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NOTE

From:	Presidency
To:	Delegations
Subject:	Strengthening traceability tools by introducing an obligation for professionals to keep a register of movable property as part of the future European Action Plan on trafficking in cultural goods

Courtesy translation

As a continuation of the conference on strengthening European cooperation against illicit trafficking in cultural goods held on 1 February at the Louvre and at the meeting of European culture ministers organised on 8 March 2022 in Angers on the new European challenges of heritage protection and enhancement policies, the discussions at the informal COSI in Versailles on 27 April highlighted the importance of strengthening the traceability of cultural goods within the internal market, whether through legal or technical means.

As Vice-President Schinas recalled in October 2021 at UNESCO, this traceability objective is included in the EU Security Union Strategy of 24 July 2020¹ and will be a key aspect of the future EU Action Plan to combat trafficking in cultural goods. Traceability was already at the heart of Regulation (EU) No 2019/880 on the introduction and the import of cultural goods² (the European electronic system provided for by the latter should be operational by the end of June 2025) and of the report illicit trafficking in cultural goods in Europe published by the European Commission in 2019³. It is also supported by several reports of the European Parliament⁴.

Experience demonstrates that in those states that have imposed registers on their art markets, this practice has been implemented without major difficulties and has proven to be effective⁵.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0605&from=EN>
« Trafficking in cultural goods has also become one of the most lucrative criminal activities, a source of funding for terrorists as well as organised crime and it is on the rise. Steps should be explored to improve the online and offline traceability of cultural goods in the internal market and cooperation with third countries where cultural goods are looted as well as providing active support to law enforcement and academic communities

² This Regulation provides for the creation of a European electronic system whereby importers must (i) apply for an import licence for goods most at risk (of participating in the financing of terrorist activities in the third country of export), and provide the necessary supporting documents for the examination of the application, or (ii) make a self-declaration for goods considered less at risk "to certify [their] lawful export from the third country ('), while providing sufficient information to enable customs authorities to identify such cultural goods" and "ensure [their] traceability after entry into the internal market", notably through the storage and exchange of information functions.), while providing sufficient information to enable the customs authorities to identify such cultural goods" and "ensure [their] traceability after entry into the internal market", notably through the storage and information exchange functions between Member States' authorities of the centralised electronic system.

³ <https://op.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1>

⁴ https://www.europarl.europa.eu/doceo/document/A-8-2018-0035_EN.html
https://www.europarl.europa.eu/doceo/document/TA-8-2018-0059_EN.html
https://www.europarl.europa.eu/doceo/document/TA-8-2018-0512_EN.html
https://www.europarl.europa.eu/doceo/document/TA-8-2019-0037_EN.htm

⁵ In France, for example, this practice has been integrated since the end of the 19th century by the vast majority of art dealers and more recently for auction houses.

The first challenge is to provide the law enforcement agencies of the Member States with the means to fight cultural crime under the same conditions as in other comparable areas⁶.

The current regulatory and technical deficiencies in the traceability of works of art, including on the Internet, not only endanger cultural goods, but also fuel trafficking, money laundering and tax fraud. The improvement of traceability is aimed at avoiding, that a good, which has illegally left its territory of origin (EU or third country), is considered in order as soon as it is imported or marketed in a Member State. It would therefore help to strengthen the reputation of the European place in the world⁷. The likely recent intensification of cultural pillage because of the Russian invasion of Ukraine also illustrates the need to reinforce the tools in this area.

Another major challenge is to reinforce the legal security of the market for buyers, which can also represent a strategic commercial argument. A number of sales companies are already using this argument: the passage of a work of art through a "safe" country is nowadays presented at sales as a guarantee of good provenance (which makes it possible to guarantee a good market price, or even simply to help a seller complete a transaction). The purpose is to help the art market to ensure the transparency of its activity by providing it with common tools at European level, following the example of other markets. It would be appropriate to be inspired, for example, by what has been done in the area of traceability for firearms established by Directive (EU) No 2021/555 of 6 April 2021⁸ and Regulation (EU) No 258/2012⁹, particularly with a view to its future revision.

The traceability obligation is an essential complement to digital tools developed elsewhere (such as INTERPOL's stolen object database and its mobile application ID ART).

⁶ For example: wild animals, ivory, diamonds.

⁷ An INTERPOL survey to assess crime against cultural property (*file:///C:/Users/CAVIGN~1/AppData/Local/Temp/2020%20Assessing%20Crimes%20Against%20Cultural%20Property.pdf*: 2020 *Assessing crimes against cultural property, survey of INTERPOL member countries, September 2021*) indicates that two-thirds of the world's seized cultural property is in Europe

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021L0555>

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0258>

Establish a specific register

An effective option could be to introduce today, at European level, an obligation for professional dealers in "second-hand" goods of a cultural or artistic nature to keep standardised registers of movable property (also known as "police books"), with guarantees regarding their forgery-proof nature and including minimum obligations (the price; a photo; a description of the object; the verified identity of the seller, etc.). These registers should cover all objects bought or sold, displayed in a shop or kept in a warehouse belonging to the same trader.

Article 10 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, States Parties undertook to "*oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold*". Several Member States already have all or part of this valuable investigative tool. The European private sector, in particular auction houses, often already maintains such registers.

The register is a traceability tool for objects entering a reseller's inventory. It is the first level of "due diligence" regarding checks on the provenance of goods offered for sale. It aims, in particular, to fight against receiving stolen goods and money laundering while legally protecting the buyer and seller of these second-hand goods by tracing the supply chain.

If the system of the "paper" register can be maintained, at least in the first phase, the use of the digital version should be progressively made compulsory, as it would make it possible to integrate photographs of the object more easily and reliably. In the long term, it would be useful if extractions from this register could be made and sent to the control administrations (customs services, police, and judicial authorities) on simple request within the existing regulatory framework of national control.

Stolen cultural property usually spends a period in "quiet storage" called the "forgetting period". For this reason, judicial investigations are regularly opened several years after the fraudulent purchase of an art object. This storage also makes it possible to falsify the declaration of origin of a good, and to conceal its illegal origin when it is directly imported as part of a declared operation. It is therefore necessary that the data recorded in a chattel register be kept for an unlimited period or at least for several years, e.g. at least twenty years.

Scope of application

The obligation to keep a register should cover all cultural goods sold by a well-defined professional category (dealer, antique dealer, gallery owner, auction house, internet seller, art broker). It is expected that all cultural goods will be covered.

A European obligation is necessary in order not to provide opportunities for traffickers to take advantage of the disparities between Member States and to facilitate, at European level, controls on contentious objects. As the art market is international and, even more so, fully Europeanised, cultural goods are expected to circulate from one country to another.

Traffickers know how to provide false evidence of legal provenance. Registers in the EU will give the authorities a better ability to trace the journey of a cultural object from one Member State to another, and thereby to detect potential fraud. The administrative control of the register avoids the need for an international request for mutual assistance in criminal matters from the outset and thus allows early work on verifications at auctions, without triggering criminal proceedings. It would also enable the customs authorities to carry out direct controls on the origin, value and classification of the work and therefore to better combat trafficking carried out under cover of legal trade by means of false declarations and documents.

Content of the register, preservation and access

The European model register could contain the following categories of information: a unique identification number for each object (serial number) for each trader, the date of sale or deposit with the dealer, the value or price, the full and verified identity of the seller or depositor, photographs, a detailed description, the terms of payment, the existence of any asset protection measures. The absence or failure to submit the register to the authorities responsible for its administrative control or the entry of incorrect information should constitute an offence. In particular, the failure to enter an object in the register may in some cases be an indication of various offences that seriously harm the interests of the European taxpayer (handling stolen goods, money laundering, illegal export, customs fraud). Furthermore, beyond an indication of fraud, the fact that a good is not entered in the register could lead to a reversal of the burden of proof, which would mean that the unscrupulous exporter or importer would have to provide proof that the good was exported or imported in compliance with the regulations. In the absence of such proof, a customs offence of exporting or importing without declaration, where applicable, could be established.

A dialogue with the art market will allow the development of a digital register, which is as ergonomic as possible, and which does not represent a disproportionate administrative burden, taking inspiration from the practice in certain Member States, such as France, which has made it compulsory for auction houses to use this format.

The register should be held in the language of the dealer's State of establishment. It should be stored by the dealer on his own database and, if the digital format has been chosen, only be consulted if necessary by the law enforcement authorities of the Member State concerned, in compliance with European data protection rules.

Data protection

The introduction of the obligation to keep registers in the Internal Market is entirely compatible with the GDPR (*General Data Protection Regulation*) insofar as personal data will only be accessible to authorised persons and will be deleted after a certain period (e.g. ten years after the transfer of the object).

The register contains private data and should only be accessible in the first instance to the trader concerned. In order to obtain access to the registers, law enforcement authorities must request access in the context of an administrative police control, a customs control or a judicial investigation by means of a requisition under the authority of a magistrate.

Questions to delegations

- Have you set up a system for the traceability of cultural goods at national level?
 - How can the generalisation of the practice of registers of movable property/police books within the Internal Market be made into an instrument fully adapted to the challenges of trade in works of art and cultural goods, including on the Internet?
 - Should the scope of such a register be limited to certain goods (e.g. antiquities) or, on the contrary, should it include all cultural goods?
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