNESCO-Übereinkommen von 1970 immer noch nicht ratifiziert haben, ist besorgniserregend. Auch die Ratifizierung des UNIDROIT-Übereinkommens verdient mehr Aufmerksamkeit der EU-Mitgliedstaaten, da sie einen breiteren Anwendungsbereich als das UNESCO-Übereinkommen von 1970 bietet und wichtige Grundsätze in Bezug auf die Sorgfaltspflicht, die Beweislast und die Rückgabe von Kulturgütern beinhaltet.

Aktueller Rechtsrahmen: Europäische Union

Die Europäische Union hat sowohl regulatorische als auch operative Maßnahmen ergriffen, um den Import und Export zu überwachen und den illegalen Handel mit Kulturgütern zu verhindern. Die Rechtsvorschriften über die Ausfuhr von Kulturgütern aus dem Zollgebiet der EU und über die Rückgabe von rechtswidrig aus dem Gebiet eines Mitgliedstaats enthobenen Kulturgütern sind Teil des EU-Rechtsrahmens. Derzeit sieht die EU-Gesetzgebung jedoch keinen Rahmen für Kulturgüter vor, die in das Zollgebiet der Union gelangen. Die einzige Ausnahme ist die Verabschiedung von zwei Ad-hoc-Maßnahmen zur Beschränkung der Einfuhr von Waren aus Irak und Syrien (Verordnungen 1210/2003 und 36/2012), die Teil der breiteren restriktiven Maßnahmen gegen Irak und Syrien sind. Bei der Einfuhr werden Kulturgüter aus anderen Drittländern als diesen Gebieten wie jedes andere Gut behandelt und unterliegen einer Zollanmeldung. Kontrollen bei der Einfuhr von Kulturgütern sind begrenzt.

In jüngster Zeit hat die Europäische Kommission im Rahmen der Europäischen Agenda für Sicherheit und des Aktionsplans zur Bekämpfung der Terrorismusfinanzierung (im Februar 2016 vorgelegt) den Handel mit Kulturgütern als eine primäre Einnahmequelle für Terroristen identifiziert.

Folglich besteht die Notwendigkeit, einen gemeinsamen politischen Ansatz für die Einfuhr von Kulturgütern zu entwickeln. Diese Notwendigkeit wird durch die gemeinsame Verantwortung gestärkt, das Weltkulturerbe zu schützen. In diesem Zusammenhang äußerten alle befragten EU-Mitgliedstaaten einstimmig die Überzeugung, die illegale Einfuhr von Kulturgütern in die Europäische Union verhindern zu müssen.

EU-Rechtsrahmen: gemeinsame Maßnahmen, und Maßnahmen der einzelnen Mitgliedstaaten

Die Analyse der Vor- und Nachteile der bereits existierenden Instrumente auf der EU-Ebene ermöglicht Einblicke in die Entwicklung solcher Maßnahmen auf der Einfuhrseite.

Der bestehende Regulierungsrahmen muss vielen praktischen Herausforderungen gerecht werden. Nach der illegalen Einfuhr werden Waren oft von skrupellosen Händlern alten Sammlungen zugeschrieben, so dass es den Behörden überlassen wird, das Gegenteil zu beweisen. Kleine Gegenstände werden leicht über die Grenze gebracht, ohne deklariert zu werden. Internationale Aufstände und Bürgerkriege überlassen das Weltkulturerbe ungeschützt den plündernden Marodeuren.

Das Ergebnis der Analyse bezieht sich insbesondere auf die folgenden Themen:

- die Komplexität der adäquaten Definition eines Kulturgutes und die kostspielige und schwierige Identifizierung solcher Güter in der Praxis,
- die Vorteile der Verwendung von digitalen Instrumenten für die administrative Verarbeitung und den Austausch von Informationen,
- die Herausforderung der Beweislast, vor der die Behörden oft stehen (z. B. bzgl. der Provenienz eines Kulturgutes),

- die notwendige Anpassung an bereits bestehende Werkzeuge und Verordnungen auf nationaler, supranationaler und internationaler Ebene.

Mehrere Mitgliedstaaten haben in Ermangelung weiterer EU-Initiativen bereits Einzelmaßnahmen ergriffen oder sind gerade dabei, in Eigenregie Rechtsvorschriften über die Einfuhr von Kulturgütern aus Drittländern zu verabschieden. In Anbetracht des EU-Binnenmarktes und des supranationalen oder gar globalen Charakters der gegenwärtigen Bedrohungen verfehlen solche Initiativen jedoch meist das Ziel. Bei der Entwicklung ihrer individuellen Politik haben die Mitgliedstaaten viel Freiheit in Bezug auf die Definition des illegalen Kulturgut-Handels sowie die Entwicklung von Gegenmaßnahmen. Die rechtlichen Rahmenbedingungen verschiedener Staaten sind im Umfang und Anwendungsbereich sehr unterschiedlich. Einige Mitgliedstaaten haben bzgl. der Einfuhr von Kulturgütern keine Verordnungen. Andere vertrauen ausschließlich auf internationale Instrumente (insbesondere das UNESCO-Übereinkommen, das UNIDROIT-Übereinkommen und den ICOM-Ethikkodex). Wieder andere entwickelten einen soliden Rahmen für die Einfuhr von Kulturgütern aus Drittländern: Entweder wird diese völlig verboten (wie in Österreich), oder eine Bescheinigung wird vor der Einfuhr verlangt (wie in Frankreich).

Perspektiven aus Nicht-EU-Ländern

Ähnlich wie einige EU-Mitgliedstaaten haben die Vereinigten Staaten von Amerika, die Türkei und die Schweiz einseitige Maßnahmen gegen den Handel mit Kulturgütern ergriffen. Zusätzlich haben die Vereinigten Staaten von Amerika und die Schweiz bilaterale Abkommen mit Drittländern abgeschlossen, um gemeinsam den illegalen Handel mit Kulturgütern zu bekämpfen: Auch diese Entwicklung hat Parallelen in mehreren EU-Mitgliedstaaten. Sowohl in den USA als auch in der Schweiz sorgt das System bei der Einfuhr von Kulturgütern aus Drittländern für eine Umkehrung der Beweislast, so dass es dem Importeur zukommt, die Einfuhr zu deklarieren und nachzuweisen, dass das Gut keine Ausfuhrgenehmigung aus dem Drittland braucht. Das schweizerische System betrachtet die Einfuhr als illegal, wenn diese einen bilateralen Vertrag oder eine einseitige Maßnahme des Bundesrates verletzt. Das US-System orientiert sich vor allem am Herkunftsland, bietet aber auch die Möglichkeit, Notfall-Einfuhrbeschränkungen auszustellen. Der Importeur muss nachweisen, dass die Ausfuhr in Übereinstimmung mit den Gesetzen des Ursprungslandes erfolgte. Alle drei untersuchten Länder sehen bei nachgewiesener illegaler Einfuhr die Beschlagnahme und Rückgabe der Kulturgüter vor.

Die internationale Zusammenarbeit bei der Bekämpfung der illegalen Einfuhr von Kulturgütern ist in den letzten Jahren deutlich gewachsen. Europäische Agenturen/Organisationen und Mitgliedstaaten arbeiten aktiv mit anderen internationalen Einrichtungen in mehrfacher Hinsicht zusammen. Es werden nicht nur Informationen und Ressourcen zur aktiven Bekämpfung des illegalen Handels ausgetauscht, sondern auch wesentliche Beiträge zum regulatorischen Rahmen bereitgestellt. Der Erfolg der Pandora-Operation zeigt, wie wichtig es ist, auf internationaler Ebene durch einen harmonisierten Ansatz mit mehreren nationalen und internationalen Agenturen (nationale Polizeibeamte, Interpol, WCO, UNESCO und die Behörden von sowohl EU-Mitgliedstaaten als auch Drittländern) kollaborativ zu handeln.

Grundsatzoptionen für einen EU-Rechtsrahmen für die Einfuhr von Kulturgütern

Angesichts der Herausforderungen, die durch Forschung sowie Stakeholder-Interviews und Fragebögen identifiziert wurden, schlägt diese Studie regulatorische und politische Optionen vor, die das übergeordnete Ziel der Bekämpfung des illegalen Handels mit Kulturgütern unterstützen, indem sie die Einfuhr dieser Waren in die Europäische Union behandeln. Diese Grundsatzoptionen beinhalten ein

breiteres Instrumentarium, das sowohl legislative Optionen als auch unterstützende Maßnahmen umfasst. Die Optionen können auch Kontrollmechanismen sowie unterstützende Maßnahmen zur wirksamen Umsetzung der Rechtsvorschriften erfordern, die im Rahmen dieser Studie vorgeschlagen werden.

Insgesamt stellte die Studie fest, dass eine breite Palette von umfassenden politischen Optionen (ein Paket von verschiedenen und gegenseitig unterstützenden Instrumenten) effektiver ist als die Auswahl einer spezifischen Option ohne Berücksichtigung der möglichen Alternativen. Unter den angebotenen politischen Optionen finden sich unterstützende Maßnahmen (minimalistischer Ansatz), „Soft Laws“ (mittlerer Ansatz) und EU-verbindliche Instrumente (maximalistischer Ansatz). Eine vergleichende Analyse der Optionen in einem Basisszenario liefert Einblicke in die Vor- und Nachteile jeder Option.

Unverbindliche Instrumente

Erstens nimmt das **Basisszenario** an, dass in diesem Bereich Handlungsbedarf besteht. Wir stellen fest, dass die derzeitigen Rahmenbedingungen und Ad-hoc-Maßnahmen auf der EU-Ebene sowie das internationale UNESCO-Übereinkommen von 1970 nicht reichen, um das Problem des illegalen Handels mit Kulturgütern in der EU zu lösen. Zusätzliche Aktionen werden benötigt.

Zweitens wurde das Basisszenario in Kombination mit unterstützenden Maßnahmen („Soft-Law-Ansatz“) wie z.B. einer Empfehlung des Rates betrachtet. Aufgrund des unverbindlichen Charakters und der fehlenden Verpflichtungen (d.h. Strafen für die Nichteinhaltung) sind Leitlinien und Empfehlungen jedoch bei der Bekämpfung des illegalen Handels mit Kulturgütern nicht effektiv.

Drittens betont die Studie den potenziellen Wert zusätzlicher **unterstützender Maßnahmen** zur Steigerung der Effizienz eines EU-Rechtsrahmens und zur Bekämpfung des illegalen Handels mit Kulturgütern. Die Maßnahmen könnten Drittland-Kulturgüter und das kulturelle Erbe der Menschheit als ein kulturpolitisches Instrument schützen und die illegale Einfuhr von Kulturgütern in die EU und die damit verbundenen negativen Folgen (Außen- und Handelspolitik) verhindern. Wünschenswerte Schwerpunkte sind die Bewusstseinsbildung, Schulungen, die Förderung von Datenbanken (z. B. für die Speicherung und den Austausch von Kulturgüterpässen oder Objekt-IDs) und die Stärkung der Zusammenarbeit zwischen den EU-Mitgliedstaaten sowie zwischen der EU und internationalen Einrichtungen, die organisatorische Unterstützung bieten (UNESCO, WCO, ICOM, INTERPOL).

Verbindliche Rechtsinstrumente

Aus dem Input wie den Erhebungen folgt diese Studie, dass die EU-Mitgliedstaaten die weitere Harmonisierung des Rechtsrahmens zur Bekämpfung des illegalen Handels mit Kulturgütern unterstützen würden. Die Europäische Kommission könnte in Erwägung ziehen, ein Rechtsinstrument für die Einfuhr von Kulturgütern vorzuschlagen, insbesondere um die Finanzierung von Terrorismus und organisierter Kriminalität zu bekämpfen. Das Hauptziel des Rechtsinstruments wäre die Unterstützung der Zollbehörden der EU beim Identifizieren und Abfangen von Kulturgütern, die illegal ins Zollgebiet der EU eingeführt wurden. Damit würde man das Weltkulturerbe schützen, den illegalen Handel mit Kulturgütern bekämpfen und verhindern, dass Terroristen an dieser Aktivität verdienen.

Das Rechtsinstrument würde einen Rahmen für Regeln schaffen, die bei der Überführung von Waren in das Gebiet der EU eingehalten werden sollen, und auf deren Grundlage sowohl Importeure als auch Behörden die Legitimität der gehandelten Kulturgüter besser ermitteln und beurteilen könnten. Der Rahmen würde Homogenität beim Umgang der EU mit Kulturgütern aus Drittländern schaffen.

In Bezug auf Inhalt und Umfang dieses Rahmens hebt die Studie Erwägungen zur wirksamen Entwicklung und Umsetzung eines verbindlichen Rechtsinstruments hervor:

- ✔ Die *Definition* von Kulturgütern: Welche Güter unterliegen der Legislativmaßnahme;
- ✔ Der *Umgrenzung* des Rechtsinstruments: Welche Kulturgüter dürfen laut Definition des Instruments (nicht) auf den EU-Markt eingeführt werden;
- ✔ Die *externe geografische Reichweite* des Instruments;
- ✔ Die *interne Reichweite*: Welche Güter fallen unter den Anwendungsbereich des Rechtsinstruments nach der Einreise in das Zollgebiet der Union;
- ✔ Die *Mittel* zur Erreichung der Zwecke des Rechtsinstruments, z.B. ein Zertifizierungssystem oder ein System von (Zoll)erklärungen/Objekt-IDs;
- ✔ Das System der *Sanktionen*;
- ✔ Die Weiterentwicklung des Rechtsinstruments durch Feedback: Verpflichtung der EU-Mitgliedstaaten zur *Informationseinholung und Berichterstattung*.
- ✔ Die *Verwaltungszusammenarbeit* innerhalb der Mitgliedstaaten: Kooperation der Zoll-, Polizei-, Justizbehörden und Kulturbehörden sowie der Wirtschaftsbeteiligten.

Für diese Studie wurden zwei Haupttypen verbindlicher Rechtsinstrumente analysiert: die Richtlinie und die Verordnung. Eine Richtlinie verpflichtet die einzelnen Mitgliedstaaten, innerhalb eines festgelegten Zeitrahmens bestimmte Ziele zu erreichen, wobei sie dem Staat eine gewisse Souveränität ermöglicht, so dass nationale Lösungen etwa im Hinblick auf die Sanktionierung (im Einklang mit dieser Richtlinie) entwickeln werden können. Die Studie stellte fest, dass eine Richtlinie nur sehr wenig Harmonisierung unter den Mitgliedstaaten erreicht: Es wird lediglich minimaler grundlegender Schutz unter allen Mitgliedstaaten vereinbart.

Eine Verordnung, hingegen, bietet laut der Studie erhebliche Vorteile in Bezug auf den Kampf gegen illegalen Handel mit Kulturgütern in der EU, da diese ein verbindliches Rechtsinstrument mit direkter Anwendung in den Mitgliedstaaten darstellt. Das Ergebnis einer Verordnung wäre ein gemeinsames Regelwerk in der gesamten EU in Bezug auf die Einfuhr von Kulturgütern. Durchgeführte und delegierte Rechtsakte würden die Anwendung der praktischen Modalitäten des in der Verordnung vorgesehenen Systems einschließlich des Kontrollmechanismus ermöglichen.

Definition

Die Studie stellte fest, dass die Definition von Kulturgütern sowohl eine große Hürde sowie eine Hilfe für eine effektive Umsetzung sein kann. Bei der Definition von Kulturgütern im Rahmen eines gemeinsamen EU-Gesetzesrahmens für die Einfuhr von Kulturgütern ist zu berücksichtigen, dass die Definition (i) ein gemeinsames Verständnis dafür herstellen sollte, welche Güter als Kulturgüter betrachtet werden, (ii) soweit wie möglich eine Harmonisierung zwischen den bestehenden Mechanismen zur Bekämpfung des illegalen Handels unterstützen sollte, und (iii) die Entscheidung, ob es sich bei einem Gut um ein Kulturgut handelt, sowohl für Marktteilnehmer als auch für Zollbeamte in der Praxis so einfach wie möglich gestalten sollte.

In dieser Hinsicht empfiehlt die Studie, Elemente bereits vorhandener Definitionen zu nutzen. Die Warenkategorisierung in den UNESCO- und UNIDROIT-Übereinkommen ist das Ergebnis eines Konsenses der internationalen Gemeinschaft und könnte damit als Grundlage für eine Definition in zukünftigen Instrumenten dienen. Die Studie ergab, dass der große Vorteil eines gemeinsamen EU-verbindlichen Rechtsinstruments darin bestehen würde, dass dieses die Definition eines Kulturgutes

unter Verwendung von Kategorien (KN-Codes) sowie zusätzlichen Merkmalen wie Zeitschwellen klären könnten.

Kontrollinstrumente

Um den Einfuhrrechtsrahmen umzusetzen, würde die Zollbehörde ein wirksames Kontrollinstrument erfordern. Die Studie empfiehlt, verschiedene Elemente in Betracht zu ziehen, wie zum Beispiel: die Strenge der Bedingungen, die von den Antragstellern (Importeur oder Exporteur) erfüllt werden müssen; die Vereinfachung der verfahrensrechtlichen Aspekte unter der Verantwortung der ausgewählten Zollbehörde oder Institution (im Einfuhr- oder Ausfuhrland); der Geltungsbereich des Rahmens (geografische Grenzen, Wertschwellen usw.).

In dieser Studie werden insgesamt vier Kontrollmechanismen vorgeschlagen und analysiert, die ein EU-verbindliches Rechtsinstrument gegen die illegale Einfuhr von Kulturgütern in die EU unterstützen könnten.

1a) Erklärung des Importeurs, begleitet von einem Kulturpass (z. B. Objekt-ID);

1b) Erklärung des Exporteurs, begleitet von einem Kulturpass (z. B. Objekt-ID);

1c) Einfuhrlizenz;

1d) Exportzertifikat.

Die Ergebnisse der Erhebungen und Untersuchungen im Rahmen der Studie lieferten folgende Erkenntnisse über den möglichen **Mehrwert dieser Kontrollinstrumente**:

Eine Verpflichtung zur **Erklärung** kann dem Importeur (Option 1a) oder dem Exporteur (Option 1b) auferlegt werden: Ein Handelspartner soll in einer unterzeichneten Erklärung bestätigen, dass Kulturgüter legal erworben sind, und dass auf dem gesamten Weg zwischen dem Herkunftsland und der EU keine illegalen Transaktionen stattfanden. Diese Erklärung kann als zusätzliche Begleitmaßnahme z.B. einen Kulturpass (wie eine Objekt-ID) beinhalten. Durch den kombinierten Ansatz der Objekt-ID und der Händlererklärung, ob vom Importeur oder vom Exporteur unterzeichnet, könnten alle in die EU eingeführten Kulturgüter zurückverfolgt werden, und der Eigentümer (Inhaber/Besitzer) wäre den Zollbehörden bekannt. Die den Wirtschaftsteilnehmern sowie den öffentlichen Institutionen auferlegten Kosten wären relativ niedrig. Die Ergebnisse der Studie deuten darauf, dass die erste Variante (Erklärung des Importeurs) deutlich mehr Vorteile hat, während die zweite (Erklärung des Exporteurs) zu viele Einschränkungen und Herausforderungen vorsieht, um die Umsetzung eines EU-verbindlichen Rechtsinstruments erfolgreich zu unterstützen.

Die Verpflichtung zur **Zertifizierung** würde sicherzustellen, dass Wirtschaftsbeteiligte, die Kulturgüter in die EU einführen wollen, eine Bescheinigung beantragen, die von einer zuständigen Behörde entweder in der EU (Einfuhrlizenz) oder im Herkunftsland (Exportzertifikat) ausgestellt wird. Durch einen Zertifizierungsmechanismus wird die Behörde den Importeur ermächtigen, Kulturgüter aus Drittländern in die EU einzuführen (Einfuhrlizenz einer zuständigen Behörde des jeweiligen Mitgliedstaats) oder aus einem Drittland auszuführen (Exportzertifikat einer zuständigen Behörde des Ausfuhrlandes).

Aus Erfahrungen mit bestehenden Zertifizierungssystemen, die von der EU geregelt werden und sich auf die Einfuhr aus Drittländern beziehen, kann man schließen, dass die Rolle und Kapazität der inländischen öffentlichen Weisungen bei der Ausstellung der Zertifikate für den Erfolg des Zertifizierungssystems entscheidend ist. Die Verpflichtung, ein Kulturgut durch eine von der zuständigen Behörde bestätigte Zertifizierung auszuweisen, reicht alleine nicht; klar definierte

Voraussetzungen und Verfahren für die Erlangung einer Einfuhrlizenz (Option 1c) oder eines Exportzertifikats (Option 1d) sind für eine wirksame Durchführung unerlässlich. Man kann viel aus den bestehenden Einfuhrlizenz-Systemen in der EU (z.B. für landwirtschaftliche Erzeugnisse oder Rohdiamanten) lernen. Erhebungen und Untersuchungen zeigen, dass ein Zertifikatskontrollmechanismus zusätzlicher Kosten und Kapazitäten bedarf, und zwar in beiden Varianten (Einfuhrlizenz oder Exportzertifikat). Die Belastungen für Händler wären im Vergleich zur Erklärung deutlich höher.

Bewertung der Zollkontrolle-Mechanismen

Die organisationpolitischen Optionen sind nach den gleichen Bewertungskriterien zu beurteilen:

- **Wirksamkeit** bei der Erreichung der spezifizierten Ziele. Die Studie hat diese Analyse für alle Werkzeuge/Optionen durchgeführt;
- **Effizienz**, d.h. qualitative Bewertung des Aufwands (Zeit und Kosten), der zur Erreichung der Ziele erforderlich ist;
- **Übereinstimmung** mit bestehenden Richtlinien und rechtlichen/institutionellen Rahmenbedingungen.

Die Studie beinhaltet eine detaillierte qualitative Bewertung der möglichen Zollkontrollinstrumente zur Abschätzung des besten Kosten-Nutzen-Verhältnisses.

Bei der Betrachtung unterschiedlicher Kriterien ergibt sich, dass eine **vom EU-Importeur unterzeichnete Erklärung** das geeignetste Kontrollinstrument ist, insbesondere in Bezug auf die Wirksamkeit und Effizienz, sowie unter Berücksichtigung der praktischen Nutzung und Kontrolle durch EU-Zollverwaltungen. Die Option einer **von den EU-Behörden erteilten Einfuhrlizenz** wird als relativ geeignet (neutral) eingestuft: Die positive Bewertung in Bezug auf die Wirksamkeitskriterien wird durch die geringere Effizienz (hoher Zeit- und Kostenaufwand) nahezu neutralisiert. Ein **von Drittländern ausgestelltes Exporteur-Zeugnis** wurde als wenig effizient bewertet, und zwar aufgrund der kostenspieligen Notwendigkeit, Zusammenarbeit mit Drittland-Regierungen zu organisieren. Eine **vom Exporteur unterzeichnete Erklärung** erscheint in Bezug auf Aufwand (Zeit und Kosten) relativ effizient, hat aber deutliche Mängel in Bezug auf die Folgemaßnahmen.

Im Hinblick auf die grundsätzlichen Herausforderungen, die in dieser Studie dargelegt wurden, wird es empfohlen, die **vom EU-Importeur unterzeichnete Erklärung** durch zusätzliche Unterstützungsmaßnahmen zu ergänzen. Für volle Wirksamkeit empfiehlt die Studie unter anderem die Entwicklung eines Systems zur Speicherung und Teilung der Erklärungen zwischen allen EU-Ländern und potenziell darüber hinaus. Dieses System wird wahrscheinlich EU-Finanzierung benötigen, um nationale Datenbanken der Erklärungen zu verbinden oder zumindest zu gewährleisten, dass Informationsanfragen zwischen den Zollbehörden reibungslos laufen.

1 Introduction

This section explains the purpose and the structure of the document.

1.1 Purpose of the document

The present document is Deloitte's final report to the European Commission, Directorate-General for Taxation and Custom Union, related to the study on *Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU*. The study provides for an analysis that may contribute to an impact assessment for a Commission Proposal for EU measures that would regulate the import of cultural goods into the EU in order to tackle the issue of trafficking in cultural goods imported from third countries.

1.2 Context of the assignment

The illicit trafficking in cultural goods is generally recognized as one of the biggest criminal trades, notwithstanding the fact that there are few reliable quantitative data available on the matter. Following the recent events in Iraq and Syria and considering the call for action from the United Nations (Security Council), the issue of illicit trafficking in cultural goods has received widespread political visibility. As indicated by the Committee on Offences Relating to Cultural Property of the Council of Europe, today hardly a week goes by without a new case reported in the press involving stolen or illegally exported objects, illicit excavations and confiscations, the discovery of fake or forged objects, or the prosecution of thieves, tomb-raiders, forgers or vandals. There are ample cases available providing for qualitative data showing the extent of the current issue. Even though the regions of the Middle East and North Africa catch most attention today, trafficked cultural goods are not limited to objects originating from those regions.

The recent calls for action demand for a harmonised and inclusive approach on international and supranational level. Reference is made to a shared responsibility of the international community. The practices behind the trafficking do not only result in the destruction of archaeological (world cultural heritage) sites and the cultural goods themselves, several empirical cases suggest that organized crime, money laundering and terrorism is involved in or even fostered by those practices. Terrorist groups and warring factions are generating income to carry out their activities from the trade of archaeological artefacts stolen or looted in archaeological sites, museums, libraries and archives. According to a letter from the Permanent Representative of the Russian Federation to the UN Security Council, *ISIL / ISIS / Da'esh* is currently in control of around 100.000 cultural objects of global importance, including 4.500 archaeological sites, 9 of which are characterized as UNESCO World Heritage. The estimated profit by the terrorist group from the illicit trade in antiquities is estimated at 150 to 200 million USD per year.

Cultural goods are exported from countries with important cultural heritage sites across the globe and are brought, through a variety of transit countries, into regions with high demand. Europe, in this respect, can be considered an important outlet.

When considering 'illicit trafficking in cultural goods', two key concepts – i.e., 'trafficking' and 'cultural goods' – can be identified. Trafficking refers to *the act of buying or selling illegal goods*, the act in which the goods are also moved, transported, imported, or exported. Although the preposition of 'illicit' is superfluous as trafficking in itself is illicit, both terms will also appear combined in the further report. The concept of cultural goods raises more controversy. Some goods are generally recognized to be cultural goods, nonetheless, there is a large grey zone with highly diverse interpretations of this concept. Different legal instruments provide for a different interpretation of the concept, causing disparities and corresponding difficulties with regard to enforcement of the existing legal frameworks in practice.

The illicit trafficking in cultural goods is characterised by three main elements. First, it is a transnational crime that affects the country of origin where the goods are excavated or stolen, the countries of transit where the cultural goods are smuggled via dealers and the country destination, where they are illegally purchased by private individuals. Second, the trafficking in cultural goods is sustained by a profitable offset market with a high demand. Third, several elements contribute to and facilitate the development of illicit trafficking such as the political instability of certain countries, the opening of borders, technological advancement, technical development, the improvement in transportation systems and networks, the weaknesses of international and domestic legislation and the lack of coordination between law enforcement agencies.

In order to protect cultural goods from armed conflicts and trafficking, the international community has adopted several instruments.

In the wake of the Second World War, the 1954 Hague Convention for the Protection of Cultural Property in the Event of an Armed Conflict was concluded, recognizing the excesses of destruction in wartime and tailored to the needs of that era. The 1954 Hague Convention was followed by 2 Protocols (in 1954 and in 1999). Despite the existence of this Convention and its Protocols, the destruction of cultural goods has persisted throughout a number of regional conflicts.

Upon today, the most comprehensive text is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter **1970 UNESCO Convention**) that provides for a legal framework and key definitions of, *inter alia*, the notions of *cultural goods* and *trafficking*. As far as the cross-border dimension of trafficking is concerned, the 1970 UNESCO Convention provides for a prohibition of imports of cultural property stolen from museums or religious or secular public monuments or similar institutions in another state party.

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereinafter **1995 UNIDROIT Convention**) is considered as an indispensable complement to the 1970 UNESCO Convention and a highly important tool to combat the trafficking in cultural goods, particularly considering the principles embodied therein. The reversal of the burden of proof is a distinctive characteristic of the Convention. Good faith of the possessor entitles him to a fair and reasonable compensation, "*provided that the possessor knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object*". Other for the protection of cultural objects important international instruments concern, *inter alia*, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, the European Convention on Offences Relating to Cultural Property, and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage.

Yet despite international binding instruments, the illicit trade in cultural goods has not subsided and remains a thriving business, today more than ever.

The 1970 UNESCO Convention and other international instruments did not succeed in meeting the ambitious goals for three reasons.

First, many countries hold back from adhering to the international legal framework. In the EU, three Member States (Ireland, Latvia, and Malta) have not yet ratified the 1970 UNESCO Convention while eight Member States have made reservations. Moreover, a number of Member States, although having accepted or ratified the 1970 UNESCO Convention, did not take any national measures to ensure the implementation of the Convention. The EU itself is not a party to the Convention.

Second, the 1970 UNESCO Convention provides Signatory States with a wide margin of appreciation for the transposition of its provisions into national law. The import prohibition set out in Article 7(b)(ii) of the 1970 UNESCO Convention is therefore applied in very different ways and proves to be difficult to implement. The existing discrepancies in national solutions do not serve the ultimate purpose of the international instrument, i.e., the protection of cultural heritage. Effectiveness, (cost) efficiency, simplicity... are affected by the disparity of measures taken in the implementation of the 1970 UNESCO Convention.

Third, the import prohibition of the 1970 UNESCO Convention only covers cultural goods stolen from a museum or a religious or secular public monument or similar institution. It does not apply to cultural goods belonging to private entities and cultural goods that are not registered in public collections, nor in museums.

The action against illicit trafficking in cultural goods undertaken at international level differs from the one followed by the EU, where the protection of cultural goods is mainly driven by the internal market requirements. Article 36 of the Treaty on the Functioning of the EU provides exceptions to the basic principle of free movement of goods within the internal market in order to protect national treasures possessing artistic, historic or archaeological value. The interpretation of what is considered a *national treasure* is, however, left to the Member States and their exportation outside the EU is solely regulated by national legislation of those Member States. As far as the cross-border movement of *cultural goods* is concerned, the EU has implemented rules on trade with third countries with the view of completing the internal market. Council Regulation No 3911/1992 on the export of cultural goods (codified in 2009 by Council Regulation No 116/2009) has established a procedure of prior authorisation for the export of cultural goods outside the customs territory of the EU with a system of export license. The specific provisions for the implementation of the Council Regulation are laid down in Commission Regulation No 1081/2012. The current EU legal framework thus only regulates the exports of cultural goods outside the EU customs territory with an *ex ante* authorisation system. Nonetheless, actively combating the trafficking in cultural goods has been high on the EU agenda for a number of years now, as shown for example by the *Study on preventing and fighting illicit trafficking in cultural goods in the European Union* prepared for the European Commission DG Home Affairs issued in October 2011.

The EU legislation does not provide for any framework on cultural goods entering the customs territory of the Union. Upon importation, cultural goods are treated like any other good and are subject to a customs declaration. Controls carried out on the importation of cultural goods are limited. With the exception of the adoption of two ad hoc measures restricting the import of goods from Iraq and Syria (resp. Regulation 1210/2003 and Regulation 36/2012), which are measures encompassed in the broader restrictive measures imposed against Iraq and Syria, no specific rules to the importation of third country cultural goods apply. Several Member States have taken individual action by enacting national legislation on the importation of cultural goods from third countries or are in the process of enacting such legislation in the absence of any further EU initiatives on this matter. Considering the single market

and the supranational or even global scope of the current threats, however, such initiatives are inclined to miss their intended target.

Any action to crack down on illicit trafficking in cultural goods proves to be challenging since this activity encompasses several dimensions. It is a criminal activity carried out by organised groups on public or private cultural goods involving cross-border movements. In order to be successful, any action must take into account elements of criminal law, private international law, customs law and cultural policy. The absence of EU legislation on the control of imports of cultural goods has important consequences. Member States adopt divergent national measures that affect the internal market. Forum shopping results in traffickers opting for importation through the regulatory and/or operationally weakest link of the chain. The current loophole at EU level and the disparities between Member States' legislation do not serve the effectiveness, the efficiency and the simplicity of the individual measures.

Implementing an EU legal framework to regulate the imports of cultural goods presents a number of challenges. The first one lies with the control of import itself, which requires the implementation of prior measures to determine whether the cultural goods have been legally purchased and whether they are not stolen cultural goods as defined, for instance, in the 1970 UNESCO Convention. The determination of the origin of the goods involves the cooperation between authorities, the use of databases and the thorny question of the burden of proof. Another challenge relates to determination of the nature of the cultural goods that requires expertise. The Object ID, a standard adopted by the International Council of Museums including a description and pictures of the cultural goods, could also be a very useful initiative in order to implement EU provisions aiming at controlling the imports of cultural goods to tackle their illicit trafficking.

1.3 Objectives of the study

The study will contribute to the reflexion on the possible adoption of legislative measures for preventing and combating the illicit trafficking in cultural goods that originate in third countries as they are imported into the customs territory of the EU.

Accordingly, the main objectives of the study are:

- ✉ **Mapping the functioning of the current legislation at Member States' and at EU level:** the first objective consists of identifying and analysing the current national and EU legislation in the field of the protection of cultural goods. This includes a review of the effectiveness of the existing measures including, inter alia, the measures taken by Member States to implement international instruments and the enforcement mechanisms in place. Collection of data and information for customs authorities and relevant stakeholders is also part of the objective. The legislation of third countries active in the protection of cultural goods is also identified and analysed in order to have a complete view on the issue of illicit trafficking in cultural goods;
- ✉ **Examining whether action at EU level is needed:** based on the analysis of the legislation, the second objective is to analyse whether there is a need for EU action to regulate the import, transit and storage of cultural goods in order to prevent and prohibit illicit trade. In view of reaching the conclusion of a possible action at EU level, it is important to take into account the co-operation with the competent bodies in the field of stolen cultural goods and the relevant stakeholders. Another element to be factored in, lies with the external dimension of the illicit trafficking in cultural goods. Co-operation between the EU, the Member States, the third countries and international organisations is needed;

- ▶ **Proposing measures in their context:** the final objective is to propose customs measures to be implemented by the EU for preventing and combating the illicit trafficking in cultural goods originating in third countries as they enter the customs territory of the EU. The external dimension of the envisaged measures will be addressed in order to reflect the international nature of illicit trafficking in cultural goods and the role that is played by third countries and the international community. Eventually, alternative measures in the form of guidelines and recommendations will also be envisaged.

One of the key issues to be addressed in the study is the interaction between the customs legislation dealing with the illicit trafficking in cultural goods on the one hand, and the other instruments aiming at protecting all cultural heritage goods that are already in force and the role played by third countries on the other hand.

2 Our approach and methodology

This section presents an overview of the approach for this assignment. It continues with a short presentation of the methodological tools that we used to meet successfully the objectives of the study.

2.1 Overall approach

Following the request of the Commission, the study followed the EU Impact Assessment methodology.

To that extent, we have synthesised the Terms of Reference (ToR) into six concrete steps as follows:

- **Step 1 – Problem assessment:** the reason for this step is to identify the problems, their drivers and effects as well as the causal relationship between these. Establishing causal links is imperative in order to develop a robust problem assessment on the one hand and to ensure that the policy options are defined in such a way that they address the actual challenges on the other hand.

The problem assessment step allows building a clear picture of the **Status Quo** situation, including measures currently implemented by Member States in application of the Regulation No 116/2009, additional measures implemented by Member States (and by some selected third countries) to fight the trafficking in cultural goods, any specific enforcement mechanism, and their success factors and elements of failure;

- **Step 2 – Definition of policy objectives:** the reason for this step is to elaborate a clear formulation of the general, specific and operational objectives of the policy intervention. A clear definition of the policy objectives is important, as they set out the political priorities and aims for action in the relevant field;

- **Step 3 – Development of policy options:** this step consists in the establishment of relevant policy options that are most likely to achieve the policy objectives and address the problems. This includes a clear specification (for each of the policy option) of the type of policy options and mechanisms to implement them, their content, the scope, etc. The ToR has identified legislative options (such as a directive or a Regulation), but also soft-laws alternatives, awareness campaigns, and guidelines and recommendations for competent authorities. The content of any option will be defined as part of the assignment;

- **Step 4 - Analysis of impacts of policy options:** this step focuses on assessing the expected impacts of the selected policy options. The aim of this step is to assess impacts across the main policy dimensions as well as potential trade-offs and synergies;

Step 5 – Comparison of policy options: this step focuses on comparing the policy options based on their relative strengths and weaknesses. The aim of the comparison is to identify whether one or more policy options stand out above the others;

- **Step 6 – Preferred option:** this step refers to the impact assessment guidelines which foresee the selection of a preferred option. We see this step as a responsibility at the side of the Commission. However, the results from the study will support the Commission in making this choice.

This approach ensures robust and reliable results through the development of a methodology founded on proven best practices that will provide a solid foundation for further development.

The specific needs and objectives of the assignment imply that the study is more qualitative than quantitative. Consequently, the problem assessment (**Step 1**) will cover the several aspects of the current situation, e.g. by examining national legislation currently in force in the Member States that addresses the import and transit of cultural goods from third countries and the issue of trafficking in cultural goods, including the storage of the seized goods and return procedures to the countries of origin. Similarly, we have supported the Commission in the definition of the policy objectives (**Step 2**). Consistently with the ToR's requests, we have focused on the definition and fine-tuning of the policy options (**Step 3**) and on analysis of the impacts of the policy options (**Step 4**). The comparison of the policy options (**Step 5**) descends from the qualitative analysis of the impacts. Finally, the study should enable the Commission to select a preferred option (**Step 6**).

This analysis combines a theoretical modelling of the main drivers, problems and effects that affect the policy domain with primary and secondary data collection leading to qualitative and quantitative analyses of the policy options proposed. The data gathering and subsequent analysis focuses largely on the qualitative elements of the legislations and enforcement mechanisms investigated. We have collected quantitative information to the possible extent, and integrate it in the analysis as illustration.

The final output is a high-level analysis and assessment of the impact of the policy options identified, their strengths and weaknesses and their implications for policy implementation.

As for the **geographical scope** of the study, the analysis of the implementation of the EU Regulation No 116/2009 and of national legislation addressing illegal trafficking in cultural goods covers the 28 Member States. However, the more in-depth analysis of the Member States legislation regarding the export and import of cultural goods covers a sample of Member States (the Netherlands, Italy, Germany, the United Kingdom, Cyprus, Greece, Poland and France). The analysis of the implementation of *ad hoc* measures and additional enforcement mechanisms covering imports of cultural goods from warzones and third countries more in general covers only those Member States that have implemented specific import legislation and/or (customs) procedures. We included in the analysis also a limited number of third countries, which are particularly relevant to the assignment. In addition to Switzerland and the US, we have included Turkey in the analysis because of its geographical situation between the EU and the countries of origin of certain cultural goods (Iraq and Syria) and because it appears to be a transit country for cultural goods entering illicitly the EU territory.

2.2 Methodological tools

Here we briefly present the methodological tools used to achieve the objectives of the assignment.

2.2.1 Data collection

The data collection was performed with the following methodological tools:

➤ Desk research

Desk research included Commission's reports, studies and evaluations carried out by EU institutions, other international organisations, research institutes, national sources and academic sources.

Results of the desk research was documented and gathered on a central data storage platform, in order to make it accessible to all parties involved in the study, including the Commission.

➤ Interviews with stakeholders

In order to gather a more in-depth understanding of the problem, the policy objectives and the implications of the policy options, we performed **strategic interviews** during the inception phase of the study with officials from DG Growth, DG Home, DG Education and Culture and DG TAXUD. A list of the Commission officials interviewed is included in Annex I.

In addition, we have interviewed stakeholders from non-EU countries, international and economic operators organisations (included in Annex II):

- INTERPOL;
- Unidroit;
- Ministry of Antiquities Egypt;
- UNESCO.

➤ Questionnaires

The questionnaires aimed at gathering input from the stakeholders:

- Competent authorities in all EU Member States (25 respondent Member States, with the exception of Hungary, Malta and Romania);
- A sample of Member States (Cyprus, France, Germany, Greece, Italy, Netherlands, Poland and UK) that have implemented the specific legislation and/or enforcement mechanisms in order to collect more in-depth elements;
- Third countries' insights (in particular Switzerland);
- Operators (27 respondents, mainly operators in the art market originating from the United Kingdom, Cyprus, Germany, Italy and France); and
- International organisations (among which, INTERPOL, UNESCO, Unidroit, WCO).

The questionnaires were submitted in English and contained a comprehensive number of well-elaborated and to-the-point questions. The answers to those questions have allowed us to get a clear view and understanding on the legislation, the experience and the challenges of the Member States and third countries. In addition, the replies to the questionnaire from stakeholders and international organisations involved in the fight against illicit trafficking in cultural goods was crucial to understand the experience of economic operators vis-à-vis the illicit trafficking in cultural goods as well as their the needs and the actions implemented by international organisations to tackle this issue.

Furthermore, the questionnaire was also a useful tool to obtain feedback from Member States, stakeholders and international organisations on the problem and objective trees.

Where necessary, desk research was used to elaborate on national systems on the importation of cultural goods to supplement the data gathering through the questionnaires (in the case the output was not sufficient or absent).

➤ **Expert workshops**

Deloitte had the opportunity to participate in the meeting of the Expert Group on Customs and Cultural Goods held in April 2016. The study team has presented the problem tree and the policy objectives (and the preliminary policy options) to the Commission, domain experts and Member States representatives in order to validate the proposed tree and drivers between the different problems (and analysis of the Status Quo). The meeting has also allowed discussing and assessing the need for action at EU level and having a first feedback on the fine-tuning of the policy options. Additional meetings with the Commission (and experts) were organised in other phases of the study, if deemed relevant.

2.2.2 Data analysis

Besides the usual analysis of the surveys, interviews and desk research results, we have used the SWOT analysis for analysing data and draw conclusions on the advantages and disadvantages of different options to reinforce the fight against trafficking in cultural goods. The SWOT analysis is a decision-making tool that examines the internal Strengths and Weaknesses within a particular context as well as the external Opportunities and Threats of the environment:

- **Step 1** requires an external analysis of opportunities and threats within the environment of the options considered. This step consists of listing the parameters of the environment which are not under the direct control of the public authorities, including the European Commission and which, it is assumed, will strongly influence future development;
- **Step 2** demands an internal analysis of strengths and weaknesses specific to the options considered. This step involves making an inventory of the factors which are at least partly under the control of the public authority, including the European Commission and which may either promote or hinder development.

SWOT analysis is a classical tool of strategic analysis that can also be considered as a shortcut compared to more lengthy exercises such as the descriptive diagnosis. Its interest lies in the fact that it goes slightly beyond the static situation in order to incorporate the determining factors in the environment in which the programme will be implemented, in other words a systematic image of the relation between the problem to be analysed and its existing environment. Another interesting aspect is the possible participatory dimension of the exercise, which can preferably be realised with the stakeholders.

3 Problem assessment

3.1 Introduction

The initial step of the analysis consists of an assessment of the nature and extent of current practices in designing and implementing legislation that protects cultural heritage goods and fights against illicit trafficking in cultural goods.

Before looking into the core of the problems as brought forward in a problem tree (paragraph 3.8), first the current regulatory and operational framework is elaborated upon. The current regulatory and operational framework is analysed with regard to the following aspects:

- ✘ Analysis and comparison of the current EU Customs legislation protecting cultural goods from the Member States (Regulation No 116/2009);
- ✘ Identification and analysis of national legislation currently in force in the EU Member States that addresses the issue of illicit trafficking in cultural goods;
- ✘ Examination of the performance of EU *ad hoc* measures: the protection of cultural goods illegally exported from warzones (Syria and Iraq); Identification and analysis of national customs legislation of key third countries, i.e. United States of America, Turkey and Switzerland on the topic of import of cultural goods.

Enforcement mechanisms set up by EU Member States, as well as in third countries, are identified and analysed throughout this chapter.

3.2 Historical background

Deeply rooted in our Western World, the tradition of collecting antiquities is known since the late Middle Ages. From the 18th century onwards, the art market, as the legitimate purveyor of the European courts who had such a high interest for archaeological items, won its reputation not only thanks to the quality of those items but also with the precise knowledge surrounding their provenance. Provenance was then a prestige carrier as important as the item itself.

From this context-based knowledge, the essential value for our contemporary archaeological works and analyses, to the absolute lack of origin that engulfs the art market after the Second World War, the path taken by this trade is staggering. The art market, key actor for all past and current collections, is drifting away since 1945 from its origins, provenance being considered superfluous or a nuisance until the late 1990's. Antiquities trading was then a far step from its original ethics, denying on a daily basis that it has originally fostered both museum tradition and field archaeology science.

The art market drift is directly linked with the soaring number of illegal excavations, which, since the early fifties, allows this industry to sell a huge number of antiquities unhampered, initially stemming mainly from Italy, Greece, Lebanon and Israel. Blatant since the Sixties, the ongoing looting was taken seriously enough by the Member States to foster the 1970 UNESCO Convention.

The 1970 convention was a real turning point. Though inspiring all subsequent national legislations, the ongoing looting and blooming antiquity trade kept growing to staggering figures between 1970 and 1995. The areas hit by illegal excavations expanded in the same proportion, covering the whole Mediterranean Basin, Africa, Latin America and Asia.

With the clamorous Medici case in the Geneva Freeport (1995), it became widely known how easily laws could be bypassed¹. This point was pressed on with the more recent Symes (London 1999 – Geneva 2016) and Becchina cases (Basel 2002)².

In the wake of the turmoil stirred by those affairs, major auction houses like Christie's, Sotheby's and Bonhams, in an effort to disprove the blatant lack of provenance for the items offered on the market during the last 60 years, decided from 1998 onwards to keep track of their sales, make them publicly searchable and state when known a cursory provenance. Though taking a step towards the right direction, this move did not solve the core issue: given provenances do generally only testify an item on auction was already auctioned before or was part of an old collection, either acknowledged by the collection owner initials or by a statement like "American private collection 1965"³. Inventories of those old collections are uncommon, effectively depriving a crosscheck verification of the statements.

Given this major flaw in the traceability and verification process, "*Illicit trade has continued and dealers have devised ever more devious ploys to creating a seemingly authentic profile for objects they are dealing in. This includes selling pieces through top auction houses and buying the same objects back to add both to the price and trading history*"⁴.

3.3 Current regulatory and operational framework

Over the years, measures to combat trafficking in cultural goods have been taken on international level, EU-level and national level. These measures cover the movement of cultural property (import, export and transfer thereof) for reasons of protecting the interest of individual states as well as the interests of the international community.

3.3.1 International level

3.3.1.1 Existing regulatory framework

3.3.1.1.1 Hague Convention 1954⁵

Subsequent to the large-scale destruction of cultural heritage during the Second World War, the Hague Convention for the Protection of Cultural Property in the Event of an Armed Conflict was adopted in 1954, together with a Protocol⁶. The Convention is the first multilateral convention to focus exclusively on the protection of cultural heritage during hostilities. After a series of armed conflicts in the early

¹ Silver 2009.

² Symes case: <http://www.dailymail.co.uk/news/article-3430805/High-society-Tomb-Raider-Bond-villain-Indiana-Jones-extraordinary-story-suave-British-art-dealer-squirrelled-away-17-000-world-s-valuable-relics.html>.

Becchina case : <https://chasingaphrodite.com/2011/06/24/the-becchina-dossier-a-new-window-into-the-illicit-trade/>.

³ <http://www.sothebys.com/en/auctions/ecatalogue/2016/ancient-marbles-classical-sculpture-art-l16260/lot.4.html>.

⁴ <http://www.cam.ac.uk/research/news/the-dark-side-of-the-art-world>; accessed 24 October 2016.

⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, <http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf>.

⁶ Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, <http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf#page=66>.

1990's, the UNESCO Secretariat has, together with a number of interested states, initiated the review of the Convention, resulting in the Second Protocol to the Hague Convention in 1999⁷.

The High Contracting Parties to the 1954 Hague Convention explicitly recognize in the introductory clauses that “*the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection*”. Moreover, the Parties are of the opinion that the protection of cultural heritage cannot be effective unless both national and international measures have been taken to organize it in time of peace.

In the 1954 Hague Convention, the term “cultural property” as a legal category in international law was established, which resulted subsequently in the adoption of this concept in national legislation implementing the Convention.

For the purposes of the 1954 Hague Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.

The Convention confers the obligation upon the Parties to take all measures necessary to prevent any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. The First and Second Protocol provide for the prohibition of the export of those goods and criminal prosecution of such acts. Furthermore, misappropriated goods must be taken into custody by the Parties and at the end of the hostilities returned, unconditionally and without any time limit, to the state of origin. Although no explicit provision on the return of looted art is foreseen, according to of the European Parliament’s Committee on Legal Affairs “*the obligation to return illicitly taken cultural objects is inherent in the obligation to respect cultural property and in the prohibition on seizing and pillaging of cultural property*”.

A recent study on ‘Cross-border restitution claims of art looted in armed conflicts and wars and alternatives to court litigations’ of the European Parliament’s Committee on Legal Affairs concludes that the Hague Convention and its two Protocols up to today remain the principal international legal instrument on protection of cultural goods.⁸ According to the study the current problems with the

⁷ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999, <http://unesdoc.unesco.org/images/0013/001306/130696eo.pdf>.

⁸ Cross-border restitution claims of art looted in armed conflicts and wars and alternatives to court litigations, May 2016, [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556947/IPOL_STU\(2016\)556947_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556947/IPOL_STU(2016)556947_EN.pdf)

Convention do not arise from inherent defects in the Convention itself, but from inadequate implementation thereof by the Parties.

3.3.1.1.2 UNESCO Convention 1970⁹

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 is to date the most comprehensive and widespread instrument of multilateral cooperation with regard to the safeguarding of cultural property.

The General Conference of the UNESCO, adopting the 1970 UNESCO Convention, considered that cultural property “*constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting*”. Moreover, it was considered that the protection of cultural heritage can be effective only “*if organized both nationally and internationally among States working in close co-operation*”.

For the purposes of the 1970 UNESCO Convention, the term “cultural property” means property which, on religious or secular grounds, is *specifically designated* by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) *Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;*
- (b) *property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;*
- (c) *products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;*
- (d) *elements of artistic or historical monuments or archaeological sites which have been dismembered;*
- (e) *antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;*
- (f) *objects of ethnological interest;*
- (g) *property of artistic interest, such as:*
 - (i) *pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);*
 - (ii) *original works of statuary art and sculpture in any material;*
 - (iii) *original engravings, prints and lithographs;*
 - (iv) *original artistic assemblages and montages in any material;*
- (h) *rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;*

⁹ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970, <http://unesdoc.unesco.org/images/0013/001333/133378mo.pdf>.

(i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

This list is identical to the list annexed to the 1995 UNIDROIT Convention (see below). The listing of possible cultural goods is binding for the countries that ratified any of the Conventions. This could be interpreted as a clause to avoid irrational classification of goods as cultural goods. The specific designation of goods as cultural property results in dispersed views on which goods benefit from the protection laid down in the Convention, eventually affecting the effectiveness of the instrument.

The State Parties to the 1970 UNESCO Convention recognise that the illicit import of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom. With regard to the importation of cultural property in the State Parties, the 1970 UNESCO Convention undertake, among other things, the following:

- To oppose the import of cultural property with the means at their disposal, and particularly by removing the causes, putting a stop to current practices, and by helping to make the necessary reparations (Article 2.2);
- To prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to 1970 UNESCO Convention after the entry into force thereof, provided that such property is documented as appertaining to the inventory of that institution (Article 7.b.i);
- At the request of the State Party of origin, to take appropriate steps to recover and return any cultural property imported after the entry into force of the 1970 UNESCO Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.

All import, export and transfer of ownership effected contrary to the provisions adopted under the 1970 UNESCO Convention by the State Parties concerned shall be illicit. However, the implementation of the 1970 UNESCO Convention, if carried out, has led to a variety of views on the matter. Disparities between States Parties are not uncommon, due to different views on and approaches towards the issues of illicit import, export and transfer of ownership of cultural property.

The mechanisms of the 1970 UNESCO Convention are limited in scope, in the sense that contracting parties are only obliged to prohibit the importation of cultural property stolen from a museum, public monument or similar institution, and that has been properly included in an inventory prior to the illicit exportation. As a consequence, any undiscovered or unexcavated items are excluded from the protection by the Convention. Hence, the 1970 UNESCO Convention does not provide cultural property sufficient protection against illicit trafficking.

3.3.1.1.3 UNIDROIT Convention 1995¹⁰

Also the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is, notwithstanding being an international private law initiative, an important source of law for combating illicit trade in cultural goods. The 1995 UNIDROIT Convention lays down rules on the restitution (in the case of stolen cultural objects) or the return (in the case of cultural objects illegally exported from a Contracting State) of cultural goods. The Convention, being commissioned by UNESCO, can be considered a *de facto* Protocol to the 1970 UNESCO Convention.

States Parties to the 1995 UNIDROIT Convention are convinced of “*the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation*”. Also, the Parties are determined to “*contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all*”.

The goods covered by the 1995 UNIDROIT Convention are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to the Convention. The same categories of goods as the goods listed in the 1970 UNESCO Convention is integrated in this Annex. However, whereas the 1970 UNESCO Convention stipulates that the goods require to be designated by each state, no such requirement can be retrieved from the 1995 UNIDROIT Convention. The latter Convention only refers to goods that are “of importance”, implying a more objective, common approach. Such common, objective approach will result in a more effective instrument.

In accordance with the 1970 UNESCO Convention, cultural property can only be returned upon payment of just compensation. Whereas this provides for protection for the good faith buyer, the limited financial means of many source countries could burden this right to return.¹¹ The 1995 UNIDROIT Convention provides for a better solution by putting the burden on the purchaser of the cultural good. Article 4.1 of the latter Convention introduces a mandatory payment of a fair and reasonable compensation, but only in case of a restitution to a possessor who neither knew nor reasonably should have known that the object in question was stolen and can prove that it exercised due diligence when acquiring the object. Due diligence is to be assessed at the time of acquiring the object, demonstrated by e.g., the character of the parties, the price paid, whether a register was consulted, if an export certificate existed, etc.¹² If the buyer cannot provide proof of his good faith, no compensation is due. In accordance with Article 4.5, the possessor of a stolen cultural object cannot be in a more favourable position than the person from whom they acquired the cultural object by inheritance or otherwise gratuitously.

Contrary to the 1970 UNESCO Convention, the 1995 UNIDROIT Convention provides protection to cultural property illicitly excavated or yet to be discovered (and hence, not inventoried). A cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered

¹⁰ Unidroit Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995, <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf>.

¹¹ J. COHAN, “An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)”, *Environmental policy and law* 2004, Vol. 28, 49.

¹² Z. VERES, “The Fight Against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention”, *Santa Clara Journal of International Law* 2014, Vol. 12, 105.

stolen, when consistent with the law of the state where the excavation took place. Protection of cultural objects illicitly excavated or yet to be discovered is essential to provide for an adequate framework to tackle illicit trafficking in cultural goods.

Although the number of parties is limited, the UNIDROIT Convention has had a considerable impact on national legislations of countries not Party to the Convention, on case law and on regional instruments (e.g., the principles of distribution of proof and due diligence laid down in the Convention). The recent Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (January 2016) is also important in this respect, stating: "53. *In order to counter the looting and illicit trafficking of cultural property during conflict, UNESCO will further strengthen its cooperation with [...] the International Institute for the Unification of Private Law, [...] and other key partners, [...], for the [...] and restitution of stolen and illegally exported objects*".¹³

3.3.1.2 Regulatory framework – recent initiatives

Recently, there have been a number of initiatives to counter the trafficking in cultural goods. On an international level there is a momentum to take action and increase efforts to tackle such illicit trade, particularly considering the looting of e.g., cultural heritage sites, museums by terrorist groups or organized crime in order to trade in the looted goods and fund their activities. The black market in cultural objects continues to grow, reason for which attention for the trafficking in cultural goods is rising.

3.3.1.2.1 Resolutions of the UN General Assembly

The UN General Assembly (hereinafter **UN GA**) has in 2015 adopted the following Resolutions related to the trafficking in cultural goods:

➤ Resolution No 69/281 – Saving the cultural heritage of Iraq¹⁴

The UN GA is alarmed "*by the organized looting of and trafficking in cultural objects, which occur on an unprecedented scale today*". In this respect, the UN GA is deeply concerned about such acts generating income for terrorist groups, which can support their recruitment efforts and strengthen their operation capability to organize and carry out terrorist attacks.

Against this background, the UN GA, *inter alia*:

- Calls upon States to assist the Iraqi authorities in fighting against trafficking in cultural property illegally excavated from archaeological sites and taken from museum, libraries, archives and manuscript collections;
- Urges all States to take appropriate measures to ensure that all actors involved in the trade in cultural property, including but not limited to auction houses, art dealers, art collectors and museum professionals, are required to provide verifiable documentation of provenance as well as export certificates related to any cultural property imported, exported or offered for sale, including through the Internet;

¹³ Report No 2016/92 of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat, http://www.un.org/en/sc/ctc/docs/2016/N1602353_EN.pdf.

¹⁴ Resolution No 69/281 – Saving the cultural heritage of Iraq, 28 May 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/281.

- Encourages States that are not already parties to consider ratifying or acceding to relevant legal instruments, in particular the 1954 Hague Convention and the 1970 UNESCO Convention;
- Invites all States, intergovernmental bodies, the UN system, relevant non-governmental organizations and all other stakeholders to identify and close any gaps in the national regulations against trafficking in cultural property.

➤ Resolution No 70/76 – Return or restitution of cultural property to the countries of origin¹⁵

The UN GA expresses deep concern that about the “*continuing illicit traffic in cultural property and its damage to the cultural heritage of nations*”, and about the fact that cultural property, including religious sites and objects, “*is increasingly targeted by terrorist attacks, often resulting in damage, theft or complete destruction, and condemning such attacks*”. In this context, the UN GA reaffirms the necessity of strengthened international cooperation in preventing and combating all aspects of trafficking in cultural property, thereby noting that such cultural property is often transferred either through illicit markets worldwide or through licit markets such as auctions, including through the Internet.

Against this background, the UN GA, *inter alia*:

- Calls upon all its Member States in a position to do so to assist the affected States in combating trafficking in cultural property illegally excavated from archaeological sites and taken from museums, libraries, archives and manuscript collections, including through international cooperation in the restitution of stolen or illicitly exported cultural property, as appropriate;
- Urges its Member States to introduce effective national and international measures to prevent and combat illicit trafficking in cultural property, including by publicizing legislation and offering special training for police, customs and border services;
- Invites its Member States to make trafficking in cultural property, including stealing from and looting of archaeological and other cultural sites, a serious crime, as defined in article 2 of the UN Convention against Transnational Organized Crime;
- Invites its Member States, in cooperation with UNESCO, to continue to draw up systematic inventories of their cultural property;
- Invites States to consider establishing and developing national, regional and international databases inventorying cultural property, which would also register trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, and illicitly dealt-in, cultural property;
- Encourages States to enhance the exchange of information by sharing or interconnecting inventories of cultural property and databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, and illicitly dealt-in, cultural property and contributing to international inventories and databases.

➤ Resolution No 70/178 – Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity¹⁶

The UN GA is concerned at the growing involvement of terrorist and organized criminal groups in all forms and aspects of trafficking in cultural property and related offences, and is alarmed

¹⁵ Resolution No 70/76 – Return or restitution of cultural property to the countries of origin, 9 December 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/76.

¹⁶ Resolution No 70/178 – Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity, 17 December 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/178.

by the destruction of cultural heritage perpetrated recently by terrorist groups, which is linked to trafficking in cultural property in some countries.

In this respect, the UN GA, *inter alia*:

- Urges States parties to make effective use of the UN Convention against Transnational Organized Crime for broad cooperation in preventing and combating all forms and aspects of trafficking in cultural property and related offences, including money-laundering and the financing of warring factions and terrorism;
- Invites States parties to exchange information and statistical data on all forms and aspects of trafficking in cultural property and related offences;
- Urges Member States to introduce effective national and international measures to prevent and combat illicit trafficking in cultural property, including publicizing legislation, international guidelines and related technical background documents, and offering special training for police, customs and border services, and to consider such trafficking a serious crime, as defined in the UN Convention against Transnational Organized Crime.

3.3.1.2.2 Resolutions of the UN Security Council

In its Resolution 2199 (2015) adopted on 12 February 2015¹⁷, the UN Security Council (hereinafter **UN SC**) “*notes with concern that ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks*”. All UN Member States are called to take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items. This decision was recalled in the UN SC Resolution 2253 adopted on 17 December 2015¹⁸.

The UN SC condemns in the strongest terms the “*barbaric acts of destruction and looting of cultural heritage carried out by ISIL also known as Da’esh*” in its Resolution 2249 (2015) adopted on 20 November 2015¹⁹.

Most recently, the UNSC condemned the destruction and *smuggling* of cultural heritage by terrorist groups, by unanimously adopting its Resolution 2347 (2017) adopted on 24 March 2017²⁰. In its Resolution, the UNSC recognizes the involvement of terrorist groups in the smuggling of cultural goods. In particular, the UNSC “*notes with concern that the Islamic State in Iraq and the Levant (ISIL, also known as Da’esh), Al Qaida and associated individuals, groups, undertakings and entities **are generating income from engaging directly or indirectly in the illegal excavation and in the looting and smuggling of cultural property** from archaeological sites, museums, libraries, archives, and other*

¹⁷ Resolution No 2199, 12 February 2015, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199(2015)).

¹⁸ Resolution No 2253, 17 December 2015, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2253\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2253(2015)).

¹⁹ Resolution No 2249, 20 November 2015, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2249\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2249(2015)).

²⁰ Resolution No 2347, 24 March 2017, <https://www.un.org/press/en/2017/sc12764.doc.htm>.

sites, **which is being used to support their recruitment efforts and to strengthen their operational capability to organize and carry out terrorist attacks**".

In this regard, the UNSC:

- requests its Member States to take appropriate steps to prevent and counter the illicit trade and trafficking in cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance originating from a context of armed conflict, notably from terrorist groups, including by prohibiting cross-border trade in such illicit items where States have a reasonable suspicion that the items originate from a context of armed conflict, notably from terrorist groups, and which lack clearly documented and certified provenance, thereby allowing for their eventual safe return,
- recalls in this regard that States shall ensure that no funds, other financial assets or other economic resources are made available, directly or indirectly, by their nationals or persons within their territory for the benefit of ISIL and individuals, groups, entities or undertakings associated with ISIL or Al-Qaida in accordance with relevant resolutions;
- urges Member States to introduce effective national measures at the legislative and operational levels where appropriate, and in accordance with obligations and commitments under international law and national instruments, to prevent and counter trafficking in cultural property and related offences;
- encourages Member States to support the UNESCO initiatives and programmes in the context of combating trafficking in cultural goods.

Member States are furthermore called upon to consider to adopt adequate and effective regulations "*on export **and import**, including certification of provenance where appropriate, of cultural property, consistent with international standards*".

Other measures encouraged to be adopted relate to (digitalized) inventory lists; the establishment of specialized units with effective tools and adequate training, the establishment of procedures and databases to collect information on related criminal activities; the use of and contribution to the INTERPOL database of stolen works of art, the UNESCO database of national cultural heritage laws, WCO ARCHEO, and current national databases; the engagement of museums, relevant business associations and the antiquity market participants on standards of provenance documentation, differentiated due diligence and other measures to prevent the trade of stolen or illegally traded cultural property; the creation of educational programmes; etc.

3.3.1.2.3 Council of Europe Criminal Law Convention to Combat Illicit Trafficking in Cultural Property

The Committee on Offences Relating to Cultural Property (hereinafter **PC-IBC**) is currently preparing a Convention superseding and replacing the European Convention on Offences Relating to Cultural Property. The Convention will entail, *inter alia*, a definition of cultural property, criminalisation of trafficking in cultural property, prevention of offenses relating to cultural property, and international co-operation. The PC-IBC will consider previous and current work carried out by the European Union in this area.

The added value of a Revised Convention to Combat Illicit Trafficking in Cultural Property is assumed to be the result of the following (PC-IBC discussion paper, 1st Plenary Meeting²¹):

- It could become the only international Treaty with a focus on illicit activities in the field of cultural heritage and on the imposition of criminal sanctions;
- It could strengthen the fight against illicit trafficking in works of art and antiquities in line with the existing international legal instruments;
- It could be a step forward in the fight against terrorism, considering that the sale of illicitly trafficked antiquities is often linked to organised crime and that it is one of the means used by terrorist organisations to finance their activities.
- It could reflect the developments in international cultural heritage law since the initial Convention;
- It would allow the Council of Europe to play a major role on the international scene in the fight against criminal offences relating to cultural property, particularly by enhancing international co-operation.

According to the Terms of Reference, a Draft Convention will be finalized by the end of 2017.

3.3.1.2.4 Resolution of the Customs Co-Operation Council on the Role of Customs in Preventing Illicit Trafficking of Cultural Objects

In July 2016, the World Customs Organisation (hereinafter **WCO**) issued a Resolution on the role of customs in preventing illicit trafficking of cultural objects.²² This Resolution is the result of the WCO being alarmed by reports of looting and destruction of cultural heritage sites in conflict zones and the increasing illicit trafficking of cultural objects, as well as the linkages between illicit trafficking in cultural objects, money laundering, other criminal activities and possibly terrorism.

WCO recognizes *inter alia* that:

- Illicit trafficking of cultural objects has to be addressed in a holistic manner by targeting source, transit and market countries, thus covering the entire supply chain;
- International borders still offer the best opportunity to intercept stolen cultural artefacts;
- Customs authorities may not have the necessary expertise to identify cultural objects, including their provenance, authenticity and legal status related to their movement across borders;
- the exchange of information, expertise and intelligence as well as close cooperation between Customs authorities, other law enforcement agencies, the private sector and non-governmental organizations are critical in order to achieve success.

Considering these elements, the WCO, *inter alia*:

- Advocates the need to elevate illicit trafficking in cultural objects as an issue of a global concern and to conduct analysis to identify and close gaps in the current legislation and techniques to address this scourge;

²¹ PC-IBC Discussion Paper – Elements to be included in the draft Council of Europe Convention on Offences Relating to Cultural Property, 1st Plenary Meeting, Strasbourg (France), 10 May 2016, [https://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/PC-IBC%20\(2016\)01%20Fin_en.pdf](https://www.coe.int/t/dghl/standardsetting/cdpc/CDPC%20documents/PC-IBC%20(2016)01%20Fin_en.pdf).

²² Resolution of the Customs Co-operation Council on the role of Customs in preventing illicit trafficking of cultural objects, Brussels, July 2016, http://www.wcoomd.org/~media/wco/public/global/pdf/about-us/legal-instruments/resolutions/resolution_cultural-objects.pdf?la=en.

- Urges Customs authorities to provide seizure information to enable the production of regional and global intelligence products to tackle illicit trafficking of cultural objects;
- Endorses close cooperation at national, regional and international level among and between Customs and other regulatory and enforcement authorities, academia, non-governmental organizations and the private sector in relation to information exchange, with a view to preventing illicit trafficking in cultural objects and contributing to investigative efforts aimed at disrupting and dismantling criminal networks and activities.

3.3.1.2.5 Conclusion of the 13th Meeting of the INTERPOL Expert Group on Stolen Cultural Property

According to the Conclusion of its 13th Meeting in March 2016, the INTERPOL Expert Group on Stolen Cultural Property (hereinafter **IEG**) is aware of the increasing cases of thefts and illicit trafficking in cultural property in many regions of the world, especially in the MENA region.²³ The IEG recognizes, *inter alia*:

- the need for harmonization of laws across jurisdictions as well as the benefits of efficient implementation of international legal instruments in the area;
- the benefits and importance of UNESCO 1970 and UNIDROIT 1995 Conventions as a legal basis in the fight against illicit trafficking in cultural property, and also of United Nations Convention against Transnational Organised Crime, as well as exchanges of best practices and of increased operational cooperation to fight the illicit traffic in cultural property, in particular between law enforcement agencies and UNESCO, UNIDROIT, UNODC, the WCO, ICOM and INTERPOL.

The IEG encourages its Member States, *inter alia*, to compile and share data on thefts and seizures of cultural items with relevant organizations and to use INTERPOL's capabilities (Stolen Works of Art Database, Poster of the Most Wanted Works of Art, Notices, etc.) for improving police cooperation in countering illicit traffic in cultural goods and related offences worldwide, particularly if linked to organized crime and terrorism, as well as all other practical tools available to the law enforcement agencies, such as ICOM Red List of Cultural Objects at Risk.

The IEG furthermore recommends that INTERPOL and its partner organizations, *inter alia*:

- To encourage their respective member countries to ratify the relevant international conventions relating to the protection of cultural heritage, if they are not yet States Parties, and implement their provisions;
- To provide for technical assistance to raise awareness and build capacity for appropriate officials, including customs, police, prosecution and judicial services, and include a component on the possible links between trafficking in cultural property and terrorism financing, particularly in relation to Iraq and Syria, but also to Libya and Yemen.

The IEG recommends, *inter alia*, that the INTERPOL General Secretariat:

- Strengthens cooperation with the WCO in order to intercept illegally imported/exported cultural goods at borders, in particular through ARCHEO network;

²³ Conclusions of the 13th Meeting of the INTERPOL Expert Group (IEG) on Stolen Cultural Property, Lyon (France), 8-9 March 2016, <https://www.interpol.int/en/Media/Files/Crime-areas/Works-of-art/INTERPOL-Expert-Group-IEG/13th-Meeting-of-the-INTERPOL-Expert-Group-IEG-on-Stolen-Cultural-Property-Lyon,-France,-8-9-March-2016-Conclusions/>.

- Explores the possibility to develop innovative technologies (mobile application, etc.) to support the daily job of the law enforcement agencies and the other international stakeholders in identifying the provenance of cultural artefacts (stolen or not).

3.3.1.2.6 Bonn Declaration of the UNESCO World Heritage Committee

On 29 June 2015, the UNESCO World Heritage Committee issued the Bonn Declaration.²⁴ In this Declaration, the Members of the World Heritage Committee:

- Denounce the destruction and looting of cultural objects used as a source to fund terrorism;
- Call upon States Parties to evaluate their implementation of pertinent legally binding and other instruments and to strengthen their national legislation and practice for the protection of cultural and natural heritage, also by introducing “*more effective measures to combat illicit trafficking and illegal trade of cultural properties*”.
- Call upon States Parties and other interested parties, to strengthen their intergovernmental and law-enforcement cooperation on the protection and preservation of cultural heritage, as well as to reinforce active participation of all interested third in measures to combat all forms and aspects of trafficking in cultural properties.

3.3.1.2.7 Statement of the third Meeting of States Parties to the UNESCO 1970 Convention

During the third Meeting of States Parties to the 1970 UNESCO Convention, the State Parties have issued a statement to “*Stop Illicit Trafficking of Cultural Property*”.²⁵ Recognizing the fact that the international community has to face illicit trade of cultural property as a severe form of trafficking and deeply concerned about the current situation in many parts of the world where “*massive destruction and the looting of cultural heritage as well as illegal excavations, result in the increasing illegal trade of cultural property*”, the States Parties:

- Urge States to become parties to the 1970 UNESCO Convention;
- Appeals to all States to adopt specific measures according to international law, in order to prevent illicit trafficking on their territory;
- Stress the need for intergovernmental cooperation on the matter, as well as active participation of all interested third parties especially those active in the fields of art and culture;
- Underline the need for respect of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM Code of Ethics for Museums.

3.3.1.2.8 Protecting Cultural Heritage – An Imperative for Humanity: Acting Together Against the Destruction and Trafficking of Cultural Property by Terrorist Groups and Organized Crime

Throughout 2015 and 2016, the Permanent Missions to the UN of Italy and Jordan have chaired a series of meetings dedicated to the different aspects of cultural heritage protection. These meetings were

²⁴ The Bonn Declaration on World Heritage, Bonn (Germany), 29 June 2015, <http://whc.unesco.org/document/147735>.

²⁵ Statement of the 3rd Meeting of States Parties to the UNESCO 1970 Convention – Stop Illicit Trafficking of Cultural Property, 18-20 May 2015, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Statement_Greece_final_EN.pdf.

organized together with INTERPOL, UNESCO, and UNODC. As an outcome to these meetings, the initiative has published a brochure on the key actions suggested.²⁶

The initiative indicates that “*the role of organized criminal and terrorist groups is of particular concern. They have entered into all forms of trafficking in cultural property and related offences, illegally moving items through diverse markets, such as auction houses and the Internet. Trafficking has also become an important means of money laundering and a source of financing for terrorist groups*”. Furthermore, the current threats as the result of trafficking in cultural goods require action at the regional or global level, as national initiatives at the legislative, institutional and law enforcement levels are considered to have proven insufficient.

The parties to the initiative have identified 3 main challenges:

- Preventing destruction, spoliation, looting and other illegal activities in the provenance areas;
- Countering all aspects of transnational trafficking;
- Repressing illegal markets in destination areas.

In particular with regard to the latter 2 challenges, the EU (Member States) could play an important role.

The parties to the initiative provide for a number of key actions, based on the following findings:

- Protection of cultural heritage is a fundamental tool to support the development of peaceful societies, strengthen sustainable development, prevent violent extremism, and suppress terrorist financing;
- International legal instruments and operational tools already provide a meaningful framework that should be fully implemented by Member States and all relevant stakeholders;
- Shared responsibility is critical, including the harmonization of domestic legislation and international cooperation in investigations and legal procedures. Capacity building and specialized training should be considered essential components of the international community’s efforts;
- Greater collaboration is needed between the public and the private spheres to prevent illegal transit and trafficking, hamper illegal conduct, and disrupt criminal networks.
- A one-size-fits-all response will not work in the short term: solutions should be adopted that are tailored to the current situation while more long-term measures should be designed, implemented, and harmonized.
- All Member States should prioritize their commitment to address the growing ties between terrorist and criminal organizations.

3.3.1.2.9 Declaration of Abu Dhabi

At the end of the international conference of Abu Dhabi on 3 December 2016, together with the participating States, the organising States France and the United Arab Emirates issued a Declaration on the protection of endangered cultural heritage. The issuing States confirm their engagement to combat illicit trafficking in cultural goods.²⁷

²⁶ UN Brochure on Protecting Cultural Heritage – An Imperative for Humanity: Acting Together Against Destruction and Trafficking of Cultural Property by Terrorist and Organized Crime Groups, 22 September 2016, <http://www.unesco.se/wp-content/uploads/2016/09/2016-Protecting-cultural-heritage.-An-imperative....pdf>.

²⁷ Abu Dhabi Declaration, 3 December 2016, <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/diplomatie-culturelle/les-actualites-et-evenements-de-la-diplomatie-culturelle-en-2016/conference-internationale-sur-la-protection-du-patrimoine-en-peril-abou-dabi-2/article/conference-internationale-sur-la-protection-du-patrimoine-en-peril-declaration>.

3.3.1.2.10 Joint Declaration of the Minister of Culture of G7 – Declaration of Florence

On 30 March 2017, the Ministers of Culture of the G7 issued a joint declaration on *culture as an instrument for dialogue among peoples*.²⁸ In the Declaration, the G7 Ministers commended the UNSC Resolution 2347 (2017) and call upon all States “to take strong and effective measures to combat the trafficking in cultural property from their places of origin and to identify and prohibit the trade in looted cultural property that has been trafficked across borders and, as appropriate, to reinforce the monitoring of free ports and free zones”. Closer cooperation and determined action among international judicial and law enforcement authorities is considered crucial in the continuing efforts to preserve and protect cultural heritage worldwide.

3.3.1.2.11 Regional initiatives

On 12 May 2015, the Nordic Council of Ministers for Culture adopted a Statement on the “*Destruction of Cultural Heritage in Iraq and Syria – Nordic initiative to stop illegal trading in cultural objects*”.²⁹ The Nordic Council of Ministers for Culture state that, *inter alia*:

- Objects of unique historical significance are being stolen from museums and libraries or looted from archaeological excavation sites, and smuggled across borders for sale in Europe and elsewhere;
- Smaller cultural objects are being sold on the black market to finance the activities of various extremist groups;
- In addition to the work done by UNESCO and other international organisations, specific national measures are needed to prevent the illegal trade in cultural objects;
- Smaller countries have a better chance of success if they co-ordinate their efforts with others involved in this work at different levels and in different government departments in neighbouring countries, reason for which a Nordic platform was created to launch further initiatives.

The Ministers of Culture of South-East Europe issued a Joint Declaration on the “*Protection and Sustainable Management of Cultural Heritage*” during the Second Ministerial Conference of the CoMoCoSEE Council of Ministers of Culture of South-East Europe (24 – 25 February 2016).³⁰ According to the Declaration, the CoMoCoSEE Member States shall “reinforce cooperation and develop a coordinated approach to support the fight against illicit trafficking of cultural property in, from and through the region, in full compliance with the relevant international standards and resolutions”. To achieve this, the CoMoCoSEE Member States shall also avail themselves, whenever possible and appropriate, of cooperation with among others the EU.

²⁸ Joint Declaration of the Ministers of Culture of G7, 30 March 2017, http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1490881204940_DECLARATION-Dichiarazione.pdf.

²⁹ Statement by the Nordic Council of Ministers for Culture on the Destruction of cultural heritage in Iraq and Syria – Nordic initiative to stop illegal trading in cultural objects, Faroe Islands, 12 May 2015, <http://www.norden.org/en/nordic-council-of-ministers/council-of-ministers/the-nordic-council-of-ministers-for-culture-mr-k/declarations-and-statements/destruction-of-cultural-heritage-in-iraq-and-syria-2013-nordic-initiative-to-stop-illegal-trading-in-cultural-objects>.

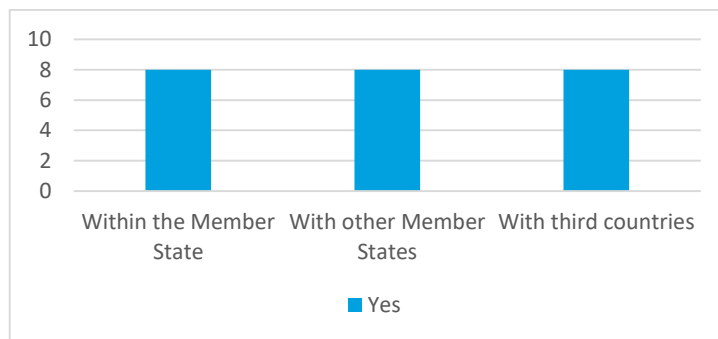
³⁰ Joint Declaration of the Ministers of Culture of South-East Europe on the Protection and Sustainable Management of Cultural Heritage, Istanbul (Turkey), 24-25 February 2016, http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Venice/pdf/news/Declaration_Comocosee_2016_01.pdf.

3.3.1.3 International cooperation

Close cooperation, both on a national and international level, is essential to combat trafficking in cultural goods, considering this is a cross-border phenomenon. The Member States indicate systematic cooperation is carried out, both internally (within the Member State) and externally (with other Member States and third countries).

- Internal cooperation is often the result of national procedures on how to deal with intercepted smuggled cultural goods or falsely declared cultural goods;
- External cooperation with other EU Member States mostly takes place in the context of Directive 2014/60/EU;
- External cooperation with third countries (exchange of information, exchange of best practices) is carried out in execution of the 1970 UNESCO Convention, e.g., through bilateral agreements (cf. Greece, Cyprus), through intervention of the foreign affairs office (cf. Germany).

Figure 1 – Systematic cooperation



Source: Specific survey to the EU Customs and Culture administrations (2016)

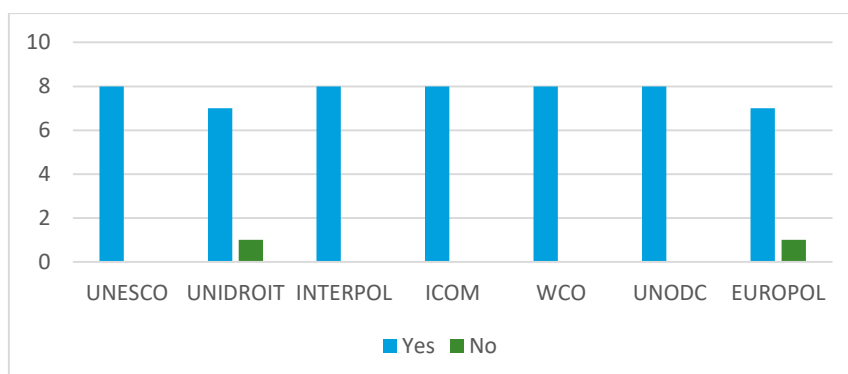
Also international organisations are involved on a systematic basis to combat illicit trafficking in cultural goods.

- UNESCO: Parties to the 1970 UNESCO Convention report on a regular basis on the implementation and application of the Convention. For programs in the scope of the activities of UNESCO, Member States indicate to have received grants and have participated in workshops and conferences on the subject of illicit trafficking;
- UNIDROIT: EU Member States having ratified the 1995 UNIDROIT Convention take further measures to implement that Convention. UNIDROIT offers conferences and workshops in the context of combating trafficking in cultural goods;
- INTERPOL: The organisation's objective is to ensure mutual assistance and communication among all competent authorities to prevent and combat criminality. The INTERPOL database on stolen works of art is applied in the daily business of customs operators in several Member States. National police forces of the Member States also attend training sessions and meetings to further develop expertise;
- ICOM: The organisation is best known for its Red List of vulnerable cultural objects, which is actively used in several Member States, and the ICOM Code of Ethics, setting minimum standard of professional practice and performance for museums and their staff. The Code of Ethics has been transposed in a national code of ethics, e.g., in the Netherlands;
- WCO: When carrying out joint customs operations, several Member States participate in the working of the World Customs Organisation, as well as in the Regional Intelligence Liaison

Offices intended as a platform to exchange intelligence. ARCHEO is an important tool to combat illicit trafficking in cultural goods;

- UNODC: Operations of this UN organisation have been supported through funding by e.g., Greece. Also the European Commission identifies this organisation as an important partner.

Figure 2 – Systematic cooperation with international organisations



Source: General survey to the EU Customs and Culture administrations (2016)

The European Commission work strives to strengthen the evidence-base and policy framework. The EU legislative action provides for a framework in this regard.

- Directive 2014/60/EU regulates the return of cultural objects unlawfully removed from the territory of a MS. Each Member State shall appoint one or more central authorities to carry out the tasks provided for in this Directive and they shall inform the Commission of all the central authorities they appoint.

Directive 93/7/EEC already established administrative cooperation between Member States as regards their national treasures, closely linked to their cooperation with INTERPOL and other competent bodies in the field of stolen works of art and involving, in particular, the recording of lost, stolen or illegally removed cultural objects forming part of their national treasures and their public collections.

- Regulation (EC) No 116/2009 was established to define the specific vocabulary used on the subject of illicit art trade and to list the steps to take when exporting cultural goods. A description for the steps in the process of exporting cultural goods is provided in this regulation. This regulation is a guideline for best practices when it comes to exporting cultural goods.

CULTNET, established through a Resolution in 2012³¹ subsequent to a recommendation in the 2011 Report on illicit trafficking in cultural goods commissioned by the European Commission, is an important network for the exchange of information.

European agencies/organizations and Member States work actively with other international organizations in several ways. Not only are intelligence and resources provided to actively tackle illicit trafficking, also substantial contributions are provided in the regulatory environment.

³¹ Resolution of the Council of the European Union on the creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), 4 October 2012, 14232/12 (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014232%202012%20INIT>)

One example of cooperation in raids is **Operation Pandora**³². This operation took place in October and November 2016 and had a joint action week from 17 to 23 November 2016. The main objective of the operation was to tackle theft and illicit trafficking in cultural goods with a focus on conflict countries and dismantle criminal networks active in this landscape. The operation was led by the Spanish and Cypriot police and several organizations were involved.

- EUROPOL played an important role in the coordination and directing of the operation. They provided the police analytical support and ensured an exchange of information during the operation. Also after the operation, they helped the investigators with checking the seized works in their stolen art database. They assisted in the investigators to check hundreds of objects against what is in their database. Providing the investigators with the proof whether to take into custody the checked goods;
- INTERPOL, the world's largest international police organization, with 190 member countries, enabled the police cooperation;
- WCO facilitated communication, cooperation and assistance between law enforcement and concerned customs administrations
- UNESCO provided training materials and recommendations, and provided the operation with expertise;
- 15 EU Member States were involved in the operation Austria, Belgium, Bulgaria, Croatia, Cyprus, Germany, Greece, Italy, Malta, the Netherlands, Poland, Portugal, Romania, Spain and the United Kingdom;
- Non-EU countries involved were Bosnia and Herzegovina, Serbia and Switzerland;

The police forces were able to seize 3 561 works of art and cultural goods of which a significant part were archaeological objects. Some of the works were of great cultural importance such as the marble Ottoman tombstone and a post-Byzantine icon depicting Saint George. During this mission, 75 individuals were arrested and 92 new investigations were initiated. Around 50 000 people, 30 000 vehicles and 50 ships were checked.

During this action, the Spanish Guardia Civil seized over 500 archaeological objects in Murcia of which 19 were stolen from a Museum of archaeology in Murcia a few years ago. Also photographs were released of ancient coins, some of these pictures were recovered by tracing online sales, the total confiscation is not provided by the Spanish authorities. The Greek police seized a part of a marble Ottoman tombstone and a post Byzantine picture of the 18th century and two Byzantine artefacts.

3.3.1.4 EU-level

3.3.1.4.1 Regulation No 116/2009

Council Regulation (EC) No 116/2009 of 18 December 2009 on the export of cultural goods is the codification of the Council Regulation (EEC) No 3911/92 of 9 December 1992. Hence, the current EU system of licensing exportations of cultural goods from an EU Member State to a third country is approximately 25 years old. Regulation No 116/2009 aims at maintaining the internal market, which calls for rules on trade with third countries necessary for the protection of cultural goods. In particular,

³² <https://www.europol.europa.eu/newsroom/news/3561-artefacts-seized-in-operation-pandora>

measures were considered necessary in order to ensure that exports of cultural goods are subject to uniform controls at the Union's borders.

For the purposes of Regulation No 116/2009 and without prejudice to Member States' powers under Article 30 of the Treaty, the term 'cultural goods' shall refer to the items listed in Annex I to that Regulation. Annex I provides both for a description of the cultural goods covered and refers to the HS codes concerned. Hence, Regulation 116/2009 – unlike the 1970 UNESCO Convention – does not provide for a definition of a cultural good, but rather lists categories of objects within the scope of the Regulation in its Annex I. Goods falling outside the list in Annex I could still be considered by Member States as their 'national treasures', eventually resulting in individual Member State action on the export of such goods.

The Regulation (EEC) No 3911/92 has established a framework for the creation of an export license system, guided by principles of simplicity and efficiency. The export license system applies for the categories of cultural goods which are listed in Annex I to the Regulation. Different financial thresholds apply for a number of cultural goods listed therein, e.g., mosaics and drawings, statuary, books, collections, and pictures. The export license, which is to be presented in support of the export declaration at the competent customs authority, is issued to the applicant by the competent authority determined in accordance with Articles 2 and 3 of the Regulation. A lawfully issued export license has an *erga omnes* character across the Union. Member States make use of standard licenses, specific open licenses and general open licenses.

Regulation (EU) No 1081/2012 of 9 November 2012 carries out the implementation of Regulation No 116/2009. The Implementing Regulation includes rules on the drawing up, issuing and use of the export license form. Three types of export licenses (general open license, specific open license, and the standard license) are provided for by the Implementing Regulation, together with a set of rules for their application. The annexes to the Implementing Regulation provide for model licenses that are used by the Member States. The competent authority for both the issue of export licenses and the handling of export formalities in each Member State is published in the EU Official Journal. The Regulation furthermore contains rules on the temporary exportation of goods outside of the Union, to facilitate the mobility of collections. Next to the Implementing Regulation (EU) No 1081/2012, the Member States have to take the necessary measures for the implementation of Regulation No 116/2009 and report on these measures to the European Commission.

Every three years the Commission presents a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the Regulation, previously on 27 June 2011 and on 1 April 2015.

3.3.1.4.2 Regulations on Iraq and Syria

Currently, the importation of cultural goods into the European Union is forbidden when it comes to goods originating from two States, Iraq and Syria.

In its Resolution 1483 (2003), the UN SC calls for the establishment of a prohibition on trade in or transfer of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance in respect of which reasonable suspicion exist that they have been illegally removed from the territory of Iraq. On the basis of this UN SC Resolution, the Council of the European Union agreed on the Regulation (EC) No 1210/2003 of 7 July 2003 *concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96*. Article 3 (1) Regulation No 1210/2003 prohibits

- a. *the import of or the introduction into the territory of the Community of,*
- b. *the export of or removal from the territory of the Community of, and*
- c. *the dealing in, Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance including those items listed in Annex II, if they have been illegally removed from locations in Iraq, in particular, if:*
 - (i) *the items form an integral part of either the public collections listed in the inventories of Iraqi museums, archives or libraries' conservation collection, or the inventories of Iraqi religious institutions, or*
 - (ii) *there exists reasonable suspicion that the goods have been removed from Iraq without the consent of their legitimate owner or have been removed in breach of Iraq's laws and regulations.*

The prohibition is limited in particular situations in accordance with Article 3 (2) Regulation No 1210/2003.

More than a year prior to the conclusion of the UN SC Resolution No 2199 (2015), the Council of the European Union adopted Regulation (EU) No 1332/2013 of 12 December 2013 *amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria*. The Regulation establishes that, in order to facilitate the safe return to their legitimate owners of goods constituting Syrian cultural heritage which have been illegally removed from Syria, it is necessary to provide for additional restrictive measures in order to prohibit the import, export or transfer of such goods. To this extent, an additional provision is inserted in Regulation (EU) No 36/2012:

Article 11c

1. It shall be prohibited to import, export, transfer, or provide brokering services related to the import, export or transfer of, Syrian cultural property goods and other goods of archaeological, historical, cultural, rare scientific or religious importance, including those listed in Annex XI, where there are reasonable grounds to suspect that the goods have been removed from Syria without the consent of their legitimate owner or have been removed in breach of Syrian law or international law, in particular if the goods form an integral part of either the public collections listed in the inventories of the conservation collections of Syrian museums, archives or libraries, or the inventories of Syrian religious institutions.

The prohibitions laid down in Article 11c of the Regulation are subject to the limitations laid down in the second paragraph of that provision.

3.3.1.4.3 Directive No 2014/60/EU

Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 *on the return of cultural objects unlawfully removed from the territory of a Member State* is a successor of Council Directive 93/7/EEC and is applicable as of 19 December 2015. The Directive provides for cooperation mechanisms and return proceedings against the possessor to secure the return of a cultural object unlawfully transferred intra-Union on, or after, 1 January 1993.

For the purposes of the Directive, cultural object means any object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 TFEU. Hence, Directive No 2014/60/EU leaves much room to the Member States to decide which goods are covered by the

instrument. The predecessor of Directive No 2014/60/EU, is Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

3.3.1.5 Currently available operational tools to combat trafficking

The European Commission cooperates closely with a number of organisations to strengthen the regulatory environment. These organisations include, in particular, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the International Criminal Police Organisation (INTERPOL), the International Council of Museums (ICOM), the World Customs Organisation (WCO), the International Institute for the Unification of Private Law (UNIDROIT), the United Nations Office for Drugs and Crime (UNODC) and the Council of Europe.

From this cooperation, initiatives to combat trafficking in cultural goods have successfully been established and developed. Also private initiatives to combat trafficking in cultural goods were launched. Without the aim of being exhaustive, hereinafter a number of those tools are described.

3.3.1.5.1 ICOM Red List³³

The International Council of Museums (hereinafter **ICOM**) has set up the ICOM Red Lists. ICOM is a diplomatic forum of experts from 136 countries, which was created as representative organ for the global museum community. It has a consultative status with the UN Economic and Social Council.

The collection of Red Lists classify the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world. Its aim is to prevent those objects from being sold or illegally exported. The database consists of several lists that are organised according to the country or region of origin of the representative objects. Only a limited number of countries are included, i.e., those which are considered most vulnerable. Following information is made available for each category of objects: name, type of object, material, country, period, description and picture. The Lists are publicly accessible.

3.3.1.5.2 Archeo³⁴

ARCHEO is an electronic information exchange platform, which was developed by the WCO Regional Intelligence Liaison Office (hereinafter **RILO**) Western Europe. ARCHEO aims to prevent cultural heritage fraud through facilitating the identification of suspected items with the goal of maximising efficient and effective enforcement in this area. It is a real-time communication tool that operates through the CEN database (WCO Customs Enforcement Network) that contains customs seizures information. It brings together the customs authorities, who are in the best position to stop illicit trafficking in cultural goods but often have limited time for deciding on releasing or detaining a good, and experts in the field of cultural property (such as ministry of culture experts and academics). In that way, the tool allows for the quicker recognition of stolen goods by the customs authorities, therefore making it possible to recover these at the border. As a consequence, the tool is accessible only for this selected group of users.

³³ <http://icom.museum/resources/red-lists-database/>

³⁴ http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage/archo brochure_en.pdf?1a=en

In its Resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh, the European Parliament urged the Member States to use international tools against trafficking in cultural goods for police and customs officers such as ARCHEO and CULTNET.³⁵ At the World Economic Forum in Davos in January 2017, WCO Secretary General Dr. Kunio Mikuriya reiterated the importance of the ARCHEO tool in effectively combating illicit trafficking in cultural goods.³⁶

3.3.1.5.3 INTERPOL database of Stolen Works of Art³⁷

INTERPOL has developed a database to serve as an inventory for Stolen Works of Art. The database mainly aims at illicit trafficking in cultural objects from countries in the Middle East, although it contains all art objects that have officially been reported as stolen. The database contains all reported stolen works of art (with a description and pictures). To facilitate searches, the objects are described according to the international standard used for describing cultural objects (Object ID).

A large part of the database is only accessible to law enforcement agencies and other authorized users (customs authorities, cultural institutions, art professionals and private collectors). The following types of data however can be accessed openly by the general public: the most recent stolen works of art reported to INTERPOL, recovered works of art (whether or not reclaimed by their owners), Afghan items, Iraqi items, Syrian items and Libyan items.

3.3.1.5.4 Art Loss Register³⁸

The Art Loss Register is exploited by a private company called International Art and Antique Loss Register Ltd. (ALR). Its origin was the International Foundation for Art Research, a non-profit organisation based in New York that established an art theft archive in 1976. Consequently, the ALR was established in London as a joint initiative of businesses from the insurance industry and art market.

The ALR provides two types of services. First, individuals can register valuable items on the database, thereby providing a deterrent to the theft of art. Second, the ALR provides a due diligence service to sellers of art. Any stolen art objects discovered during the due diligence are returned to their rightful owners. Additionally it is possible to negotiate compensation to the victims of art theft and to legitimise the current ownership. ALR is entitled to a recovery fee based on the fair market value of the object for all recoveries in which it has played a role.

3.3.1.5.5 Psyche³⁹

In collaboration with the Italian Carabinieri Command for the Protection of Cultural Heritage, INTERPOL developed Psyche (Protection System for Cultural Heritage) in order to further increase the contents of the Stolen Works of Art database and to facilitate queries of the information it contains. This project is funded by the European Commission, on the basis of 2008 EU Council Decision CRIMORG 166, ENFOPOL 191, no° 14224/2/08, Council Decision 2007/125/JHA and Council Framework Decision 2006/960/JHA.

³⁵ European Parliament resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh (2015/2649(RSP)), *PB.C.* 346/55.

³⁶ <http://www.wcoomd.org/en/media/newsroom/2017/january/wco-urges-for-partnership-to-combat-illicit-trafficking-of-cultural-heritage-in-davos.aspx>

³⁷ <https://www.INTERPOL.int/Crime-areas/Works-of-art/Database>

³⁸ <http://www.artloss.com/en>

³⁹ <http://tpcweb.carabinieri.it/SitoPubblico/psyche/generic?lang=EN>

Psyche focused on four main actions:

- ✔ Implementation of a web formatted message enabling each member country to insert, modify and delete information on stolen artwork and associated events directly in the Database of Stolen Works of Art;
- ✔ Development of specific software to transfer data directly from existing national works of art databases into the Database of Stolen Works of Art;
- ✔ Integration of an image comparison system to speed up searches;
- ✔ Development of training activities for the authorities who will be using the system, including e-learning courses, seminars and a handbook.

3.3.1.5.6 EU CULTNET⁴⁰

EU CULTNET is an informal network of law enforcement authorities and experts competent in the field of cultural goods. It aims at strengthening coordination between law enforcement and cultural authorities and private organizations (e.g., antique shops, auction houses, online auctions), by identifying and sharing information on criminal networks suspected of being involved in illicit trafficking of stolen cultural goods. In doing so, the network hopes to establish links between criminal networks and to identify routes, destinations and modus operandi of their activities. This should result in the development of a strategy on combating crime against cultural goods and preparing an action plan. Where appropriate, the existing national legal frameworks of Member States should be considered as a starting point.

EU CULTNET works in close cooperation with international organizations such as UNESCO, INTERPOL, UNIDROIT, EUROJUST and EUROPOL. The network investigates, through the sharing of best practices, how procedures could be simplified for recording missing cultural goods in national Member States' databases and how the latter could be adapted to the INTERPOL Stolen Works of Art database (taking into account the findings of the Psyche project). They also encourage the use of these existing systems.

According the Council Resolution, the network needs to fulfil the following objectives:

- 1) *ensuring that Member States become aware of countering crime against cultural goods at a strategic level,*
- 2) *identifying and sharing, in compliance with data protection rules, non-operational information on criminal networks suspected of being involved in illicit trafficking of stolen cultural goods in order to determine the links between such networks and other forms of (organised) crime and to identify routes, destinations, modus operandi and trends and types of criminal activities in close cooperation with the different national and international stakeholders,*
- 3) *identifying the indicators of cross-border or even domestic criminal activity in connection with crime against cultural goods,*
- 4) *improving the exchange of information as well as contributing to risk and threat assessment studies where appropriate,*
- 5) *exchanging information about the law enforcement systems in each Member State and identifying possible legal and practical obstacles to cross-border cooperation,*

⁴⁰ Resolution of the Council of the European Union on the creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), 4 October 2012, 14232/12 (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014232%202012%20INIT>)

- 6) *exchanging best practices (i.e. new technologies, etc.), operational experiences and priority-setting methods,*
- 7) *sharing information regarding auction houses and websites used for the trading of cultural heritage objects,*
- 8) *sharing best practice on procedures for recording crime against cultural goods that will where possible improve the comparability and consistency of information,*
- 9) *considering, through the sharing of best practices, how procedures could be simplified for recording missing cultural goods in national Member States' databases and how the latter could be adapted to the INTERPOL "Stolen Works of Art" database, taking into account the best practices and techniques identified within the "Psyche" project funded by the EU,*
- 10) *encouraging the use of existing systems, such as the INTERPOL's "Stolen Works of Art" database and EUROPOL's SIENA for the exchange of information on crime against cultural goods,*
- 11) *contributing to the better, faster and more efficient use of the official information exchange and cooperation channels, such as EUROPOL, EUROJUST, INTERPOL, UNESCO, WCO, etc.,*
- 12) *contributing to organising joint training activities for officers and investigators competent in the field of cultural goods conducted by CEPOL and taking this subject into account in exchange programmes and in the development of other CEPOL tools, also in cooperation with other relevant partners, e.g. UNESCO and the European Judicial Training Network,*
- 13) *preparing, in cooperation with INTERPOL, a handbook in order to combat crime against cultural goods more effectively in line with Council Conclusions on preventing and combating crime against cultural goods*
- 14) *ensuring coordination within the European Union in order to stress EU-specific concerns and to function as a multiplier, channelling needs and requests from Member States or member organizations,*
- 15) *developing a strategy on combating crime against cultural goods and preparing an action plan with concrete activities aiming to contribute to combating this form of crime,*
- 16) *considering, where appropriate, the existing national legal frameworks of Member States in the field of combating crime against cultural goods as a starting point for best practice sharing and cooperation.*

In its Resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh, the European Parliament urged the Member States to use international tools against trafficking in cultural goods for police and customs officers such as ARCHEO and CULTNET.⁴¹

3.3.1.5.7 ICOM Code of Ethics⁴²

The ICOM code of ethics contains minimum standards of professional practice for museums and their staff. In joining the organisation, ICOM members undertake to abide by this Code.

The underlying principle of the Code is that museums are entrusted with the responsibility of safeguarding the tangible and intangible natural and cultural heritage in the general interest of the public. Therefore governing bodies and those concerned with the strategic direction of museums have a primary responsibility to protect and promote this heritage as well as the resources made available

⁴¹ European Parliament resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh (2015/2649(RSP)), PB.C. 346/55.

⁴² <http://icom.museum/the-vision/code-of-ethics/>

for that purpose. Museums have the duty to acquire, preserve and promote their collections as a contribution to safeguarding the natural, cultural and scientific heritage. Inherent in this public trust is the notion of stewardship that includes rightful ownership, permanence, documentation, accessibility and responsible disposal.

3.4 Analysis and comparison of the current EU Customs legislation protecting cultural goods from the Member States (Regulation No 116/2009)

Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods lays down the framework on the export of cultural goods from the customs territory of the EU. This section will allow gaining an overview of the application and the implementation of the EU Regulation No 116/2009 in Member States, and deriving lessons from that implementation. The analysis will look at the application of the Regulation in Member States and compare national practices. The comparative analysis will look at the following elements:

- Lessons from the implementation so far;
- Elements transferable to a (possible) EU instrument protecting all cultural heritage goods (including thus also goods from third countries);
- Elements that did not work as expected and should thus be excluded/avoided in a (possible) EU instrument.

3.4.1 Implementation of Regulation No 116/2009

At implementation of the export license system laid down in Regulation No 116/2009, practical difficulties could be encountered by administrations. In particular the administrative burden, the costly organisation, or the internal distribution of competencies could be considered. From the input received from the Member States and with explicit reference to the follow-up reports of the European Commission on the implementation of Regulation No 116/2009, an assessment of the export license system is performed below, consisting of information and analysis on the following topics:

- General assessment of the export license system;
- Definition and assessment of a cultural good;
- Issuance of export licenses;
- Burden of implementation;
- Effectiveness and improvement of the export license system.

3.4.1.1 General assessment of the export license system

A vast majority of 22 out of 25 respondent EU Member States states not to have encountered any difficulties when implementing the Regulation in practice. The remainder of the Member States identified a number of complications burdening the implementation:

- Matching cultural goods with the categories in Annex I to the Regulation. This issue was also raised in the 2015 Report on the implementation of Regulation No 116/2009. The existing disparities in interpretation of Annex I to Regulation No 116/2009 could be detrimental to the effectiveness of the export license system, in particular considering the *erga omnes* character of an export license issued;
- Establishing the competent authority to issue the export license. In particular, questions arise whether goods can be considered lawfully and definitively dispatched from another Member

State. The publication of the competent authorities in accordance with Article 3.2. of the Regulation could be useful in practice, however, this does not contribute to answering the legal questions arising from Article 2.2.b of the Regulation. Also with regard to the determination whether an export license can be issued, there appears to be an ambiguity with regard to whether the Regulation requires that prior importation from third countries is lawful and what the powers are in place to be able to require evidence, e.g., with regard to provenance.

Apart from these difficulties concerning the implementation of the Regulation, among which most of the difficulties are relevant for the everyday application of the export license system, the Member States generally (23 out of 25 respondents) consider the export license system to be effective in practice.

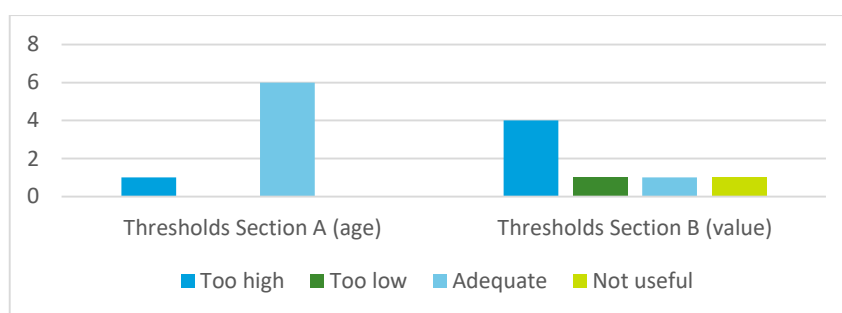
Out of the two responding Member States according to which the export license system is considered not effective in practice, one Member State expounded on its position. In particular, the export license system is considered effective for the compliant persons and trade, furthermore adding that the system attributes greater awareness and has a preventive effect. Nonetheless, the license system is deemed not to halt the illicit trafficking in cultural goods. Adding to the issue is the lack of a level playing field across the EU, implying that authorities do not control and issue export licenses in the same way.

3.4.1.2 Definition and assessment of a cultural good

The applicant for an export license has to supply the competent authority for the issuance of such license with satisfactory evidence on the provenance and characteristics of the goods. The authority in charge of reviewing the export license applications will then be able to check the goods in question to the definition as laid down in Regulation No 116/2009.

When considering the definition of a cultural good for the purposes of Regulation No 116/2009, the views of the Member States are divergent. Half of the respondent Member States to the specific questionnaire indicate they are not satisfied with the definition provided for in the Regulation.

Figure 3 – Thresholds (age and value)



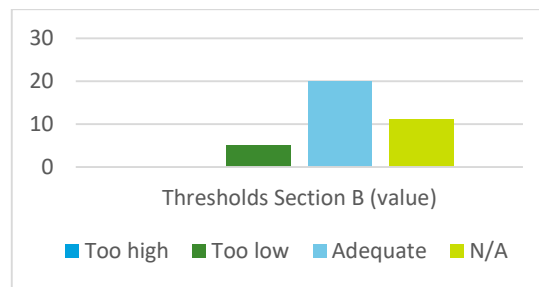
Source: Specific survey to the EU Customs and Culture administrations (2016)

The use of thresholds is important for the effectiveness of the Regulation No 116/2009. Whereas with regard to the age thresholds in Section A of Annex I to the Regulation there is close to unanimity concerning the adequacy of those thresholds, less unanimity can be witnessed when polling for the adequacy of the value thresholds in Section B of Annex I to the Regulation. From the data retrieved from the Member States, it follows that the current value thresholds are considered not to meet the principles of efficiency and simplicity as referred to in the preamble of the Regulation No 116/2009.

Half of the respondent operators in the market state they are satisfied with the understanding of a cultural good for the purposes of Regulation No 116/2009, with only 2 out of 36 respondents explicitly opposing the annexed list of goods and the thresholds therein. One of the two opposing operators states

that adherence should be sought with the definition of the state of origin of the good , i.e., the good should be considered a *cultural good* if the Member State of origin designates the good as such. With regard to the use of the value thresholds in Section B of Annex I to Regulation, market operators do not consider these thresholds too high, on the contrary. The thresholds are generally considered to be adequate, with a limited number of respondents stating they are too low.

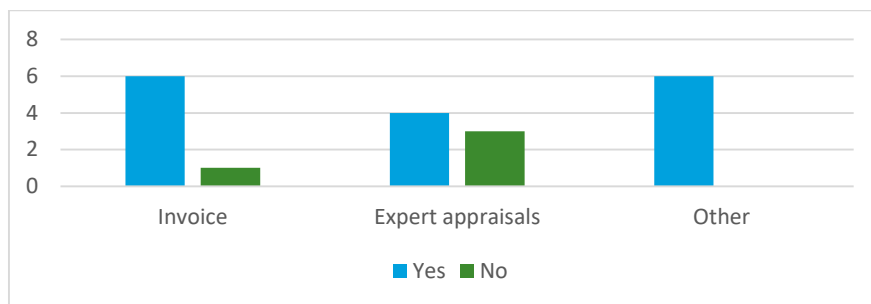
Figure 4 – Value threshold (market assessment)



Source: Survey to the market operators (2016)

In general, the competent authorities will allow the applicant to supply all evidence that may contribute to the full understanding and clarification of the case. Referring to a standard situation, the Member States indicate the following documentation accompanies the application for a standard export license.

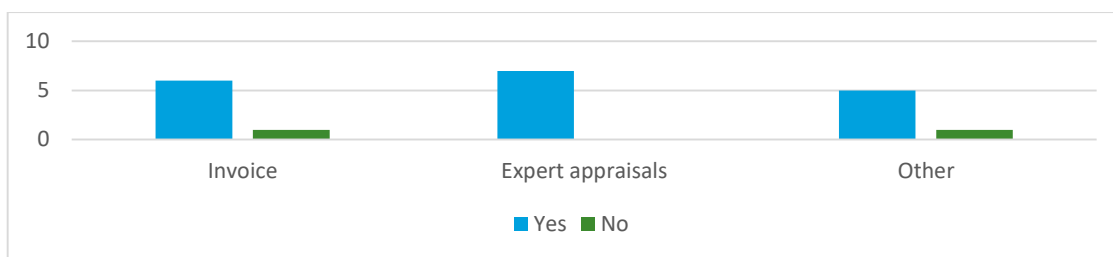
Figure 5 – Documentation accompanying application



Source: Specific survey to the EU Customs and Culture administrations (2016)

The authenticity of the invoice cannot always be verified, hence, supplementary evidence is required. Expert appraisals are more often than not supplied and could provide for important information on the provenance, value, and age of the cultural good. Most applicants also provide other evidence, such as documentation on provenance, photo documentation, declarations by stakeholders, proof of value, contract of loan, a catalogue entry, auction or sale details if the item is sold, proof of importation, shipping documentation, customs return.

Figure 6 – Evaluating the value



Source: Specific survey to the EU Customs and Culture administrations (2016)

To estimate the value of the cultural good for which an export license is applied for, which is important for the thresholds embodied in the Regulation No 116/2009, the Member States generally rely on the information provided by the applicant. One respondent Member State does not consider the invoice relevant for the determination of the value of the good, however, considering the principle of transaction value constituting customs value for exportation, the available invoice will constitute an essential element for valuation purposes in most Member States. Moreover, one respondent only relies on the invoice and expert appraisals, and no further information is taken into consideration.

Other instruments than the invoice and expert appraisals relevant for the determination of the value and accepted in (some of) the Member States are e.g., a declaration by the applicant, customs expertise, proven insurance value of the good, and the sales contract. A vast majority of the respondent Member States (7 out of 8) indicate that they request for external expertise in case of doubt of the declared value.

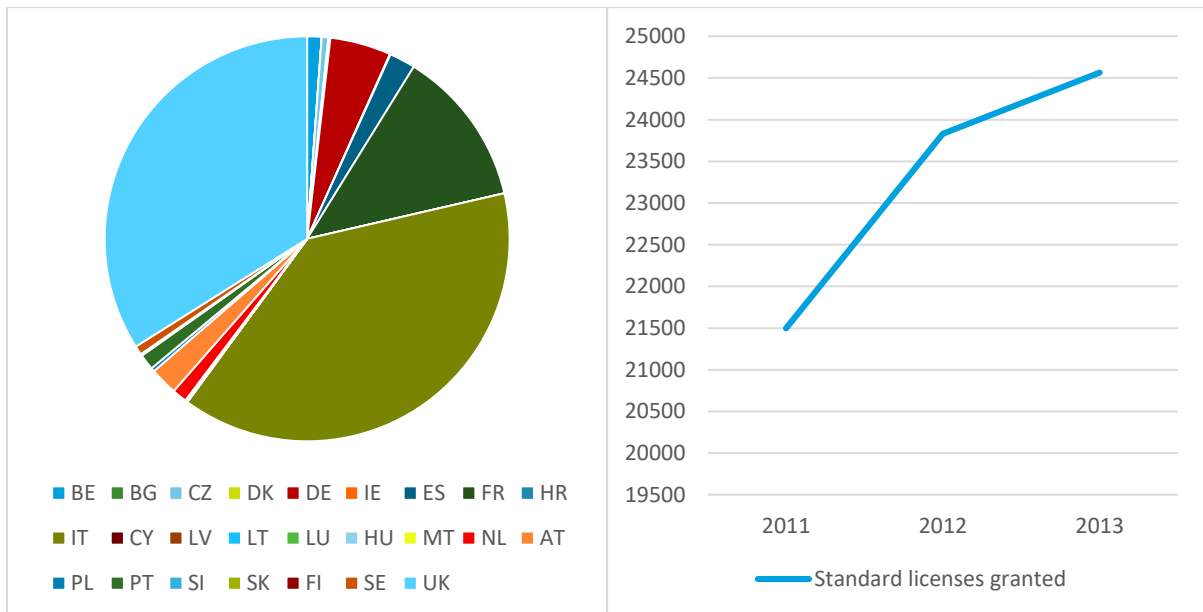
3.4.1.3 Issuing export licenses

Both the data from the surveys conducted and from the Reports from the European Commission to the European Parliament, the Council and the European Economic and Social Committee show that within the European Union, there is a very different workload related to the implementation of the Regulation No 116/2009.

The amount of applications for an export license differs substantially per Member State. Over the years, the number of issued export licenses has been subject to an upward trend. The Member States most affected by the export license system in terms of workload are Italy, the United Kingdom, France, and Germany, together dealing with more than 90% of the standard export licenses granted over the years 2011 – 2013.

Figure 7 – Standard licenses granted (EU level)

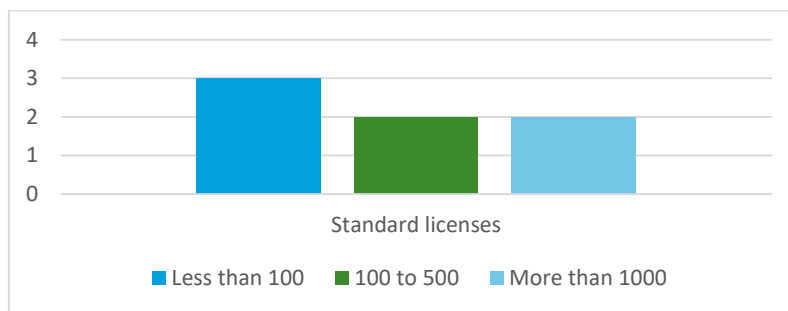
Standard licenses issued (EU 2011–2013)



Source: Annex to the Report from COM on Council Regulation No 116/2009 (2011 – 2013)

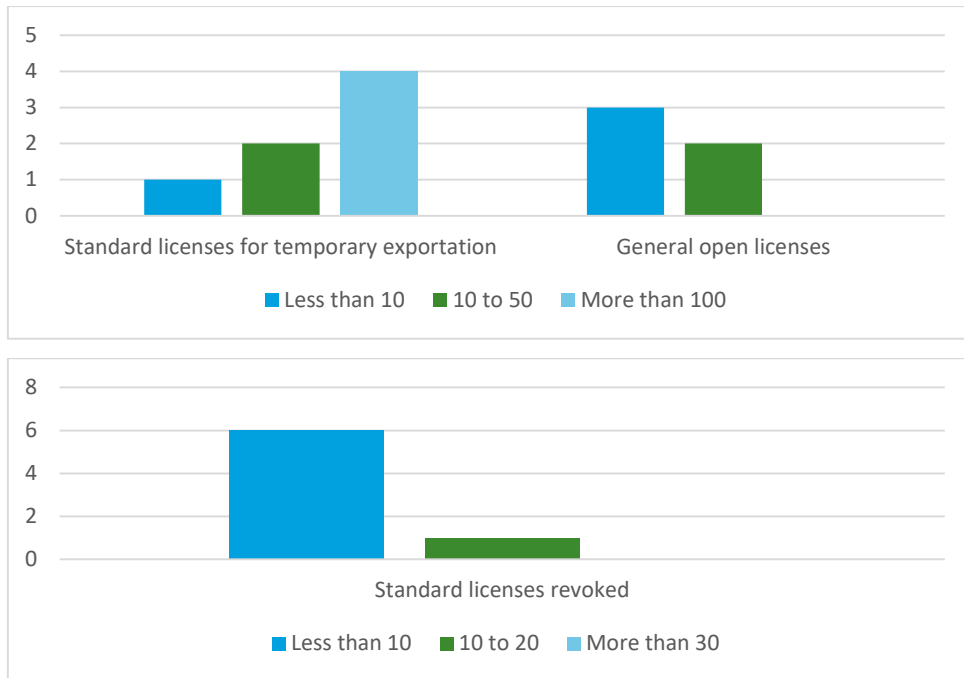
The standard export license is by far the most commonly issued license. The number of licenses withdrawn by the authorities is insignificant in comparison to the number of licenses issued.

Figure 8 – Standard licenses issued (per annum)



Source: Specific survey to the EU Customs and Culture administrations (2016)

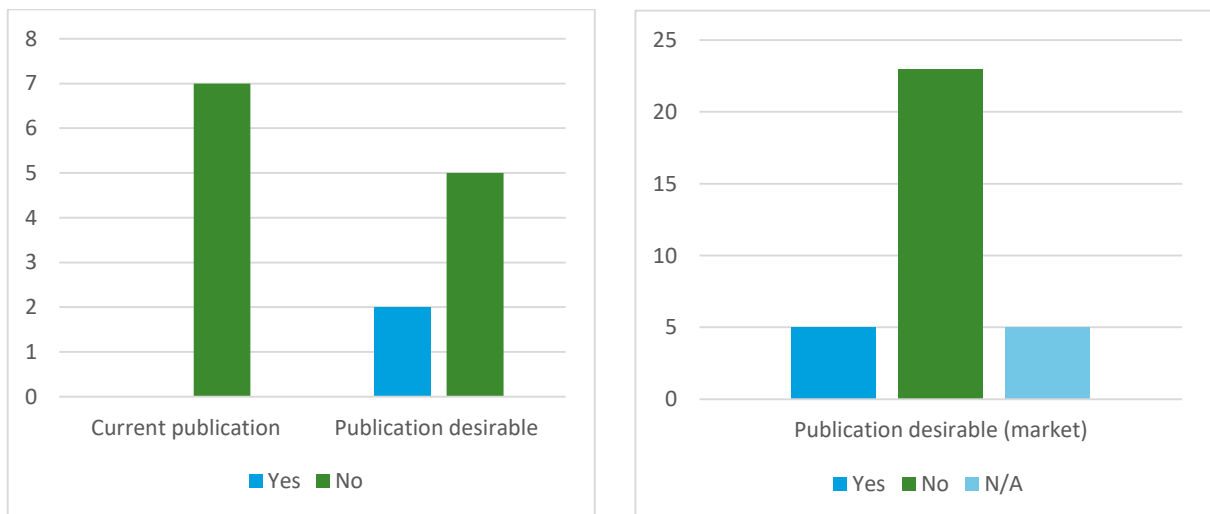
Figure 9 – Licenses issued (per annum)



Source: Specific survey to the EU Customs and Culture administrations (2016)

None of the respondent Member States currently publishes the export licenses. When asked whether such publication would be desirable, 2 out of 7 Member States agree that such publication would contribute to a better enforcement. Similar data were retrieved from operators in the market, who generally do not support such publication.

Figure 10 – Publication of export licenses

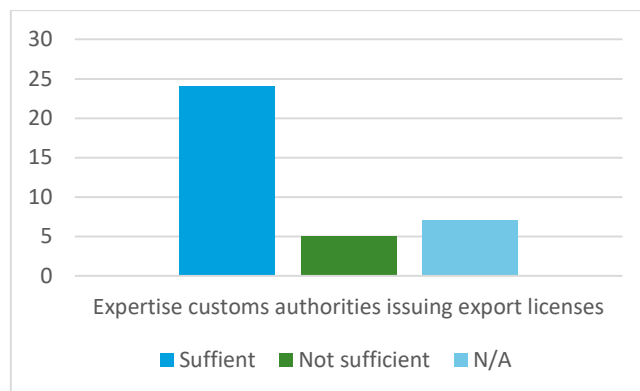


Source: Specific survey to the EU Customs and Culture administrations (2016)

Source: Survey to the market operators (2016)

When asked about the expertise of the customs officers of the export license issuing Member States, a large majority of the market operator respondents considers the export license issuing authorities to be sufficiently equipped with expertise to duly carry out their assignment. Such view might be biased, considering that less expertise possibly results in less burdensome customs controls.

Figure 11 – Customs expertise (market assessment)

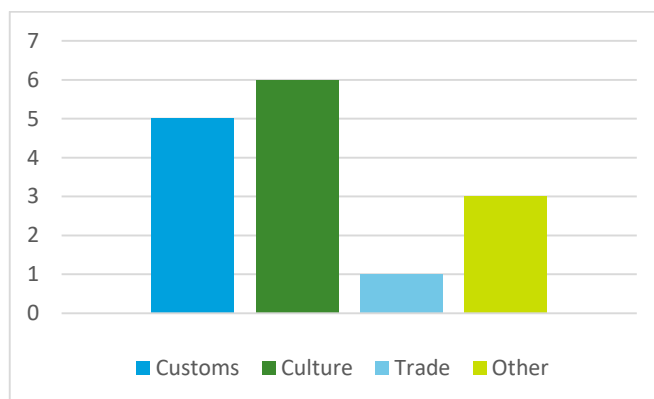


Source: Survey to the market operators (2016)

3.4.1.4 Burden of implementation

The implementation of the Regulations on the export of cultural goods resulted in the employment of civil servants at Member State’s governmental department(s) responsible for implementing and/or enforcing national legislation with regard to the export of cultural goods. The implementation of the Regulation No 116/2009 was laid in the hands of different administrations or ministries in different EU Member States. Most Member States indicate different ministries have to work together.

Figure 12 – Responsible authority



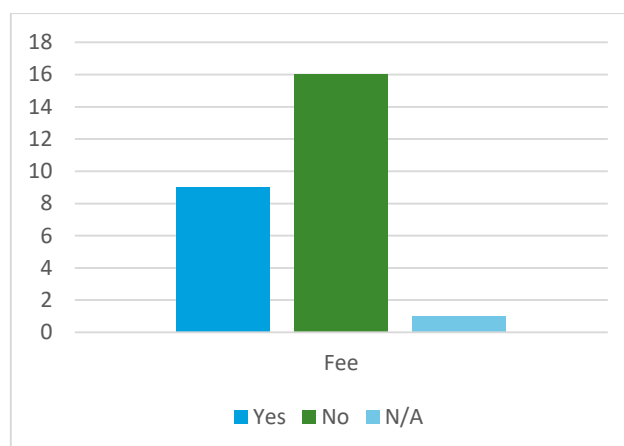
Source: Specific survey to the EU Customs and Culture administrations (2016)

Most Member States recognize, however, that it is very difficult, if not impossible to identify the exact number of Full Time Equivalents (FTEs) occupied exclusively with the application of the Regulations. Competent authorities are often considered responsible in its entirety to deal with the correct application and enforcement of the regulations in place, hence, the amount of FTEs cannot be established.

For the facilitation of the implementation, a number of countries have issued user guidelines on the export license system. These guidelines are either generally supplementing statutory provisions or target specific applicants, e.g., applicants of standard export licenses, professional musicians and their musical instruments (specific open license).

In order to limit the financial burden, a limited number of the Member States impose a fee for the issuance of an export certificate. The fee charged may differ according to the quantity of items applying a license for as well as the value of the goods in question.

Figure 13 – Charging of a fee



Source: General survey to the EU Customs and Culture administrations (2016)

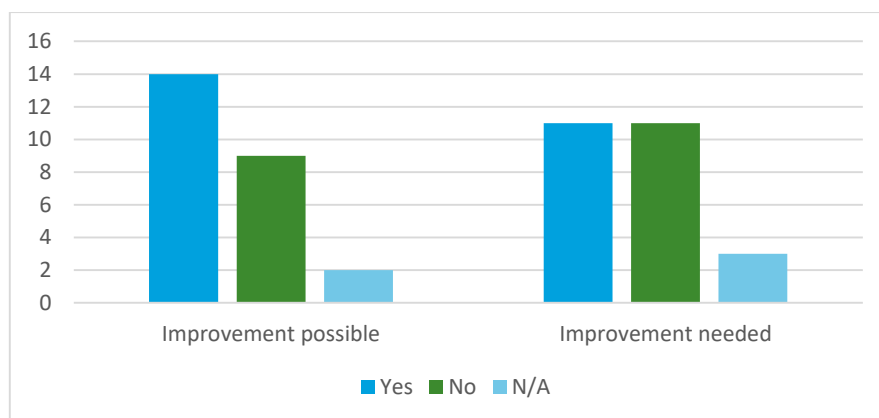
3.4.1.5 Effectiveness and improvement of the export license system

13 out of the 25 responding Member States (i.e., Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Italy, Latvia, the Netherlands, Poland, Spain, the United Kingdom) indicate to have traced and/or seized cultural goods that were about to be exported to third countries in violation of Regulation No 116/2009 or any of their national laws in place to prevent the illicit exportation of cultural goods.

The amount of goods intercepted by the Member States is very different; this difference also appeared from the European Commission reports on the implementation of the Regulation. The goods being intercepted range from antique books to statutes, paintings, archaeological finds, paintings, coins, and stone fragments. The goods are mostly intercepted at airports transported by international travelers (e.g., small sized items such as old coins), postal parcels where no customs declaration is provided for, shipping containers, and travelers by car.

A considerable number of Member States does not see room for improvement of the current export license system and is, as a conclusion, of the opinion that the system does not require improvement. The majority of the responding Member States does, however, consider that improvement is possible. Nonetheless, not every respondent that sees room for improvement is convinced of the necessity of modifying the current existing system.

Figure 14 – Current export license system



Source: General survey to the EU Customs and Culture administrations (2016)

When considering the current export license system, the Member States suggest following improvements:

- The paper handling of export licenses is considered to be outdated. Export licenses could and should be electronically delivered and administratively processed, which would also allow for the automatic translation of the licenses issued. As part of the periodic review of the European Commission, the very same issue was raised. Although it was recognized by the Member States that the possible future development of a common database could bring significant benefits, the absence of financing of such electronic system was underlined;
- The current procedures are not always deemed fit for purpose;
- The categories of cultural goods and their thresholds require revisiting (as discussed during the Committee and Expert Group Meetings), in particular to facilitate the handling of goods by customs officials;
- Existing issues with regard to the interpretation of the Regulation, in particular with regard to establishing which is the competent authority in a particular case as well as the required information on the provenance of cultural goods, should definitively be clarified;
- It is considered helpful to have a requirement for full provenance, rather than merely asking this as an aid to identification (box 17 of the standard license under Regulation No 1081/2012);
- A 'stop-removal order' from the customs administration could be added, until the competent body in charge of assessing the good has made a final decision;
- The exchange of information between the Member States could be encouraged and facilitated (e.g., through digital platforms). The protection of the Member States' cultural heritage should be pursued from a solidarity and reciprocity perspective. Cooperation between Member States with regard to the identification of the origin of the intercepted cultural good could be improved;
- The possibility of extending the authorisation for temporary export for public institutions without having to import the object;
- Bringing the export license system in line with other (non-EU) international legal systems would result in a more effective instrument to tackle cross-border trafficking in cultural goods;
- Diplomatic help from the EU and the other Member States for recovering an object illegally exported outside the EU that requires a permit on the basis of Regulation No 116/2009.

The existence of an export license system set up by Regulation No 116/2009 and implemented through Regulation No 1081/2012 is known and applied among operators in the market. When queried about

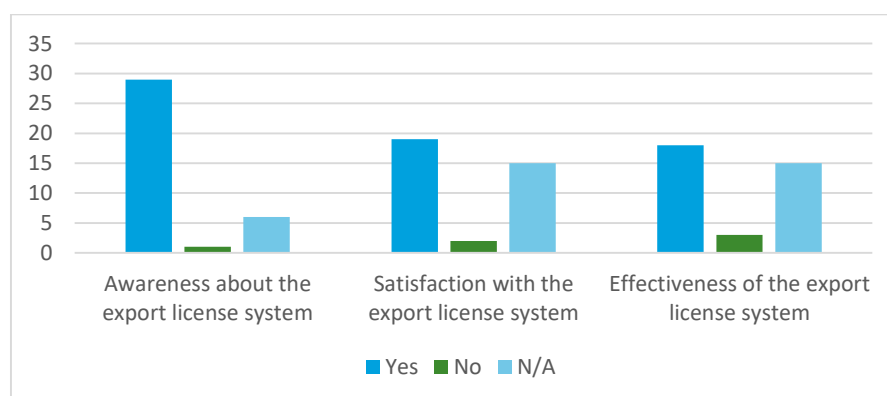
the satisfaction with the current system, the market remains positive. Suggestions for improvement are made:

- The value thresholds do not necessarily meet their intended purpose. Cultural relevance of an object is not necessarily reflected by its current value in the market, also considering fluctuation of prices of cultural objects.
- A passport for a cultural good, similar to the French system, is considered to facilitate trade, in particular for goods exported multiple times.

Although the effectiveness of the export license system is recognized, the existing discrepancies in application of the system (not necessarily in line with the EU Regulations) are said to be disruptive for legitimate trade.

According to the market operators, the introduction of the export license system also has shown that imposing a measure not backed by the people that should comply with the measure – the market (i.e. dealers in antiquities, museums) – potentially results in an ineffective system not meeting the intended goals.

Figure 15 – Assessment by the market



3.4.1.6 Conclusions on the implementation of Regulation No 116/2009

Being questioned individually, the Member States almost unanimously agree that the current export license system for cultural goods as laid down in Regulation No 116/2009 is effective in practice. This view is shared by the market operators, making use of that system on a regular basis.

There is room for improvement of the current export license system, however. Upon today, several issues affect the level playing field with regard to the exportation that could be attained through a harmonized application of the rules laid down in Regulation No 116/2009.

Most relevant issues encountered by the Member States are:

- With regard to the definition of a cultural good, practice shows that matching a cultural good with the categories listed in Annex I of the Regulation turns out to be difficult and burdensome. The documentation used in the assessment of the good in question differs per Member State. Moreover, the list of categories as laid down in the Annex is not unanimously supported by the Member States nor by the market operators. In particular the financial thresholds in Section B of Annex I are considered not always serving the effectiveness of the export license system. On the other hand, several market operators indicate the value thresholds in the Annex are too low. Matching both interests is a difficult exercise;

- The competent authorities of the Member States interpret the provisions of the Regulation No 116/2009 differently. The difference in interpretation could lead to a difference in treatment, however, the Regulation has laid down the rules to determine the competent authority, which should rule out the possibility of forum shopping. Nonetheless, the difference in interpretation does not serve the efficiency and simplicity, guiding principles of the Regulation.

The Member States also suggest several improvements to the current export license system, which could also serve as an inspiration for other future legislative instruments combating the trafficking in cultural goods, notably:

- The use of electronic delivery and administrative processing of export licenses. Such system would facilitate the application for and issuance of an export license, but could also ease cooperation between the Member States;
- The exchange of information between Member States could be facilitated at supranational level, e.g., by making use of electronic platforms. The effectiveness of Regulation No 116/2009 could be improved through enhanced exchange of information and best practices between the Member States;
- Determination of the provenance of the cultural good is vital for the assessment whether a good will be (il)legally moved. The concept of provenance could gain importance in the legislative measures combating trafficking in cultural goods;
- Bringing the system in line with other (possibly non-EU) legal systems to combat trafficking in cultural goods could result in the creation of a more effective instrument to control and tackle cross-border trafficking in cultural goods.

Market operators are generally satisfied with the (application of the) export license system in practice. Involvement of the market when improving the current system or introducing new regulations is key in order to come to a cost effective system that has the potential to meet the intended goals.

3.5 Identification and analysis of national legislation currently in force in the EU Member States

This section will allow identifying those Member States that have implemented a specific legislation addressing illicit trade in cultural goods, and analysis of such legislation.

The analysis will cover measures taken by Member States in application of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, or of other related international UN treaties or others (e.g. UNODC, UNIDROIT) that Member States have adhered to individually.

Similar to the previous paragraph, the analysis will look at the a number of key issues, such as the how at national level the legislation is implemented in respect to identifying possible illicit trades in cultural goods, the adequacy of tools available to Customs to implement such measures, co-ordination mechanisms at national and international levels. The analysis will also consider the following elements:

- Elements transferable to a (possible) EU instrument addressing the import of cultural goods from third countries and the fight against illicit trafficking in cultural goods;
- Elements that did not work as expected and should thus be excluded/avoided in a (possible) EU instrument.

3.5.1 Introduction

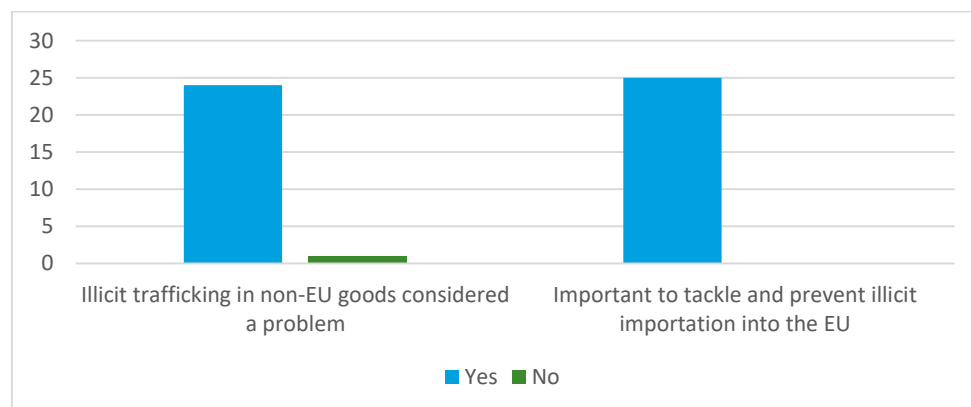
Considering the limited regulatory intervention on the supranational level, a major part of the policy concerning trafficking in cultural goods is left to the discretion of the Member States. The national legislator is, e.g., currently in charge of any initiatives with regard to the importation of cultural goods (with the exception of the further discussed *ad hoc* EU measures on Syria and Iraq).

The Member States consider the trafficking in (non-)EU cultural goods to be a problem, together with the consequences thereof (i.e., the fact that cultural goods are taken away from rightful owners, do not stay in the cultural region, are no longer available to the public, are not properly maintained when transported and are destroyed to obtain artefacts). In particular, Member States indicate the following reasons:

- As it is linked to illegal activities, trafficking in cultural goods – which is an international issue – should be combated, if possible through joint efforts;
- The trafficking results in the irretrievable loss of cultural wealth;
- Illicit trade in cultural goods is part of a bigger problem since it is often combined with other forms of criminal activities, such as money laundering, tax evasion, terrorism and organised crime;
- Several Member States refer to their international obligations resulting from e.g., the 1970 UNESCO Convention.

From the questionnaire, it follows, moreover, that **all respondent Member States** unanimously consider it important to tackle and prevent the illicit importation of cultural goods into the European Union.

Figure 16 – Member States' views on protection of cultural goods



Source: General survey to the EU Customs and Culture administrations (2016)

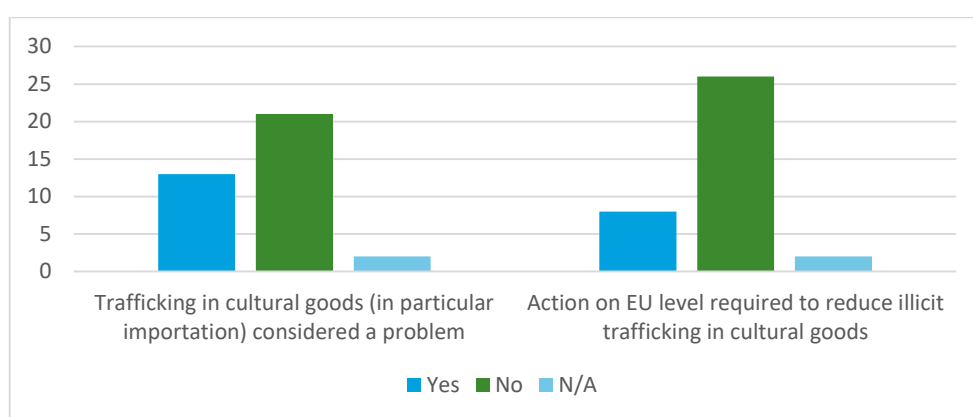
Market operators are less convinced of the existence of a problem and the importance to tackle and prevent the illicit importation of cultural goods into the European Union. The main reasons why the trafficking is not considered a problem:

- There would be no demand for illicit objects, hence the supply would be negligible;
- Sensational media reports excessively about a relatively limited number of cases;
- Many market operators do not have any personal experience with the illicit trafficking in cultural goods.

However, as reasons why this is (or could be) indeed a problem are brought forward:

- ✔ The large profit margins for rare art objects;
- ✔ The interest of criminal organizations (e.g., for purposes of money laundering);
- ✔ The prominent position of the EU art market with high demand for cultural goods, resulting in a definite offset market for illicitly traded goods;
- ✔ The lack of adequate laws and/or enforcement (both border enforcement and enforcement at cultural heritage sites) in the countries of origin;
- ✔ The lack of adequate administrative processes and/or border enforcement in the European Union;
- ✔ The lack of sufficient knowledge on the existing limitations on the movement of cultural goods.

Figure 17 – Operators' views on protection of cultural goods



Source: Survey to the market operators (2016)

3.5.2 National legislation and practice

The existing regulatory framework in the Member States, together with the practices of their customs and culture authorities, could serve as an important source to identify possible best practices in the field of combating trafficking in cultural goods, particularly also relating to the importation of cultural goods into the European Union. From both desk research and the input received from the Member States, below an assessment is performed with regard to the following topics:

- ✔ Ratification and implementation of international instruments (in particular the 1970 UNESCO Convention and the 1995 UNIDROIT Convention);
- ✔ The concept of 'cultural goods';
- ✔ Enforcement and seizure;
- ✔ Expertise.

3.5.2.1 Ratification and implementation of international instruments

3.5.2.1.1 1970 UNESCO Convention

The 1970 UNESCO Convention is undoubtedly the most important international instrument addressing the trafficking in cultural goods. This importance has been recognized in several times by the European Union. For example, the introductory clauses to the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory

of a Member State refer to conclusions of the Council of 2011, in which the Council recommended “*that the Member States consider the ratification of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 17 November 1970, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects signed in Rome on 24 June 1995*”. Several United Nations General Assembly resolutions on the “*Return or restitution of cultural property to the countries of origin*” also called Member States to become Parties to it.

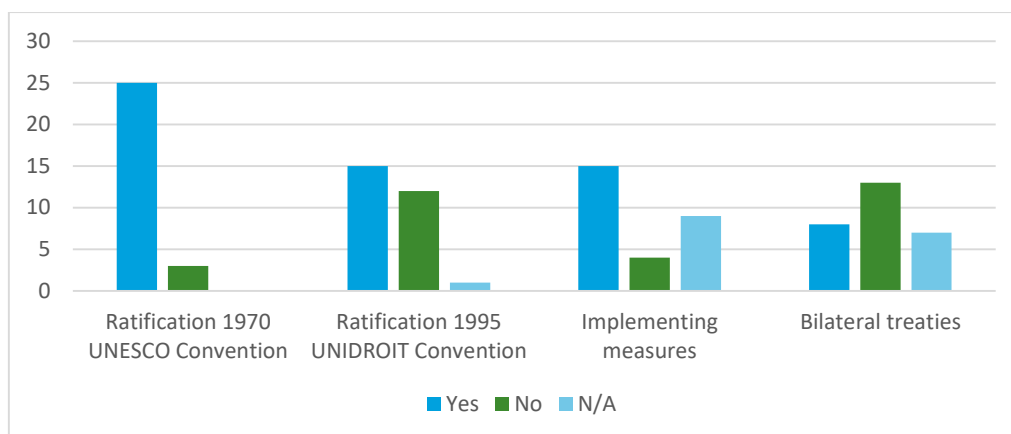
The signatory parties to the 1970 UNESCO Convention recognize that the illicit importation, exportation and transfer of ownership of cultural goods is “*one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country’s cultural property against all dangers resulting there from*” (Art. 2). Ratifying parties need further implementation at national level:

- to set up, within its territory, one or more national services for the protection of cultural heritage, with a qualified staff sufficient in number to effectively carry out a number of functions to ensure the protection of its cultural property “against illicit import, export and transfer of ownership” (Art. 5 of the Convention);
- to introduce an export certificate and to prohibit the exportation of cultural property from its territory unless accompanied by that certificate (Art. 6 of the Convention);
- to take the necessary measures to prevent museums and similar institutions within its territory from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of the Convention (Art. 7.a of the Convention);
- to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution; at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property (Art. 7b of the Convention).

3.5.2.1.2 1995 UNIDROIT Convention

Also the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is an important source of law for combating illicit trade in cultural goods and can be considered a de facto Protocol to the 1970 UNESCO Convention.

Figure 18 – Ratification and implementation of international instruments



Source: General survey to the EU Customs and Culture administrations (2016)

Table 1 Ratification of Unesco 1970 and UNIDROIT 1995 conventions by EU member states

Country	Ratification 1970 Unesco convention?	Ratification 1995 UNIDROIT
Austria	Yes	Yes
Belgium	Yes	No
Bulgaria	Yes	No
Cyprus	Yes	Yes
Czech Republic	Yes	No
Denmark	Yes	Yes
Estonia	Yes	No
Finland	Yes	Yes
France	Yes	Signed but not ratified
Germany	Yes	No
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	No	No
Italy	Yes	Yes
Croatia	Yes	Yes
Latvia	No	No
Lithuania	Yes	Yes
Luxemburg	Yes	No
Malta	No	No
Netherlands	Yes	Yes
Poland	Yes	No

Portugal	Yes	Yes
Romania	Yes	Yes
Slovenia	Yes	Yes
Slovakia	Yes	Yes
Spain	Yes	Yes
Sweden	Yes	No
UK	Yes	No

From the input of the Member States on their ratification and implementation of the available international instruments, the following can be concluded:

- The UNESCO Convention is indeed the most important available international instrument, having, next to 25 EU Member States, another 106 countries that are signatory parties. Nonetheless, 3 Member States stay behind when it comes to the signing and ratification of the Convention (in particular Ireland, Latvia and Malta). The UNIDROIT Convention gained less global recognition. From the 37 Contracting States, 15 are EU Member States;
- The signing and ratification of the respective conventions has not always led to transfer and implementation of the Convention provisions in the national legal system. Several EU Member States did not take any legislative action to ensure the correct implementation and application of the Convention(s);
- A number of Member States have concluded separate bilateral treaties with third countries to tackle the trafficking in cultural goods and to ease the exchange and restitution thereof. In this respect, Spain is party to a particular collaboration framework with Latin American countries.

3.5.2.2. Applicable legislation on exportation and importation of cultural goods

Several EU Member States have individually introduced legislation on the trade in cultural goods, also taking their international engagements into consideration (see Table 2, with Annex 3 providing an overview of Government websites where the legislation can be accessed).

Table 2 – Applicable legislation on exportation and importation of cultural goods in EU member states

Country	Applicable legislation
Austria	<p>Novelle zum Denkmalschutzgesetz vom 1 Jänner 2000 im Sinne der Haager Konvention (Hague Convention for the protection of cultural property in the event of armed conflict);</p> <p>Bundesgesetz: Änderung des Denkmalschutzgesetzes – DMSG, BGBl. I Nr. 170/1999 (Federal Law on Protection of Monuments);</p> <p>Verordnung des Bundesministers für Unterricht und kulturelle Angelegenheiten, BGBl. II Nr. 484/1999 (Regulation of the Federal Minister for Education and Cultural Matters)</p> <p>Kulturgüterrückgabegesetz of 13.04.2016</p>
Belgium	<p>Federal: Wet van 4 mei 2016 tot wijziging van de wet van 28 oktober 1996 betreffende de teruggave van cultuurgoederen die op onrechtmatige wijze buiten het grondgebied van bepaalde buitenlandse Staten zijn gebracht, BS 23 mei 2016;</p>

	<p>Flanders: Decreet houdende bescherming van het roerend cultureel erfgoed van uitzonderlijk belang van 24 januari 2003;</p> <p>French Community: Le décret du 11 juillet 2002 relatif aux biens culturels mobiliers et au patrimoine immatériel de la Communauté française</p>
Bulgaria	<p>Cultural Heritage Act (in force as of 10.04.2009);</p> <p>Ordinance No 2 on the arrangements for the issuing of export, temporary export and temporary removal of movable cultural values and of the certificate under Art. 128, para. 3 of the Cultural Heritage Act for removal and temporary removal issued by the Minister of Culture and the Minister of Finance, 2014;</p> <p>Ordinance for export and temporary export of movable cultural monuments, 2004 (in effect until 2014);</p> <p>Ordinance No N-3 on the arrangements regulating the identification and keeping the Register of Movable Cultural Objects, 2009;</p> <p>Ordinance No N-4 on the conditions and order for presentation of cultural values, 2013</p>
Cyprus	<p>Antiquities law;</p> <p>Export of Cultural Goods Law No. 182(I) of 2002 (based on Council Regulation B8 No 116/2009 on the export of cultural goods);</p> <p>The Return of Cultural Goods Law No 183 (1) of 2002 (based on Council Directive No 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State)</p>
Czech Republic	<p>Decree No. 15/1980 of the Minister of Foreign Affairs on the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;</p> <p>Act No. 20/1987 on National Heritage Management, as amended;</p> <p>Act No. 122/2000, on the Protection of Museum-type Collections and on Amendment to Certain Other Acts as amended;</p> <p>Act No. 499/2004 on Archives and Records Management and on Amendment to Certain Acts, as amended;</p> <p>Act No. 71/1994 on the Sale and Export of Items of Cultural Value, as amended</p>
Denmark	<p>Act on Protection of Cultural Assets in Denmark of 4 June 1986 ; Museum Act of 7 July 2006;</p> <p>The Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects (Act no. 521 of 26. may 2010);</p> <p>The Act on Return of Cultural Objects Unlawfully Removed from the Territory of a Member State</p>
Estonia	<p>Intra-Community Transport, Export and Import of Cultural Objects Act (2008);</p> <p>Heritage Conservation Act (2002, last amended 2011);</p> <p>Museums Act (2013);</p> <p>Act on the Return of Cultural Objects Unlawfully removed from the Territory of a Member State of the European Union (2004)</p>
Finland	<p>The Act (115/1999) and Decree (189/1999) on Restrictions to the Export of Cultural Objects</p>
France	<p>Article 56 Loi N° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine</p>

Germany	Kulturgutschutzgesetz vom 6. August 2016
Greece	Law no. 3028/2002, For the Protection of Antiquities and Cultural Heritage in General
Hungary	Act No.LXIV of 2001 on Protection of Cultural Heritage 2001
Ireland	Council Regulation 116/2009; Commission Implementing Regulation 1081/2012; Customs Consolidation Act 1876; Customs Act 1956; National Cultural Institutions Act 1997
Italy	Heritage and Landscape Code (Leg Decree 42/2004) (amended up to 2008); Leg. Decrees 156/2006, 157/2006, 62/2008 and 63/2008 Law 88/1998 on the circulation of cultural goods Law 352/1997 on the sale of cultural goods
Croatia	The 1999 Law on the Protection and Preservation of Cultural Goods (amended 2003) The 1998 Penal Code, and the Customs Law
Latvia	Law "On Protection of Cultural Monuments"(11.03.1992) Regulation of the Cabinet of Ministers No.8"Exportation of Works of Art and Antiques from Latvia and Importation into Latvia"(07.01.2003) Regulation of the Cabinet of Ministers No.526 "Procedures for Return of Unlawfully Removed Art and Antique Objects"(16.09.2003)
Lithuania	Law on the Protection of Movable Cultural Property 1996, amended in 2004 and 2008
Luxemburg	Loi du 17 décembre 2014 portant approbation de la convention, concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriété illicites des biens culturels Luxembourg
Malta	2002 Cultural heritage Act: Chapter 445
Netherlands	Cultural Heritage Protection Act 1984
Poland	Act of February 15, 1962 on the protection of cultural property and museums Act of 2003 on the protection and guardianship of monuments
Portugal	National Law nr. 107/2001: establishes the basis of the cultural heritage policy and the regime for the protection and valorisation of Portuguese cultural heritage 1985- Government decree no. 26/85 of 26 July 1985 which ratifies UNESCO's Convention on the means of Prohibiting and Preventing the illicit import, export and transfer of ownership of cultural property 1970
Romania	Law No. 182/2000 on the protection of movable national heritage
Slovenia	Exercising Public Interest in the Field of Culture Act 2002 Cultural Heritage Protection Act 2008
Slovakia	Decree of the Minister of Foreign Affairs No. 15/1980 Coll. on the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Act No. 416/2002 Coll. on the return of illegally exported cultural objects as amended by Act No. 149/2005 Coll. Act No. 207/2009 Coll. on conditions for the export and importation of objects of cultural significance and the amendment of Act No. 652/2004 Coll. on state customs authorities and the amendment of certain acts, as amended.
Spain	Law 16/1985 of 25 June, on Spanish Historical Heritage
Sweden	Heritage Conservation Act 1988

UK	Statutory Instrument 2003 No.2759: The export of objects of cultural interest (Control) Order 2003 Dealing in cultural object (Offences) Act 2003
-----------	--

3.5.2.2 National interpretation of ‘cultural goods’

3.5.2.2.1 Definition laid down in international instruments

To delineate the scope of the instrument, several regulatory acts contain a definition of cultural goods.

- The 1954 Hague Convention lays down the basis for the definition of ‘cultural property’ in further UNESCO initiatives on cultural goods. The Convention contains a definition consisting of 3 categories of goods, irrespective of origin or ownership. First of all, the definition refers to movable or immovable property of great importance to the cultural heritage of every people. The definition gives particular examples, referring to monuments, archaeological sites, works of art, manuscripts, etc. Second, buildings are covered by the definition whose main and effective purpose is to preserve or exhibit the movable property protected under the Convention. Finally, also centres containing a large amount of cultural property are in scope. The definition is to be framed in the particular purpose of the Convention, protecting cultural property in the event of an armed conflict.
- The 1970 UNESCO Convention refers in the first place generally to goods designated as such by State Parties to the Convention. These goods are considered of importance for archaeology, prehistory, history, literature, art or science by the State in question. Nonetheless, these designated goods should fall within one of the categories listed in Article 1 of the Convention. A similar definition can be found in the 1995 UNIDROIT Convention, however, as elaborated above, the exact scope of the international instruments differs. The 1995 UNIDROIT Convention covers cultural property from a more objective perspective, thus serving effectiveness. The analogue list of categories is placed in Annex to the 1995 UNIDROIT Convention.
- Regulation No 116/2009 refers for the definition of cultural goods to the annex to the Regulation, which consists of two parts. Part A to the Regulation lists the objects covered, with reference to the code of the Combined Nomenclature and in some cases laying down age requirements in order to be considered to fall within the listed category. Part B to the Regulation lists the financial thresholds laid down with respect to the categories of objects defined in Part A. The list of objects considered to be ‘cultural’ resembles the list of the 1970 UNESCO / 1995 UNIDROIT Conventions. However, contrary to those instruments, the Regulation does not consist of a dual condition (i.e., there is no requirement to be considered of importance for archaeology, prehistory, history, literature, art or science).
- For the Directive 2014/60/EU on the return of cultural objects, the cultural objects within the scope of the Directive are goods which are classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the ‘national treasures possessing artistic, historic or archaeological value’ under national legislation or administrative procedures within the meaning of Article 36 TFEU. There are no further requirements laid down in the Directive with respect to e.g., particular categories or thresholds that should be respected.

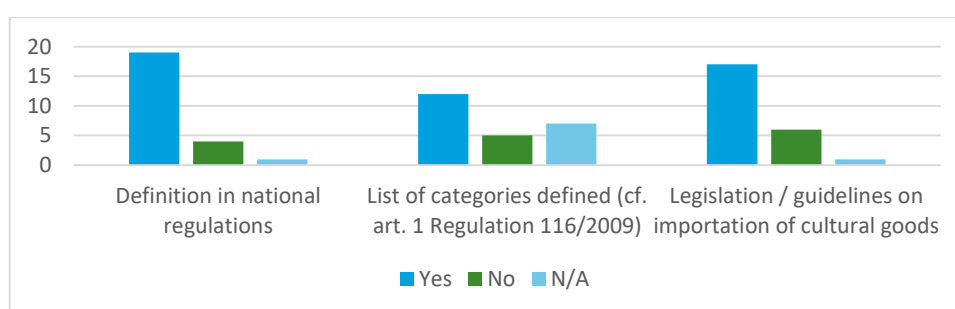
3.5.2.2.2 National definition of cultural goods / property

When ratifying and implementing international instruments on cultural goods or when developing internal policy on cultural goods, Member States will define the concept of a cultural good. Three main options can be identified:

- An open definition, elaborating in general terms on what is to be understood as a cultural good. This is e.g., the case in Cyprus, where ‘cultural property’ is defined in the national Antiquities Law (Article 2) as follows: “*Antiquity means any object, whether movable or part of immovable property which is a work of architecture, sculpture, graphic art, painting, or generally any form of art which has through human effort been produced, sculptured, inscribed or painted or generally made in any manner whatsoever and from any material, one hundred or more years ago and which has been found, discovered or excavated in Cyprus or recovered from the sea within the territorial waters of Cyprus and includes any such object or part thereof which has at a later date been added, reconstructed, readjusted or replaced subsequently*”. Article 2 paragraph 1 of the Slovak Act No. 206/2009 Coll. defines an object of ‘cultural significance’ as “*an original item of material or intellectual evidence, which directly or through interpretation is able to bear witness to the development of society and which has permanent scientific, historical, cultural or artistic significance. Provided that for works of ecclesiastical or folk art of great archaeological or artistic or historical value, the year 1940 AD shall be taken into account irrespective of the place of manufacture or origin*”;
- A definition referring to a list of goods, either exhaustive or non-exhaustive, e.g., Article 1 Regulation No 116/2009;
- Combination of both an open definition and a list of cultural goods falling within the scope of the regulatory framework, e.g., the 1970 UNESCO Convention / 1995 UNIDROIT Convention.

Table 4 provides an overview of EU Member States’ national definition of cultural goods applicable to exportation or intracommunity trade⁴³.

Figure 19 – Definition of cultural goods



Source: General survey to the EU Customs and Culture administrations (2016)

Table 3 – EU Member States’ national definition of cultural goods applicable to exportation or intracommunity trade

Country	National definition of cultural goods applicable to exportation or intracommunity trade
---------	---

Austria	Article 2 of the Act on the Return of Cultural Objects (<i>Kulturgüterrückgabegesetz</i>): As a "cultural asset" for the purposes of this Federal Law applies an article which is classified or defined as a national cultural asset within the meaning of Article 36 of the Treaty on the Functioning of the European Union (TFEU) under the legislation of a Member State of the European Union before or after its unlawful movement;
Belgium	Article 2, 2° Act of 4 May 2016 amending the Act of 28 October on the Return of Cultural Objects which have been illegally brought out of the territory of certain foreign States: "A cultural good is a good which, before or after it has been brought outside the territory of the claiming state, is recognized as national, artistic, historical, or archaeological property in the sense of article 36 of the TFEU or article 13 of the EEA Agreement. The recognition must have occurred in accordance with the legislation or administrative procedures of the claiming State."
Bulgaria	Article 1, 1970 UNESCO Convention; Article 2,6 and 53 of the Cultural Heritage Act (cultural heritage and value)
Cyprus	Art. 2 Antiquities law: Antiquity means any object, whether movable or part of immovable property which is a work of architecture, sculpture, graphic art, painting, or generally any form of art which has through human effort been produced, sculptured, inscribed, or painted or generally made in Cyprus earlier than the year 1850 A.D. in any manner whatsoever and from any material and which has been found, discovered or excavated in Cyprus or recovered from the sea within the territorial waters of Cyprus and includes any such object or part thereof which has at a later date been added, reconstructed readjusted or replaced subsequently.
Czech Republic	Act No. 20/1987 on National Heritage Management, as amended: Cultural objects are movable and immovable objects or sets of objects representing valuable evidence of historical development, mode of life and the social environment from the earliest times up to the present day as manifestations of people's creative abilities and work in diverse areas of human activity. Such objects or sets of objects are declared so because of their revolutionary, historical, art, scientific and technical values and/or because of their direct relationship to outstanding persons or events. Outstanding cultural monuments may be declared national cultural monuments by a government regulation, specifying also the conditions of their protection.
Denmark	Act on Protection of Cultural Assets in Denmark § 2: "This act applies to the following cultural assets, which are not public property: 1) cultural objects older than the year 1660 AD, 2) cultural objects with a value exceeding 150.000 DKR, and which are more than 50 years old. <i>Subsection 2:</i> Regardless of Subsection 1, item 2, photographs of a value of DKK 30,000 or more shall be subject to the Act. <i>Subsection 3:</i> The act shall not apply to coins and medals. <i>Subsection 4:</i> On the recommendation of the Cultural Assets Commission, cf. Section 5, the Minister for Cultural Affairs may decide that the Act be applied to a cultural object not covered by the Act, where special circumstances require this. Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects § 3, contains the following definition: "For the purposes of this act, the term "Cultural Object", means an object which is of importance for archaeology, prehistory, history, literature, art or science and which belongs to one of the categories listed in Annex 1 to this Act." Annex 1 contains a comprehensive list of object categories.
Estonia	Heritage Conservation Act:

	<p>A monument is a movable or immovable, a part thereof, a body of things or an integral group of structures under state protection which is of historical, archaeological, ethnographic, urban development, architectural, artistic or scientific value in terms of religious history or of other cultural value and due to which it is designated as a monument pursuant to the procedure provided for in this act.</p> <p>Monuments are movable or immovable monuments according to the classification of things as movables and immovable (cfr. § 3 of the Act).</p> <p>According to the Archives Act § 2 part 3, archival records are part of the national cultural heritage.</p>
Finland	<p>The definition of 'cultural property' is based on the Act (115/1999) and Decree (189/1999) on Restrictions to the Export of Cultural Objects and on the EU Council Regulation (EC) No. 116/2009 on the export of cultural goods, and on Commission Implementing Regulation (EU) No 1081/2012 for the purposes of Council Regulation (EC) No 116/2009 on the export of cultural goods.</p>
France	<p>The definition of 'cultural property' is based on article 1 of the 1970 UNESCO Convention.</p>
Germany	<p>Article 6 § 1 of the Law on Protection of Cultural Goods (<i>Kulturgutschutzgesetz</i>):</p> <p>National cultural property is cultural property which:</p> <ul style="list-style-type: none"> - is registered in a list of nationally valuable cultural assets, - is in public ownership and in the possession of a public entity for cultural preservation - is owned and held by an entity which is financed mainly by government grants or which is - part of an art collection of the federations of the country
Greece	<p>Article 1 of Law 3028/2002 "on the protection of antiquities and cultural heritage in general" considers only goods with a link to Greece to be in the scope of the law. According to article 2:</p> <p>a. "cultural objects" : shall mean testimonies of the existence and the individual and collective creativity of humankind;</p> <p>b. "monuments" shall mean cultural objects which constitute material testimonies and belong to the cultural heritage of the country and which deserve special protection on the basis of the following distinctions:</p> <p>(i) "Ancient monuments or antiquities" shall mean all cultural objects dating back to prehistoric, ancient, Byzantine and post-Byzantine times up to 1830, subject to the provisions of article 202. Archaeological monuments shall also include caves and paleontological remains, for which there is evidence that they are related to human existence.</p> <p>(ii) "Recent monuments" shall mean cultural objects dating after 1830, which deserve protection due to their historical, artistic, or scientific significance, in accordance with the distinctions of article 20.</p> <p>(iii) "Immovable monuments" shall mean monuments which have been attached to, and remain on the ground or on the seabed or on the bed of lakes or rivers, as well as monuments which are found on the ground or on the seabed or on the bed of lakes or rivers and cannot be removed without damage to their value as testimonies. Immovable monuments shall also include installations, structures and the decorative and other elements, which form an integral part of the monuments, as well as their surroundings.</p> <p>(iv) "Movable monuments" shall mean monuments which are not immovable.</p>

Hungary	Act No 64/2001: Outstanding and typical objects, images, sound recordings and written memories and other proof of the origin and development of lifeless and live nature, mankind, the Hungarian nation, and the history of Hungary (except items of immovable heritage) as well as pieces of arts.
Ireland	Reference is made to Commission Implementing Regulation (EU) No 1081/2012 which lays down provisions for the implementation of Council Regulation (EC) No 116/2009 on the export of cultural goods.
Italy	Article 2 Heritage and Landscape Code: 1. The cultural Heritage consists of cultural property and landscape assets. 2. Cultural property consists of immovable and movable things which, pursuant to Article 10 and 11, present artistic, historical, archaeological, ethno-anthropological, archival and bibliographical interest, and of any other thing identified by law or in accordance with the law as testifying to the values of civilisation. 3. Landscape assets consist of the buildings and areas indicated in article 134, which are the expression of historical, cultural, natural, morphological and aesthetic values of the land, and any other assets identified by law or in accordance with the law. 4. Cultural heritage property belonging to the government shall be designated for public enjoyment, compatibly with the needs of government use and on condition that no protection reasons to the contrary persist
Croatia	Reference made to Implementing Regulation (EU) no. 1081/2012 of 9 November 2012 for the purposes of Council Regulation (EC) No. 116/2009 on the export of cultural goods
Latvia	In Latvian legislation there is no definition of “cultural goods” ⁴⁴ . Instead there is a definition of “cultural monuments” according to the Law on Protection of Cultural Monuments, article 1: ‘Cultural monuments are a part of the cultural and historical heritage – cultural and historical landscapes and individual territories (ancient burial sites, cemeteries, parks, places of historical events and the activities of famous persons), as well as individual graves, groups of buildings and individual buildings, works of art, facilities and articles with historical, scientific, artistic or other cultural value and the preservation of which for future generations is in conformity with the interests of the State and people of Latvia, as well as international interests.’
Lithuania	The definition of “cultural goods” is defined by the Law on protection of Movable Cultural Heritage ⁴⁵ . In Lithuania, a cultural object can be defined (unofficial translation into English) as follows: or “cultural object” “Cultural object” shall mean an item of movable cultural property* or another movable item holding cultural value**, or movable item, which is ascribed as valuable property of national

⁴⁴ Information obtained through email confirmation by Latvia National Customs Board, d.d. 3 August 2017

⁴⁵ Lithuanian Law on Protection of Movable Cultural Heritage can be accessed [here](#). Information provided through email confirmation by Ministry of Culture of The Republic of Lithuania by Department of Protected Areas and Cultural Heritage, d.d. 10th August 2017

	<p>art, history or archaeology by the national law or administrative procedures in Member State of European Union.“</p> <p>*“Movable cultural property” - another definition (partly similar), which defines movable items, holding cultural value, registered in national registers of Republic of Lithuania (narrower meaning than „cultural object“)</p> <p>**“Movable item holding cultural value” - in an unclear situation, the Department of Cultural Heritage of the Republic of Lithuania has the right to make an assessment with the help of commission of experts. Such an item, which is valuable for the culture or history of Lithuania, could be later registered in the national register. Until registering the right to export is suspended.</p>
Luxemburg	Luxemburg follows the definition of cultural good Article 1 Council regulation (EC) N°116/2009 of 18 December 2008 on the export of cultural goods ⁴⁶
Malta	No information could be obtained
Netherlands	<p>Definitions of cultural goods according to the Cultural Heritage Act of 9 December 2015 Section 1.1:</p> <p>Cultural heritage: tangible and intangible resources inherited from the past, created in the course of time by people or arising from the interaction between man and the environment that people, irrespective of the ownership thereof, identify as a reflection and expression of continuously evolving values, beliefs, knowledge and traditions, and that offer a frame of reference to them and to future generations;</p> <p>Cultural object: a movable item forming part of cultural heritage.</p>
Poland	In the Polish Legal System the term "cultural goods" exists (constitution, criminal code) but is not defined.
Portugal	<p>In Portugal, the cultural goods definition is laid down in the Law n° 107/2001 of 8 September 2001, article 14 and Decree-law n° 148/2015 of 4 August 2015, article 2(c)⁴⁷:</p> <p>Cultural assets:</p> <p>1 - Movable and immovable property which, in accordance with Article 2 (1), (3) and (5), are material witnesses of civilization or culture value.</p> <p>2 - The fundamental principles and provisions of this law shall extend, to the extent compatible with their respective legal systems, to natural, environmental, landscape or paleontological goods.</p>
Romania	Movable national cultural heritage is composed of goods of historical, archaeological, documentary, ethnological, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliographic, cartographic, and epigraphic value, representing material evidence for the evolution of the natural environment and for the relation of humans with it, the potential creativity of man and of the Romanian contribution, as well as that of the national minorities to the universal civilization

⁴⁶ Information provided through email confirmation by Luxemburg Administration des Douanes et Accises, d.d. 3 August 2017

⁴⁷ Information obtained through email confirmation by Portugal National Customs Service, d.d. 2 August 2017

Slovenia	The term 'heritage' shall mean resources inherited from the past which Slovenes, members of the Italian and Hungarian ethnic communities, and of the Romani community, as well as other nationals of the Republic of Slovenia, determine to reflect and express their values, identities, religious and other beliefs, knowledge and traditions. The concept of heritage shall be taken to include those features of the environment which have been shaped over time by the interaction between people and place. The concept of heritage shall be divided into tangible and living heritage. Tangible heritage shall consist of movable and immovable heritage.
Slovakia	<p>"Cultural property" (National Cultural Heritage of the Slovak Republic) is composed of the following cultural objects:</p> <ul style="list-style-type: none"> a) national cultural monuments, or parts thereof, b) archaeological finds and founds, c) collection items, d) historical library documents and historical library collections, e) archival documents, f) objects of cultural significance
Spain	The Spanish Historical Heritage is made up of movable and immovable objects of artistic, historical, palaeontological, archaeological, ethnographic, scientific or technical interest. It also comprises documentary and bibliographical heritage, archaeological sites and areas as well as natural sites, gardens and parks having artistic, historical or anthropological value.
Sweden	Sweden's national law, in accordance with the Governmental Bill called the Heritage Environment Act (1988:950) and its amendments, contains no particular definition of the term "cultural property".
UK	<p>The Export Control Act 2002 defines objects of cultural interest as "including objects of historical or scientific interest". Under the Act, the Secretary of State may make an Order (i.e. secondary legislation) specifying which goods need a license for export from the UK. The current Order which relates to cultural goods is the Export of Objects of Cultural Interest (Control) Order 2003. This order prohibits, except under the authority of a license granted by the Secretary of State, the export of:</p> <p>"Any objects of cultural interest manufactured or produced more than 50 years before the date of exportation except:</p> <ul style="list-style-type: none"> a) postage stamps and other articles of philatelic interest; b) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse of the exporter; c) letters or other writings written by or to the exporter or the spouse of the exporter; and d) goods exported by, and being the personal property of the manufacturer or producer thereof, or the spouse, widow or widower of that person."

3.5.2.3 Importation of cultural goods

When it comes to the importation of cultural goods, in absence of EU-wide regulation with global coverage, Governments in the EU are developing different ways and means to counter the threat of illicit cultural goods imports. Some EU Member States have put in place a non-mandatory national legislative framework on imports of cultural goods, in the form of a voluntary option request for an import license (such as offered by Spain and Italy) to prevent cultural goods originating from third countries to enter the EU territory illegally. Other EU Member States limit the imports of cultural goods based on the existence of a third country export license requirement where the cultural good was exported from. For

example, France requires the importer of cultural goods listed in the 1970 UNESCO Convention to submit a certificate or other document which authorises the export of the good by the source country for cultural goods directly dispatched from signatory states which have established an export licence system.

Table 4 – support / use of the ICOM Object ID Standard by selected EU member states

Country	Support / use of the ICOM Object ID Standard
Belgium	Yes
Bulgaria	Yes
Cyprus	Yes, e CADiP (Cyprus Archaeological Digitization Programme) http://www.mcw.gov.cy/mcw/DA/DA.nsf/0/1A7BF21DA2D1652DC225750C00228456?OpenDocument
Czech Republic	Yes, The Central Registry of Museum-Type Collections (CES) is a publicly accessible information system and can be found on the Ministry of Culture's website (http://www.mkcr.cz/ces)
Denmark	Yes, http://kum.dk/om-ministeriet/organisation-og-institutioner/bestyrelser-naevn-raad-og-udvalg/udvalg/kulturministeriets-sikringsudvalg/
Estonia	Yes
Finland	Yes
France	http://www.culturecommunication.gouv.fr/Politiques-ministerielles/Circulation-des-biens-culturels/Informations-pratiques/Procedures-en-cas-de-vols
Germany	Yes, database for the documentation of protected cultural property (chapter 1 §4 of the Law on the protection of cultural goods.
Greece	Yes
Italy	Yes, Carabinieri National Stolen Cultural Property Database
Croatia	Yes
Luxemburg	No
Malta	No
Netherlands	Yes
Poland	No
Portugal	No
Romania	The inventory systems in place in the cultural network do not observe as such the Object ID standard. The object identification set of data commonly used comprises, among others, all the elements of the Object ID standard. The Police data base of stolen cultural goods observes, in turn, the object ID standards
Slovenia	Yes
Slovakia	Yes
Spain	Yes
Sweden	No

UK	Yes
----	-----

Table 5 – National regulatory framework and import license requirement in EU member states

Country	National regulatory framework on importation of cultural goods	Import license requirement / option
Austria	<p>§§ 4 and 9 of the Act on the Return of Cultural Objects (<i>Kulturgüterrückgabegesetz</i>) of 13 April 2016</p> <p>The importation of a cultural good into Austria is illicit and prohibited, in case the good was transported out of a Convention State illicitly and in case the transportation was also illicit at the moment of importation into Austria.</p> <p>In §9 of the above mentioned Act, a due diligence obligation has been included for traders of cultural goods in Austria. Traders must take precautionary measures not to import or transfer cultural property in Austria. They have to do this by keeping records to make the good and owner identifiable, as well as document the purchase and sale price and the export permit. These records must be kept for 30 years as of the date of expropriation of the good. This obligation is applicable to anyone involved in the trade of cultural goods including art dealers, auction houses and even collectors who buy and sell on a commercial basis.</p> <p>A pilot project was also developed in Germany, Austria and Switzerland. In those countries, the sale of a cultural good was only possible via the Internet platform if the seller could prove that the object was authentic. In order to do so, the seller had to provide a legible document. Otherwise, the object was taken off the site.</p>	<p>No</p> <p>The recent Act on the return of Cultural Objects does impose due diligence obligations on traders of cultural goods in Austria as explained in the column “Legislation on importation of cultural goods”. These obligations also aim to counter illicit imports⁴⁸.</p>
Belgium	<p>Museums subsidized by the Flemish and the French Communities must follow the ICOM code of ethics (check on provenance and due diligence when acquiring objects). The Belgian Royal Chamber of Antiques and Art Dealers has adopted a code of ethics (which contains specific measures against illegal trade and exportation of cultural goods)⁴⁹.</p>	<p>No</p>
Bulgaria	<p>A Memorandum for cooperation and interaction between the Ministry of Interior, the Ministry of Culture, the Prosecutor's office, the National Customs Agency, the Union of the collectors in Bulgaria and the Artwork Traders Association has been concluded. Its purpose is to achieve a greater efficiency and effectiveness in the field of protection of cultural heritage by implementing a common approach and optimization of the activities related to prevention, detection and investigation of crimes connected with cultural goods. Republic of Bulgaria has concluded bilateral agreements on customs cooperation and mutual assistance with Greece, Romania, Turkey, Serbia and the US, which foresee actions against illegal trafficking of goods of particular importance⁵⁰.</p>	<p>No</p>

⁴⁸ Kulturgüterrückgabegesetz ([here](#))

⁴⁹ Code of ethics ([here](#))

⁵⁰ See Unesco report on the implementation of the 1970 convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property ([here](#))

Cyprus	<p>A number of bilateral agreements has been concluded, in particular with Republic of China, Russia, Palestine, Switzerland, Israel, Georgia.</p> <p>Article 31 Customs Code Law of 2004 grants Customs authorities the power to attach certain conditions to the import of cultural goods.</p> <p>According to the national instructions, in case of suspicions regarding cultural goods at importation, the expertise of an Archaeological Officer from the Department of Antiquities is sought and further investigations are conducted by all competent authorities.</p>	No ⁵¹
Czech Republic	N/A	No
Denmark	<p>The provisions of the Act on the Return and Transfer of Cultural Goods set out obligations for the private art market to observe due diligence in acquisitions of cultural objects. All cultural objects exported from a third country in violation of the 1995 UNIDROIT Convention, which are imported to Denmark are deemed to be returned to the country of origin upon request from this country. The possessor will only be compensated for his or her economic loss, if he or she can prove the observance of due diligence in the acquisition. All state owned and state approved museums are subjects to an obligation to comply with the ICOM code of ethics, i.e., not to acquire any objects of unknown or uncertain origin. All personnel of the Danish armed forces are subject to an obligation to observe the rules of the Hague Convention of 1954 and its first protocol, as well as customary international humanitarian law concerning conduct of armed forces in relation to cultural property. This obligation is implemented through a general manual.</p>	<p>No</p> <p>Danish Customs Authorities can enforce restrictions on the import of cultural objects⁵².</p>
Estonia	Guidelines by the Estonian Chamber of Commerce and Industry	No.
Finland	<p>The customs authority can, on its own initiative or on the initiative of the authority of another Contracting State, maintain special surveillance over movement of goods which are known or suspected to give rise to illicit traffic into Finland.</p> <p>Finland has ratified the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, but there is no separate national legislation on the import of cultural goods. Enforcement of the Conventions is carried out through export controls, criminal sanctions, etc. There is no particular guidance issued by the Finnish authorities in this respect, but the ICOM ethical guidelines are adhered to by museum professionals.</p>	No
France	<p>Article 111-8 and 111-9 under Article 56 Act N° 2016-925 of 7 July 2016 regarding the freedom of creation, architecture and heritage (Loi relative à la liberté de la création, à l'architecture et au patrimoine) – see analysis below</p> <p>According to the new article L.111-8 of the Heritage Code, importation of cultural goods belonging to one of the categories listed in article 1 of the 1970 Convention requires the presentation of a certificate or any other mandatory document provided by exporting country (non-EU member) to allow the exportation of the cultural good. This obligation only applies : to cultural goods belonging to one of the categories listed in article 1 of the 1970</p>	<p>No</p> <p>However, at imports, the French customs can control the certificate or any other mandatory document provided by the exporting country (non-EU member) to allow the exportation of the cultural good, based on article L.111-8 of the Heritage Code. Imports are prohibited</p>

⁵¹ Source: Cyprus customs and excise department ([here](#))

⁵²Source [here](#) Page 4

	<p>Convention ; if these goods supplied directly from a third country, signatory to the 1970 Convention and if the national regulations provide that the exportation is subject to a particular authorization (certificate or any other mandatory document).</p> <p>If the document is not presented to customs, the importation is prohibited.</p>	<p>if the document required from the exporting country is not presented to customs. The Heritage Code requires the importer to lay down a certificate or other document which gives authorisation to the export of the good by the exporting state if this state foresees such a requirement, and for those goods belonging to one of the categories listed in article 1 of the 1970 Convention. Customs authorities also have the authority to control the good, its origin and value⁵³.</p>
Germany	<p>Articles 28 - 30 of the Law on the Protection of Cultural Goods (<i>Kulturgutschutzgesetz</i>)⁵⁴ – see analysis below</p>	<p>No – see analysis below</p> <p>However, article 30 of the Law on the Protection of Cultural Goods imposes an obligation on the importer to carry the relevant documents to prove the legality of the export from the state of origin if the goods have been classified as a national cultural property by a Contracting State of the 1970 UNESCO Convention. Proof is either an export license or any other confirmation from the state of origin.</p>
Greece	<p>Import of cultural property is subject to Law 3028/2002 “On the Protection of Antiquities and Cultural Heritage in General”, articles 33-34. Penalties are covered by the same law.</p> <p>Greece takes a strong stance towards the protection of cultural heritage and the return of cultural goods to their country of origin. Hence, Greece is the only country in the EU requiring an import declaration. A declaration is to be submitted:</p> <ul style="list-style-type: none"> - Upon the import of a cultural object from a non-EU country, at a port of entry in Greece, an import declaration is to be submitted before the competent Customs Authority where the formalities of import are observed, according to the Customs legislation and the pertinent Service of the Ministry of Culture is notified. - Upon the transport of a cultural object from a M-S of EU, before the competent Service of the Ministry of Culture, 	<p>Yes</p> <p>Cultural objects can be freely imported into Greek territory provided the provisions of the Paris Convention of 1970 as well as other rules of international law are not violated⁵⁵. The holder of imported antiquities has without, undue delay, to declare their import to the Archaeological Service as well as the manner in which they came to his possession (Article 33§ 2).</p>

⁵³ LOI n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine ([here](#)) and email confirmation from Fren customs authorities d.d 09/03/2017

⁵⁴ Law for the Protection of Cultural Property of 6 August 2016 (source [here](#))

⁵⁵ Email confirmation by the Hellenic Ministry of Culture Directorate of Management of the National Archive of Monuments, Documentation and Protection of Cultural Goods Department of Supervision of Private Collections and Antique Shops d.d 09/03/2017

	<p>without undue delay. The declaration may also be submitted at a port of entry into the country before the competent Customs.</p> <ul style="list-style-type: none"> - Following the declaration an archaeologist of the pertinent Service of the Ministry of Culture, expert in objects like the imported ones, proceeds to the scientific examination, photographing and registering the declared objects. - The imported artifact may remain in a place of the Customs Authority for a time of period of 15 days, or a time period that may not exceed 1 month for the continental part of Greece and 2 months for the insular part. - 	
Hungary	N/A	No
Ireland	N/A	No
Italy	<p>Article 72 of the Decree of 22 January 2004 – Code of Cultural Goods and Landscape⁵⁶.</p> <p>The importation of cultural goods from a third country shall, upon application, be certified by the export office. Certificates declaring that shipment and importation have occurred shall be issued on the basis of documentation suitable for identifying the thing or the property and for proving provenance from the territory of the third Country from which the thing or property has been respectively shipped or imported.</p>	<p>No</p> <p>Economic operators can voluntarily request a import license. If requested, the importer can receive an import certificate with 5 years validity (renewable)⁵⁷.</p>
Croatia	<p>Article 70a of the Law on the Protection and Preservation of Cultural Goods⁵⁸</p> <p>Cultural goods may be imported or brought in the Republic of Croatia, subject to the approval of the country from which they are imported or brought. Importer of cultural good or a person bringing the cultural object into the country is bound to notify the competent authority of the cultural object without any delay.</p> <p>Article 117 of the Law on the Protection and Preservation of Cultural Goods:</p> <p>Any legal or natural person who fails to report to the competent authority that a cultural object was brought or imported into the country shall be punished for a misdemeanour.</p>	No
Latvia	N/A	No
Lithuania	N/A	No

⁵⁶ Code of Cultural Goods and Landscape ([Here](#))

⁵⁷ Normativa In questa sezione puoi trovare preziose informazioni in merito a normative che regolano il settore del trasporto d'opere d'arte ([here](#)) and Ministro dei beni e delle attività culturali e del turismo ([here](#))

⁵⁸ Law on the protection and preservation of cultural goods ([here](#))

Luxemburg	<p>The Regulation of the Grand Duchy of Luxemburg of 17 December 2014 subjecting certain merchandise originating from or destined for Iraq to import, export and transit licenses.</p> <p>Luxemburg also issued written customs procedures on the importation of cultural goods.</p>	<p>No</p> <p>However, in case of doubt, customs authorities can request importers to present proof of origin and legal export from the source country⁵⁹.</p>
Malta	N/A	No
Netherlands	<p>Section 6.10 Cultural Heritage Act of 9 December 2015⁶⁰:</p> <p>It is prohibited to import cultural property from an occupied territory into the Netherlands or to have such property in one's possession in the Netherlands.</p> <p>The Minister of Culture can take into storage goods of which it is presumed that the prohibition is being violated. The storage can be done on demand of the authorities or by the Ministry of Culture.</p> <p>The Ministry of Culture put in place a cultural heritage inspection department which has the task of detecting illegal trade in cultural objects. The Ministry of Foreign Affairs has implemented a sanction regime. These involve investigations of illegally exported cultural heritage from countries that are in a conflict and where a vulnerable situation has arisen for cultural heritage. The inspectors have special powers under the Sanctions Act of 1997 and additional regulations.</p> <p>The Cultural Heritage Inspection Department also more broadly installed guidelines that refer to the existence of export legislation in the countries where the goods are bought and strongly suggests importers to take these into account. In case of illegal export of cultural goods Dutch Customs can impound these goods. Customs does not necessarily have to control cultural goods or impound them if it is presumed to be imported against the rules of exportation in the country of origin, but they do have the competence to do this.</p> <p>The Netherlands also refers to and makes use of the ICOM red list.</p>	No ⁶¹
Poland	There are provisions of international bilateral agreements requiring assistance in returning such cultural goods.	No
Portugal	Article 68 of Law 107/2001, Heritage Protection Act ⁶²	No
Romania	Law N° 182/2000 regarding the protection of the movable national heritage ⁶³	No
Slovenia	Article 47 of the Cultural Heritage Protection Act ⁶⁴	<p>No</p> <p>However, an export license is to be presented if required from the source country. "If the state of origin prescribes a permit for export or transfer, such a permit shall</p>

⁵⁹ Source: email confirmation by Luxemburg Customs Authority, d.d. 24.02.2017

⁶⁰ Act of 9 December 2015, relating to the combining and amendment of rules regarding Cultural Heritage Act ([here](#))

⁶¹ Email confirmation from Ministry of Education, Culture and Science of Netherlands d.d 22/03/2017

⁶² Heritage Protection Act ([here](#))

⁶³ Law 182/2000 regarding the protection of the movable national heritage ([Here](#))

⁶⁴ Cultural Heritage Protection Act ([Here](#))

		be presented upon the introduction or import of the heritage in question” ⁶⁵
Slovakia	Act No. 207/2009 Coll. on conditions for the export and importation of objects of cultural significance and the amendment of Act No. 652/2004 Coll. on state customs authorities and the amendment of certain acts, as amended ⁶⁶ . Collections, museums and galleries may not acquire objects of cultural significance as collection objects if they are tangible archaeological findings that originated from illegal research or excavations or from another crime.	No
Spain	Law 16/1985 of 25 June, on Spanish Historical Heritage ⁶⁷	No. However, a voluntary option exists for economic operators to request an import license to the Directorate General of Fine Arts and Cultural Heritage and Archives and Libraries of the Ministry ⁶⁸
Sweden	N/A	No
UK	Dealing in Cultural Object (Offences) Act 2003 ⁶⁹	No

3.5.2.3.1 Germany

Germany has enacted the ‘Cultural Property Protection Law’, as implementation measure of the 1970 UNESCO Convention and Directive 2014/60/EU of May 2014. It replaces the old ‘Act on the Return of Cultural Property of 18 May 2007’. The principles laid down in the 1995 UNIDROIT Convention can be considered as an important source of inspiration for the new legislation.

National cultural treasures are defined as national cultural property of outstanding significance for the nation of which the removal would cause a significant loss. The import of cultural property is prohibited if the object is deemed to be a national treasure by an EU Member State or UNESCO contracting State, and if it has been brought out of the territory of that state in breach of its legislation protecting national treasures of the territory. Anyone importing those objects needs to accompany these with an export license from the country of origin and other confirmations of that state that the export was carried out lawfully.

Article 28, section 3 of the *Kulturgutschutzgesetz* prohibits the importation of cultural goods if:

- the good has been classified or defined as a national cultural asset by a Member State or Contracting State (to the 1970 Convention) and has been moved from its territory in violation of its legislation on the protection of national cultural property,
- This would be in breach of directly applicable acts of the European Union published in the Official Journal of the European Union which restrict or prohibit the transnational movement of cultural property, or

⁶⁵ Cultural Heritage Protection Act ([here](#))

⁶⁶ Act on conditions for the export and importation of object of cultural significance ([Here](#))

⁶⁷ Law on the Spanish Historical Heritage ([Here](#))

⁶⁸ See also Ministerio de educación, cultural y deporte ([here](#))

⁶⁹ Dealing in Cultural Object Act 2003 ([here](#))

- This would be in breach of Section I (1) of the Protocol to the Hague Convention for an armed conflict.

Article 29 of the *Kulturgutschutzgesetz* provides for exceptions. No import ban will be applicable to cultural property if the good in question:

- Was lawfully in the territory of the Federal Republic of Germany on 6 August 2016, in so far as it is not the case that directives of the European Union are directly applicable;
- Is imported in order to protect it against the dangers of an armed conflict within the meaning of Section II, point 5, of the Protocol to the Hague Convention in the Federal territory (i.e. in order to temporarily preserve it).

Import of cultural property that was exported contrary to the applicable legislation in the state of origin is considered illegitimate if the export took place after 31/12/1992 for EU Member States or 26/04/2007 for other 1970 UNESCO Convention contracting states. The same goes for protected cultural goods, which are imported without an export license of the country of origin. The competent authority shall seize the good if there is reasonable suspicion that it was imported illegally.

Anyone who imports cultural goods shall, if it has been classified or defined as a national cultural property by a Member State or a Contracting State, provide the corresponding documents in order to prove the legality of the export from the state of origin within the meaning of Article 28 (1) (cf. requirements Article 30 of the *Kulturgutschutzgesetz*). The proof could consist of the export authorization of the country of origin as well as any other confirmation from the state of origin that the cultural goods could be lawfully exported.

If no valid export license or other proof is provided, although such a license or proof is required pursuant to this State's legislation, the cultural property concerned is considered to have been unlawfully removed. This provision takes into account that most States require a license to export cultural property. The license requirement helps protect archaeological cultural property, which in many States is subject to export bans. Germany recognizes foreign export and protection provisions for national cultural property in its own legislation.

The new legislation imposes due diligence requirements upon buyers of cultural property. The due diligence requirements are based on the codes of conduct of the national and international trade associations. In order to fight illegal trafficking in cultural property and implementing the EU Directive 2014/60/EU of May 2014, the due diligence requirements relate to placing cultural property on the market, as well as to acquisition of cultural property. In addition, record keeping requirements are introduced of all transactions by art and antiquities dealers, with a retention period of 30 years instead of 10 years⁷⁰.

As result of the German *Kulturgutschutzgesetz*, the EU standards under the Directive 2014/60/EU of May 2014 also apply to the States Parties of the UNESCO 1970 Convention

Art dealers need to attain special qualifications and impose codes of conduct. It applies to anyone selling art and antiquities. Art dealers need to keep records of their transactions for a period of 30 years.

⁷⁰ <https://www.bundesregierung.de/Content/DE/Anlagen/BKM/2016/2016-09-23-kulturgutschutz-informationen-englisch.pdf?blob=publicationFile&v=2>

At the request of an EU Member State, any cultural property which was exported from its territory after 31/12/1992 in breach of its national legislation needs to be returned. The same goes for other UNESCO contracting states concerning goods exported after 26/04/2007. The request must be accompanied by the following documents:

- an appropriate description with information on the identity and origin, the actual or estimated date of the shipment and the actual or presumed location;
- a statement that it is a national treasure by national legislation or administrative procedure the requesting state;
- a statement that the cultural object was unlawfully exported.

If the claimant establishes that he purchased the article for value without knowledge or reason to believe it was stolen, forfeiture shall not be decreed unless the claimant is compensated by the state to which the good will be returned.

3.5.2.3.2 France

France amended its legislation on cultural property protection with 'Law n°2015-195 of 20 February 2015 transposing EU law on aspects of intellectual property and cultural heritage' and 'Law n° 2016-925 of 7 July 2016 *relative à la liberté de la création, à l'architecture et au patrimoine*'.

In accordance with article L-111-8, the import of cultural goods defined in one of the categories in Article 1 of the 1970 UNESCO Convention directly from countries signatories to the Convention, must be accompanied by a certificate or other equivalent document authorizing the export of the cultural good. In the absence of such certificate, the import will be blocked. Cultural goods that were exported illegally from a third country cannot be imported, exported, transited, transported, held, sold, bought or exchanged in France. These goods shall be seized and deposited in a museum in France for their conservation and presentation to the public while searching for their rightful owner.

The Central Office for Combatting Trafficking in Cultural Goods (Office Centrale de lutte contre le trafic de biens culturels) developed the TREIMA (Thesaurus de recherche électronique et d'imagerie en matière électronique) database that compiles images of cultural objects stolen from the national territory as well as national treasures circulating illicitly. The database is used to prevent trade of these goods.

3.5.2.3.3 Conclusions on the national legislation on importation of cultural goods

All EU Member States have legislation with regard to the trade in cultural goods. Most of the legislation aims to regulate the illegal export and intra-community movement of cultural goods following EU legislation, whereas a few Member States also regulate imports of cultural goods (import licence requirement in the case of Greece, voluntary import licence schemes in Italy and Spain), some countries have an export certificate requirement in place (including France, Germany, export certificate requirement in France, Germany and Slovenia).

Most definitions on cultural goods refer to the national heritage of EU Member States, which is in line with the legislation that is concentrated on export and movement within the internal market.

In 14 Member States of the EU there exists some sort of definition or reference to cultural goods in the context of import. These definitions are often based on the 1970 UNESCO Convention.

Several EU Member States took action to combat the illicit importation of cultural goods into their territories. In particular, Germany, France, Austria and the Netherlands recently introduced new

legislation in this regard. Although the Member States' initiatives on the importation of cultural goods are far from analogous, they do share several characteristics. This legislation can vary from very limited obligations (prohibition to illegally import cultural goods based on exporting country license requirements) to import license requirements (Greece).

- The majority of EU Member States does not have actual import legislation on cultural goods in place, but rely to a more or lesser extent on international conventions. Austria and the Netherlands only stress that the illegal importation of cultural goods is forbidden, without providing additional provisions. Austria foresees a due diligence obligation upon buyers of cultural property under the recent Act on the return of Cultural Objects.
- Although, apart from Greece, no other EU Member State has an import license requirement in place, there are voluntary import license systems in several EU Member States. Spain and Italy make use of such voluntary system to counter illicit trafficking in cultural goods into, as well as out of the country (import license serves as a basis for or qualifying as export certificate).
- One clear finding is that whereas an import license requirement only exists in one Member State, there is a significant number of Member States (at least 4 Member States, including Austria, France, Germany, Luxembourg) providing for controls on the import of cultural goods on the basis of export certificates or licences issued by the third country. Germany and France both impose the obligation to present a certificate or other mandatory export document issued by the country of exportation (non-EU member but Party to the 1970 UNESCO Convention), if the imported cultural good belongs to one of the categories listed in article 1 of the 1970 Convention;
- A majority of the Member States (17 out of 28) actively supports / makes use of the ICOM Object ID Standard.

Hence, it is clear that diverse methods are currently used by the competent authorities in most of the EU Member States to combat the importation of illicit cultural goods. In the absence of an EU-wide and harmonized approach, differences between Member States are appearing and become more prominent as national legislation is being developed, which could affect the effectiveness of the individual measures put in place.

3.5.2.4 Competent agencies in the Member States

The competent agencies responsible for trade in cultural goods are most often the Ministry of Culture in respective Member States (listed in Table 6).

Table 6 – competent agencies in EU member states

Country	National Ministry competent for trade in cultural goods
Austria	Bundeskanzleramt Österreich; Österreichische Gesellschaft für Kulturgüterschutz: Entwicklung des Kulturgüterschutzes in Österreich.
Belgium	Vlaanderen: Departement Cultuur, Jeugd en Media / Wallonië: Fédération Wallonie-Bruxelles - Culture
Bulgaria	The Ministry of Culture of the Republic of Bulgaria
Cyprus	Department of Antiquities
Czech Republic	Ministry of Culture: Department of Conservation of Movable Cultural Heritage. Museums and galleries
Denmark	Danish Ministry of Culture

Estonia	Control is carried out by customs border control officers and should it be necessary also by mobile units. Both of them are working under Customs Organisation department, respectively Customs Offices and Mobile Control Units.
Finland	National Board of Antiquities
France	Ministère de Culture et Communication
Germany	Minister of State for Culture and Media
Greece	Hellenic Ministry of Culture and Tourism
Hungary	National Centre for Cultural Heritage Management - Inspectorate of Cultural Goods
Ireland	The Department of the Environment, Heritage and Local Government
Italy	Italian Ministry for the Heritage and Cultural Ministries
Croatia	The Directorate for Cultural Heritage Protection works with its 19 departments – the Department for Moveable and Intangible Cultural Heritage, in particular – to protect heritage. Additionally, the Criminal Police Directorate’s Department for Organized Crime and the Customs Directorate’s Department for the Prevention of Trafficking work towards the prevention of illicit trade.
Latvia	Latvian ministry of Culture
Lithuania	Ministry of Culture
Luxemburg	Ministere de la culture Luxembourg
Malta	Ministry for Justice, Culture and local government
Netherlands	Ministry of education, culture and science
Poland	Ministry of culture and national heritage
Portugal	Ministry of culture
Romania	Ministry of Culture
Slovenia	Ministry of culture
Slovakia	Ministry of culture
Spain	Ministry of Education, Culture and Sport
Sweden	Ministry of culture
UK	Department for Culture, Media and Sport

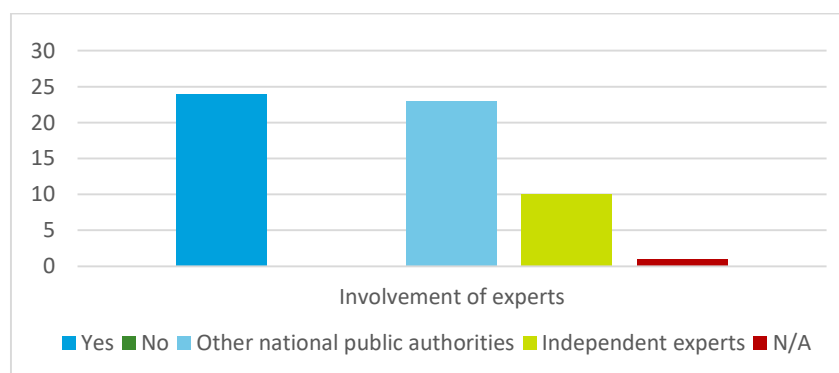
3.5.2.5 Expertise

Suspicious shipments that may concern illicitly traded or smuggled cultural goods are investigated by the competent authorities in each Member State. Depending on the internal organisation of the Member States, this will be either only the customs authorities or a combination of both the customs and culture authorities (e.g., Greece, where the attendance of an archaeologist of the ministry of culture is required in accordance with the procedures in place). The involvement of other relevant authorities is organised through national procedures in each Member State individually. These authorities are, e.g., ministry of culture, national police forces, ministry of foreign affairs.

The Member States subject to the in-depth analysis all indicate to follow specific procedures in case of doubt on the origin of a cultural good. The involvement of experts in the field (e.g., from the Member State’s cultural or antiquities department) is a common practice. Also the consistent involvement of databases in the operational procedures can be witnessed in several Member States.

- In Cyprus, the Department of Antiquities works closely together with the Department of Customs and Excise, which is physically present at all points of entry, exit and in transit through the Republic of Cyprus and EU borders in general. Once a cultural object appears at a point of entry, exit or transit, the Department of Customs and Excise notifies the Department of Antiquities, which in turn sends an Archaeological Officer to inspect the specific object/s in order to assess whether further investigations are required. Documents accompanying the object are inspected and further information on the provenance is requested (i.e. any information on the conduct of due diligence is requested). A special form is filled in for the temporary seizure of cultural goods for investigation purposes. If necessary, the Cyprus Police will contact other (international) bodies (e.g., INTERPOL) in order to request for further information. The Department of Antiquities also contacts the cultural authorities countries if in doubt;
- In the Netherlands, if the customs authorities discover an object with a possible unlawful origin, they contact their cultural customs officer, who in turn contacts the Cultural Heritage Inspectorate to check on the importance and legal status of the cultural good. In cases of doubt, experts from universities or museums are consulted. For the continuation of the possible procedure also the public prosecutor may be consulted to discuss the best way forward in the case at hand;
- In the United Kingdom, if Border Force officers are suspicious about a particular consignment, they will look into the customs declaration often identifying irregularities with regards to the value or description of the goods. If suspected looted cultural antiquities are seized, Border Force then works closely with law enforcement partners and relevant embassies on subsequent criminal investigations and the restitution of the articles to their rightful owners.

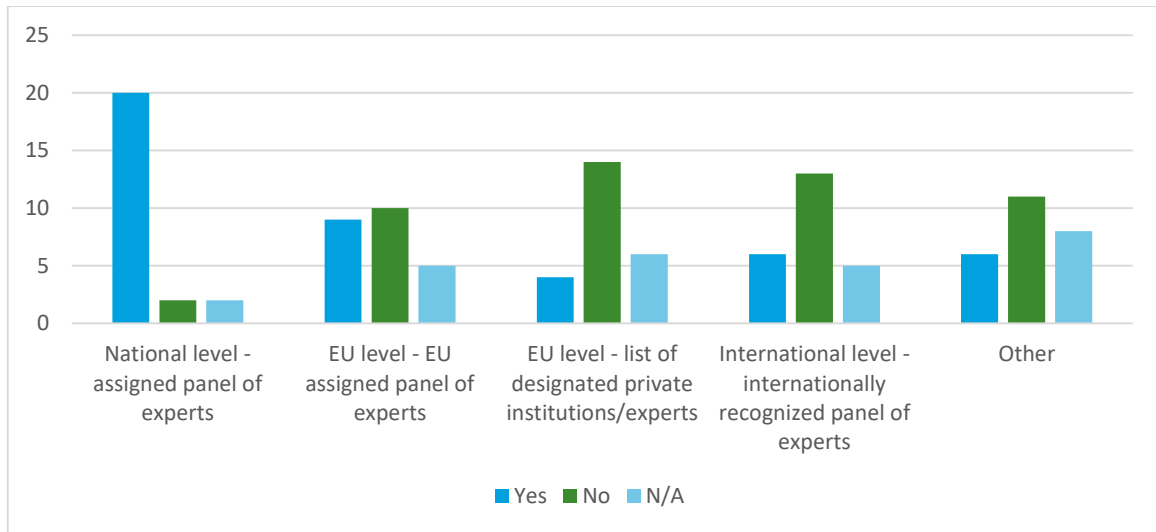
Figure 20 – Investigation of suspicious shipments



Source: General survey to the EU Customs and Culture administrations (2016)

The expertise is performed in a variety of ways in the different Member States according to national procedures, eventually formalized in collaboration agreements or guidelines. When considering the assessment of a cultural good in light of the subsidiarity principle, most Member States indicate the assessment of a cultural good should be performed on a national level, despite the indicated issues of lack of level playing field and interpretation issues of categories of cultural goods in practice.

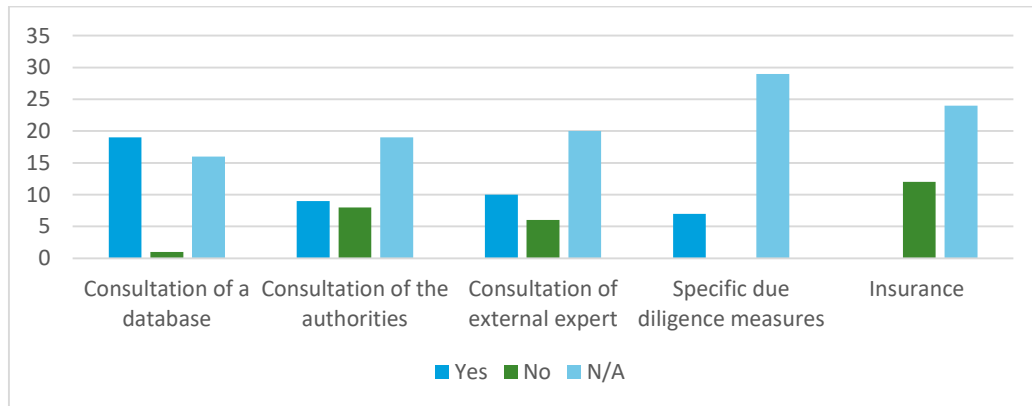
Figure 21 – Assessment of a cultural good



Source: General survey to the EU Customs and Culture administrations (2016)

The tools used by the Member States' authorities assessing the import differ from the tools used in the market. In order to perform the necessary checks with regard to the origin of cultural goods acquired, market operators mainly developed and make use of the following practices.

Figure 22 – Ensuring provenance by the market



3.5.2.6 Conclusions on the analysis of national systems currently in place

Only a limited part of the policy concerning trafficking in cultural goods has been regulated at EU level. Member States maintain large discretionary margins in developing their individual policy on what should be considered illicit and how should illicit movement of cultural goods be tackled, particularly when it comes to the import of cultural goods. All respondent Member States to the survey agree, however, that illicit importation of cultural goods is a problem that needs to be tackled.

Member States have taken measures with regard to the trafficking in cultural goods at different levels (i.e., both national and international):

- ✔ National legislation and soft law measures;
- ✔ International bilateral treaties;
- ✔ International conventions.

Despite the fact that the 1970 UNESCO Convention has gained global recognition – considering the number of Contracting Parties – still 3 EU Member States did not ratify the Convention. The 1995 UNIDROIT Convention has received less EU and global support, but encompasses important principles to combat the illicit trafficking in cultural goods, particularly when it comes to the burden of proof and the good faith of the buyer.

There are different legal frameworks available in the Member States, which are very diverse in scope and field of application.

- Several Member States do not have any regulations in place on the importation of cultural goods;
- A number of Member States rely entirely on the international instruments available (in particular UNESCO Convention, UNIDROIT Convention, ICOM code of ethics);
- A number of Member States adopted provisions on the importation of cultural goods from third countries, either entirely prohibiting the importation – e.g., Austria – or subjecting the importation to a requirement of prior certification – Greece.

The assessment procedure for cultural goods depends on the national existing framework. Internal cooperation is related to this framework. For the assessment of a cultural good, the main tools are (i) the use of experts and (ii) databases (e.g., INTERPOL database for stolen cultural property), which provide for the most accurate identification of the cultural good.

International cooperation takes place at different levels:

- Cooperation with other EU Member States (cf. Directive 2014/60/EU);
- Cooperation with third countries (in execution of the 1970 UNESCO Convention, e.g., through bilateral agreements or through intervention of the foreign affairs office);
- Cooperation with international organisations (UNESCO, UNIDROIT, INTERPOL, ICOM, WCO, UNODC, EUROPOL).

3.6 Examination of the performance of EU *ad hoc* measures: the protection of cultural goods illegally exported from warzones (Syria and Iraq)

This part of the study will allow gaining an overview of the implementation and the performance so far of *ad hoc* measures protecting cultural goods illegally exported from warzones (e.g., Iraq and Syria), and deriving lessons from the implementation. The analysis will look at the following elements:

- Lessons from the implementation so far;
- Elements transferable to a (possible) EU instrument fighting against the illicit import of cultural heritage goods;
- Elements that did not work as expected and should thus be excluded/avoided in a (possible) EU instrument.

3.6.1 Introduction

The European Union has not taken any action with regard to the importation of third country cultural goods into the customs territory, except for the *ad hoc* measures for Syria and Iraq. Council Regulation (EC) No 1210/2003 of 7 July 2003 concerns certain specific restrictions on economic and financial relations with Iraq and repeals Regulation (EC) No 2465/96. Article 3 of the Regulation stipulates that any movement of Iraqi cultural property is prohibited. This prohibition does not apply in the case the

exportation of the cultural good in question can be proven to have happened prior to 6 August 1990 or in the case the cultural good is returned to Iraqi institutions in accordance with the objective of 'safe return' (par. 7 UN SC Resolution 1483/2003). A similar regulation (in the form of an ordinance) has been issued in Switzerland (cf. *supra*).

On January 18, 2012, the Council agreed to the Regulation (EU) No 36/2012 (amended by Regulation (EU) No 1332/2013) concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011. According to Article 11c of Regulation No 36/2012, it is prohibited to import, export, transfer, or provide brokering services related to the import, export or transfer of, Syrian cultural property goods and other goods of archaeological, historical, cultural, rare scientific or religious importance. This prohibition applies where there are reasonable grounds to suspect that the goods have been removed from Syria without the consent of their legitimate owner or have been removed in breach of Syrian law or international law. Similar to the exclusion grounds under the Regulation No 1210/2003 for Iraq, the prohibition does not apply if it is demonstrated that the goods were exported from Syria prior to 15 March 2011 or if the goods are being safely returned to their legitimate owners in Syria. The EU also supports the UNESCO Action Plan for Syria, according to which "*The Syrian conflict has resulted in significant damage to Syria's cultural heritage. All six of Syria's world heritage sites have been damaged by the conflict, as well as numerous other buildings of high cultural significance. In addition, a number of Syria's museums have been looted, including those in Homs and Hama. The situation is compounded by the lack of a comprehensive documentation of antiquities in the country.*"

3.6.2 Analysis of the EU *ad hoc* measures

Both Regulation No 1210/2003 and 36/2012 will be analysed below. In particular, the following topics will be looked into in the context of these Regulations:

- Enforcement;
- Seizure;
- Improvement;
- Cooperation.

3.6.2.1 Enforcement

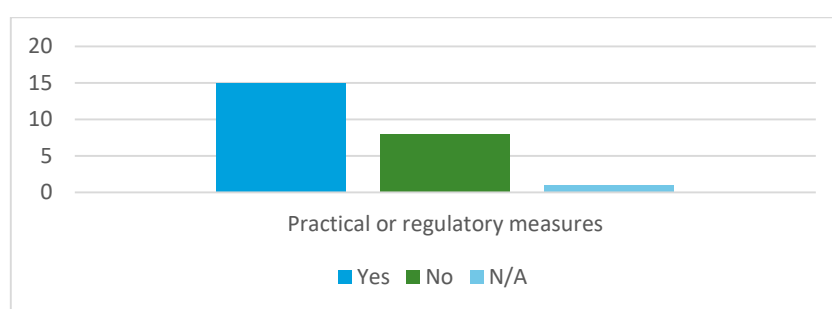
It is difficult to estimate how and to what extent the EU *ad hoc* measures on the prohibition of import, export or transfer of cultural goods originating in Iraq and Syria affect the Member States. When considering the application of the Regulations in practice, the following should be considered:

- A considerable number of Member States did not trace any good originating in these countries, hence, they do not have any experience with the application of these Regulations to date. The lack of expertise is considered problematic by one of the Member States: since the Member State in question does not dispose of any Middle-Eastern art collections nor has available experts in this field, it is a challenge to actually ensure the correct application of the Regulations;
- Other Member States that have seized cultural goods originating from Iraq or Syria consider the burden of implementation insignificant. The application of the Regulations is taken care of by the very same institutions controlling the general importation of cultural goods. Since these Regulations form part of the daily work of the competent authorities, often no particular additional burden is identified. The burden thus is limited to expert assessments and the safeguarding and maintenance of the seized cultural goods under the appropriate conditions.

In order to ensure the correct application of Regulations No 1210/2003 and Regulation No 36/2012, the majority of Member States has taken further practical or regulatory measures. Dissemination of information on the Regulations varies, both internally (e.g., through notices to customs officers, through training of customs officers) and externally, e.g., through:

- ✔ A notice on the website of the ministry of foreign affairs (e.g., Poland);
- ✔ A ministerial decree (e.g., Belgium);
- ✔ The adoption of memoranda with institutions such as universities, museums and galleries to ensure the application of laws and codes for the protection of cultural heritage (e.g., Greece);
- ✔ The organisation of special inspections to identify trafficked antiquities from Syria, Iraq, Lebanon and Libya (Greek Customs Service operation under codename “Athina”, 15/3-31/3/2016).

Figure 23 – Impact of the Regulations on cultural goods from Iraq and Syria



Source: General survey to the EU Customs and Culture administrations (2016)

3.6.2.2 Seizure

Only a very limited number of Member States has actually seized cultural goods moved in breach of Regulation No 1210/2003 and Regulation No 36/2012. The Member States indicating they have actually traced and seized such goods, only did so in a limited number of cases.

- ✔ On March 25, 2016, French regional customs officers have intercepted a consignment of goods from Lebanon to Thailand. The consignment contained 2 *bas-reliefs* of 108 kg., declared as 2 decorative stone panels for garden decoration. Following the expertise of the Louvre museum, it has been established that the goods in question concerned cultural goods from the Medieval period with provenance from the Euphrates valley, in the northern region of the Levant. The investigation of the judicial customs authorities and the central office for combating trafficking in cultural goods has shown that the two *bas-reliefs* were obtained from looting of Syrian cultural heritage;
- ✔ In 2015, the British tax authorities (HMRC) seized consignments of antique coins suspected to have been illegally excavated in Syria, which were detected in transit to third countries. The British Metropolitan Police Art and Antiques Unit have also seized items;
- ✔ In Slovakia 3 votive statues were detected in 2015, which have Mesopotamian origin;
- ✔ In the Netherlands in 2012, cultural goods from Syria were seized. The case is still pending. In 2015 the offering for sale of Iraqi cultural goods via the internet has been investigated, however, unlawful removal of the objects could not be proven;
- ✔ The criminal police office of Schleswig-Holstein, Germany has seized a Sumerian clay cuneiform tablet, which was offered in an online auction in violation of the ban on trade of Iraqi

cultural property in the EU. The cultural good in question dates from 2049 B.C. and records the distribution of flour to the crew of a ship. On January 14, 2016, the German authorities have restituted the antiquity to the Republic of Iraq.

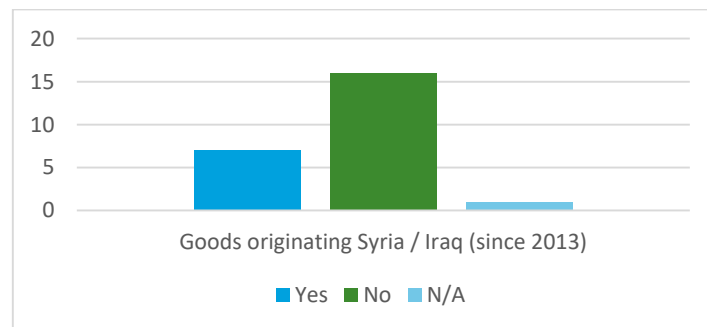
There are further cases pending in Sweden and Belgium.

None of the respondent market operators indicate to have been offered to buy cultural goods for which they had reasons to suspect that they were illicitly exported from Iraq or Syria. In order to make sure that the purchased goods do not originate from Iraq or Syria, the market operators indicate to have taken the following measures:

- As part of the due diligence procedures, goods are particularly checked if they could originate in Iraq or Syria;
- The installment of rigid provenance requirements for goods originating from the Middle-East.

From the available data and the limited number of practical cases, no definitive conclusions can be drawn with regard to the number of goods trafficked that originate in Syria and Iraq. The example of the Netherlands in 2015 shows that the identification of provenance is highly complex and goes far beyond the standard available expertise at customs departments. Moreover, considering the mentioned examples of seizures, the importance of the internet in the context of trafficking cannot be underestimated (cf. examples in Germany and the Netherlands).

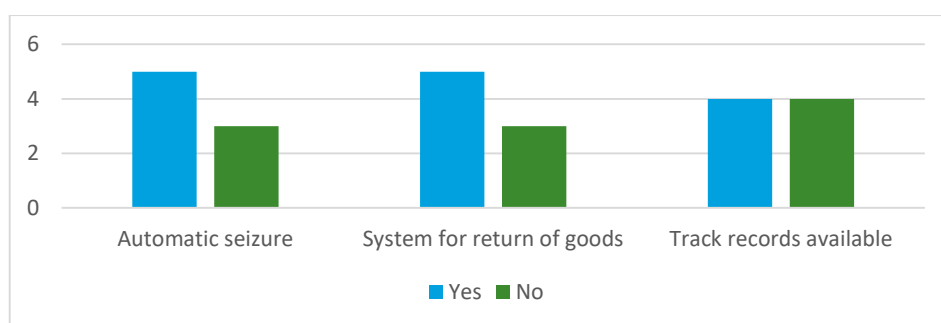
Figure 24 – Seizure of cultural goods



Source: General survey to the EU Customs and Culture administrations (2016)

Several Member States do not have a system for restitution of cultural goods imported in violation of Regulation No 1210/2003 or Regulation No 36/2012. The authorities will have to resort to either bilateral agreements or diplomatic solutions in order to be able to return the good in question to the legitimate owner. Track records of seized cultural goods, also from third countries, are kept by a number of Member States.

Figure 25 – Systems in place on Iraqi / Syrian cultural goods



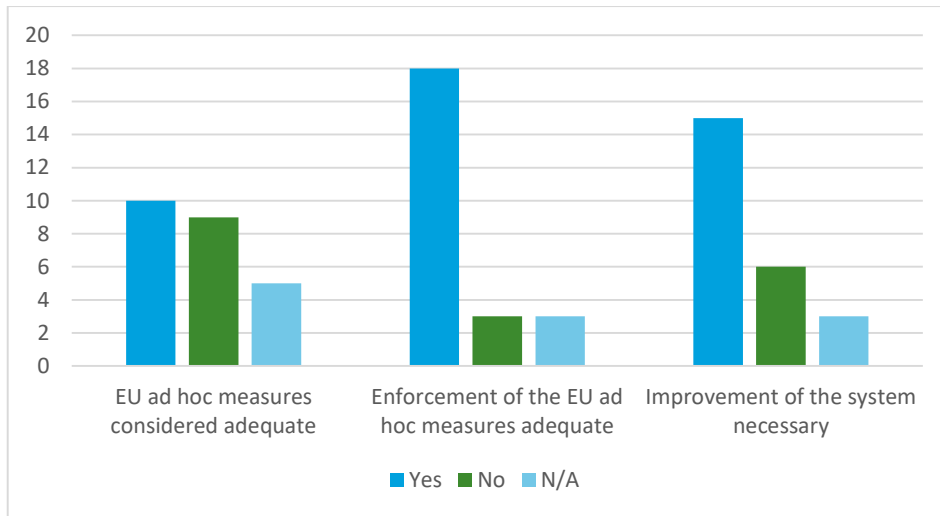
Source: Specific survey to the EU Customs and Culture administrations (2016)

3.6.2.3 Improvement

The adequacy of the EU *ad hoc* measures is questioned by a considerable number of Member States, in particular on the following grounds:

- The full identification of the characteristics of a cultural good through adequate expertise is extremely difficult, costly and time consuming:
 - The issue of provenance is believed to undermine the purpose of the *ad hoc* measures. For example, a Member State indicates that within their borders, there is no available expertise on Middle-Eastern cultural goods. Moreover, importers of cultural goods can easily claim origin e.g., Jordan or United Arab Emirates, which would have to be proven inaccurate by the authorities of the Member States. This burden of proof is, as follows from the practical examples (e.g., the Netherlands), very difficult to meet;
 - Once seized, the identification of the legitimate owner might pose difficulties, which is important for restitution;
 - Next to the provenance and legitimate owner of the cultural goods, also the age is difficult to determine. Moreover, when imported prior to a certain date, the goods are considered to have legally been moved. This is, however, an internal market issue that cannot be tackled by EU customs authorities. Again, the burden of proof regarding the date of prior importation lays with the competent authorities of the Member States;
- The restitution of seized cultural goods brought into a Member State in breach of the two Regulations is considered problematic. Several Member States do not have any provisions on the restitution after seizure and will have to resort to bilateral agreements or diplomacy solutions. Furthermore, it is recognized that returning cultural goods to politically destabilized regions could be considered contradictory to the purpose of the *ad hoc* measures.

Figure 26 – Assessment of the system

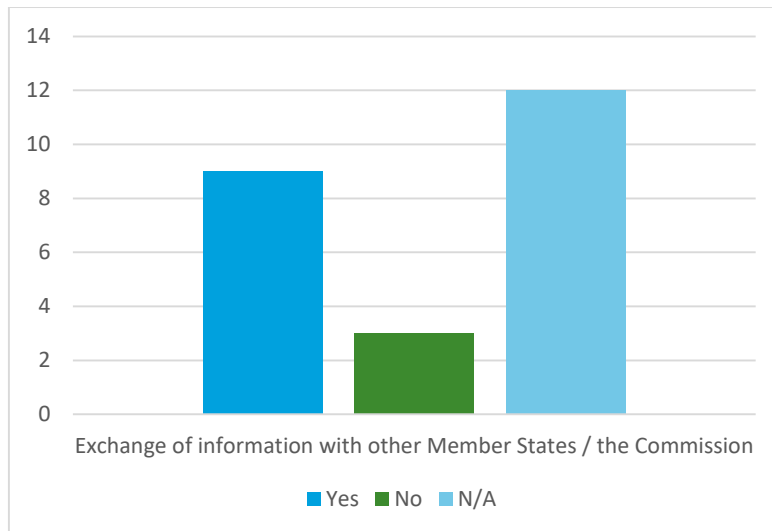


Source: General survey to the EU Customs and Culture administrations (2016)

3.6.2.4 Cooperation

A number of Member States that have identified and/or seized cultural goods imported in the EU from Iraq or Syria in breach of the abovementioned Regulations, exchange information on the *ad hoc* measures with the other Member States and/or the European Commission. Nonetheless, increasing this exchange could result in an improved understanding and effectiveness of the *ad hoc* measures.

Figure 27 – Exchange of information on *ad hoc* measures



Source: General survey to the EU Customs and Culture administrations (2016)

3.6.3 Conclusions on the EU *ad hoc* measures for Syria and Iraq

Subsequent to the calls from the United Nations in a number of Resolutions, the European Union has taken action by prohibiting the importation of and trade in cultural goods originating from Syria and Iraq. The EU *ad hoc* measures on cultural goods originating from Syria and Iraq, as laid down in Regulations No 1210/2003 and No 1332/2013, have led only exceptionally to the identification of cultural property illicitly imported into the European Union. This does not automatically lead to conclude, however, that

goods originating in Syria and Iraq do not reach the EU market. From practical cases, it appears that indeed a number of goods have entered the customs territory of the Union.

Several elements should be considered when assessing the effectiveness and adequacy of the *ad hoc* measures for Syria and Iraq.

- First of all, the limited number of identified cases of illicit import of cultural goods originating from Syria and Iraq could be attributable to the difficulty, costly and time consuming expertise of a cultural good, in combination with the burden of proof (with regard to provenance), which is imposed on the competent authorities of the Member States. When incorrectly declaring the origin of the cultural good, it will be up to the customs authorities to provide evidence of the opposite. As cultural heritage regions do not necessarily correspond with country borders, cultural goods cannot always be traced back to the country of origin, rather to the region of origin. In the case of proven theft in Iraq or Syria of the good in question, provenance is easier to prove;
- The measures on Syria and Iraq follow (or even preceded) the calls from the United Nations, acting against among other the financing of terrorism through sale of cultural goods from conflict areas. The European Union acted appropriately by taking the necessary *ad hoc* measures against importations from the countries concerned. Particular elements inherent to the *ad hoc* measures do not serve the effectiveness of those restrictive measures on cultural goods originating in Syria and Iraq, however. As the *ad hoc* measures do not form part of a comprehensive system, declaring different origin than Syria or Iraq could result in less stringent border controls and enforcement. Several countries currently facing similar issues are not targeted by an *ad hoc* measure (e.g., Libya);
- After seizure of a good found to be imported in breach of the Regulations, questions arise with regard to its restitution to the rightful owner, whose identification can be highly difficult. Restitution of cultural goods to territories suffering from political instability is often problematic in view of the very purpose of the measures.

The intensive exchange of intelligence among Member States but also between the EU and third countries could result in a more effective system, both considering the tracing and identification (through expertise) of cultural goods.

3.7 Identification and analysis of national customs legislation of key third countries, i.e. United States of America, Turkey and Switzerland on the topic of import of cultural goods.

This part of the study will allow gathering information on how the abovementioned third countries are responding to the challenge of protecting cultural heritage and fighting against the illicit trafficking in cultural goods. We will do so by examining their legislative provisions on the import of cultural goods.

3.7.1 Introduction

Hereinafter, the following topics will be analysed:

- Regulatory framework on cultural goods;
- Definition of cultural goods;
- Illicit importation of cultural goods;
- Enforcement and seizure.

3.7.2 Switzerland

3.7.2.1 Regulatory framework on cultural goods

The Federal Act on the International Transfer of Cultural Property (CPTA)⁷¹, representing the Swiss implementation of the 1970 UNESCO Convention ratified on October 3, 2003, together with the implementing ordinance (CPTO) have entered in effect on June 1, 2005. Both the CPTA and the CPTO constitute the Swiss law governing the import, transit, export and repatriation of cultural property. With the CPTA, the Federal Government intends to make a contribution to the maintenance of the cultural heritage of mankind and prevent theft, looting, and illicit import and export of cultural property (Art. 1 CPTA). The abovementioned Medici case, Symes case, and Becchina case directly built the way for the new Swiss cultural heritage law (cf. par. 3.2).

No public evaluation of the CPTA has been performed up till now according to input from our Swiss specialists. There has been a rise in cases where Switzerland is applying the CPTA since 2010. Though the act came into force as of 2005, the Swiss Customs and Federal authorities merely started to proficiently apply it from 2010.

Apart from the national framework for the maintenance of the cultural heritage of mankind and the prevention of theft, looting and illicit import and export of cultural property, Switzerland has concluded a number of bilateral treaties:

- ✘ Italy (SR 0.444.145.41);
- ✘ Greece (SR 0.444.137.21);
- ✘ Colombia (SR 0.444.126.31);
- ✘ Egypt (SR 0.444.132.11);
- ✘ Cyprus (SR 0.444.125.81);
- ✘ China (SR 0.444.124.91).

Similar to the EU, Switzerland has issued an ordinance on economic measures against the Republic of Iraq and an Ordinance instituting measures against Syria.

Switzerland is not a party to the 1995 UNIDROIT Convention. Nonetheless, the 1995 UNIDROIT Convention did serve as an important inspiration for the Swiss national law on cultural goods, particularly with regard to the burden of proof and the protection of the good faith buyer.

3.7.2.2 Definition and assessment of 'cultural goods'

Cultural property is defined as significant property from a religious or universal standpoint for archeology, pre-history, history, literature, arts or sciences belonging to the categories under Article 1 of the UNESCO Convention of 1970. For the definition of 'cultural goods' and 'cultural heritage', the CPTA refers to the 1970 UNESCO Convention.

The exporter or importer has to declare the value and origin of the cultural good in the customs declaration. The value is verified based on invoices or other payment documents, whereas the origin is verified based on certificates of origin, invoices, shipping documents or export certificates. If there are no documents for valuation purposes available, the value is estimated by an expert. In case of doubts

⁷¹ Federal Assembly of the Swiss Confederation, Federal Act on the International Transfer of Cultural Property (Cultural Property Transfer Act), 20 June 2003, http://www.unesco.org/culture/natlaws/media/pdf/switzerland/ch_actintaltrsfertcultproties2005_engtno.pdf.

on the licit provenance of a cultural property, the Federal Customs Authorities contact the Specialized Body for the International Transfer of Cultural Property (Federal Office of Culture) for further information. After assessing the case, an expert may be involved by the Federal Office of Culture to inspect the object in question in order to decide on the further steps.

3.7.2.3 Illicit importation of cultural goods

Whoever imports, transits or exports cultural property must provide the following at the customs declaration: (i) the cultural property object type and (ii) a description as detailed as possible on the place of manufacture, or if the result of archaeological or paleontological excavations, the place where the cultural property was found (Article 25 CPTA). Whoever imports or transits cultural property must declare at the customs declaration that the export of cultural property from a contracting state is not subject to a permit under the laws of that state. Persons, required to notify customs, inform the customs office in writing on the storage of cultural property in a free port. The notification must contain the required aforementioned documents and information.

An importation is considered illicit if an importation is carried out in violation of:

- An agreement concluded between the Swiss Federal Council and third countries on the repatriation of cultural properties. The scope of such agreement must be cultural property of significant importance to the contracting state in question. The cultural property must be subject to export provisions in the state in question for the purpose of protecting cultural heritage, and the contracting state must grant reciprocal rights;
- A measure from the Federal Council enabling the import, transit, and export of cultural property (eventually tied to specific conditions, limitations and prohibitions).

Since 2013, approximately 185 cultural goods have been seized by the Swiss authorities for infringement to the legislation on importation of cultural goods.

In Switzerland, the same pilot project as in Austria was operational for three months and had excellent results. The main outcome was a memorandum of understanding with eBay to fight the illicit trafficking in cultural goods on the internet. This memorandum states that eBay accepts that no cultural property can be sold without a certificate by the competent Swiss or foreign authorities. This condition applies particular to cultural property that are a part of the 'risk categories' such as those in ICOM Red Lists. This limitation of certificates will be subjected to controls to ensure the condition will be respected. There will also be preventive information on the issue of the traffic of archaeological goods coming from illicit excavations. The memorandum was the result of the application by Switzerland of INTERPOL's Expert Group on Stolen Cultural property recommendation on illicit trafficking of cultural property on the internet.

3.7.2.4 Enforcement and seizure

The CPTA is implemented by the Specialized Body for the International Transfer of Cultural Property, Federal Office of Culture. Customs related procedures (inspection of transfer at border, withhold suspicious cultural property during import, transit, export and report to criminal authorities) are dealt with by the Federal Customs Administration. The duty to provide support to the Specialized Body of the Federal Office of Culture (police databases, expertise, providing input to the INTERPOL network) falls under the authority of the Federal Police force.

Cultural goods can be seized in the case they are subject of a criminal investigation (Article 69ff. Swiss Penal Code). In the context of the CPTA, cultural goods will be returned to the state of origin, after a

formal decision of the Federal Office of Culture in this respect. Circumstances could result in the suspension of the repatriation, in the case the cultural good would be endangered by the repatriation.

3.7.3 Turkey

3.7.3.1 Regulatory framework on cultural goods

The protection of cultural goods and struggle against the trafficking in cultural goods is one of the top priorities of the relevant institutions and law enforcement authorities. The Ministry of Culture and Tourism, together with the law enforcement agencies (Police, Gendarmerie, Coast Guard and Customs) are responsible for the implementation and the enforcement of Turkey's cultural goods legislation.

Cultural goods are legally conserved by the Law on the Conservation of Cultural and Natural Property (2863)⁷². Furthermore, the Turkish Anti-Smuggling Law (5607)⁷³ prevents the illicit exportation of cultural objects.

In accordance with the Law on the Conservation of Cultural and Natural Property (2863), persons that discover movable and immovable cultural and natural property, as well as owners, proprietors or occupants that know or have recently found out about the existence of cultural and natural property on their land shall be obliged to notify the nearest museum directorship or the village headman or the local administrators of other places within at the latest 3 days.

- Persons who breach the obligation to report about the cultural and natural properties intentionally and without excuse are punished with a prison sentence of 6 months up to 3 years.
- Persons who tender, sell, offer, buy, or accept the cultural and natural properties which have not been reported are punished with a prison sentence of 2 to 5 years and judicial fine up to 5 thousand days.
- Persons who trade the movable cultural properties trade of which has not been prohibited, without permission are punished with a prison sentence of 6 months to 3 years.
- Persons who take illegally abroad the cultural and natural properties are punished with a prison sentence of 5 to 12 years and judicial fine up to 5 thousand days.

The Turkish Anti-Smuggling Law (5607) provides for a punishment (prison sentence of 1 to 3 years and a judicial fine of up to 5 thousand days) for persons who take abroad the goods of which the export is prohibited.

Turkey ratified the 1970 UNESCO Convention on 21 April 1981. Turkey is not a party to the 1995 UNIDROIT Convention.

A legal framework on the importation of cultural goods is in place. However, at importation, unless there is serious suspicion that the goods in question were stolen, no particular verification to determine the origin of the goods is made.

⁷² Grand National Assembly of Turkey, Law on the Conservation of Cultural and Natural Property, No 2863, 21 July 1983, <http://www.oruchukuk.net/kacakciliklamucadelekanunu.htm>

⁷³ Grand National Assembly of Turkey, Anti-Smuggling Law, No 5607, 31 March 2007, <http://www.oruchukuk.net/kacakciliklamucadelekanunu.htm>

3.7.3.2 Definition and assessment of 'cultural goods'

In accordance with the Law on the Conservation of Cultural and Natural Property, *cultural property* is defined as movable and immovable property on the ground, under the ground or under the water pertaining to science, culture, religion and fine arts of before and after recorded history or that is of unique scientific and cultural value for social life before and after recorded history. Although Turkey is party to the 1970 UNESCO Convention, no reference to the Convention is made in the national definition. There is no list of categories similar to the list in Article 1 of the 1970 UNESCO Convention in place.

3.7.3.3 Enforcement and seizure

The law enforcement agencies of Turkey, a transit area for cultural goods trafficked from the Middle-East region to the European market, recorded 1366 cases of attempts of illicit export of cultural goods from Turkey since 2013, indicating the extent of the problem.

Police and Gendarmerie, which are responsible for the fight against illicit trade throughout the country, have special units to combat smuggling and organized crime. The Turkish Customs Authority has also central and regional law enforcement units for the fight against smuggling of all kind of goods. None of the special units of the Police, Gendarmerie, or Customs Authority for the fight against trafficking in goods, dispose of specialized units for the prevention and investigation of trafficking in cultural goods.

The officers under these units are especially trained for the fight against certain types of criminal acts, including the trafficking of cultural property. Trafficking in cultural goods is one of the subjects of both the basic and expert training curriculum of the Police, Gendarmerie and Customs. The Ministry of Culture and Tourism occasionally supports the regular trainings by providing for museum experts. TADOC (Turkish International Academy against Drugs and Organized Crime) is also a specialized common training center for law enforcement authorities, which was established in Ankara on June 26, 2000 under the Police Department and within the framework of Turkey-UNODC collaboration. With its experienced trainers, international subject experts, state of the art facilities and equipment, and the training programs developed according to the needs of the region, TADOC provides distinguished training not only to the personnel of the national law enforcement agencies, but also to the law enforcement personnel of the countries that Turkey signed bilateral cooperation agreements and treaties with.

3.7.4 United States of America

3.7.4.1 Regulatory framework on cultural goods

On the basis of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the illicit Import, Export and Transfer of Ownership of Cultural Property the US has enacted cultural property protection regulation: The Convention on Cultural Property Implementation Act.⁷⁴ Public Law No 114/151 of 9 May 2016⁷⁵ is an execution of the Convention on Cultural Property Implementation Act.

⁷⁴ United States Congress, Convention on Cultural Property Implementation Act, 12 January 1983, <https://eca.state.gov/files/bureau/97-446.pdf>

⁷⁵ United States Congress, Public Law No 114-151, 9 May 2016, <https://www.congress.gov/114/plaws/publ151/PLAW-114publ151.pdf>

3.7.4.2 Definition and assessment of 'cultural goods'

For the purpose of the US legislation, the terms of *archaeological* and *ethnological* material is of importance. Archaeological material is any object of archaeological interest which (1) is of cultural significance; (2) is at least 250 years old; and (3) was discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or underwater. Ethnological material is any object of ethnological interest which (1) is the product of a tribal or nonindustrial society; and (2) is important to the cultural heritage of people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.

3.7.4.3 Illicit importation of cultural goods

3.7.4.3.1 Procedure

Third countries that are members of the 1970 UNESCO Convention may submit a request to the US President for US import measures concerning archaeological or ethnological material imported into the US from their country. The request is subject to the following proof:

- their patrimony is under threat from pillage;
- they themselves have taken measures to protect it;
- US import restrictions would be of benefit;
- US import restrictions will not impede the exchange of cultural property for educational or scientific purposes.

The Department considers the Cultural Property Advisory Committee's findings and recommendations before making a final determination. If it finds that the conditions are met, the President may enter into an agreement with that third state to apply import restrictions on certain categories of archaeological and ethnological material. This agreement lasts for five years, but may be extended following a review by the Cultural Property Advisory Committee. At this moment agreements exist with the following states: Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, El Salvador, Greece, Guatemala, Honduras, Iraq, Italy, Mali, Nicaragua, Peru and Syria.

Under certain conditions the President may also impose an emergency import restriction as an interim response which lasts for up to 8 years or until an agreement is negotiated.

3.7.4.3.2 Implementation of import restrictions

After an agreement is negotiated a list designating the categories of archaeological or ethnological material that are subject to import restrictions is published. All materials listed may only be imported into the US after an export permit is issued by the country of origin, or any other documentation showing that it left the country of origin prior to the imposition of restrictions. This clearly indicates the prospective nature of the measures.

Any designated archaeological or ethnological material which is imported into the US without the necessary export proof is subject to seizure and forfeiture, unless the importer proves that the object is in compliance with the law. The object then is returned to the state of origin.

In addition, stolen cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any state party may not be imported into the US after the date the 1970 UNESCO Convention entered into force with respect to the state party,

or the effective date of the Act (April 12, 1983) whichever date is later. This restriction is ongoing, and not predicated on a state party request.

3.7.4.3.3 *Ad hoc measures*

Public Law No 114-151 (9 May 2016), in execution of the Convention on Cultural Property Implementation Act, establishes an emergency protection regime for Syrian cultural property. It conveys upon the President the obligation to impose import restrictions within the meaning of section 304 of the Convention on Cultural Property Implementation Act with respect to any archaeological or ethnological material of Syria. The restrictions shall remain into force until 5 years after the date on which the President determines that Syria is able to enter into an agreement with the United States to implement article 9 of the Convention on Cultural Property (unless, within that time period, Syria would request to enter into such agreement). The President may waive the import restrictions for specified archaeological and ethnological material of Syria if: (1) import in the United States is necessary for protection purposes, (2) the owner has not requested to return the material, and (3) there is no risk of illegal trafficking.

3.7.4.4 *Enforcement and seizure*

Any designated archaeological or ethnological material or article of cultural property, as the case may be, which is imported into the US in violation of this act is subject to seizure and forfeiture. All normal provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs laws apply to these procedures.

Any designated archaeological or ethnological material which is imported into the US without the necessary export proof is seized and returned to the state of origin. The object is returned to the claimant with respect to whom the material was forfeited if that claimant establishes a valid title to the material or if he is a bona fide purchaser for value of the material. The state of origin or claimant, as the case may be, bears the expenses incurred.

Any stolen article of cultural property which is imported into the US is seized and returned to the state of origin (which again bears the expenses incurred). However, if the claimant establishes a valid title to the article against the institution from which the article was stolen or establishes that he purchased the article for value without knowledge or reason to believe it was stolen, forfeiture is not decreed unless the state to which the article is to be returned pays the claimant just compensation. Nevertheless, if the claimant doesn't establish a valid title the state doesn't have to pay compensation if it proves that, as a matter of law or reciprocity, it would in similar circumstances recover and return an article stolen from an institution in the US without requiring the payment of compensation.

3.7.5 *Joint analysis on import of cultural goods*

Similar to some EU Member States, the United States of America and Switzerland have entered into bilateral agreements with third countries to jointly combat the illicit trade in cultural goods. Next to this bilateral approach, the third countries examined also took unilateral measures to take action against trafficking in cultural goods.

For the importation of cultural goods from third countries, both the US and the Swiss system provide for a reversal of the burden of proof, whereby it is up to the importer to declare the good and to prove that the good is not subject to an export permit in the third country.

- The Swiss system considers imports illicit where such import is carried out in violation of a bilateral treaty or a unilateral measure from the Federal Council;
- The US system relies mainly on the country of origin, notwithstanding the possibility to also issue emergency import restrictions. The importer has to prove that the export has been carried out in compliance with the laws of the country of origin.

All three examined countries provide for the seizure and restitution of the cultural goods to their rightful owners, once illicit importation has been proved.

3.8 Problem tree

The illicit trafficking in cultural goods has a number of causes (or 'drivers') and consequential effects, facilitating the problem. For the identification of these drivers and problems, a 'problem tree' has been developed (see Figure 1 below). The findings embodied therein are based on desk research and strategic interviews with DG International Market, Industry, Entrepreneurship and SMEs (DG Growth), DG Education and Culture, DG Migration and Home Affairs (DG Home) and DG Taxation and Customs Union (DG TAXUD) held in January 2016.

In the 2011 *Study on preventing and fighting illicit trafficking in cultural goods in the European Union*, different types of difficulties giving rise to trafficking were identified. In particular, reference was made to legal difficulties of a technical nature, procedural difficulties, difficulties with regard to the application and effectiveness of norms, technical difficulties, and operational difficulties.

The Problem Tree below serves as a logical framework to illustrate the current problems, their drivers and effects, as well as the causal links between these. The figure flows from bottom to top.

At the level of the drivers, it has been possible to identify four main types of challenges:

- The absence of regulation regarding the import of cultural goods;
- The absence of practical restrictions to trafficking;
- The lack of common understanding on the definition of cultural goods;
- The existence of a profitable commerce for cultural goods in the EU, with high demand.

The problem resulting from the drivers is that non-EU cultural goods enter the EU territory either unhampered by restrictive legal measures or non-compliant with existing legal measures, i.e., without being declared for import or declared for import inconsistent with national legal measures. This may have the following impacts:

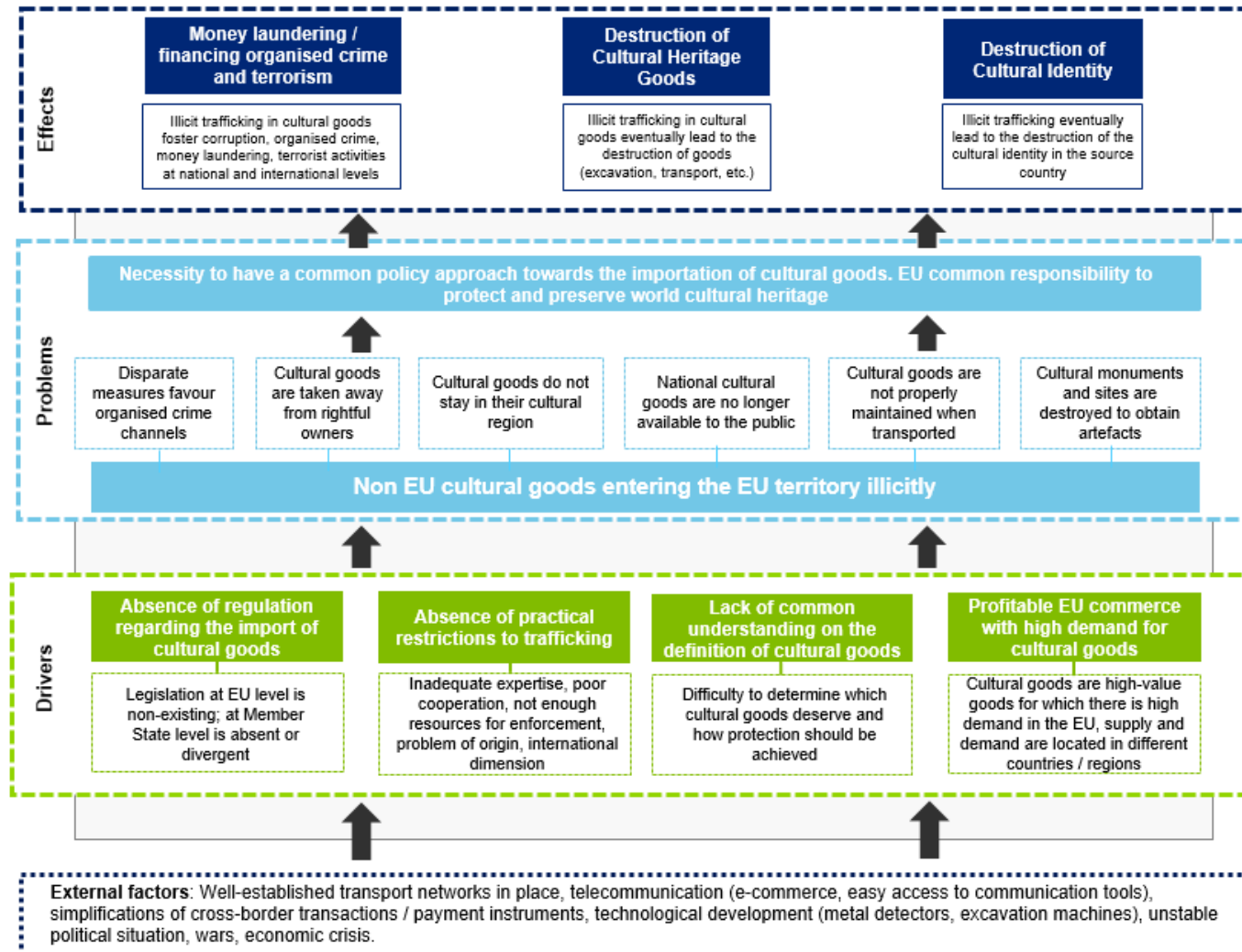
- Disparate measures favour organised crime channels;
- Cultural goods are taken away from rightful owners;
- Cultural goods do not stay in their region of origin;
- National cultural goods are no longer available to the public;
- Cultural goods are not properly maintained when they are transported into the EU territory;
- Cultural monuments and sites are destroyed in order to obtain artefacts.

The illicit trafficking in cultural goods entering the EU territory fosters organised crime, money laundering and the financing of terrorism activities and the destruction of the cultural goods and cultural identity.

As a consequence, the necessity arises to have a common policy approach towards the importation of cultural goods. This need for a common policy approach is strengthened by the common responsibility to protect and preserve world cultural heritage.

A number of so-called 'external factors' have an impact on the development of the problems identified in relation to the fact that non-EU cultural goods enter the EU territory illicitly. The external factors are not necessarily problems but could strengthen some of them.

Figure 28 – Problem tree



3.8.1 Current situation

3.8.1.1 *The old collection issue*

Since 2011, a new string of cases of trafficking in cultural goods alarm the law enforcement communities worldwide: most of them currently still subject of investigation and hence not to be disclosed, they refer the items in question to old collections but evidence has arisen to disprove those statements. A rare case made public so far concerns an ancient Egyptian ivory statue, offered on sale by a German auction house stating it was part of an old English collection; it was actually looted in 2013 from the storerooms of the Swiss archaeological Institute in Aswan⁷⁶.

The Aswan proven case is indicative of the biggest issue current legislations are confronted with. It suffices for an unscrupulous merchant to state an item stems from an old collection to bypass without harm the most stringent law standards currently enforced and actually sell recently looted items. More often than not, those old collections had no inventory before being dispersed; it is easy enough for a smuggler to “enrich” any of them with recently stolen items.

Suspected since a decade, it can nowadays be feared on a very concrete basis that this practice of attributing recently looted items to old collections is far more widespread than previously thought. This is particularly worrying in the light of the looting on an unprecedented scale of major archaeological sites in war-torn countries like Iraq (Mari, Nineveh), Syria (Palmyra, Apamea, Dura Europos), Libya (Cyrene), Yemen or politically troubled like Egypt. It can be reasonably feared that many more recently looted items are or will be in the near future on offer with a forged “old collection” background.

3.8.1.2 *Small multiple artefacts*

First devised by the antiquity dealers of Jerusalem, a very simple and efficient way of bypassing all inventory and provenance issues is to rely on small and multiple artefacts like coins, clay lamps, small potteries or statuettes. As stated in the Israel Antiquities Law of 1978, dealers can sell artefacts only if he has a license from the Director of Antiquities (art. 15)⁷⁷. Every licensed dealer has to keep a list of stock and register it annually (art. 17)⁷⁸. Owing to the never decreasing number of those small and multiple items, the Israel Antiquities Authority (IAA) came to suspect that dealers replace every object sold by a similar one and assign it the same stock number⁷⁹. Monitoring of antiquities dealers in Geneva do show the recent exportation of this practice: small multiple items are offered for sale since 2014 without provenance being given at very attractive prices ranging from 900 to 5.700 CHF⁸⁰.

Far from being marginal, this proven way of dealing antiquities for paying the bills poses the biggest threat to archaeological sites: those small multiple antique items, produced in millions of units in the past, are the ones looters will find most often. Easy to smuggle and hide, non-descript one from the other, those small items are perfect both for foiling all current legal barriers and allowing the art market to reach out towards young people via physical shops or internet shopping sites. Attracted by the low

⁷⁶ <http://english.ahram.org.eg/NewsContent/9/40/132755/Heritage/Ancient-Egypt/Unique-stolen-ancient-Egyptian-statue-to-return-fr.aspx>; retrieved 24 October 2016.

⁷⁷ http://www.antiquities.org.il/Article_eng.aspx?sec_id=42&subj_id=228&id=450; retrieved 24 October 2016.

⁷⁸ http://www.antiquities.org.il/Article_eng.aspx?sec_id=42&subj_id=228&id=450; retrieved 24 October 2016.

⁷⁹ http://archive.archaeology.org/israel_antiquities_authority/ganor.html; accessed 24 October 2016.

⁸⁰ <http://www.young-collectors.com/fr/shop/>; accessed 24 October 2016.

prices, they might buy one or more small items, possibly setting off a new passion for antiquities, ultimately keeping alive the art market for another generation.

Small multiple items do not only stem from the Middle East: the high number of illegal metal detectors diggers in the EU itself inflict severe damage to EU archaeological sites too, as exemplified by a Swiss case currently on trial⁸¹.

3.8.1.3 Impact of civil wars and conflicts on cultural heritage

Since 2011, the multiplication of insurrections and civil wars in the Middle East has left one of the richest cultural heritages of the world unprotected and fully exposed to looting. Beyond the horrendous human tragedies, archaeological items have been pilfered in Iraq, Syria, Libya, Mali, Afghanistan and Egypt on a wider scale than ever before. Addressed since 2013 by specific UNESCO conferences and regional trainings for law enforcement units, the current situation illustrates the extreme prejudice done to cultural heritage in those war-torn countries⁸². The size of the ongoing looting in Syria is dramatically illustrated by the sheer volume of archaeological items seized both by the Jordanian and Lebanese customs; full storerooms of objects without any provenance are a direct consequence⁸³. Libya is also heavily looted: Libyan archaeological objects are currently traded by the Italian Mafia against weapons used by Libyan militias in the on-going civil war⁸⁴.

3.8.1.4 Free ports issue

The key role played by the European Free ports in storing looted archaeological items is plain since the 1995 Medici case⁸⁵. Since 2005, the Geneva Freeport, according to Swiss cultural heritage law, implemented the compulsory Customs announcement for importing cultural goods. Thanks to the ongoing Customs verification work, several cases currently under instruction or pending final judgment have emerged since this implementation⁸⁶.

Between 2015 and 2016, a string of new affairs shook the Geneva Freeport again, both highlighting their role as a turnpike for high profit cultural good sales⁸⁷ and as a long-term storage facility for looted archaeological objects⁸⁸. The threat of a massive discredit of the Geneva Freeport prompted the Board of Trustees to implement new rules of operations in order to curb the alarmingly high number of cases. As a consequence, since 19 September 2016, it is mandatory to make an official audit for every archaeological object bound for importation in the Freeport⁸⁹. In case of dubious origin or without an internationally recognised paper trail, the item will be barred of entering the premises.

⁸¹ <http://www.20min.ch/ro/news/suisse/story/Un-Suisse-juge-pour-recel-d-antiquites-17231465>, accessed 5 October 2016.

⁸² http://www.unesco.org/new/en/media-services/single-view/news/syrian_and_international_experts_agree_on_emergency_measures/#.WA57MhRMRcY; accessed 24 October 2016.

⁸³ Jordanian customs report, UNESCO conference, Amman 12 February 2013.

⁸⁴ <http://www.thedailybeast.com/articles/2016/10/18/italian-mob-trades-weapons-with-looted-art-from-isis-in-libya.html>; accessed 24 October 2016.

⁸⁵ Brodie 2014, p. 64.

⁸⁶ <https://www.letemps.ch/2012/04/27/bataille-acharnee-sarcophage-romain-bloque-aux-ports-francs>; <http://www.tdg.ch/geneve/actu-genevoise/pLa-restitution-dun-sarcophage--la-Turquie-est-validep/story/11726185>; both accessed 25 October 2016.

⁸⁷ <https://www.letemps.ch/suisse/2015/02/26/monaco-yves-bouvier-roi-ports-francs-garde-vue> accessed 25 October 2016.

⁸⁸ http://ge.ch/justice/sites/default/files/justice/common/actualites/communiqués_de_presse/PJ_MP_english_COMMUNIQUE_R_ESTITUTION_ITALIE_20160114.pdf; accessed 25 October 2016.

⁸⁹ <http://www.arts-franc.ch/copie-de-procedure-pfeg-fr>; <http://geneva-freeports.ch/files/5514/7444/3078/info-flash-contle-objets-archologique.jpg> both retrieved 25 October 2016.

3.8.2 External factors

3.8.2.1 3.8.2.1. *Transport networks*

A characteristic common to all forms of trafficking are transport networks. Goods switch hands regularly on their way to the demand side. The 'value chain of illicit trade' involves a number of in-between smugglers, paying a mark-up for the risk involved for the other criminals. Transportation networks will depend on other factors such as the applicable legislation, deterrent measures, enforcement and awareness along the route. Disrupting transportation networks is highly difficult, considering the lack of systematic border and customs control of every person or shipment entering the Union. Moreover, whereas outside of the customs Union sovereignty with regard to intervention is left to the source and transit states in question, inside the customs Union the free movement of goods applies, only limited by the exceptions of Article 36 TFEU.

3.8.2.2 3.8.2.2. *Telecommunication*

When considering the sale of cultural goods by traffickers, a distinction between 'traditional' and 'new' methods can be witnessed. Upon today, the traditional methods of selling goods through antique shops, art dealers, auction houses, newspaper adverts, etc. are in use. However, the emergence of the digital economy in regular trade also extends to illicit trade and the black market. Thanks to the emergence of e-commerce, antiquities these days can be traded easily around the world. The sale of illicit cultural goods through online platforms (e.g., online auction, online market ...) is rising substantially. On the internet, both virtual galleries and auctions of cultural goods can be found. The e-commerce of cultural goods has had a number of side effects: the engagement of collectors from a much broader range of socioeconomic backgrounds than previously the case, geographically distant buyers and sellers can be brought together easily, the trade in low-value material becomes lucrative considering the potential high volumes traded. The involvement of internet sales requires particular combating tools and expertise.

As part of the World Economic Forum (WEF) Global Agenda Councils, the Meta-Council on the Illicit Economy brings together a group of relevant stakeholders to reflect on this matter and offer solutions through public-private cooperation. In their paper on 'The State of the Illicit Economy' (2015), the Council acknowledges that international governance gaps are to be considered to support Governments to operate and cooperate. In specific, the internet is mentioned as a major governance gap, referring to the number of illegal websites and mentioning that with the "emergence of illicit e-commerce that is 'almost as easy as ordering from Amazon or eBay'".

In specific, so-called Dark Web marketplaces are innovative in the use of search engines, and allow people to browse the web while hiding identities, making use of crypto-currency such as bitcoin that lets them transact their business discreetly⁹⁰.

With new legislation in the area of e-commerce (including in the EU), there seems to be a pressure mounting on e-commerce platforms towards increased responsibility, and signing up to a 'voluntary' code of conduct committing them to actively and swiftly remove counterfeit products and illegal hate speech⁹¹. As such, the EU E-Commerce Directive (Directive 2000/31/EC on electronic commerce) may be adjusted in light of these mounting pressures.

⁹⁰ http://www3.weforum.org/docs/WEF_State_of_the_Illicit_Economy_2015_2.pdf

⁹¹ <https://www.ceps.eu/publications/limited-liability-net-future-europe%E2%80%99s-e-commerce-directive>

Internet sales of antiquities have grown ever since. By 2014 “*antiquities from most countries in the world could be bought online in many other countries in the world*”, the internet being a forum continually creating or adapting to new commercial opportunities.⁹² Because of the widespread ignorance or indifference on the part of customers to the issues involved and with merchants doing not sufficiently to raise awareness about illicit trade.⁹³

3.8.2.3 3.8.2.3. Technological development

Technical developments foster the illicit trade in cultural goods. International transactions and payments are facilitated through the digitalization trend, allowing for the swift and possibly anonymous dealing in trafficked cultural goods. Also, improvements of both technical nature and general accessibility concerning tools used in practices of excavation allow for the discovery of more ancient objects, also making excavation and looting of cultural goods accessible to a broader range of people.

3.8.2.4 3.8.2.4. Political and economic instability – regions in distress

The economic and political context of a region has a determinative impact on the preservation of local heritage sites and the illicit trafficking in cultural goods. Subsistent digging, for example, by definition only results from economic necessity. In recent years, public commotion arose on the destruction of cultural heritage by terrorist groups. In the margin of reports on crimes against humanity being committed, various news bulletins announced the destruction of archaeological sites, statues, shrines, tombs, and religious buildings. Reports suggest that terrorist groups do not limit themselves to the mere destruction of valuable cultural and archaeological sites and object, but also mention the sale of antiquities as a source of income for those groups, next to donations, smuggled oil, kidnapping, people trafficking, extortion and robbery.

Although the recent destruction of world cultural heritage sites in e.g., the Middle East as well as the reports of looting and smuggling of archaeological objects and artefacts from that region have put the issue in the limelight, the pillaging and plundering, excavation and robbery of cultural goods is neither a recent phenomenon nor solely ascribed to terrorist extremist groups. A variety of examples can be found in recent history, from the early 20th century (seizures by the Committee of Union and Progress of the Ottoman Empire, the Commission for the Storage and Registration of Artistic and Historic Monuments to facilitate the confiscation of individuals’ and institutions’ cultural property of the Soviet Union) to the mid-20th Century (confiscations by the Nazi regime, the seizure of goods by the Communist East German Commercial Coordination, China campaigns by the Communist Party, and the trafficking related to the Cambodian civil war).

When it comes to the supply side, both the damaging and destruction of cultural heritage sites and the generation of revenue has been looked into. Many cultural heritage sites are damaged or even destroyed by illegal excavation and looting activities, as it appears from multiple studies.

⁹² N. Brodie, *The Internet Market in Antiquities*, <http://traffickingculture.org/app/uploads/2016/01/2015-Brodie-ICOM-Internet.pdf>

⁹³ N. Brodie, *The Internet Market in Antiquities*, <http://traffickingculture.org/app/uploads/2016/01/2015-Brodie-ICOM-Internet.pdf>

3.8.3 Drivers

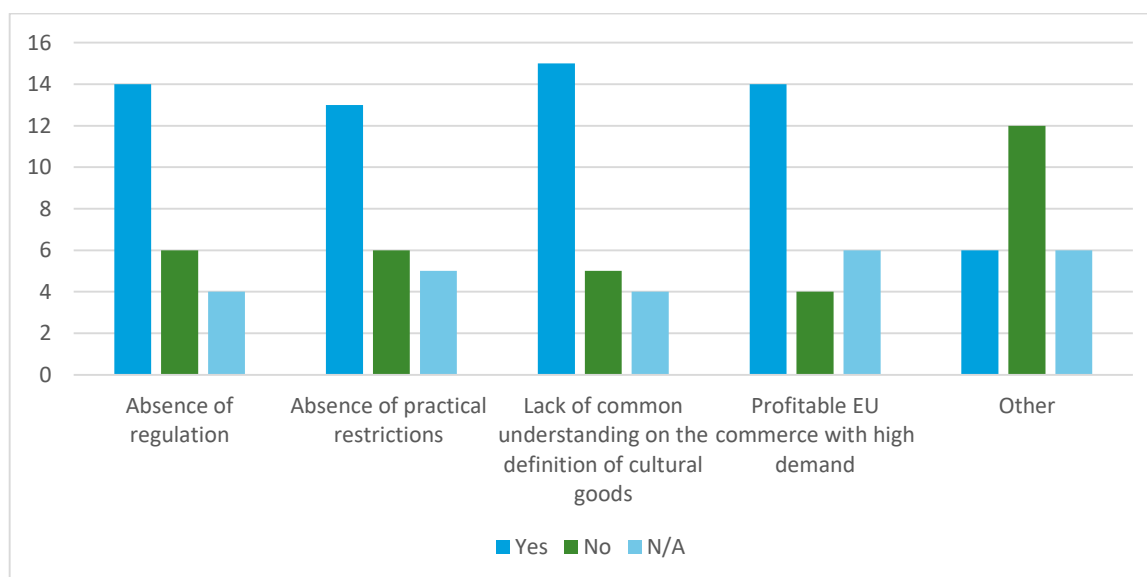
Several main drivers bolstering the trafficking in cultural goods have been identified, which were also considered by the majority of the respondent Member States to cause the discussed problem. In particular, the following drivers were considered:

- ✔ Absence of regulation on the market for cultural goods and trafficking;
- ✔ Absence of practical restrictions to trafficking;
- ✔ Lack of common understanding on the definition of cultural goods;
- ✔ Profitable EU commerce with high demand for cultural goods.

Several Member States suggested further elements driving the trafficking in cultural goods. The trafficking is also deemed to be caused by:

- ✔ The lack of sufficient regulation of art market professionals, in particular not always being subject to specific regulations on money laundering and the financing of terrorism;
- ✔ The lack of common controls at the borders of all Member States. Disparities with regard to the enforcement of existing regulations exist;
- ✔ The lack of information on provenance of cultural goods is problematic. Documentation should be available on lawful export from the exporting countries (e.g., through a well-documented export licensing system). Currently, in the field of trafficking in cultural goods there is no sufficient cooperation, exchange of information, registration and documentation of cultural goods.

Figure 29 – Drivers



Source: General survey to the EU Customs and Culture administrations (2016)

3.8.3.1 3.8.3.1. Absence of regulation regarding the import of cultural goods

The paragraphs above have shown that only a limited part of the policy on trafficking in cultural goods has been regulated at EU level, in particular when it comes to intracommunity trade and the exportation of cultural goods. With regard to importation, *ad hoc* measures are in place. The scope of the instruments in place – both nationally and internationally – differs in scope. Different definitions of cultural goods are used. Moreover, even when falling within the definition of cultural goods under a

certain instrument, the movement of the good in question is not always covered by the instrument concerned (e.g., illegally excavated goods that are not inventoried will not benefit from the 1970 UNESCO Convention). Much discretion is left to the Member States, which has led to a multiple-speed Europe. At international and global level, initiatives often cover only a part of the policy regarding trafficking and do not always gain sufficient attention.

3.8.3.2 3.8.3.2. Absence of practical restrictions to trafficking

When considering the practical restrictions to trafficking, one has to take into account:

- The (inadequate) expertise in law enforcement authorities: determining the origin, value and age of a good requires high level of expertise. Several EU Member States do not dispose of any or sufficient expertise with regard to cultural goods coming from a particular region (e.g., Middle-East, Latin-America, Western-Africa ...);
- The lack of sufficient national and international cooperation;
- The lack of sufficient resources for enforcement of the legal framework;
- The 'provenance question': it is recognized from examples in practice that accurately determining the provenance of a good is sometimes very difficult, if not impossible.

3.8.3.3 3.8.3.3. Lack of common understanding on the definition of cultural goods

The concept of cultural goods is not identified by a common definition. International instruments make use of different lists of goods, different thresholds.... Member States have given different interpretation to the term in their national laws, representing broader or narrower protection. The lack of a common definition follows from the difficulty to determine which goods deserve protection.

3.8.3.4 3.8.3.4. Profitable EU commerce with high demand for cultural goods

The main countries of destination – representing the *demand* side – are fundamentally economically powerful countries.⁹⁴ The size of the illicit market in cultural goods can be assumed to correlate to the size of the regular, licit market in cultural goods. Together with China and the United States of America, Europe is an important destination region⁹⁵. Apart from the source countries being affected, also in the countries at the demand side problems arise when it comes to the (detection of) illicit trafficking in cultural goods.

The body of quantitative studies of the market has performed research on the issue of provenance, i.e., the history of ownership and origin of a cultural good. Cultural goods are per definition of a certain age, hence the good has been transferred from owner to owner several times. Both the age of the good and its relation to a culture rather than an artificial country border benefits individuals and organizations illicitly trafficking cultural goods. Several studies have shown the lack of knowledge about the provenance of cultural goods, also with regard to large, high quality items.⁹⁶ Cataloguing cultural goods

⁹⁴ S. Hardy, *Illicit trafficking, provenance research and due diligence: the state of the art*, UNESCO, Paris, 2016, p. 7.

⁹⁵ TEFAF Art Market Report 2016

⁹⁶ See e.g., D. Gill and C. Chippindale, "Material and intellectual consequences of esteem for Cycladic figures", *American Journal of Archaeology* 1993/97, p. 616ff.; R. Elia, "Analysis of the looting, selling, and collecting of Apulian red-figure vases: a quantitative approach" in N. Brodie, J. Doole and C. Renfrew (eds.), *Trade in illicit antiquities: the destruction of the world's archaeological heritage*, McDonald Institute, Cambridge, 2001, pp. 145 – 154; C. Chippindale, D. Gill, E. Salter and C. Hamilton, "Collecting the classical worlds: first steps in a quantitative history", *International Journal of Cultural Property* 2001/10, p. 1ff.; M. Bell, "Italian Antiquities in America", *Art, Antiquity and Law* 2002/7, pp. 195 – 205; V. Norskov, *Greek vases in new contexts*, Aarhus University Press, Aarhus, 2002, pp. 256 – 270.

has proven to be relevant to track and trace illicitly trafficked goods. Qualitative research, on the other hand, has shown the impact of regulatory intervention on the illicit trade in cultural goods. An Israel study in this context has established that, as the regulatory framework offered possibilities for “object laundering”, the purpose of the regulatory intervention – i.e., countering the illicit trade in cultural goods by addressing the demand side – was surpassed by reality, actually facilitating illicit trafficking and contributing to the problem.⁹⁷ Also the number of repatriation cases – cases in which illegally exported goods were brought back to the country of origin – provide valuable insight in the extent of the problem.⁹⁸

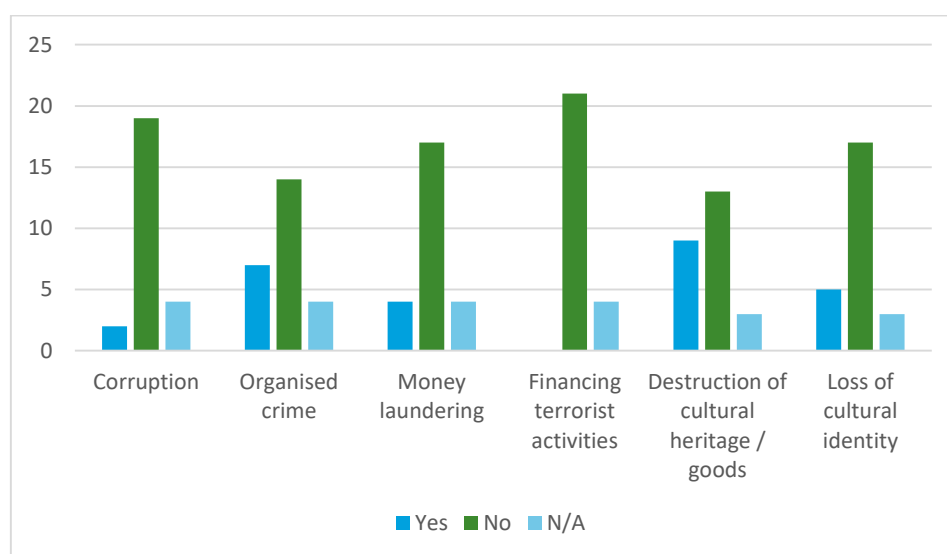
3.8.4 Effects

A number of effects of trafficking in cultural goods has been risen in literature. The following effects are believed to occur as the result of trafficking in cultural goods:

- ❑ corruption;
- ❑ organised crime;
- ❑ money laundering;
- ❑ financing of warring factions and terrorist activities;
- ❑ destruction of cultural heritage and/or cultural goods;
- ❑ loss of cultural identity.

As shown from the surveys to the Member States’ administrations, hard evidence on the existence of these effects is currently often lacking.

Figure 30 – Effects: available evidence



Source: General survey to the EU Customs and Culture administrations (2016)

⁹⁷ M. Kersel, *License to sell: the legal trade of antiquities in Israel*, University of Cambridge, 2006.

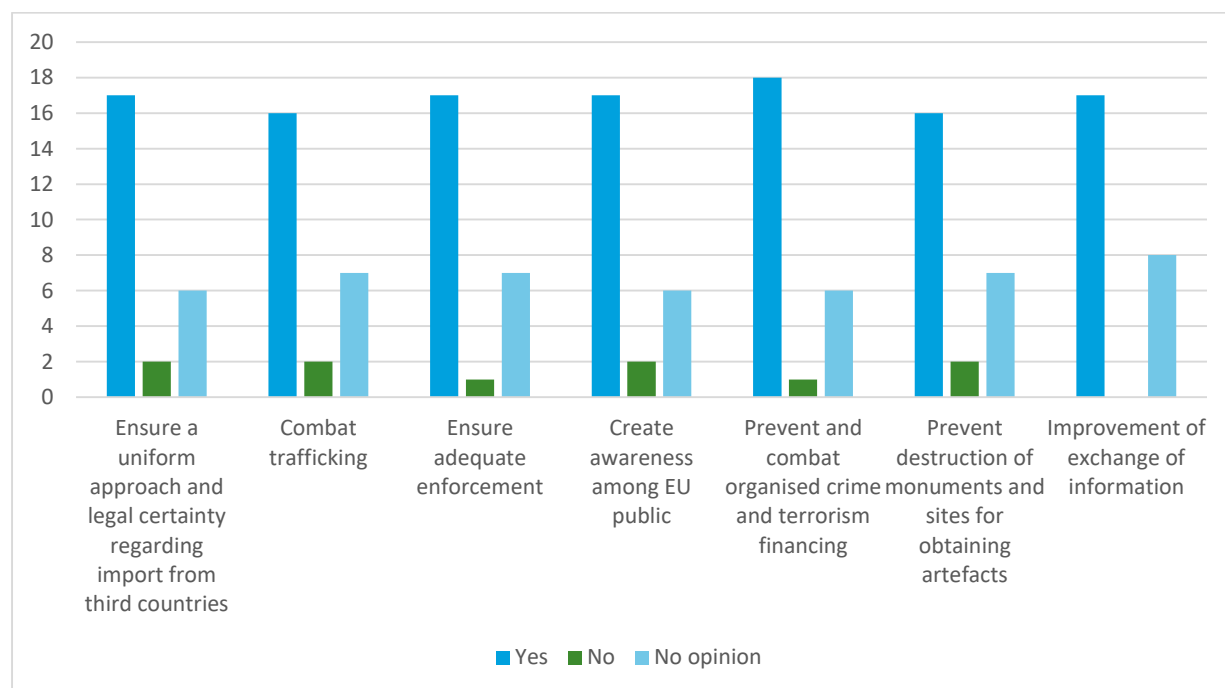
⁹⁸ S. Hardy, *Illicit trafficking, provenance research and due diligence: the state of the art*, UNESCO, Paris, 2016, p. 4.

4 Policy objectives

Policy objectives set out the political priorities and aims of the actions to be taken. The important questions are thus: what is the aim of the policy intervention and what is to be achieved? The definition of policy objectives is important, since they form part of the criteria for assessing the policy options in accordance with the Commission’s Impact Assessment Guidelines (effectiveness criterion).

The objectives need to reflect the definition of the problems on a systematic basis. Indeed, the specific objectives “mirror” the problems, the operational objectives “mirror” the drivers and the general objectives “mirror” the effects/impacts of the problem. The assessment of problems and causal links therefore informs the formulation of policy objectives because it is necessary to know which problems are relevant given the context and which problems are the most severe. At the same time, the definition of policy objectives may involve political considerations as to the priority of specific areas of problems or the order in which problems are addressed.

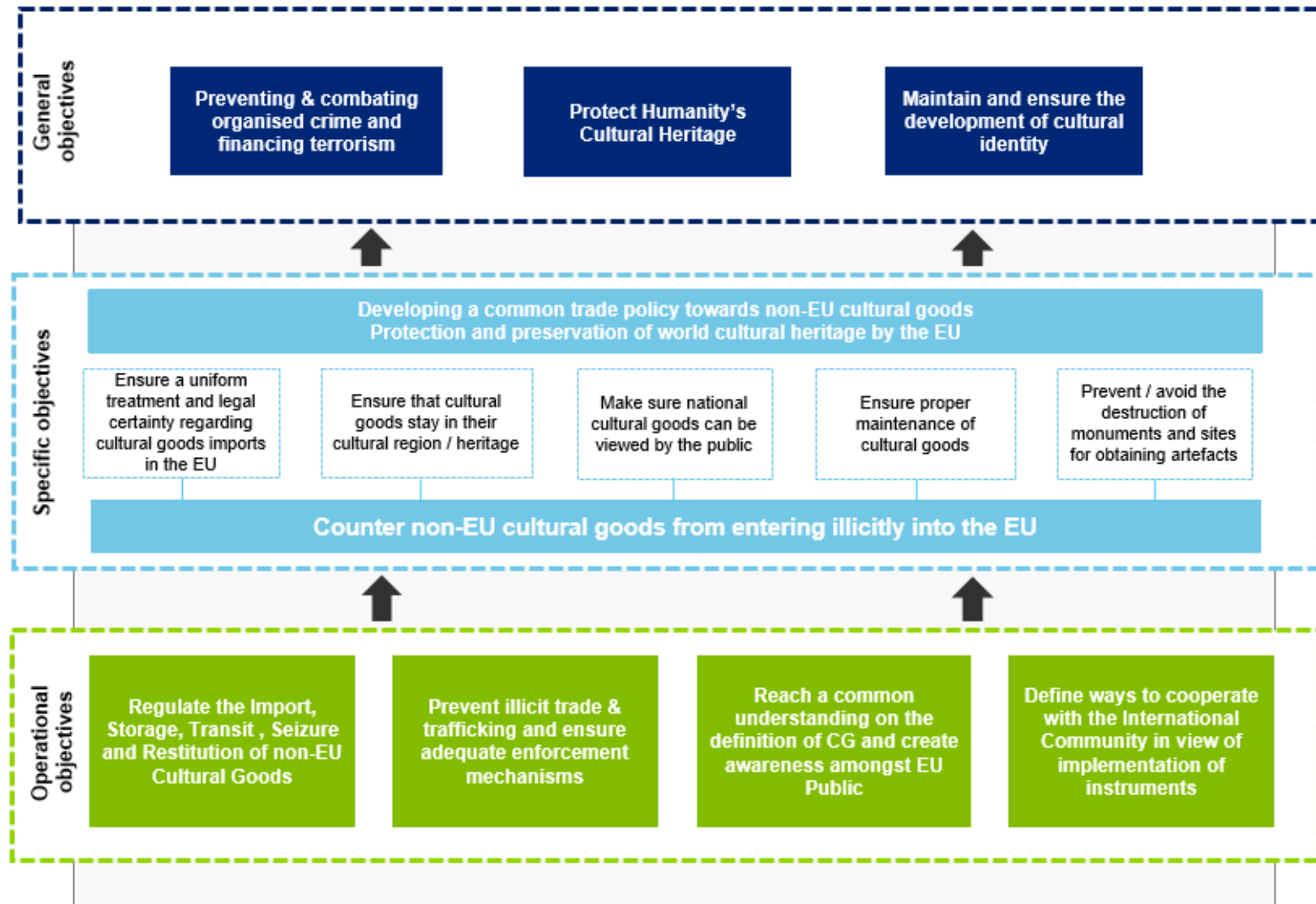
Figure 31 – Objectives pursued of new policy



Source: General survey to the EU Customs and Culture administrations (2016)

Figure 32 below provides an outline of the policy objectives that are pertinent to the present study, taking into account of the findings of the problem assessment. The figure flows from bottom to top.

Figure 32 – Objectives tree



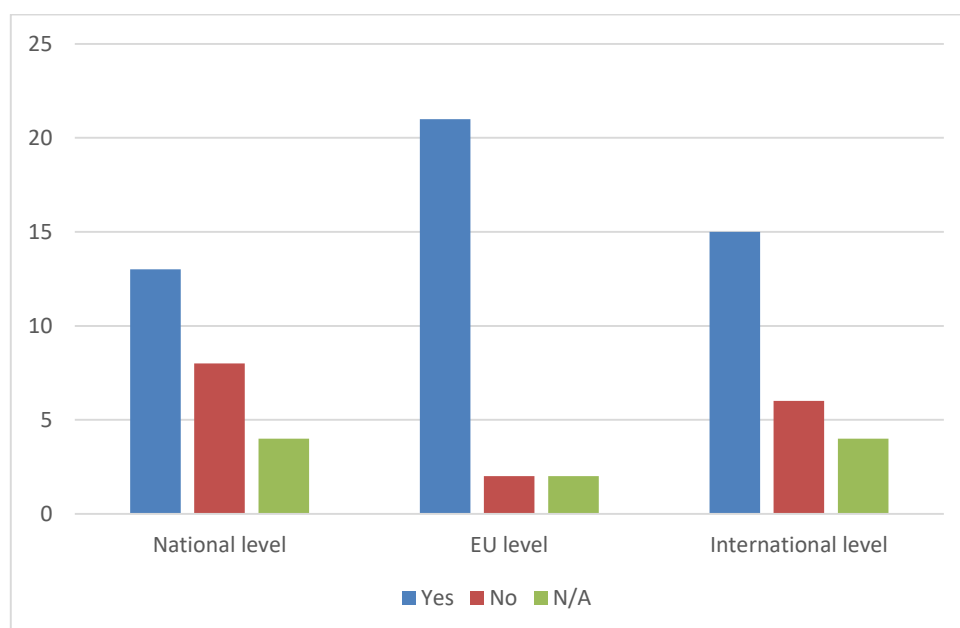
5 Policy options

5.1 Introduction

Based on the problem assessment elaborated in the previous chapters, a set of regulatory and policy options has been developed with the aim of supporting the overall objective of combating the illicit trafficking in cultural goods by addressing the importation of those goods into the European Union. Whereas the problem assessment, in line with the Terms of Reference, focuses on challenges in relation to legislation and implementation thereof, the policy options cover a wider set of instruments, encompassing both legislative options, as well as supportive measures. The proposed measures relate to the challenges that were identified through research as well as stakeholder interviews and questionnaires.

The results of the surveys to the different stakeholders (incl. the Member States) suggest that the Commission should take strong action in this area. On the demand side in particular, the vast majority of the respondents have considered that actions should be taken at EU level and less at national level.

Figure 33 – Action on the demand side



Source: General survey to the EU Customs and Culture administrations (2016)

The policy options include different aspects presented in the next sections.

5.1.1 Comprehensive set of options

When developing options, the first to consider would be maintaining the status quo, i.e., no additional action from the EU institutions. In the case of trafficking in cultural objects, there are different instruments that have been in place for a considerable period in time, notably the 1970 UNESCO Convention. The analysis indicates that the current situation and related problems will not be solved by these tools without further actions.

Taking the position that there is a need for action in this area, a wide range of comprehensive policy options (i.e. package of different and mutually supportive instruments) is to be considered in order to avoid pre-empting for one specific option without considering possible alternatives. In the set of policy options, supportive measures (minimalist approach), soft laws (medium approach) and EU binding instruments (maximalist approach) are considered. Each of these options will be compared to the current situation in order to identify the added value (advantages and disadvantages) of each one and finally to compare them with each other.

5.1.2 The rationale of the policy option

When proposing options, the rationale behind the policy option is elaborated. Different types of instruments have been identified, which can be combined in a package of solutions. When describing these instruments, the reason why they can bring value to the status quo situation is considered.

5.1.3 Content of the policy options

Each option includes a set of elements that will reinforce each other. Some elements will be present in several options. For instance, an instrument as an expert group could be considered as a supportive measure if its consultation is optional or in binding instruments if its consultation is mandatory in specific cases or situations.

The options may also demand control mechanisms as well as supportive measures to ensure effective implementation of the legislation. For instance, the existence of conditions to be met and procedures to be followed will need to be communicated to the users, who may need additional training or awareness raising. Similarly, institutional structures may need to be strengthened or put in place at EU or Member State level, so as to carry out the new tasks flowing from the new legislation. These measures will need to be considered, once the Commission will identify the preferred option(s) that is (are) more likely to be implemented.

5.1.4 The scope of the policy options

Important aspects of policy options related to the fight against trafficking of cultural goods are:

1. The **geographical scope**, i.e. will the instruments/options be applicable in all countries, only in the EU MS and/or specific regions, e.g. for cultural goods coming from warzones. Limitation to the latter will be difficult to implement because artefacts are mobile and are known to transit to countries outside warzones before entering the EU.
2. **Specific cultural goods**, e.g. cultural goods with a certain value could be considered.
3. **Time aspects**, e.g. cultural goods sold after or before a certain date are within scope of the instrument.

These three elements will be specified for each set of options.

5.1.5 Coherence of actions of the different stakeholders

When elaborating the options, the role of the different actors is to be identified in order to:

1. Assess whether they can materially and politically contribute to the implementation of the policy options, e.g. imposing the creation of a certifying body in third countries is not politically feasible;
2. Estimate the burden and costs of each option and therefore their feasibility and acceptability, e.g. imposing an estimation of the value by a third party of each cultural good that is sold could be considered disproportionate.

A comprehensive approach to tackling illicit trafficking in cultural goods effectively, demands clear responsibilities identified and strong coordination established between institutions at different levels of governance. Experiences from implementation of existing import or export restriction schemes, such as in trade of rough diamonds, are to be taken into account⁹⁹

1. At *EU level*, a strengthening of EU legislation is to be proposed, coupled with guidelines relating to the trafficking in cultural goods, so as to allow for a common approach across EU Member States. In addition, control mechanisms are to be considered, ranging from declaration to the certificates to the use of a 'cultural goods passport' (or Object ID). Supportive measures, including on training, awareness, as well as in the area of technology (databases) may be required to facilitate implementation and coordination with and between different actors.
2. At the *level of EU Member States*, Competent authorities are to be designated to fulfil tasks flowing from the legislation. Sanctions are to be determined, to be imposed in the case of infringement. Without strong coordination between EU and EU Member States on enforcement and sanctions, differences between countries may result in non-harmonized application of the EU legislation proposed.
3. At the *level of international organisations*, proposed actions (inter alia) may include exploring means to improve the value of existing tools and instruments for the EU, such as offered by ICOM (Code of Ethics) or UNIDROIT (due diligence). In addition, a strong role of international organisations is to be seen in the area of exchange of information through systems (linking existing platforms).
4. At the level of *third countries (non-EU Member States)*, proposed actions (inter alia) may relate to improving institutional capacity (as already initiated by UNESCO meetings), and increasing awareness.
5. At the level of *economic operators (buyers and/or sellers)*, proposed actions (inter alia) may relate to codes of conduct and awareness raising activities, or imposing the use of certain IT systems (databases) for the filing of customs documentation. As result of control mechanisms put in place, economic operators may face the obligation to apply for a certification or submit a signed declaration to be presented to customs authorities before importing cultural goods legally into the EU.

Looking at the roles and responsibilities of the different actors means as well that we have to ensure coherence between the policy option and control mechanisms considered and the current tools and rules that already exist. As described in the section 3 on the problem analysis, there are indeed different initiatives already existing in the area of cultural goods, e.g., 1970 UNESCO Convention and the 1995 UNIDROIT Convention. In Customs area, different instruments also exist for identifying the goods

⁹⁹ See for example; http://www.asser.nl/media/1645/cleer14-3_web.pdf, accessed 15.01.2017

imported in the EU. When developing the options, their integration in this broader framework was considered.

5.2 Types of policy options

5.2.1 Baseline scenario – no action

Description

The identified problems are not addressed through additional actions at EU level.

At the level of *legislation*, this implies that **no specific EU regulatory framework is in place** to control the importation of third country cultural goods. Unless a particular national regime would apply, cultural goods are treated like any other goods being imported and controls carried out on the importation of cultural goods are limited. There would be no system in place of prior verification of the legality of imports of cultural goods entering the customs territory of the EU. The *ad hoc measures* restricting the import of cultural goods from Iraq and Syria (resp. Regulation 1210/2003 and Regulation 36/2012) may be continued.

However, the baseline scenario also contains the risk that current *ad hoc measures* may be discontinued, as result of the repealing of sanctions against Iraq and Syria. As *ad hoc measures* are put in place as result of sanctions against third countries, they are by definition limited in time. Whereas other types of *ad hoc measures* may in theory be adopted in relation to new sanctions imposed on third countries, the procedures for adoption are lengthy, putting cultural goods in those country at continued risk of illicit trafficking.

The baseline scenario also implies that **EU Member States (national legislators) remain in charge of any initiatives with regard to the importation of cultural goods** (with the exception of the *ad hoc* EU initiatives on Syria and Iraq). The burden of proof in the current situation lays with the competent authorities in the EU Member States. Some Member States, such as France and Germany, have developed national legislation in the absence of EU level regulatory framework in this regard.

Without a harmonized approach and regulatory framework for EU customs authorities to enforce and considering that the EU is an important outlet for (trafficked) cultural goods, there is no substantial protection against the illicit importation of cultural goods into the EU.

In terms of non-legislative support to prevent the illicit trafficking of cultural goods into the EU, the baseline scenario provides for a limited role of the EU, and a somehow fragmented approach through actions at the level of international organisations (UNESCO, UNIDROIT, WCO, INTERPOL), European Union (DG TAXUD and DG Culture) as well as at the level of Member States.

Advantages

- The two *ad hoc* measures prohibiting the import of cultural goods from Iraq and Syria (resp. Regulation 1210/2003 and Regulation 36/2012), which are measures encompassed in the broader restrictive measures imposed against Iraq and Syria, are supporting the EU over-all objective of protecting cultural heritage and to adequately take action subsequent to the international calls (e.g., by the UN SC);
- The awareness of customs authorities in EU Member States on illicit trafficking of cultural goods is growing as a result of the *ad hoc* measures;

- Albeit limited in number, the seizures under the current regulatory framework have proven that an EU legislative framework is relevant in addressing the illicit trafficking of cultural goods.

Disadvantages

- As illustrated through the Member State examples (*inter alia* on Netherlands and Germany) and the responses to the questionnaires, there is willingness to take action against trafficking in cultural goods, with an important role for the EU. The baseline scenario has proven insufficient to tackle the trafficking, notwithstanding the important demand market in the EU.
- Considering the qualitative and limited reliable quantitative data available, the relatively low level of seizures could indicate the weaknesses of the current import controls system, particularly with regard to the effectiveness of the measures in place. National measures in place suffer from the existing disparities in the EU and consequently the lack of a harmonized approach.
- Particularly the lack of an overall framework and the burden of proof imposed on the customs authorities could be considered problematic in view of effectively tackling the trafficking in cultural goods.
- In terms of cooperation, the exchange of information between customs authorities is sub-optimal to non-existent.
- With regard to supportive capacity and measures, the difficulties include the limited availability of expertise and awareness, as well as resources (manpower) on the side of the customs authorities to carry out the enforcement tasks.

In addition, the study found that *systems and technological tools* are a crucial success factor supporting the effective implementation of EU rules in the area of customs and border controls and aiming to limit the illicit trafficking of cultural goods. In the case of the *ad hoc* rules in place under the baseline scenario, customs authorities will continue to work with different systems that are not inter-connected (such as the INTERPOL database of stolen works of art). The lack of a dedicated EU 'cultural goods' web portal for customs authorities has stood in the way of effective sharing of information, supporting identification and a tracking and tracing of cultural goods).

In terms of *cooperation*, customs authorities continue to operate through expertise, network and membership of international organisations (WCO, UNESCO, INTERPOL, etc.) but with rather limited support from EU-level structures and expertise. Currently, supportive measures provided by DG TAXUD and DG Culture are limited, although the existing Expert Group on customs issues related to cultural goods (E03313)¹⁰⁰ provides advice and expertise to the Commission and its Services in relation to the customs legislation including the *ad hoc measures*.

Currently, there is no network of National Contact Points on Illicit Trafficking of Cultural Goods, nor are dedicated electronic databases facilitating the exchange of information on cultural goods imports into the EU between Member States.

Over-all, it is to be noted that, in the changing context of the existing political instability in a number of regions as well as terrorist groups financing their activities through the trafficking in cultural goods, the baseline scenario is considered too limited in its scope. With the ambition to 'disrupt the sources of revenue of terrorism' as mentioned in the Commission's Communication to the European Parliament

¹⁰⁰ See Register of Commission Expert Groups, <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3313> accessed 01.02.2017

and the Council on an Action Plan to strengthen the fight against terrorist financing (February 2016), the baseline scenario is falling short in terms of providing a comprehensive approach to tackling the illicit trafficking in cultural goods that could finance terrorism.

5.2.2 EU Supportive measures

The combating of illicit trafficking in cultural goods, in the context of the Action Plan to strengthen the fight against terrorist financing, demands for a range of supportive actions and mechanisms that enhance the effectiveness of an EU regulatory framework. The measures would support the protection of third country cultural goods and cultural heritage of mankind (cultural policy instrument), as well as prevent trafficking of cultural goods and the negative consequences thereof (foreign and commercial policy), e.g., the impact on the EU internal market and on terrorist financing.

As part of this study, a (limited) analysis of existing support measures in EU Member States was undertaken and requires a more in-depth analysis, including also the European Commission support, UNESCO, ICOM and other international organisations. Examples of existing support measures in EU Member States are presented below. Based on the study, and taking into account previous research in this area¹⁰¹, the proposed EU supportive measures are suggested in this chapter.

5.2.2.1 Examples of EU Member States supportive measures in relation to the protection of cultural goods and prevention of illicit trafficking thereof

Through their dedicated mandates, the strong expertise and experience in protecting cultural goods world-wide, international organisations, especially UNESCO, ICOM and INTERPOL (as well as others), fulfil an essential role in providing technical assistance and awareness raising on the importance of cultural heritage, and the risks of illicit trading of cultural goods. In addition, the European Commission provides targeted support, targeting both EU Member States, as well as third countries.

A key role in current provision of supportive measures on prevention of trafficking of cultural goods at EU level is played by Directorate General for Education and Culture (DG EAC). Apart from fostering improved cooperation between EU Member States, as well as with international organisations and European Commission and agencies (including Eurojust and Europol), DG EAC in cooperation with other European Commission DGs and international organisations supports development of effective measures to combat trafficking of cultural goods¹⁰². An important initiative is the creation of EU-CULTNET in 2012, improving exchange of information through creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods.

At EU Member State level, supportive measures are provided to combat the trafficking in cultural goods, complementing the participation of and contribution by EU Member States to EU programs and international organisations. Below overview provides some examples of such measures, showing the different types of instruments used (with an emphasis on awareness raising).

➤ France:

As part of its prevention mission, the Central Office for Combatting Trafficking in Cultural Goods (OCBC) participated in the drafting of a prevention guide on the security of cultural property

¹⁰¹ Including: Study on preventing and fighting illicit trafficking in cultural goods in the European Union, October 2011 (Contract No. Home/2009/SEC/PR/019-A2)

¹⁰² https://ec.europa.eu/culture/policy/culture-policies/trafficking_en, accessed on 27.01.2017

published by the Ministry of Culture and Communication. This guide is intended for all owners and managers of works of art, whether individuals or professionals. It provides simple and practical advice and tools, enabling everyone to protect against theft of their own property and through them our common artistic and cultural heritage¹⁰³.

➤ Germany

In 2015, the Federal Foreign Office (FFO) has made public a leaflet entitled “illicit trade in cultural property is threatening humanity’s cultural heritage” targeted to buyer and tourist in order to raise awareness on the issue on the illicit trade of cultural goods¹⁰⁴.

In December 2014, the FFO held a conference on “Cultural Heritage in danger: illicit excavations and trade” where several national and international expert gathered to discuss the current situation and the perspectives for futures developments in the area of protecting cultural property.

The German Customs authorities also provide extensive and detailed information on the different procedure and customs regulation on the protection of cultural property.

➤ Netherlands

In the Netherlands, the Erfgoedinspectie (‘inspection of heritage’) is a dedicated unit working closely with Dutch customs and Ministry of Finance as well as Ministry of Foreign affairs to combat illicit trafficking of cultural goods. Experts from the Erfgoedinspectie support Dutch development projects in the area of cultural goods protection, such as in Bulgaria and Romania in 2008. A dedicated Q&A section is available on the website, raising awareness about do’s and don’ts. A brochure for import and export of cultural goods is available¹⁰⁵.

➤ Greece

In Greece, one of the main goals of the Department of Documentation and Protection of Cultural Property focuses primarily on public awareness.

➤ Portugal

The Department for Cultural Heritage (DGPC) provides information on trade of cultural goods. A user friendly ‘guide to procedures’ for the movement of cultural property is available on their website¹⁰⁶.

5.2.2.2 EU awareness raising campaigns on the importance of cultural heritage and the effects of trafficking in cultural goods

Description

The critical role of education and awareness raising in addressing the trafficking in cultural goods cannot be overstated. Awareness raising campaigns proposed hereunder offer a dual approach. On the one hand, they should address the existing ignorance and poor ethics, as well as lack of understanding on the importance of cultural heritage for states (in the EU and in third countries). In addition, awareness

¹⁰³ <http://www.culture.gouv.fr/culture/securite-biensculturels/appli.htm>, accessed on 20.01.2017

¹⁰⁴ https://www.zoll.de/SharedDocs/Downloads/DE/Publikation/Broschuere/Reise-Post/faltblatt_illegaler_kulturguthandel_en.pdf;_blob=publicationFile&v=10, accessed on 20.01.2017

¹⁰⁵ www.erfgoedinspectie.nl, and <http://www.ondernemersplein.nl/regel/invoer-uitvoer-cultuurgoederen/>, accessed on 20.01.2017

¹⁰⁶ www.patrimoniocultural.pt , accessed on 20.01.2017

raising campaigns should also inform about the risks of trafficking, such as the penalties associated with illegal import of cultural goods coming from a European or third country.

The different EU awareness raising campaigns are to be developed and distributed in close cooperation with UNESCO, UNIDROIT and WCO, and other relevant bodies to build on best practices. The coordination of the awareness raising campaigns should be under responsibility of European Commission (DG TAXUD or DG Culture) in cooperation with UNESCO and WCO. In each country, the National Contact Points play a crucial role in promotion and distribution through their networks and existing local platforms. In third countries, the EU delegations can closely cooperate with implementing partners to ensure the relevant content and partners for the targeted events and awareness raising campaigns.

The 4 different campaigns to raise awareness should be initiated covering the dual approach (importance of cultural goods, and risks of trafficking), targeting different stakeholders within the EU and in selected third countries.

Within the EU:

- For customs officials: awareness raising campaign on the importance of cultural heritage for states, and the effects of the trafficking of cultural goods (under the existing *ad hoc* measures and/or new EU regulatory framework).
- For art market and general audience: awareness raising campaign on the importance of cultural heritage for states, and the effects of the trafficking of cultural goods (under the existing *ad hoc* measures and/or new EU regulatory framework).

In (selected) third countries:

- For customs officials: awareness raising campaign on the importance of cultural heritage for states (specific attention to cultural goods from the region), and the risks and effects of the trafficking of cultural goods (under the existing *ad hoc* measures and/or new EU regulatory framework).
- For art market and general audience: awareness raising campaign on the importance of cultural heritage for states (specific attention to cultural goods from the region), and the risks and effects of the trafficking of cultural goods (under the existing *ad hoc* measures and/or new EU regulatory framework).

In terms of tools and instruments, the awareness raising campaigns can take different forms:

- Stakeholder debates on 'our cultural goods; risks or opportunities?' (including e.g., local press covering the event so as to ensure outreach);
- Expositions through photo-documentaries or brief video's;
- Social media campaigns;
- A cultural good 'back-trafficking' roadshow, visiting schools, art centres, etc. (the journey back from the EU to the origin);
- 'Cultural Goods Trafficking Game': the importance of cultural goods & risks trafficking;
- Information campaigns targeting key events (i.e. professional art fairs), or locations (i.e. airports, ports, market places).

Advantages

- Relatively cost-efficient, as existing structures and networks, through UNESCO and WCO inter alia, are already in place to organise awareness-raising campaigns on cultural goods' importance and the risks of trafficking.

- Although it is difficult to measure the overall impact of awareness-raising campaigns (especially the impact on art market and general audience), this component is nonetheless considered as indispensable to combating illicit trafficking of cultural goods. Best practice experiences are to be taken into account in this respect, such as the international cooperation and technical assistance provided to combat illegal trade in wildlife, ivory or rough diamonds.

Disadvantages

- Whereas awareness-raising campaigns may discourage some traffickers, the financing of terrorism through (serious and organised) trafficking of cultural goods will not be addressed structurally through this option.

5.2.2.3 EU coordinating department on 'Trafficking of Cultural Goods'

Description

The complexity of the trafficking of cultural goods, especially in the context of the financing of terrorism, brings with it certain challenges in terms of coordination at EU level. As this and other studies have shown (cf. 2011 *Study on preventing and fighting illicit trafficking in cultural goods in the European Union*), the lack of cooperation and trust between different stakeholders in the context of combating trafficking in cultural goods (i.e., governments, officials, market operators, buyers) stands in the way of optimal implementation and enforcement of EU rules. The multidisciplinary character of the trafficking of cultural goods demands a crosscutting coordination approach at EU level, whereby a dedicated team maintains strong expertise and coordinates the network of national and international stakeholders, thus creating trust and coherence in the implementation of the EU strategy and policy.

Whereas such a cross-cutting department currently does not exist at EU level, the number of European Commission Directorates General involved in coordination are numerous, *inter alia*:

- Education and Culture (EAC);
- International Cooperation and Development (DEVCO);
- Internal Market, Industry, Entrepreneurship and SMEs (GROW);
- Taxation and Customs Union (TAXUD);
- Trade (TRADE);
- Migration and Home Affairs (HOME);
- EU External Action Service (EEAS).

In the event an EU regulatory framework on the importation of cultural goods is considered, the coordinating role could be within DG TAXUD (monitoring implementation of customs regulations).

A crosscutting department operating on a permanent basis, would have as its main responsibility to serve as an **advisory body**, and to provide strategic expertise and implementation support to national authorities and international stakeholders on the trafficking of cultural goods. Second, the department's objective should also be to foster a cooperative culture and enhance mutual trust between persons and services concerned, both within EU institutions and with member states authorities and non-government stakeholders. Furthermore, the department could also represent the Union in competent international bodies (UNESCO, WCO) on cultural goods trafficking, where appropriate.

Advantages

- Through a pooling of available expertise within EU Directorates Generals, this relatively cost-efficient support measure could deliver tangible results in an area which has appeared as crucial to the combating of trafficking of cultural goods: cooperation and coordination.
- Most definitely in the event that EU-level regulatory framework on combating cultural goods is expanded, this support measure is a strong complementary action.

Disadvantages

- In order to be successful, the option requires support from the participating stakeholders as well as a dedicated budget and mandate.
- Obtaining the required budgets and human resources as well as institutional basis to create such a department would prove challenging.

5.2.2.4 Cooperation between relevant authorities

Description

The lack of cooperation between national authorities responsible for combating trafficking in cultural goods seriously limits the efficiency of an EU regulatory framework. Hence, stepping up efforts in this area, and especially targeting the level of trust between customs authorities, is crucial to the success of a possible new regulatory framework. Although instruments for cooperation are already in place, such as the EU-CULTNET improving exchange of information and cooperation between expertise and law enforcement agencies, there is room for improvement.

Within the EU member states, a support structure will consist of a (the proposed) network of cultural goods experts (who know each other), working closely and providing expertise to the formal National Contact Points on cultural goods and support cooperation in combating the trafficking. The National Contact Points are advised to be set-up within the entity responsible for monitoring customs and trade of cultural goods (for example: dedicated Ministry), so as to also be able to participate in discussions at international level (EU, UNESCO, etc). The National Contact Points would liaise closely through (a dedicated part of) the EU web-portal on cultural goods and would meet at regular intervals.

The following options could be considered:

- Within the EU:
 - Further enhancing the role and functioning of EU-CULTNET;
 - Setting up of National Contact Points in all EU Member States for the prevention, investigation and prosecution of trafficking in cultural goods;
 - Supporting the use of Object ID
- In (selected) third countries: Provide financial and institutional support to set-up National Contact Points in selected third countries, for the prevention, investigation and prosecution of trafficking in cultural goods.

Advantages

- Focus on exchange of information, building on existing collaboration mechanisms (EU-CULTNET).
- Improved and dedicated institutional capacity on cultural goods trafficking in the member states and in third countries will directly support the implementation of EU rules and combat trafficking.

National Contact Points can serve as radar between national dialogue and international discussions.

Disadvantages

- Limited disadvantages; financial and political support required by all EU member states.

5.2.2.5 Training for Customs officers and economic operators

Description

With growing pressure on customs authorities to perform in the area of risk management, including the tackling of illicit cultural goods, the need for skills and knowledge also has augmented. As indicated by customs officials dealing with the export license system in place, the lack of skills often pertains to the categorization of cultural goods, as well as to the assessment on provenance of the cultural good. Second, a lack of information and knowledge of customs authorities is limiting exchange and cooperation with other EU Member State. The knowledge gaps include the following areas: applicable legislative frameworks at EU and national level (ad hoc measures) pertaining to the imports and exports of cultural goods, as well as relevant international frameworks, such as UNESCO and UNIDROIT Conventions. In addition, awareness of specific conditions and procedures relating to trade of cultural goods (in-bound, out-bound, storage), the role of EU legislative frameworks (and possible changes as result of proposed new legislation),.

This support measure proposes dedicated trainings, which could take the form of trainings requiring physical presence, as well as e-learning modules. Whereas physical-presence trainings are deemed crucial for customs authorities (supporting the building of mutual trust), the e-learning modules are considered more appropriate for economic operators and society.

Dedicated trainings can be considered in the following areas for customs officers (as well as other selected stakeholders, such as police officers, military staff, diplomats, judges):

Within the EU:

- Focus issue # 1: investigation, detection and risk management techniques to combat illicit trafficking in cultural goods (including with respect to the rise in e-commerce 'faceless traders' as result of logistics providers acting as importer of record, and growth of low value parcels);
- Focus issue # 2: (for destination countries) categorization of types and provenance of cultural goods;
- Focus issue # 3: understanding trade flows and art-market dynamics driving the illicit trafficking in cultural goods, including relevant codes of ethics (incl. ICOM Code of Ethics for museums, and UNESCO International Code of Ethics for Art Dealers).

Selected third countries:

- Focus issue # 1: investigation, detection and risk management techniques to combat illicit trafficking of cultural goods;
- Focus issue # 2: categorization of types and provenance of cultural goods;
- Focus issue # 3: understanding trade flows and art-market dynamics driving the illicit trafficking of cultural goods (incl. ICOM Code of Ethics).

Addressing the illicit trafficking in cultural goods cannot take place without engaging stakeholders in the art market and society at large, taking away ignorance or un-willingness to operate on the basis of agreed Codes of Ethics (UNESCO International Code of Ethics for Art Dealers)

In addition, dedicated on-line trainings are to be considered in the following areas for economic operators and society:

- Focus issue # 1: understanding trade flows and art-market dynamics driving the illicit trafficking of cultural goods (incl. UNESCO Code of Ethics);
- Focus issue # 2: exporting, importing and storage of cultural goods in the European Union: what works and what does not work in the new EU regulatory framework.

5.2.2.6 EU expert group

Experts have proven to fulfil a crucial role in supporting Member States' customs authorities in the process of identification of a cultural good. Specific challenges whereby expert appraisals are being sought include (inter alia) the identification of provenance and value assessment. Customs authorities in EU Member States currently rely on an informal network of experts, often through contacts with (national or international) museums hosting a collection of Middle East and/or North African arts. The existing Expert Group on customs issues related to cultural goods, led by DG TAXUD, is providing expertise and guidance.

However, on a more day-to-day basis, there is no 'operational level' expert group at EU level that could support the customs authorities in their daily tasks related to enforcement of the existing (or possible future) EU rules in the context of 'illicit trafficking of cultural goods'.

This supportive measure proposes:

- At EU level: To set up an EU expert group on 'identification of (potential) illicitly trafficked cultural goods'.
 - Institutional context:
 - Linked to existing network of experts, such as in the context of INTERPOL and WCO;
 - Procedural workings:
 - 'digital expertise' from experts can be requested by customs authorities through the dedicated EU web-portal, and making use of the object-ID provided by the exporter;
 - 'physical expertise' from experts to be sought in the case of doubt expressed through digital expertise provided
 - Expert selection: based on proven expertise related to specific regions related to incoming geographical origin of (illicit) cultural goods;
 - Financing:
 - Dedicated financing mechanism to be developed and granted to the coordinating entity (EU, WCO, INTERPOL or other).
- In third countries: To support local customs authorities in identifying possible illicit trafficking of cultural goods (destined for the EU market) at export, by setting up a MENA-region network of experts on 'identification of (potential) illicitly trafficked cultural goods from the MENA-region'.
 - Institutional context:
 - Linked to existing network of experts, such as in the context of INTERPOL and WCO (regional liaison offices);

- Procedural workings:
 - 'Digital expertise' from experts can be requested by customs authorities in third countries through the dedicated EU web-portal, and making use of the object-ID provided by the exporter
- Expert selection: based on proven expertise related to MENA-region cultural goods
- Financing:
 - Dedicated financing mechanism to be set-up for selected target countries, allowing customs authorities request for expertise from international experts (upon conditions to be determined)

Advantages

- This flexible and 'on the job' expert group would provide the expertise currently lacking, especially for customs authorities to support the more difficult cases;

Disadvantages

- Financial resources are required as well as the appropriate institutional/operational framework.

5.2.2.7 Creation of a central authority monitoring sales over the internet

Looking at the demand-side incentives for illicit trafficking in cultural goods, the sales over the internet (such as investigated by Netherlands' in the case of Iraqi cultural goods), has proven to be a growing channel for traffickers to find buyers within the EU.

The online platforms, often using auctions or offering goods through an online marketplace, are increasingly used for the sale of trafficked cultural goods, leading to changing characteristics of relations between buyers and sellers as well as change of distribution channels in the market of cultural goods. The monitoring of e-commerce of cultural goods, already initiated under the Interpol Export Group (IEG) on Stolen Cultural Property, has been identified as one of the major challenges in combating illicit trafficking of cultural goods. Whereas some tools have been developed to counter the rise of increasing sale of trafficked cultural objects through the internet, such as the 'basic actions list' developed by INTERPOL, UNESCO and ICOM, the lack of organised capacity to effectively monitor and support enforcement in this area allows for the sale of trafficked cultural goods through the internet to flourish.

This supportive measure would imply to set-up a central authority or dedicated department (within UNESCO, INTERPOL, ICOM or WCO) for the monitoring of (potentially trafficked) sales of cultural goods over the internet. In the context of sales of cultural goods over the internet, it is important to consider that no threshold value is introduced for the monitoring of (e-commerce of) cultural goods, as more often than not, items sold by e-commerce have low prices (small, multiple items).

Advantages

- With growing importance of the internet as a distribution channel for trafficked cultural goods to buyers in the EU, the improved institutional capacity can prove very effective in limiting the chances that trafficked cultural goods can be offered and sold over the internet. By focusing on this important demand-side pull-factor (e-commerce), the improved institutional capacity will support effectiveness of the implementation of a possible EU regulatory framework;
- Based on existing expertise at INTERPOL, UNESCO and ICOM in e-commerce and cultural goods trafficking, a dedicated department may be set-up with financing by EU and non-EU partners. Within the EU crosscutting department (proposed), dedicated resources can ensure translation to EU networks and dialogues.

Disadvantages

- Financial resources are required to set up an authority, whereas a dedicated department in an existing institution (INTERPOL, UNESCO, ICOM) would be less demanding in that respect.

5.2.2.8 Creation of an EU data portal

Description

In order to keep track on archaeological items, it is essential that EU law enforcement units gain access to the existing national (Carabinieri, etc.) and international databases (WCO, Interpol, etc.) of looted items. The creation of a European platform (or: portal) would especially target to expand the cooperation and improve the exchange of information between different actors, including economic operators. Building on existing databases (including maintained by WCO, UNESCO and INTERPOL), , such a portal would serve different actors. On the one hand, the portal serves a broader and public function for individuals and actors in the art market. On the other hand, the portal would serve institutions with a dedicated role in the combating of cultural goods trafficking. Whereas the CENcomm based electronic information platform codenamed ARCHEO¹⁰⁷ currently serves as a relevant platform to communicate and exchange information between customs authorities of WCO members, the access of ARCHEO is restricted and not accessible for public authorities or private sector actors.

General information consists of information about the role of different actors (UNESCO, UNIDROIT, ICOM, INTERPOL, WCO, EU as well as national actors) and links to their websites, as well as definitions and categories of cultural goods. Specific information will be targeted at the coverage of the EU regulatory framework and implementation thereof, including on the provenance and origin of goods, the movement of goods and enforcement in the case of infringement. In addition, a part should be dedicated to practical documents (possibly including the Object ID) and tools, as well as a contacts database.

Advantages

- The EU web portal is to be considered as the key enabler for successful implementation of legislation aimed at restricting the trafficking of cultural goods into the EU, especially by improving information exchange (such as Object ID) between different stakeholders (including economic operators).
- Improved enforcement as a result of information sharing, tracking and tracing, as well as improved trust between different stakeholders.
- Possibility to build on existing platform (ARCHEO).

Disadvantages

- Demands financial resources to develop and maintain this portal.

¹⁰⁷http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage/arcgeo_brochure_en.pdf, accessed 20.01.2017

5.2.3 EU soft law measures

5.2.3.1 EU guidelines and recommendations

Combining the baseline scenario, with the supportive measures, this 'soft-law- approach would support the raising of awareness on illicit trafficking of cultural goods and the links to financing of terrorism. Through a Council Recommendation, the different actors are stimulated to take a more pro-active approach; the economic operators to show 'good behaviour' and look out for potential illicit cultural goods in the market place, the customs authorities to actively monitor incoming cultural goods and act in the case of suspicion, based on the EU regulatory framework in place (current and/or future). Due to their non-binding nature, the lack of clear obligations (i.e. penalties for non-compliance) mean that guidelines and recommendations would not prove effective in combating illicit trafficking of cultural goods.

5.2.3.2 Open Method of coordination and recommendations on the use of the tools

As defined by the European Commission¹⁰⁸, the open method of coordination (OMC) is part of the 'soft' law category. *"It is a form of intergovernmental policy-making that does not result in binding EU legislative measures and it does not require EU countries to introduce or amend their laws"*.

OMC is based on

- Jointly (European Commission and the EU Member States) identified and defined objectives;
- Jointly (European Commission and the EU Member States) established measuring instruments (statistics, indicators, guidelines);
- Benchmarking, i.e., comparison of EU countries' performance and the exchange of best practices (monitored by the Commission).guidelines proposed by the European Commission and agreed by the EU Member States.

The interest of such tools is that each Member State can decide which approach is the most appropriate to reach the objectives commonly defined considering their national context and specificities. In the context of the fight against trafficking of cultural goods, one of the main problems identified is the lack of a common framework and coordination. Therefore, such tool would be probably not the most appropriate to solve this issue. It could be still relevant to support the implementation of soft tools such as awareness raising campaigns, promotion of codes of conduct or creation of a handbook addressed to enforcement authorities, for example by EU-Cultnet or Europol. Such handbook could contain a list of best practices and recommendations which Member States can use as a point of reference. It shall be user-friendly and comprehensive, and may be revised as necessary. It shall be designed to compile the common, practical circumstances faced by practitioners, and the difficulties that may be encountered during the prevention, investigation, detection and prosecution of crime against cultural heritage, with the purpose of having a set of good practices. Such a tool shall provide practitioners with practical support and guidance.

¹⁰⁸ See : http://eur-lex.europa.eu/summary/glossary/open_method_coordination.html

5.2.4 EU binding legal instrument

5.2.5 Legal instrument

From the input to the surveys, it follows that the EU Member States support the idea of further harmonisation in the legal framework combating trafficking in cultural goods. As most binding initiative, the European Commission could consider proposing a legal instrument on the import of cultural goods, in particular in order to strengthen the fight against financing of terrorism and organised crime. The main objective of the legal instrument would be to facilitate the work of EU customs authorities in identifying and intercepting cultural goods that enter the customs territory of the EU illegally and, in this manner, protect world cultural heritage, combat illicit trafficking of cultural goods and prevent terrorists from deriving income from this activity.

The legal instrument would lay down a framework of rules to be complied with when bringing goods into the territory of the EU. With regard to the content and scope of the framework, several options will need to be taken into account, in particular:

- ✔ The *definition* of cultural goods, i.e., which goods are subject to the legislative measure;
- ✔ The *scope of restricted goods* of the legal instrument, i.e., which cultural goods (as defined in the instrument) will (not) be allowed to enter the EU market;
- ✔ The *external geographical scope*, i.e., the geographical field of application of the instrument;
- ✔ The *internal scope*, i.e., additional to fall under the application of the legal instrument after bringing the EU to the customs territory of the Union;
- ✔ The *means* used to achieve the aims of the legal instrument, i.e., a certification mechanism or a declaration / object ID mechanism;
- ✔ The *sanctioning* mechanism;
- ✔ The follow-up on the legal instrument through *information gathering and reporting obligations* of the EU Member States.
- ✔ The *administrative cooperation* within Member States, involving Customs, police, judicial authorities and cultural authorities

A binding legal instrument would provide for a legal framework on the basis of which both importers and authorities are in a better position to identify and assess the legitimacy of the cultural goods traded. The framework would provide for homogeneity when dealing with such imports in the EU. The scope of the legal instrument cannot be too large – as this could impede regular trade in goods; nor can it be too restrained – if it aspires to provide a comprehensive response to the issue. In any case, defining the exact scope of the measure will be very important. The binding legal instrument will not solve all problems identified. The multi-faceted problem of illicit trafficking will require multiple actions.

The legal instrument could take the form of a Regulation or a Directive. The advantages of both options will be assessed below. This part should first propose a legal basis from the Treaty, and then the relevant legal instrument – which can only be a regulation

5.2.4.1.1. Directive

Description

As a legal instrument, a Directive would require the individual Member States to achieve certain goals within a set timeframe. The Member States themselves retain the sovereignty to develop their national solutions to reach the aims and principles laid down in the Directive (and in accordance with that

Directive). A Directive would result in a minimum harmonisation among the Member States, where a basic layer of protection is agreed upon by all Member States.

Advantages

- As only minimum harmonisation is aimed for, the initiative of a Directive will be politically less sensitive compared to a farther-reaching Regulation. A Directive would allow for a considerable margin of appreciation for the Member State to develop its own policy, potentially resulting in an easier consensus reached by the Member States.

Disadvantages

- A Directive would not allow for the development of a uniform (framework) mechanism at import to combat the illicit trafficking in cultural goods, as the Member States retain the sovereignty to develop their individual control measures, including procedures or formalities;
- The development of separate systems across the Union will result in a complex system for market operators, which will have to comply with different rules considering the Member State of importation. Trade could be disproportionately/unnecessarily burdened by the lack of harmonization in this respect;
- As the control mechanism would cover the importation of goods into the Union, for reasons of effectiveness, there should be no major discrepancies between the Member States when it comes to the formalities to be fulfilled upon importation;
- Gathering of reliable data on the matter of trafficking in cultural goods could be burdensome considering different approaches in different Member States;

5.2.4.1.2. Regulation

Description

A Regulation is a binding legal instrument with direct application in the Member States. A Regulation would result in a system of common rules across the EU. Implementing or delegated acts would allow for the application of practical modalities of the system laid down in the Regulation.

Advantages

- As the importation of cultural goods into the customs territory of the Union concerns the Union as a whole, a uniform approach could be considered most suitable to combat the trafficking in cultural goods in the context of the existing EU Common Commercial Policy;
- Trade could be facilitated through the introduction of a uniform control mechanism, rather than not intervening (status quo option) or by intervention through a Directive (discrepancies will persist);
- A uniform approach towards the combat of trafficking in cultural goods, which is a global issue, would allow for better cooperation with international organizations and with third countries;
- Uniform approach would complement existing national level initiatives to more intensively regulate and monitor the import of cultural goods from third countries, as trafficking routes through lesser-regulated entry points of the EU external border will be discouraged.

Disadvantages

- A uniform approach to tackle the trafficking in cultural goods might be politically more sensitive to agree upon.

5.2.4.2. Definition

The legal measure would have to lay down the definition of cultural goods in order to identify the material scope of the measure, i.e., which goods are covered by the measure. When defining cultural goods, it should be considered that the definition should (i) create a common understanding of which goods are considered as cultural goods, (ii) harmonize between the available legal instruments as much as possible, not to further create a distinction between the existing mechanisms to combat illicit trade, and (iii) make the assessment whether a good is a cultural good as easy as possible for both market operators and customs officers in practice. In this respect, it is recommended to make use of (elements of) already existing definitions.

5.2.4.2.1. 1970 UNESCO Convention / 1995 UNIDROIT Convention

Description

Cultural goods are those goods that are of importance for archaeology, prehistory, history, literature, art or science. The 1995 UNESCO Convention is limited in scope to cultural goods designated by the parties to the Convention. Moreover, the goods should belong to a particular set of listed categories. These categories sometimes consist of an age threshold (e.g., with regard to furniture). Whereas the 1970 UNESCO Convention refers to the set of categories in the Convention itself, the 1995 UNIDROIT Convention has laid down the categories in a separate Annex.

Advantages

- As the 1970 UNESCO Convention has been signed / ratified and eventually implemented by a considerable number of countries across the globe, this is currently the most generally accepted definition of cultural goods;
- The list of categories is identical in the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. Adhering to such list could further harmonize the current set of regulations on cultural goods.

Disadvantages

- The terms used in the definition of cultural goods as laid down in the Conventions are not always clear in practice. The reference to the codes of the Combined Nomenclature could further facilitate the identification of cultural goods;
- The 1970 UNESCO Convention definition refers to “specifically designated by each State”. As such, EU Member States would have to rely on the designation as “cultural good” by the country of origin. This creates additional transactional costs and inefficiencies.

Conclusions

- The common set of categories of goods in the UNESCO and UNIDROIT Conventions is the result of a consensus of the international community and could serve as a basis for a definition in future instruments.

5.2.4.2.2. Regulation 116/2009

Description

For the definition, the Regulation on the export of cultural goods from the EU refers to the Annex I to the Regulation. Annex I part A to the Regulation lays down what is to be understood as a cultural good

in terms of categories with corresponding age thresholds, whereas part B lays down financial minimum value thresholds for certain categories (where value limits are attached).

Advantages

- The use of CN-codes next to the general description provides for an easier identification of cultural goods;
- By introducing particular age and value thresholds, the Regulation has made an attempt to harmonize principles of efficiency and simplicity with the effectiveness of the system.

Disadvantages

- An archaeological item remains a culturally significant object (no value limit included currently)
- According to the input to the surveys, half of the Member States indicate not to be satisfied with the definition. Similar numbers were retrieved from the operator's survey. The current value thresholds laid down in Regulation No 116/2009 might not meet the principles of efficiency and simplicity as referred to in the preamble of Regulation No 116/2009.

Conclusions

- The use of value thresholds divides the stakeholders. As authorities might consider them too high, several market operators indicate the thresholds are too low. Moreover, value thresholds are often difficult to apply in practice, since determining an arm's length price for unique objects could be highly complex.

5.2.4.2.3. Directive 2014/60/EU

Description

Cultural objects are objects classified or defined by an EU Member State as national treasures. The state of departure of the good itself defines what is considered to be a national treasure (and thus which goods cannot leave the territory).

Advantages

- The State of departure retains the right to determine which goods can leave and which goods cannot leave the territory.

Disadvantages

- The country of arrival is not involved in the enforcement of the protection of cultural goods, as such country is generally not aware of what is considered a national treasure and thus subject to the export certificate obligation;
- The definition has been construed in view of the exportation of cultural goods, leaving ample room for the Member States to consider which goods are national treasures. The definition as a whole would not be useful in the context of the importation of cultural goods into the EU.

Conclusions

- EU Member States would have to have sufficient knowledge of and rely on the legislation of the state of departure (third country), which could create additional transactional costs and inefficiencies.

5.2.4.3. *Scope of restricted goods*

The binding legal instrument would provide for a definition of the cultural goods covered under the binding legal instrument on importing cultural goods into the EU. This framework for identification will be supplemented by particular rules on the handling of particular cultural goods presented for imports to customs authorities in Member States. Customs authorities in the Member States will be able to identify the goods and subsequently assess whether the goods in question are allowed for importation in the EU. The prohibition of cultural goods from entering into the customs territory of the Union could be attached to several determining factors, in particular:

- Goods of which the export is prohibited under the rules applying in the country of shipment and/or origin;
- Stolen goods;
- Goods originating in certain countries / regions;
- Specific types of cultural goods subject to the import restriction.

A combination of those factors would be an additional option, which could lead to a more efficient and comprehensive system (e.g., by prohibiting both the importation of stolen cultural goods in general and cultural goods originating from particular third countries). Laying down the categories of cultural goods prohibited from entering into the EU should be done in view of the aims of the measure, i.e., combat trafficking in cultural goods, preserve cultural heritage, and prevent terrorism and organised crime financing through the trafficking in cultural goods.

5.2.4.3.1. **Goods of which the export is prohibited under the rules applying in the country of shipment and/or origin**

Description

Similar to the EU Regulation No 116/2009, a number of countries around the world have laid down national measures to prohibit the exportation and transfer of ownership of cultural property. Such national measures could have been taken in order to meet the implementation requirements of the 1970 UNESCO Convention.

Similar to the State Parties' obligation laid down in Article 3 of the 1970 UNESCO Convention, the binding legislative instrument could prohibit the import of cultural goods into the customs territory of the European Union, if the goods were exported from a third country in breach of the national provisions of that third country (of origin or of dispatch). The ratio behind this approach would also be similar to the definition of cultural goods under Directive 2014/60/EU, leaving upon the country to define what can or cannot leave the territory.

Similar systems exist in Switzerland, France, Germany and the United States of America, which could be used as an inspiration for the binding legal measure. An export certificate is required in those systems. In the countries mentioned, the burden of proof is imposed on the importer, who has to show that the good has been exported from the country of origin / dispatch in accordance with the local regulations.

Advantages

- The third countries themselves regulate which goods can leave their territory and which goods can be traded internationally;
- The EU would contribute to the enforcement of third country national measures to combat the trafficking in cultural goods, and this with respect for the sovereignty of those third countries;

- Traffickers would face a multiple layered enforcement mechanism, as both at exportation and at importation side the illicit goods could be intercepted, based upon the same rules;
- Even though customs authorities will not always be aware of the third country rules, action could be taken against the trade in the illicitly exported (and consequently imported) goods, also after importation. EU (customs, police and judicial) authorities could act, e.g., upon the request of a third country.

Disadvantages

- Unless exportation from the third country is subject to an export certificate issued by their competent authority, the EU customs authorities should be knowledgeable about all third country national cultural goods regimes. Even when the third country applies an export certification system, there should be an agreement with EU customs for administrative co-operation in order to be able to verify the authenticity of those certificates. Further information exchange systems could support this knowledge and the effectiveness of the system.

5.2.4.3.2. Stolen goods

Description

Goods that are wrongfully taken away from the legitimate owner – whether this is a private individual, organisation, or a state – should not be eligible for importation into the customs territory of the Union, as the EU cannot and should not serve as an offset market for such goods. If this option is considered in the legal instrument, the INTERPOL database on stolen works of art could play an important role in the identification of the goods in question as well as the assessment of the good faith of the buyer / importer.

Advantages

- Stolen goods cannot enter the EU. Cooperation with INTERPOL and national police services is desirable in this respect;
- By prohibiting every importation of stolen cultural goods, there is a clear enforcement framework. Also when the fact that good is stolen is only proven after importation, measures could be taken.

Disadvantages

- It will not always be easy to determine whether a good is stolen or not, since this might depend on the national laws of the country of origin. Cooperation with third countries is necessary in order to adequately enforce this rule.

5.2.4.3.3. Goods originating in certain countries / regions

Description

The current *ad hoc* measures on the import of cultural goods originating in Syria (Regulation No 36/2012) and Iraq (Regulation No 1210/2003) are in line with the calls from the United Nations to act against the local destruction of and the trafficking in cultural goods originating in the countries concerned. Currently, other territories are likewise affected by political and economic instability, which might call for further *ad hoc* initiatives (e.g., Libya). The prohibition of imports from particular regions could be laid down in a basic or Implementing Act, in order to efficiently add or erase countries from the scope of the import prohibition.

Similar to the system in the United States of America, for the *ad hoc* measures with regard to cultural goods coming from a particular country, a system where third countries that are members of the 1970 UNESCO Convention can submit a request to the European Commission to restrict imports of cultural goods coming from their country. This is possibly not, however, a sustainable solution for countries suffering from (political) instability. Hence, a combination with the possibility of unilateral measures would be recommended.

It should be kept in mind that retention of the cultural goods in the country of origin in the case of an armed conflict or political instability does not always result in the preservation of cultural heritage. On the contrary, particularly if the context of ethnic conflicts, destruction of the heritage might be part of the cultural eradication objective of warring factions. Such conflicts would call for additional action.

Advantages

- Although the individual measures might be circumvented, e.g., through shipment from another territory than the countries of Syria and Iraq, within the framework of a comprehensive mechanism of identification of cultural goods increased effectiveness of the *ad hoc* measures could be reached;
- Based on the framework in place (cf. further, certification or object declaration / passport mechanism), the *ad hoc* measures could be extended effectively based on new trafficking routes and streams;
- The *ad hoc* measures have the potential to preserve the cultural heritage in the country of origin, particularly in case of an armed conflict or political instability.

Disadvantages

- Establishing the origin of a cultural good has shown to be highly difficult in practice. *Ad hoc* measures should take this difficulty into account, e.g., by covering cross-border cultural areas rather than depending on country borders. In this respect, for efficiency reasons, also measures against other countries in the same cultural and targeted area could be considered;

5.2.4.3.4. Specific EU definition (description of goods)

Description

The EU could unilaterally define which cultural goods, as defined in the legal instrument, cannot be imported. Reasons for the prohibition would stem from a preservation of cultural heritage for mankind. As an example, reference could be made to a prohibition of importation of cultural goods of a certain age, which could be considered unsuitable for trade.

Advantages

- The EU (Member States) has the possibility, in view of the protection of cultural heritage for mankind, to generally prohibit the importation of particular goods, regardless of the rules of the country of origin;
- In cooperation with the current international (private) organizations active in the field (e.g., UNESCO, ICOM, WCO), the EU could play a leading role with respect to the protection and preservation of cultural heritage across the globe.

Disadvantages

- A political consensus on what should be generally protected and what should not might be difficult, considering drawing a line somewhere will lead to arbitrariness.

5.2.4.4. External geographical scope (field of application for legal instrument)

The proposed mechanism through the binding legal instrument (cf. control instrument further – either a certificate or an object declaration / passport mechanism) could either cover particular countries or could apply globally. The solution opted for will correlate with the prohibition criteria laid down above.

5.2.4.4.1. Specific territories and countries only – to be decided by COM

Description

The control instrument would only apply to imports of goods originating or shipped from particular third countries or territories. These countries would be identified and decided upon by the European Commission.

Advantages

- A tailor-made approach limiting the system to particular areas could address the core of an acute issue, although this would not address the roots of the problem of trafficking in cultural goods.

Disadvantages

- As the origin and provenance of a cultural good is often highly difficult to assess, the control instrument might be circumvented by stating a different origin or by exporting from a different region. As there would be no control instrument in place from the stated origin, the importation would likely pass customs control;
- A uniform system applying to all third countries would serve simplicity for market operators and customs officers;
- Identification of the countries to which the control measure would apply would be arbitrary and difficult to determine based on objective factors, due to the current lack of reliable data on the trafficking in cultural goods.

5.2.4.4.2. Global reach

Description

The control instrument could apply globally. All goods imported into the EU should be accompanied by the control instrument.

Advantages

- As this is a comprehensive solution, there is no distinction made between cultural goods with regard to origin. This would reduce the assessment to be made by customs authorities;
- As the system would globally apply this would contribute to predictability, transparency and efficiency, as similar treatment would apply to imports of cultural goods regardless of the country of origin/shipment;

- A globally applicable system would lay down a framework system, which is adaptable for example to *ad hoc* measures on the short term (i.e., as there already is a control mechanism in place, the control should only be actually performed).

Disadvantages

- For economic operators, a comprehensive system would still prove more burdensome than the current baseline scenario, but would support them in their risk management.

5.2.4.5. Internal scope

The control mechanism would apply for the importation of cultural goods into the territory of the EU. Apart from bringing goods into free circulation, also goods in free zones could be covered by the proposed measure, which is important in order to create a comprehensive system. As after importation the goods will enter into free circulation, other accompanying measures could be subsequently considered to cover the internal market aspects.

5.2.4.5.1. Coverage of imports for EU free circulation goods only

Description

If limited to coverage of cultural goods destined to be released for free circulation in the EU only, the measure would not cover goods which are placed in a free zone, nor cover transactions after importation.

Advantages

- The system would be straightforward, as only goods actually entering the EU with an import declaration would be covered.

Disadvantages

- The EU could still serve as a transit area for cultural goods not entering into free circulation, but passing through warehouses to other offset areas such as the United States or Russia.
- After importation, the goods would not need to be accompanied with the control mechanism as it is applied before the items physically enter the territory, which would result in (i) only a barrier against trafficking upon entry, not after entry of the good and (ii) only a minor facilitating effect of the control mechanism for licit trade.

5.2.4.5.2. Cultural goods in free zones

Description

The coverage of cultural goods in storage facilities such as free zones would link the control mechanism to the physical entry and storage of the goods within the EU customs territory. Inspiration could be found in the Geneva Freeport approach, where it is mandatory to conduct an official audit for every archaeological object presented for stay or storage in the Freeport. In the event the scope would include controls of cultural goods in free zones, the matter of duration of storage, as well as import formalities for releasing the cultural goods into free circulation are to be considered.

Advantages

- Apart from the actual importation of goods by bringing them into free circulation, also the role of the EU as a temporary storage area could be tackled;

Disadvantages

- Bringing goods into a free zone would require further formalities when it comes to cultural goods;
- After importation, the goods would not need to be accompanied by the control mechanism, which would result in (i) only a barrier against trafficking upon entry, not after entry of the good and (ii) only a minor facilitating effect of the control mechanism for licit trade.

5.2.4.5.3. Coverage of domestic (EU) transactions/collections

Description

The control mechanism could also serve as a catalyst for proposing complementary internal market measures or customs legislation that would target the cultural goods also after they have been brought into free circulation, by requiring all trade in cultural goods to be accompanied by the control mechanism. This would contribute to the traceability of cultural goods and over-all objective of the legislation in combating illicit trafficking of cultural goods. However, the appropriate legal basis would need to be found, as covering cultural goods in free circulation would require an internal market measure, whereas free zones are covered under customs legislation.

Advantages

- The facilitating effect of the control mechanism on legal trade would be maximized by requiring the use of the mechanism also after bringing the goods into free circulation.
- A further barrier to combat the trafficking in cultural goods is introduced, as also after importation the goods are to be accompanied by the measure.

Disadvantages

- For cultural goods currently in the internal market, a duty to register or draw up inventories of stocks and public and private collections or a similar transitional measure should be introduced in order to maximize the effect of the measure.

5.2.4.6. Control instrument

In order to ensure the application of this legislation, the Commission has to consider instruments the Customs authorities will use to control the importation of cultural goods.

For a control instrument to contribute effectively to the implementation of the legislation different elements are to be considered, such as: the stringency of conditions to be met by applicants (importer or exporter), the ease of dealing with procedural aspects under responsibility of selected customs authority or institution (in importing or exporting country), the scope of goods covered (geographical, value thresholds, etc.).

We have considered two main potential options, each offering two sub-options, for a control mechanism supporting EU binding legal instrument on the illicit trafficking of Cultural Goods into the EU.

- **a declaration signed by the traders**, accompanied by a description of the cultural goods imported to the EU (i.e. Cultural good passport or Object ID)

- **declaration signed by the importer**
- **declaration signed by the exporter (source country)**
- **a certificate to be issued to the traders by competent authorities**
 - a. **Import certificate (issued by EU competent authority)**
 - b. **Export certificate (issued by source country competent authority)**

An accompanying description of the cultural goods can be considered in the form of a cultural passport or existing standard (such as an Object ID) for both control mechanisms proposed.

5.2.5.1.1 Trader declaration accompanied by (Cultural Good passport or Object ID)

5.2.5.2 Mechanism

Description

A first option contains the obligation on the importer (option 1a) or the exporter (option 1b) to declare that cultural goods have been purchased or sold and traded legally between the source-country and the EU.

Thanks to this declaration the presence of this artefact in the EU and the owner (or holder/possessor) will be known by the Customs authorities. Upon entrance, the good is recorded in a database. After entrance, the good can be followed through an easy to track electronic file. In case of reclamation or doubt, Customs authorities or other enforcement authorities will know where the artefacts is or at least who is supposed to be the actual possessor.

The declaration could be imposed on the importer or on the exporter. Whereas in theory both options 1a (importer declaration) and 1b (exporter declaration) should be considered, the findings of this study point towards the advantages of the first (importer declaration), and the severe limitations and challenges of the second option (exporter declaration) to successfully support implementation of the EU binding legal instrument.

As an accompanying obligation with the trader declaration, cultural goods presented to EU Customs Authorities for imports should be accompanied by a standard Object ID (or: cultural goods passport). Every cultural good would be subject to declaration and Object ID, in order to ensure the effectiveness of the system.

Through the combined approach of the Object ID and the trader declaration, whether signed by the importer or the exporter, all cultural goods imported into the EU would be traceable and relatively low costs would be imposed on economic operators as well as on the side of public institutions.

In terms of information to be provided by the importer (or exporter) with the signed declaration, the declaration form could include:

1. the identification of the trader;
2. the estimated value of the artefact;
3. the origin of the goods
4. the identification of the recipients.

In terms of general implementation procedures and capacity required (both by public institutions as well as private sector), the burden of the importer declaration approach is softer than the certification. This

follows from the fact that with the declaration, the burden of proof of the legitimacy of the trade, will rely only on the importer and will not involve a certifying body.

In terms of timing of the presentation of the declaration, this could be performed upfront, allowing the customs authorities for a pre-importation analysis, or could be performed at importation. Requiring the responsible person to file the declaration on beforehand, will allow for the responsible authority to perform an assessment prior to the good entering into the EU. Prior checks could result in the identification of trafficked goods, in respect of which the country of exportation could be involved to catch the traffickers.

The preparation of the Object ID (Option 1a) or other type of 'cultural good passport' (including for Option 1b, the exporter declaration) should be prepared and completed before importation, so as to be presented to customs authorities for pre-importation analysis or at importation itself.

5.2.5.3 Accompanying measure: obligation of cultural goods Object ID

The introduction of an obligation for cultural goods imported into the EU to be accompanied by an Object ID has been subject of discussion over the past years. The Object ID, a standard adopted by the International Council of Museums, is already used widely by art dealers, following active promotion by ICOM, UNESCO, Interpol and other organizations in fighting illicit trade. Based on a description and pictures of the cultural goods, the initiative is considered as holding strong potential to support implementation of EU binding legal instrument to combat illicit trafficking of cultural goods.

Through the compulsory Object ID for all goods imported into the EU, the traceability of cultural goods would improve considerably, supporting the identification of possible illicit trades. Based on the existing [Object ID checklist](#), the database should guide the importer in provide the following information (if available) through targeted questions:

- Unique registration number of object
- Photograph of good (overall views, as well as close-ups, inscriptions, damages)
- Type of object
- Materials & Techniques
- Measurements
- Inscriptions & Markings
- Distinguishing Features
- Title
- Subject
- Date or Period
- Maker

In the event an exporter declaration is considered, an alternative option to the existing Object ID for cultural goods, would be to use the UNESCO - WCO Model Export Certificate.

In terms of **institutional responsibilities**, the role of EU would be to facilitate the registration of the cultural good Object ID in a database to be accessible by public administrations in EU Member States (potentially also outside the EU), with possibility for extension to international organisations.. Existing databases could be considered, so as to limit additional costs.

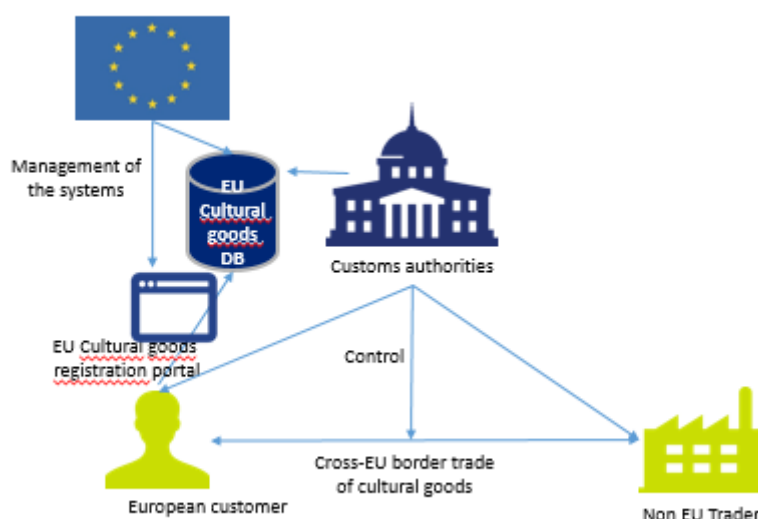
The trader would have to connect to a dedicated EU website in order to register and to download the declaration that will accompany the artefact exported to the EU. Taking inspiration from the REX

system, we could consider that all traders that want to export cultural goods to the EU would need to be officially recognised and registered.

The European Customs authorities will be able to consult the database when they need to control the imported cultural goods at the EU border or in the internal market. In order to support them, the EU, in collaboration with all MS, could create a dedicated group of experts that could be consulted to attest the origin of the cultural goods and the legality of its importation to the EU. The existing databases and tools available to EU Member States and international/private organizations should be adequate to make an inventory of incoming cultural goods. Cooperation with Member States and international/private organizations (e.g., ICOM, INTERPOL, etc.) could be relied upon in order to come to an effective and cost-efficient system. Entering the good into the database could be facilitated by making use of the existing technologies (e.g., customs officers making use of a mobile app, using technology to compare the good with goods in existing databases).

The figure below illustrate the functioning of the declaration system.

Figure 34 -Cultural goods trade - Declaration system (illustration)



Advantages

- Value is created for the market operators through the proper identification of the cultural good, providing the importer and subsequent buyers of the good with important information about the good;
- Improved traceability of cultural goods would be offered through the use of an Object ID or other type of cultural passport obligation;
- Harmonization of the importation procedure across the Union could facilitate trade;
- Customs officers would dispose of verifiable data on the imported cultural good. They would be able to both check the good imported with existing goods in the databases at hand, as well as provide for an assessment of the good brought into the Union. In the case of doubt, further analysis could be performed. As the good is taken into an inventory, other market operators could provide for evidence contradicting the statements in the object passport. Cultural goods would be identifiable throughout the supply chain once entered into the EU;

- As the identification is performed by importer, the customs officers would still have a considerable margin to assess those statements. Post importation proof could still result in measures against the importer of such good;
- The object declaration / passport mechanism could be combined with due diligence requirements on the importer, who should perform certain checks, e.g., in databases or with regard to the identity of the seller;
- Even for goods of lower value, the object declaration / passport mechanism could serve its purpose. In the case the object declaration / passport mechanism would be considered too burdensome, the amount of information to be disclosed could be adapted in terms of the value of the good (notwithstanding for all goods, a minimum level of information is to be shared).

Disadvantages

- Although the object declaration / passport mechanism would allow for identification, such identification could still result in false information on the good. The exporter/importer would however bear the responsibility (to a certain extent) for such false statements (cf. also the issue of the burden of proof);
- The burden for trade should be carefully monitored and optimized through adequate assessment of the compliance requirement, although with the use of a common description (or Object ID) this may be partly offset by advantages.
- Risk of misinterpretation and burden of trade increase for importers not covered by this legislation. Need to set clear boundaries for in-scope and out-scope of cultural goods requiring accompanying declaration and passport through age requirement (e.g. minimum X years old).

5.2.4.6.1.2. *Responsible person is the importer (option 1a)*

Description

The burden to present a signed Importer Declaration Form and *Object ID* could be imposed on the importer. The responsible person should be able to file the declaration through online systems.

Advantages

- Since the importer/buyer will perform certain checks anyway before buying a good, this buyer will dispose of a certain amount of relevant information already. The object declaration / passport mechanism will result in further checks of the market on the legitimacy of the goods that are bought;
- Since the buyer is located in the EU jurisdiction, Member States could easily enforce eventual misstatements;
- The buyer might be fully dependent on the seller's information, however, this will result in market due diligence with a 'know your seller/exporter' check performed by traders.
- Advantages of an importer declaration obligation (option 1a): this option offers the advantage that the **burden of proof** would be placed on the importer. The reversal of the burden of proof on the importer would address the challenges encountered in implementing the current EU *ad hoc* measures (see Chapter 3.7), and build on best practices on reversal of burden of proof on the importer, as applied by US and Switzerland (see Chapter 3.6). An additional advantage would be that the importer can be held liable (through penalties set by EU Member States).

Disadvantages

- The information required for the declaration can in some instances be difficult to obtain for the importer and/or to verify with the buyer. The amount of information could, however, be dependent on the value of the good (notwithstanding for all goods, a minimum level of information is to be shared).

5.2.4.6.1.3. Responsible person is the exporter (option 1b)

Description

The burden to present a signed Importer Declaration Form and *Object ID* could be imposed on the exporter. The responsible person should be able to file the declaration through online systems. The exporter's identification could be eventually performed through a registration system, e.g., similar to the Registered Exporter System used in the context of GSP preferential origin.

Advantages

- The seller/exporter knows most about the goods as he will be disposing of those goods. He is in the most relevant position to provide the information requested.

Disadvantages

- There is no jurisdiction for the EU (Member States) outside the Union. It might prove difficult to hold someone liable for misstatements or flaws in the declaration.

5.2.4.6.2. License (import certificate or export certificate)

5.2.4.6.2.1. Mechanism

Description

The objective of a license mechanism would be to ensure that economic operators seeking to import or export cultural goods into the EU would apply for a license (also called an import certificate or an export certificate) to be issued by a competent authority (in the EU or in the source country). Through a certificate, the authority will authorize the importer to introduce in the EU the cultural goods from third countries (import license) or to export outside the third country the cultural goods (export license).

Based on experience with existing certification schemes governed by the EU and involving trades with third countries, it can be said that the role and capacity of domestic public authorities in issuing the certificates is crucial to the success of the certification system. Apart from the obligation to accompany the cultural goods by a certificate issued by the competent authority, and which clearly identifies the consignment to which it refers, additional obligations on packaging and labelling will likely apply. Correct labelling and packaging, including the possibility of sealing the package, may limit the risk that the presented (and certified) package at customs does not actually contain the cultural good for which the certification was obtained. The possibility is to be considered of introducing special packaging and labelling conditions for imports of cultural goods that are subject to a license.

Inspiration could, for example, be taken from the legislative framework governing the imports of rough diamonds into the European Union (EU), which are subject to a system of certification and controls laid down in Council Regulation (EC) No 2368/2002 (OJ L-358 31/12/2002) (CELEX 32002R2368) which incorporates into the European's Union law the Kimberley Process (KP) certification scheme. In terms of packaging and labelling, the Regulation stipulates that: rough diamonds

must be contained in tamper-resistant containers, and the seals applied at export by that Participant are not broken¹⁰⁹.

The **conditions and procedures** for obtaining a cultural goods import certificate (option 1a) or export license (option 1b) are to be further elaborated upon. Based on existing EU import licensing systems (such as for agricultural products, or rough diamonds), the following conditions *can* be considered as an obligation to fulfil (not comprehensive list):

- Obligation to complete an application form for import or export certificate
- Obligation of accompanying Object ID (see Option 5.2.4.6.1 Declaration)

First, with regards to the **application form** for an import or export certificate, the EU holds substantial experience in issuing certificates (such as in the area of export control and dual use, as well as agriculture products). Due to the rather resource-intensive nature of the application, processing and issuing of import or export certificates, the question of proportionality comes into play. More specifically, the UNESCO - [WCO Model Export Certificate](#) may prove as a useful model. In terms of content of the application form for import or export certificate, the information to be provided could include:

1. type of import or export
2. a description of the artefact including the country of origin and the estimated age;
3. dimensions and net weight
4. an estimated value of the artefact;
5. a picture of the artefact;
6. legal status and use;
7. owner of the cultural object;
8. the identification of the trader;
9. the identification of the recipients
10. identification of initial (and subsequent) consignee (if known)
11. any other relevant information (including origin or cultural good, if known)

The information to be provided by the public authority would entail:

1. a unique identification number
2. assessment / approval on the characteristics mentioned on the application form (dimensions and net weight, estimated value, origin)
3. issuing authority

Second, with regards to the **Object ID** condition, the issuing of an import or export certificate allowing cultural goods to enter into the EU could be introduced, as with the importer or exporter declaration. The information provided on the Object ID would concern the cultural goods only (Object ID checklist) (see Option 5.2.4.6.1 Declaration).

In terms of procedures, the issuing of the certificate would be prior to clearance for free circulation for imports or exports, upon the fulfilment of the conditions.

Whereas the certification poses additional costs and delays on the side of the economic operator, this is equally the case for public institutions governing and responsible for the certification. Appointing or identifying the competent authority issuing certificates should not only take into account the available

¹⁰⁹ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002R2368>

expertise, but also the required investments. Issuing certificates through computerised systems may be possible to limit the burden for both the requesting party and the issuing authority.

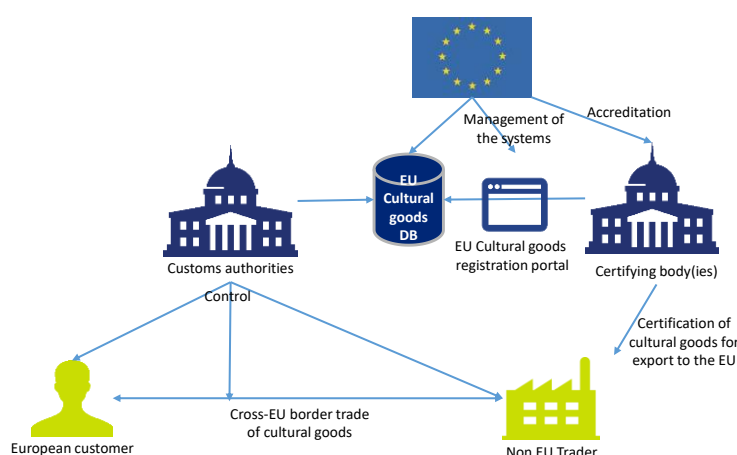
There are different possibilities for constituting the certifying body for cultural goods import or export certificates (see below for import and export certificates).

In all cases, the accredited experts will have to record the certifications in a central database that the European Customs authorities will have to consult to attest the authenticity of the certificate accompanying the cultural goods imported. The EU would support the cost and (outsourced) management of such database and the European Customs authorities will feed the information contained in it. Customs authorities or other enforcement authorities from third countries could also have access to the database for consultation purpose for instance and under certain conditions.

The certification would bear considerable value for the market operator. Providing proof of the incorrectness of the certification would be highly difficult.

The figure below illustrate the functioning of this system.

Figure 35 - Cultural goods trade - Certification system (illustration)



Advantages

Value is created for the market operators through the certification, as this provides for a third party assessment of the cultural good.

- Harmonization of the importation procedure across the Union could facilitate trade;
- Other authorities and market operators in the supply chain would be able to rely on the certification for their assessment of the tradability of the good.

Disadvantages

- Certification can only be issued if the provenance, age and value can be correctly determined. In certain cases, this will be highly difficult or even impossible, resulting in the good not being able to be traded;
- In the case of cultural goods of lower value, the certification mechanism might be ineffective due to the costliness thereof, compared to the value of the good;
- A particular authority would be designated for the assessment of the cultural good. Their assessment should be both reliable and recognized by other authorities.

5.2.4.6.2.2. Responsible authority at import side

Description

The authority issuing the certification at importation side could be at the Member State level. The national authorities seem the most feasible option.

Other options could include that the competent authority could be composed by different national experts and would be located in the EU, whereby certification should be done in most cases (depending on the value of artefact) remotely. Whereas computerised systems have proven useful, this type of certification and considering the sensitivity of cultural goods trade, the quality is not fully ensured.

Another approach could be that this central certifying authority recruits freelance experts from all over the world. They would receive an accreditation for certifying cultural goods and will be paid by the traders asking for a certification. This option seems less feasible in the current setting.

Whereas importers or economic operators are free to choose the point of entry at an external border of the EU for the import of cultural goods, the goods must first be verified by a Union authority which must verify the packaged goods and certificates.

Advantages

- The EU Member States retain the competence to perform the assessment for certification or, depending on the subsidiarity analysis, to lay this responsibility with the EU level;
- There is no need to depend on third country authorities or international organizations to develop the certification mechanism.

Disadvantages

- The import side should dispose of all necessary information on the region of origin. The assessment whether a good comes from a particular region is often more efficiently carried out with the cooperation of the country of exportation.

5.2.4.6.2.3. Responsible authority at export side

Description

The authority issuing the certification could be in the country of origin or dispatch. In the case of export certificates, the EU should agree with the authorities from third countries on the competent authorities. This, however, would assume that existing dialogue and cooperation on cultural goods trade between the EU and third countries are in place, and/or can be initiated. Verification mechanisms should be agreed upon, demanding intense exchange of information.

Advantages

- Before importation, the certification is issued.
- Determining whether goods could enter the EU would be dependent on the assessment of a non-EU, not Member States' related body, deciding on whether the export is licit.

Disadvantages

- Especially in conflict areas, there is not always an authority available to issue a certificate;
- Especially in conflict areas, the third country authorities could be affected by negative influences, essentially resulting in the untrustworthiness of the certification;

- A uniform certification model should be developed in order to make sure the certification is valid and recognized by the EU customs authorities;
- Would require a pre-existing administrative cooperation agreement between EU and third country.

5.2.4.7. Enforcement

The enforcement of the system laid down in the binding legal instrument is necessary in order to actually tackle the trafficking in cultural goods and to make a difference. As the solutions laid down in the binding instrument would concern the importation of cultural goods, the enforcement takes place at the external border of the customs territory of the Union. However, it is important to align with the existing tools on intra-community trade in national treasures and the exportation of cultural goods, in order to come to a comprehensive set of rules. Such alignment (in terms of harmonization of e.g., the definition of the goods covered by the instrument, the sanctioning regime, etc.) would be beneficial for both market operators and customs administrations, as this will lead to simplification and increased efficiency. The enforcement is closely linked to the sanctioning regime discussed under the next paragraph.

5.2.4.7.1. Responsible institutions

Different authorities could be designated to deal with the declaration of cultural goods entering into the Union. Hereafter, a number of options are described, ranging from the most decentralized option (status quo) to the most centralized option (EU body). All options could be combined with a list of designated experts to be shared by the EU institutions. Such list could serve as a EU-wide knowledge platform, allowing for the national customs authorities to address the most intelligible individuals in the field to make the cultural goods' assessment.

5.2.4.7.1.1. Customs authorities – All customs offices

Description

The enforcement of the binding instrument – i.e., performing the necessary checks with regard to the formalities to be fulfilled in order to bring cultural goods into the European Union – could be performed similar to what is currently the case. Cultural goods would be brought to any customs office in the Union in accordance with the requirements for declaration on entry.

Advantages

- As cultural goods would be treated as any 'traditional' good, there are no particular requirements market operators have to take into account.

Disadvantages

- The assessment of a cultural good is highly complex and requires a certain degree of particular expertise. Requiring every customs officer to dispose of such expertise would be both unnecessary and inefficient;
- *Forum shopping* could be facilitated, as traders could declare the good at an office disposing of less means and expertise;
- Licit trade could be burdened because of the lack of expertise at certain customs offices. Assessment of the declaration could take more time than objectively necessary, due to a lack of resources.

5.2.4.7.1.2. Customs authorities – Limited number of competent customs offices

Description

The enforcement of the binding instrument – i.e., performing the necessary checks with regard to the formalities to be fulfilled in order to bring cultural goods into the European Union – could be performed at a designated customs office per EU Member State. Cultural goods brought into the EU by travellers/tourists above the value threshold (in-scope of the legislation) would also need to be able to access a point to declare goods, which may be more difficult if not arriving by air. Member States could even cluster their resources by designating a regional customs office, competent for a number of countries.

Advantages

- As the assessment of cultural goods requires particular expertise and the necessary resources, the centralization could lead to a more efficient and more adequate assessment;
- As the designated customs office would dispose of considerable expertise, this office is in the position to handle the declaration in the most efficient way possible;
- Cross-border cooperation and exchange of information / best practices (both within the Union, with third countries and with international organizations) could be facilitated through the reduction of the number of competent customs offices;
- Data gathering on the cultural goods entering into the Union would be facilitated, whereby trafficking trends could be identified more rapidly, which would allow for swift geopolitical action (to be linked with the *ad hoc* measures)

Disadvantages

- Market operators are limited in their possibilities to declare the cultural good, as they are required to address the competent national customs office;
- The risk of *forum shopping* would be reduced, however, shopping could still take place on an intra-Union level.
- Lack of specialized competent offices to declare cultural goods, may lead to ‘illicit imports’ as result of non-availability of places to declare a good.

5.2.4.7.1.3. Other authorities / bodies

Description

The enforcement of the binding instrument – i.e., performing the necessary checks with regard to the formalities to be fulfilled in order to bring cultural goods into the European Union – could be laid in the hands of another established EU body (e.g. Europol), eventually in cooperation with international organizations. Such body would consist of a number of experts in the different fields of cultural goods. This option would result in the most centralized approach.

Advantages

- As the assessment of cultural goods requires particular expertise and the necessary resources, the centralization could lead to a more efficient and more adequate assessment;
- As the designated public authority within the Member State, usually a department within the Ministry of Culture, would dispose of considerable expertise, this office is in the position to handle the declaration in the most efficient way possible;

- Cross-border cooperation and exchange of information / best practices (both within the Union, with third countries and with international organizations) could be facilitated through the reduction of the number of competent customs offices;
- Data gathering on the cultural goods entering into the Union would be facilitated, whereby trafficking trends could be identified more rapidly, which would allow for swift geopolitical action (to be linked with the *ad hoc* measures).

Disadvantages

- Market operators are limited in their possibilities to declare the cultural good, as they are required to address the competent national customs office;
- The risk of *forum shopping* would be reduced, however, shopping could still take place on an intra-Union level.

5.2.4.7.2. Burden of proof

Upon importation of a cultural good into the customs territory of the EU, the question arises who has to prove that the good was exported legally (or not) from the country of origin. Today, from an EU perspective, this burden lies with the customs authorities in the framework of the two sanctions Regulations against Iraq and Syria governing the imports of cultural goods from these countries. Moreover, the customs authorities have to prove that the import declaration contains incorrect information. This is burdensome for the customs authorities of the Member States and stands in the way of an effective mechanism to combat illicit trafficking.

Finding the balance between the interests of traders and the interests of the authorities to combat trafficking in cultural goods is difficult, particularly with regard to this topic. Imposing a too heavy burden on traders could result in the impediment of licit trade, potentially even enhancing the trafficking in cultural goods. Nonetheless, considering the current state of play, the authorities are not adequately covered by a legal framework safeguarding the respect for currently existing rules and to effectively act against the trafficking in cultural goods.

Ideally, and similar to the principles of the 1995 UNIDROIT Convention, the burden of proof with regard to the statements made in the import declaration should be (at least partially) shifted to the importer. Also, the proof of legitimate exportation from the third country should be provided by that importer.

5.2.4.7.3. Use of existing technologies

Development of technological support (e.g., through a mobile support, or online platforms storing information such as blockchain) should be high on the agenda in the context of combating illicit trafficking of cultural goods. The reasons are manifold: (i) to foster understanding of cultural goods among EU public, (ii) to improve traceability of the goods, (iii) to foster the identification of cultural goods by sellers, buyers, importers, and / or (iv) to systematically scan cultural goods entering the EU (linked with a database). The use of technological support – which would rely on existing technologies – could foster the efficient enforcement of the control mechanism.

5.2.5.4 5.2.4.8. Sanctioning

In order to make sure the system provided in the binding legal instrument is effective, a sanctioning mechanism should be introduced. To this extent, the European Union currently does not dispose of the competency to introduce and harmonize such system. In this context, however, a relevant development is the development of an international treaty by the Council of Europe, inspired by the work of UNESCO,

UNIDROIT and others, which will allow to criminalise the different acts involved in trafficking cultural property. Referred to as the 'blood antiquities convention', the convention will set out which actions are illegal, and which actors are complicit, so that states can go after the networks of individuals facilitating these crimes¹¹⁰.

The binding legal instrument should require of the Member States to lay down rules on penalties for infringement of its provisions. The implemented penalty framework must be effective, proportionate and dissuasive. The Member States should take all measures necessary to ensure the enforcement of the legal instrument through adequate sanctioning of infringements.

5.2.5.5 5.2.4.9. Reporting obligations of the Member States

The lack of reliable and comprehensive data on the trafficking in cultural goods has been raised in an international context by several institutions and international bodies (e.g., the UN General Assembly Resolution No 70/178; Conclusions of the 13th Meeting of the INTERPOL Expert Group on Stolen Cultural Property). Notwithstanding the ample case-by-case evidence at hand, the numbers on the size of illicit trade in cultural goods are highly diverse depending on the source of the information.

In order to be able to adequately tackle flows of cultural goods coming from different regions, mapping and keeping an oversight of what goods are entering into the European Union is important, regardless of whether these goods enter legally or illegally. Hence, stringent and centralized follow-up on the performance of the new binding legislative act is a necessity, considering the importance of mapping the evolution of the problem of trafficking in cultural goods through reliable data. The reporting obligations of the Member States should include a disclosure of information with regard to both the measures taken for the implementation of the binding legal instrument on a national level, as well as the reporting of field statistics on the interception and seizure of illicit cultural goods.

¹¹⁰ Speech delivered by COE Secretary General at Colloquium on Initiatives to strengthen international capacities for the protection of cultural property and the prevention of illicit trafficking in cultural goods – the Council of Europe Convention on Offences relating to Cultural Property”, January 2017, www.coe.int

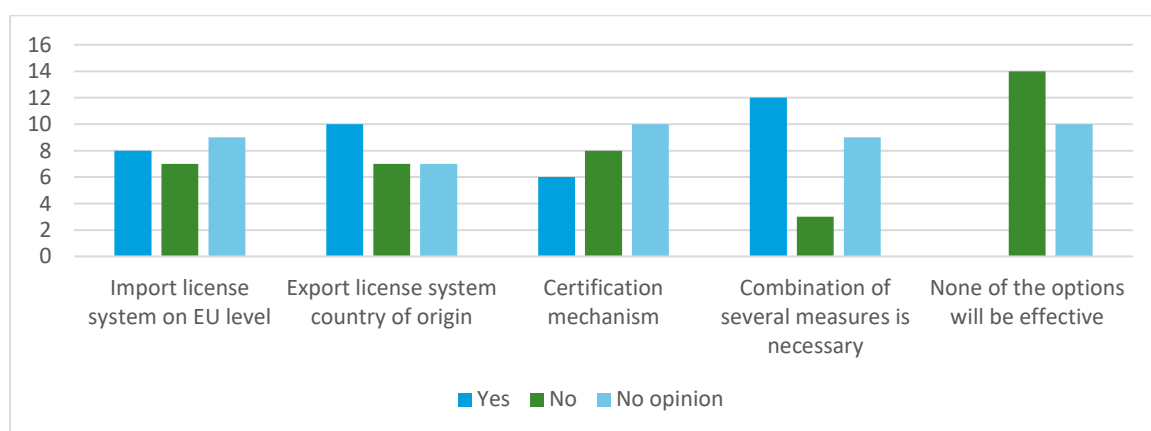
6 Assessment of the policy options

6.1 Impact assessment criteria

In the previous section, a description has been provided of the different policy options that are considered in order to tackle the problems identified. This description included already the scope of the options (stakeholders involved, their role and responsibilities, geographical level) and high level advantages and disadvantages of each option considering the objectives of the policy.

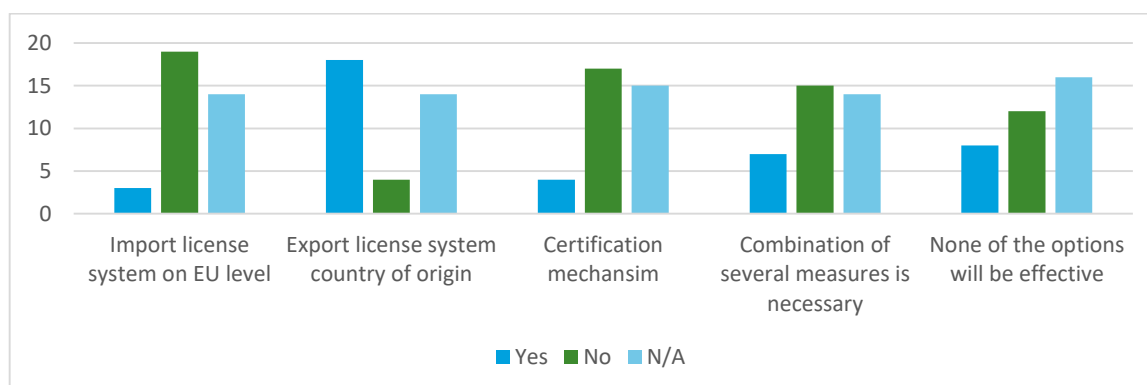
The options proposed above are not necessarily mutually exclusive. They would be complementary to one another because they address the different drivers of the problem. From the surveys to the Member States and the market operators, the preference to a combination of several measures (including legislative and control mechanisms) has been identified. (NB: the option of importer and exporter declaration was at the time of the survey not in scope and not proposed as part of the survey.)

Figure 36 – Mechanism



Source: General survey to the EU Customs and Culture administrations (2016)

Figure 37 – Mechanism (assessment of the market)



The next step is then to identify the magnitude of the impact of each option or set of options. The analysis of the impact aims to provide the Commission with sound information based on which the relevant options can be compared and ranked. To provide this information, the objective of this step is to assess impacts across the main policy dimensions as well as potential trade-offs and synergies.

The policy options have to be assessed towards the same assessment criteria. Using the same criteria ensures comparability across the policy options and allows assessing, for each option, e.g., how relevant, effective and efficient they are in addressing the problems, how effective they are in achieving the policy objectives and how coherent they are as far as Commission policies as well as Treaty and high level objectives are concerned. For this Impact assessment, we have used the following qualitative assessment criteria:

- **Effectiveness** in achieving the specific policy objectives. We have made this analysis for all tools/options listed in the section 5.2.;
- **Efficiency**, i.e. qualitative assessment of the effort (time and cost) needed to reach the objectives;
- **Coherence** with existing policies and legal/institutional frameworks.

In the next sections, the study has analysed the effectiveness of each tool individually in order to identify possible packaging of tools.

Then the study has conducted a SWOT analysis of the possible Customs control instruments to estimate the best cost benefit ratio in terms of efficiency and coherence with the existing framework.

6.2 Effectiveness

In order to assess the effectiveness of the various tools, the study has listed the problems and needs identified in Chapter 3 on the Problem assessment. For each problem/need, the study has identified which tool could be used to satisfy the need/tackle the problems.

Problem / Lack of:	OPTION 1	OPTION 2						OPTION 3		OPTION 4																
	status quo	EU supportive measures						EU soft law measures		binding legal instrument																
	Baseline scenario no further action	Awareness campaign	EU coordinating department	Cooperation – information exchange	Trainings customs officers / operators	EU expert group	Central authority monitoring internet sales	EU data portal	Guidelines and recommendations / open method of coordination	Support international instruments (UNESCO, UNIDROIT)	Directive	Regulation	Definition with thresholds	Definition without thresholds	Scope of restricted goods	Specific territories / countries	Global reach	Free circulation	FC + bonded warehouse	FC + BW + domestic EU market	Object declaration (exporter)	Object declaration (importer)	Certification/License	Burden of proof on importer	Enforcement and sanctioning	Reporting obligations
Protection of cultural heritage / goods Address EU demand market for illicit goods		x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Common understanding of a cultural good				x	x			x		x			x	x												
Difficulty to match a cultural good in practice with the definition					x	x		x	x				x													
Prove age, provenance and value of the CG (incl. the 'old collection issue')				x	x	x		x						x							x	x	x	x		
Tracking small cultural goods with limited value					x			x			x	x		x			x					x		x	x	
CG expertise of MS officials				x	x			x	x													x				x
CG expertise of market operators		x		x	x			x	x													x				
Awareness on the problem of trafficking		x			x						x	x										x				
Knowledge existing regulatory framework				x	x			x																		
Level playing field - harmonised approach										x		x		x	x		x			x	x	x	x			
Practical tools to apply the legislation				x				x														x				
Control mechanism											x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Licit trade facilitation					x	x		x			x	x										x				
New political instability / regions in distress															x	x	x									
Free ports issue																			x	x						
Circumvention of existing framework					x	x	x	x						x	x		x			x	x	x	x	x	x	
Adequate resources for customs authorities				x	x	x	x	x																		
Cooperation with other EU Member States, third countries, international organisations			x	x						x							x									
Coordination existing tools and mechanisms		x																								
Lack of reliable quantitative data				x																						x

Table 7 Effectiveness of policy options

From this table, several tools can be identified as being particularly effective. The study proposes to group them in order to leverage on the strengths of the most effective tools. For instance, one can clearly see from this table that a binding tool such as a Regulation would certainly be more effective than a soft law. Control instrument such as an object declaration from the importer would be included in the Regulation in order to ensure the respect of the measures. The burden of proof on EU importer is much more powerful than relying on exporters or certification bodies located in non-EU countries.

Together with the Regulation, the EU and MS would certainly consider supportive measures such as:

- Increased cooperation between Customs authorities but also other law enforcement authorities involved in the fight against cultural goods trafficking;
- Improving the exchange of data by linking for instance databases with the artefacts imported and declared or by creating a central database;
- Awareness raising campaigns to communicate on the needs for an object declaration and overall on the risks related to trafficking cultural goods;
- Trainings for customs officers / operators, as usual business, when legal change occurs.

6.3 SWOT analysis – Efficiency and coherence

As the measures to regulate imports are at the centre of this study, the analysis of the coherence and efficiency emphasize the use of the following control instruments:

1. declaration by the importer accompanied by cultural passport (e.g. Object ID) ;
2. declaration by the exporter accompanied by cultural passport (e.g. Object ID) ;
3. Import certificate;
4. Export certificate.

Given the inherent qualitative nature of the assessment, we present the characteristics of these tools using the SWOT analysis. The use of this tool allows having a clear identification of the strengths, weaknesses, opportunities and threats presented by each tool, in comparison with the Status Quo, i.e. the baseline scenario.

Table 8 – SWOT elements per customs control instrument

	Strengths	Weakness	Opportunities	Threats
Declaration signed by the EU importer	Efficiency			
	<p>It will provide an additional tool to identify and track the good imported.</p> <p>Even for goods of lower value, the object declaration mechanism could serve its purpose.</p>	<p>The system will rely on the importer's good faith. Moreover the information about the good that the importer will have at his/her disposal will come from the exporter to a large extent.</p> <p>The identification could still result in false information on the good. The importer would however bear the responsibility for such false statements.</p> <p>This declaration will create a burden on all EU importers who want to import goods that potentially fit in the definition of the cultural goods.</p>	<p>The system will contribute to monitor better cultural goods that have entered the EU (e.g. for further investigations)</p> <p>The fact that the importer will have to fulfil additional obligations will also create an awareness on the risks of importing illicitly cultural goods in the EU.</p> <p>The harmonization of the importation procedure across the Union could facilitate trade.</p>	<p>Risk of circumvention of the obligation, in the event there is no agreement on a clear definition of cultural goods, and different restrictions between the exporting country and the importing country.</p>
	Coherence			
	<p>The object declaration will be an add-on to existing Customs procedures. It could be combined with due diligence requirements</p>	<p>It will create a specific administrative requirement for the EU market.</p>	<p>To leverage on existing systems for storing of the object declarations.</p>	<p>There are risk of confusion for the exporters with the creation of a new system.</p>

	Strengths	Weakness	Opportunities	Threats
	<p>on the importer, who should perform certain checks, e.g., in databases or with regard to the ID of the seller.</p> <p>It will create an extra check on the import of goods.</p>			<p>The definition of cultural goods applied by the EU could be different than those applied by the exporting countries.</p>
Declaration signed by the exporter	Efficiency			
	<p>Same as for Declaration signed by the EU importer</p> <p>Plus</p> <p>The seller/exporter knows most about the goods as he will be disposing of those goods. He is in the most relevant position to provide the information requested.</p>	<p>Same as for Declaration signed by the EU importer</p> <p>Plus</p> <p>Holding liable and initiating proceedings against (enforceability) the exporter who made a false declaration is more difficult and therefore requires more effort than holding liable the importers located in the EU.</p> <p>There is no jurisdiction for the EU (Member States) outside the Union. It might prove difficult to hold someone liable for misstatements or flaws in the declaration.</p>	<p>Same as for Declaration signed by the EU importer</p> <p>Minus</p> <p>The fact that the exporter will have to fulfil this additional obligation will create less awareness among the importers on the risks of importing illicitly cultural goods in the EU.</p>	<p>Same as for Declaration signed by the EU importer</p>

	Strengths	Weakness	Opportunities	Threats
	Coherence			
	<p>Same as for Declaration signed by the EU importer</p> <p>But</p> <p>It could be combined with due diligence requirements on the exporter instead of on importer.</p>	<p>Same as for Declaration signed by the EU importer</p>	<p>Same as for Declaration signed by the EU importer</p>	<p>Same as for Declaration signed by the EU importer</p>
Import licence issued by EU authorities	Efficiency			
	<p>There is no need to depend on third country authorities or international organizations to develop the certification mechanism.</p> <p>Value is created for the market operators through the certification, as this provides for a third party assessment of the cultural good.</p> <p>➤ Harmonization of the importation procedure across the Union could facilitate trade;</p>	<p>Time necessary for receiving the license would slow down trade of antiquities and other artefacts.</p> <p>The import side should dispose of all necessary information on the region of origin. The assessment whether a good comes from a particular region is often more efficiently carried out with cooperation of the country of exportation.</p> <p>The cost for EU authorities to set up and operate such a system would be quite significant and the</p>	<p>As for the object declaration, the fact that the importer will have to fulfil additional obligations will also create an awareness on the risks of importing illicitly cultural goods in the EU.</p> <p>The harmonization of the importation procedure across the Union could facilitate trade.</p>	<p>Risk of circumvention of the obligation, in the event no agreed definition of cultural goods would be agreed upon (unlikely) and different restrictions between the exporting country and the importing country.</p>

	Strengths	Weakness	Opportunities	Threats
	<p>➤ Other authorities and market operators in the supply chain would be able to rely on the certification for their assessment of the tradability of the good.</p>	<p>delays for imports could turn out to be prohibitive.</p> <p>The cost will be disproportionate for the authorities and for the market.</p> <p>It would also increase the price of the goods.</p>		
	Coherence			
	<p>As for the object declaration, it will be an add-on to existing Customs procedures. It could be combined with due diligence requirements on the importer, who should perform certain checks.</p> <p>It will create an extra check on the import of goods.</p>	<p>As for the object declaration, It will create a specific administrative requirement for the EU market.</p>	<p>Countries' intelligence would be shared and information could be exchanged, essentially facilitating the identification and certification of the cultural good.</p>	<p>As for the object declaration the definition of cultural goods applied by the EU could be different than those applied by the exporting countries.</p>
Export certificate issued by third countries	Efficiency			
	<p>Same as for EU import licence but the value of export certificate (at least from certain countries) could be questioned.</p>	<p>Many third countries do not provide for such certification would effectively mean that all</p>	<p>Same as for import license; The fact that the exporter will have to fulfil this additional obligations will make EU importers more vigilant about whom to do business within</p>	<p>Same as for the import license</p>

Strengths	Weakness	Opportunities	Threats
<p>The export cultural authorities know better about the legal status of the goods that are about to be exported. They are in a better position to agree on the exportation of the goods located in their countries.</p>	<p>imports of cultural goods from these countries would be blocked.</p> <p>Even for countries that do provide for such export certification, the lack of arrangements for administrative co-operation between them and the EU which would allow verification (cross-checking with the exporting country's customs) of the certificates by EU customs, means that these imports would de facto also be blocked.</p> <p>Determining whether goods could enter the EU would be dependent on the assessment of a non-EU, not Member States' related body.</p> <p>There is no jurisdiction for the EU (Member States) outside the Union, hence the EU and Member States would rely on third country authorities for enforcement of the export legislative framework in place.</p>	<p>third countries for the imports of cultural goods in the EU.</p>	
Coherence			

	Strengths	Weakness	Opportunities	Threats
	<p>It could be combined with due diligence requirements on the exporter instead of on importer.</p> <p>It will create an extra check on the import of goods.</p>	<p>Same as for the import license.</p>	<p>Countries' intelligence would be shared between the EU and third countries and information could be exchanged, essentially facilitating the identification and certification of the cultural good.</p>	<p>Same as for the import license.</p>

6.4 Comparison of the options

In this step, the study compares the options based on their relative strengths and weaknesses. The aim of the comparison is to identify whether one or more policy options stand out above the others. The comparison presents the relative strengths and weaknesses of customs control instruments in a clear way in order for the European Commission to clearly see and decide which option is preferred based on a weighting of political priorities.

The table below presents visuals of the result of the qualitative assessment carried in the previous sections.

Table 9 - Comparison of the Customs control instruments

	Effectiveness	Efficiency	Coherence	Total
Declaration signed by the EU importer	+++	+	++	++++++
Declaration signed by the exporter	++	+	+	++++
Import licence issued by EU authorities	+	--	+	=
Export certificate issued by third countries	+	+	+	+++

According to the assessment of the various instruments, it appears that a system based on a declaration signed by the EU importer is more effective, controllable and manageable by EU customs authorities and is very coherent with existing customs procedures and forms. An accompanying compulsory use of a standard 'cultural good passport' (or Object ID) is to be considered. Still, to be fully effective, the study recommends that a system should be developed (or existing platform to be enhanced) to store and share the accompanying cultural goods passport (or Object ID), between all EU countries, potentially beyond the EU in the long term. This system will probably merit additional EU financing in order to become the repository of information from the Member States on the declarations and cultural goods passports (or Object IDs) or at least to ensure that the requests for information smoothly circulate between customs authorities.

6.5 Preferred option

Following the analysis of all the other steps, the European Commission will have all the necessary details to support the selected of the preferred option.

Annex I – Survey (sample to selected third countries)¹¹¹

Page 1 - 4

Questionnaire to the third countries selected

Identification

1. State
2. Name of your organization (and department).
3. Name and function of respondent

National legislation addressing the illicit trafficking in cultural goods

Legislation

4. Does your country have national legislation in place in order to tackle the illicit imports of cultural goods, i.e. cultural goods originating in third countries that enter the territory of your country illegally (e.g., absence of import declaration, incorrect declaration, false origin, etc.)? Yes No

Import / export legislation

5. Does your country request specific import documents / procedures for the import of cultural goods from a third country into your country? Yes No

E-commerce

6. Do you have national provisions regulating the sale of cultural goods from third countries over the internet? Are such sales monitored in any way in your country? Yes No

Valuation and origin of cultural goods

12. Which information do the customs use to estimate the value of the cultural goods for export / import?
13. What information do the customs use to verify / determine the origin of the cultural goods for export / import?
14. Do the customs request assistance of external experts in case of doubt on the value and/or the origin of the cultural goods? Yes No

Definition

15. How are cultural goods defined in your legislation?
16. Does the definition of cultural goods refer to a list of categories like the list mentioned in Article 1 of the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property? Yes No

Return of cultural goods

17. Does your country have specific legislation on the return of cultural goods stolen or illicitly imported into your country? Yes No

Page 2 - 4
Questionnaire to the third countries selected

National legislation addressing the illicit trafficking in cultural goods (continued)

Cooperation

18. Do administration services and/or law enforcement authorities cooperate systematically with other administrations (e.g. Ministry of Culture, Ministry of Foreign Affairs, Museums, Customs, Police) in the matter of illicit trafficking in cultural goods? Yes No
-
19. Do administration services and/or law enforcement authorities cooperate systematically with administrations/authorities of third countries in the matter of illicit trafficking in cultural goods? Yes No
-
20. Do administration services and/or law enforcement authorities cooperate with the following international organisations on the topic of the illicit trafficking in cultural goods:
- 20a. UNESCO Yes No
- 20b. UNODC Yes No
- 20c. UNIDROIT Yes No
- 20d. INTERPOL Yes No
- 20e. International Council of Museums (ICOM) Yes No
- 20f. World Customs Organisation Yes No
- 20g. European Union Yes No

UNESCO Convention

21. Has your country ratified the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property? Yes No
-
22. Have the provisions of the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property been implemented in your country? Yes No

UNIDROIT Convention

23. Has your country ratified the 1995 UNIDROIT Convention on stolen and illegally exported cultural objects? Yes No
-
24. Have the provisions of the 1995 UNIDROIT Convention on stolen and illegally exported cultural objects been implemented in your country? Yes No

Database

25. Do you have a national database for cultural goods that have been stolen in your country? Yes No
-
26. Do you use private databases of cultural goods? Yes No

Expertise

27. Do the customs authorities employ or co-operate with experts in cultural goods (art historians; cultural heritage experts; archaeologists; etc.)? Yes No
-
28. Do the customs authorities organise trainings so that customs officers develop knowledge on cultural goods? Yes No
-
29. Do customs authorities in your country make systematic use of available online databases of stolen or endangered cultural goods? Yes No

¹¹¹ As part of this study, surveys to EU member states, economic operators and international organizations were equally conducted and are available on demand.

such as the Interpol database of stolen works of art? (or, e.g., the ICOM Red Lists?)

30. Are there trainings in your country for the art market, police officers, judges, diplomats, military staff, archaeologists etc. to raise awareness about illicit trafficking in cultural goods? Yes No

Awareness Campaign

31. Have you lead awareness raising campaigns to sensiblise the public (including tourists) on the fight against illicit trafficking in cultural goods? Yes No

Page 3 - 4

Questionnaire to the third countries selected

Imports of cultural goods from warzones

Legislation

32. How does your country apply the provisions of paragraph 7 of UN Resolution 1483(2003) and Resolution 2199(2015) preventing the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq and Syria?

33. Does your country have specific legislation aiming at prohibiting the imports, exports and transit of cultural goods originating in warzones? Yes No

Enforcement

34. How many cultural goods originating in Iraq, Syria or other warzones has your country seized since 2013?

35. In how many cases were the seized cultural goods sent back to their country of origin?

36. In case the seized cultural goods are not sent back to their country of origin, what does your country do with them?

Analysis

37. Do you believe that the enforcement measures in place in your country are adequate for cultural goods coming from areas of conflict? Yes No

38. In your opinion, do you think an improvement/extension of the provisions of paragraph 7 of UN Resolution 1483(2003) and Resolution 2199(2015) preventing the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq and Syria is necessary?

Yes No

Cooperation

39. Do you exchange information on the seized cultural goods originating in warzones with other countries? Yes No

Page 4 - 4
Questionnaire to the third countries selected

Prospective

Scope of protection

40. Would you agree that a clear definition (for instance based on age or other criteria) of the term "cultural good" would help customs when they are dealing with the importation of such goods from third countries? Yes No
-
41. Do you consider the setting of specific value limits for cultural goods helpful in that context or not? Yes No
-
42. Do you have evidence in your country of the occurrence of one or more of the following believed effects of the trafficking in cultural goods?
- 42a. Corruption Yes No
- 42b. Organised crime Yes No
- 42c. Money laundering Yes No
- 42d. Financing terrorist activities Yes No
- 42e. Destruction of cultural heritage and/or cultural goods Yes No
- 42f. Destruction of cultural identity Yes No
- 42g. Other (please explain) Yes No

Action

43. Does your country consider the illicit trafficking in cultural goods to be a problem? Yes No
-
44. Do you think an action at the international level is needed in order to tackle this problem? Yes No
-
45. Do you consider it necessary to take action at the demand side of the trade in cultural goods (i.e. countries of import) or should the main course of action relate to the supply side of the trade in cultural goods (i.e. countries of origin)?
-
46. If considering also the demand side relevant to take action, should this action be taken on:
- 46a. National level Yes No
- 46b. Supranational level Yes No
- 46c. Other (please explain) Yes No

Enforcement

47. In terms of enforcement measures to tackle the problem of illicit trafficking in cultural goods, which of the following measures do you consider to be effective:
- 47a. Import license system on the demand side Yes No
- 47b. Export license system in the country of origin Yes No
- 47c. Certification mechanism (similar to the Kimberley Process Certification Scheme for conflict diamonds) in the country of departure Yes No
- 47d. Certification mechanism in the destination country Yes No
- 47e. A combination of several of the mentioned measures will be necessary Yes No
- 47f. None of the aforementioned options will be effective and preferable Yes No
- 47g. Other (please explain) Yes No

48. If you have any further experiences, remarks, information to add, please do so below.

This is the end of the survey, please click "Next Page" and then "Finish" to submit your responses.

DeloitteDEX™ survey tool - Copyright [2001 - 2017] Deloitte Development LLC . All rights reserved.
Survey questionnaires and reports provided through DeloitteDEX are created by one or more of Deloitte Touche Tohmatsu Limited (DTTL); the DTTL member firms and their respective affiliates.
Such materials are the copyrighted materials of the creating entity.
Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Annex II – Literature

Books

J. Nafziger & R. Kirkwood Paterson, Handbook on the law of cultural heritage in international trade, 2014, Edward Elgar Publishing

P. O’Keefe, Commentary on the 1970 UNESCO convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, 2007, 2nd edition, Institute of Art and Law

S. Manacorda and D. Chappell, Crime in the art and antiquities world - Illegal trafficking in cultural property, New York – Dordrecht – Heidelberg – London, 2011, Springer

Reports

CECOJI-CNRS – UMR 6624, Study on the preventing and fighting illicit trafficking in cultural goods in the European Union, 2011,

http://ec.europa.eu/home-affairs/doc_centre/crime/docs/Report%20Trafficking%20in%20cultural%20goods%20EN.pdf

International Council of Museums, Countering illicit traffic in cultural goods – the global challenge of protecting the World’s Heritage, 2014,

http://issuu.com/internationalcouncilofmuseums/docs/book_observatory_illicit_traffic_ve/1?e=17199299/31993810

INTERPOL, Office of Legal Affairs, Countering illicit trade in goods – A guide for policy-makers, 2014,

<http://www.INTERPOL.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Legal-assistance/Legal-publications>

European Commission, Moving art – A guide to the export and import of cultural goods between Russia and the EU, 2007,

http://eeas.europa.eu/delegations/russia/documents/eu_russia/moving_art_07_en.pdf

UNODC, Protection against trafficking in cultural goods, 2009,

https://www.unodc.org/documents/organized-crime/trafficking_in_cultural/CCPCJ_EG_1_2009_CRP_1/V0987314E.pdf

UNODC, Report on the meeting of the expert group on protection against trafficking in cultural property, 2012,

https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.1_2012/UNODC_CCPCJ_EG1_2012_4_E.pdf

UNODC, Report on the meeting of the expert group on protection against trafficking in cultural property, 2014,

https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.1_2014/UNODC_CCPCJ_EG1_2014_E.pdf

UNITED NATIONS, *Protecting cultural heritage – an imperative for humanity*, 22 September 2016.

Articles

World Customs Organisation, The many challenges involved in combating trafficking in cultural goods, 2013, World Customs Organisation News

L. V. Prott, Strengths and weaknesses of the 1970 Convention: an evaluation 40 years after its adoption, 2011, The fight against the illicit trafficking of cultural objects, The 1970 Convention: past and future

A.F. Vrdoljak, The criminalisation of the illicit trade in cultural property, 2015, Cultural Property Reader

R. Fisman and S-J Wei, The smuggling of art, and the art of smuggling: uncovering the illicit trade in cultural property and antiquities, 2009, American Economic Journal: Applied Economics

A.F. Vrdoljak and F. Francioni, The illicit traffic of cultural objects in the Mediterranean, 2009, EUI Working Papers

M-A. Haldimann, Tradition de collection et trafic d'antiquités: une réflexion sur la collection privée au XXIème siècle, 2015, Uniform Law Review

A. Koush, Fight against the illegal antiquities' traffic in the EU: bridging the legislative gaps, 2011, Bruges Political Research Papers

S.J. Park, Cultural property regime in Italy: an industrialized source nation's difficulties in retaining and recovering its antiquities, 2002, University of Pennsylvania Journal of International Economic Law

M.V. Vlastic and J.P. De Sousa, Stolen assets and stolen culture: the illicit antiquities trade, the perpetuation of violence and lessons from the global regulation of blood diamonds, 2012, Durham Law Review

G. Borgstede, Cultural property, the Palermo Convention and Transnational Organized Crime, 2014, International Journal of Cultural Property

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, 1 January 2000 – 31 December 2010, COM(2011)382.

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, 1 January 2011 – 31 December 2013, COM(2015)144.

Ali, I. and Coningham, R., "Recording and preserving Gandhara's cultural heritage", Culture Without Context 1998/3, 27.

Bell, M., "Italian Antiquities in America", Art, Antiquity and Law 2002/7, pp. 195 – 205.

Brodie, N. and Contreras, D., "The economics of the looted archaeological site of Bâb edh Dhrâ: a view from Google Earth", in Lazrus, P.K. and Barker, A.W. (eds.), All the Kings Horses: Looting, antiquities trafficking and the integrity of the archaeological record, Society for American Archaeology, Washington, 2012, p. 23.

Brodie, N., Dietzler, J. and MacKenzie, S., "Trafficking in cultural objects: an empirical overview", in Manacorda, S. and Visconti, A., Beni culturali e Sistema penale – Atti del Voncegno, p. 25ff.

Chippindale, C., Gill, D., Salter, E. and Hamilton, C., "Collecting the classical worlds: first steps in a quantitative history", International Journal of Cultural Property 2001/10, p. 1ff.

Elia, R. "Analysis of the looting, selling, and collecting of Apulian red-figure vases: a quantitative approach" in Brodie, N., Doole, J. and Renfrew, C. (eds.), Trade in illicit antiquities: the destruction of the world's archaeological heritage, McDonald Institute, Cambridge, 2001, pp. 145 – 154.

Fernandez Cacho, S. and Garcia Sanjuan, L., "Site looting and illicit trade of archaeological objects in Andalusia, Spain", *Culture Without Context*, 2000/7, p. 19.

Gill, D. and Chippindale, C., "Material and intellectual consequences of esteem for Cycladic figures", *American Journal of Archaeology* 1993/97, p. 616ff.

Gutchen, M., "The destruction of archaeological resources in Belize, Central America", *Journal of Field Archaeology* 1983/10, p. 223.

Hanna, M., "Looting activities in post-2011 Egypt" in Desmarais, F. (ed.), *Countering illicit traffic in cultural goods – the global challenge of protecting the world's heritage*, ICOM, Paris, 2015, pp. 54 – 55.

Hardy, S., "Interrogating archaeological ethics in conflict zones: cultural heritage work in Cyprus", Brighton, University of Sussex, 2011.

Hardy, S., "Virtues impracticable and extremely difficult: the human rights of subsistence diggers" in González-Ruibal, A. and Moshenska, G. (eds.), *Ethics and the archaeology of violence*, London, Springer, 2015, p. 229ff.

Hardy, S., *Illicit trafficking, provenance research and due diligence: the state of the art*, UNESCO, Paris, 2016, p. 4 and 7.

Hollowell, J., "Moral arguments on subsistence digging" in Scarre, C. and Scarre, G. (eds.), *The ethics of archaeology: philosophical perspectives on the practice of archaeology*, Cambridge, Cambridge University Press, 2006, pp. 69 – 93.

Hollowell, J., "St. Lawrence Island's legal market in archaeological goods" in Brodie, N., Kersel, M.M., Luke, C. and Tubb, K.W. (eds.), *Archaeology, cultural heritage, and the antiquities trade*, pp. 120 – 121.

ICOM, *Red List – The looting of African archaeological objects*, Paris, 2000, p. 11.

Kersel, M., *License to sell: the legal trade of antiquities in Israel*, University of Cambridge, 2006.

Luke, C. and Henderson, J.S., "The Ulúa Valley, Honduras, and a market analysis for its antiquities", in Brodie, N., Kersel, M.M., Luke, C. and Tubb, K.W. (eds.), *Archaeology, Cultural Heritage, and the Antiquities Trade*, University Press of Florida, Gainesville 2006, pp. 155 – 156.

Mackenzie, S., "Organised crime and common transit networks", *Australian Institute of Criminology* 2002/233, 6 p.

Matsuda, D., "Subsistence diggers" in Fitz Gibbons, K. (ed.), *Who owns the past? Cultural policy, cultural property, and the law*, New Brunswick, Rutgers University Press, 2005, p. 225ff.

Norskov, V., *Greek vases in new contexts*, Aarhus University Press, Aarhus, 2002, pp. 256 – 270.

Panella, C., Schmidt, A., Polet, J. and Bedaux, R., "Le context du pillage" in Bedaux, R., Polet, J., Sanogo, K. and Schmidt, A. (eds.), *Recherches archéologiques à Dia dans le Delta intérieur du Niger (Mali): bilan des saisons de fouilles 1998 – 2003*, CNWS, Leiden, 2005, p. 18.

Roosevelt, C.H. and Luke, C., "Looting Lydia. The destruction of an archaeological landscape in Western Turkey" in Brodie, N., Kersel, M.M., Luke, C. and Tubb, K.W. (eds.), *Archaeology, cultural heritage, and the antiquities trade*, p. 179.

Roosevelt, C.H. and Luke, C., "Mysterious shepherds and hidden treasures: the culture of looting in Lydia, Western Turkey", *Journal of Field Archaeology* 2006/31, p. 193.

Rose, J.C. and Burke, D.L., "Making money from buried treasure" in *Culture Without Context* 2004/14, pp. 4 – 5.

Staley, D.P., "St. Lawrence Island's subsistence diggers: a new perspective on human effects on archaeological sites", *Journal of Field Archaeology* 1993/20, pp. 347 – 355.

Yahya, A., "Looting and 'salvaging' the heritage of Palestine", 2010 (<http://www.presentpasts.info/articles/10.5334/pp.26/>).

Presentations

European Parliament, *Destruction and trafficking of cultural heritage – UNESCO's actions and cooperation with the EU*, 2015

UNODC, *The UN Convention against transnational organized crime: a vehicle for effective law enforcement and international cooperation to combat trafficking in cultural property*, 2009

Annex III – National level cultural goods legislation in EU member states (resources)

Country	Link
Austria	https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_19/BGBLA_2016_I_19.pdf
Belgium	http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1996102854&table_name=wet/ http://www.kunstenenergoed.be/sites/default/files/uploads/pdf/160119_Topstukken decreet-2015-geconsolideerde-versie.pdf/ http://www.unesco.org/culture/natlaws/media/pdf/belgium/be449_decretbcmob_p atrimmcomfran_freorof.pdf
Bulgaria	http://www.unesco.org/culture/natlaws/media/pdf/bulgaria/bulgaria_culturalheritageact_2009_entof.pdf
Cyprus	http://www.mcw.gov.cy/mcw/da/da.nsf/All/A2ABFCFE258EFD71C22571A2003A2B9D/\$file/law-en-1.pdf ; http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Cyprus/law1831of2002.pdf
Czech Rep.	http://www.eui.eu/Projects/InternationalArtHeritageLaw/CzechRepublic.aspx
Denmark	http://www.unesco.org/culture/natlaws/media/pdf/denmark/denm_act_332_engtof.pdf ; http://www.unesco.org/culture/natlaws/media/pdf/denmark/denm_museum_act_473_engtof
Estonia	http://www.unesco.org/culture/natlaws/media/pdf/estonia/es_expimcltp08_entno;
Finland	http://www.nba.fi/en/about_us/export_of_cultural_goods
France	https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032854341&dateTexte=&categorieLien=id
Germany	http://www.gesetze-im-internet.de/kgsg/index.html
Greece	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Greece.aspx
Hungary	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Hungary.aspx
Ireland	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Ireland.aspx
Italy	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Italy.aspx
Croatia	http://www.min-kulture.hr/default.aspx?id=81
Latvia	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Latvia.aspx
Lithuania	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Lithuania.aspx
Luxemburg	legilux.public.lu/eli/etat/leg/loi/2014/12/17/n3/jo
Malta	http://docs.justice.gov.mt/lom/legislation/english/leg/vol_14/chapt445.pdf
Netherlands	http://www.unesco.org/culture/natlaws/media/pdf/netherlands/netherlands_act198420022009_entof.pdf
Poland	http://www.unesco.org/culture/natlaws/media/pdf/poland/poland_act2302003_entof.pdf
Portugal	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Portugal/law107of2001.pdf

Romania	http://www.unesco.org/culture/natlaws/media/pdf/romania/rom_law_182_engtof.pdf
Slovenia	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Slovenia/culturalheritageprotectionact.pdf
Slovakia	http://www.wipo.int/wipolex/en/text.jsp?file_id=418650
Spain	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Spain/law16of1985.pdf
Sweden	http://www.unesco.org/culture/natlaws/media/pdf/sweden/se_ordincehertgeconservat1998_engtno.pdf
UK	http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/UnitedKingdom/dealinginculturalobjects(offences)act2003.pdf

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:
from the European Union's representations (http://ec.europa.eu/represent_en.htm);
from the delegations in non-EU countries
(http://eeas.europa.eu/delegations/index_en.htm);
by contacting the Europe Direct service
(http://europa.eu/europedirect/index_en.htm) or calling 00 800 6 7 8 9 10 11
(freephone number from anywhere in the EU) (*).

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

