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**NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Acting together against the destruction and illicit trafficking of cultural heritage in conflict areas  
- *Policy debate*  
[Public debate pursuant to Article 8(2) CRP [proposed by the Presidency]]

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Following consultation of the Cultural Affairs Committee, the Presidency has drawn up the attached discussion paper as the basis for the policy debate at the Education, Youth, Culture and Sport Council meeting on 23-24 November 2015.

## **Acting together against the destruction and illicit trafficking of cultural heritage in conflict areas**

### **Presidency discussion paper**

Current events remind us once again that armed conflict and war have a direct impact on cultural heritage, which becomes the target of deliberate destruction, demolition, looting and illicit trafficking.

The international community is deeply concerned about the destruction of this heritage that belongs to all humanity. It firmly and unanimously condemns these senseless acts that result in barbaric murders of those trying to save this heritage for future generations, and in the disappearance of invaluable and irreplaceable parts of world heritage.

As one of the **numerous bodies** involved, UNESCO has a leading coordinating role, guided by its overall mandate and with the support of the European Union and its Member States. At the same time, the EU is also active, particularly in the fight against illicit trafficking of cultural property. At the national level, Member States are involved to varying degrees, including in cooperation with affected third countries. A number of other actors and organisations are also contributing to the safeguarding efforts.

The fight against the destruction and illicit trafficking of cultural heritage also requires that **action needs to be led simultaneously on many overlapping fronts**, such as:

- heritage protection, including by documenting and cataloguing sites and artefacts in conflict and war areas (notably through digitisation);
- heritage defence, notably in the context of civilian crisis management missions, through rapid intervention measures, and through the commitment of local communities;

- heritage restoration, thanks in part to digital data and new technologies, but also through professional training;
- prevention of destruction, notably by raising awareness of the significance of cultural heritage and by working on the causes of conflicts and on ways of ensuring respect for cultural diversity;
- fight against illicit trafficking of cultural property, notably through legal measures (controls and sanctions);
- preservation of the value of heritage in terms of identity and history, notably by combatting the denial of the cultural rights of populations affected by conflict, in particular migrants and refugees.

Bearing in mind that these are **cross-sectorial issues**, and considering that the Council calls for a strategic and transversal approach which consistently and coherently integrates culture in the EU's external relations, ministers for culture are invited to express themselves on the following question:

**Given the multitude of actors, challenges and possible solutions to combat the destruction and illicit trafficking of cultural heritage, what role could the European Union play and how could a coherent and coordinated approach be ensured, while complementing efforts undertaken at the national and international levels?**

(For example, should efforts be specifically concentrated on different aspects of the above-mentioned fronts? Given the pressing challenge of the migratory crisis, what about the safeguard of the intangible heritage of the migrants and refugees? How could efforts be coordinated despite the fact that different ministries are competent for these issues?)

## **An overview of actions of the EU in the fight against illicit trafficking of cultural objects**

### 1. INTERNAL MARKET

Directive 2014/60/EU of the European Parliament and of the Council on the **return of cultural objects unlawfully removed from the territory of a Member State**, which was adopted on 15 May 2014, is a recast of Directive 93/7/CEE. The objective of the recast was to ensure that Member States can obtain the return of any cultural object identified as national treasure possessing artistic, historic or archaeological value that was unlawfully removed from their territory on or after 1 January 1993. By this way, the European Union seeks to contribute to the protection of Member State's cultural heritage.

The new Directive will therefore contribute to preventing and combating the illegal trafficking of cultural objects.

### 2. EXTERNAL RELATIONS

The EU has taken concrete action to address the systematic looting of heritage sites in **Syria and Iraq**. The Council has adopted the following **regulations banning imports of cultural goods** coming from the two countries if they are suspected of having been removed illegally:

- a) Council Regulation (EU) N°1210/2003 imposes certain restrictive measures in respect of **Iraq**, in accordance with Common Position 2003/495/CFSP and UN Security Council Resolution 1483 (2003).

- b) Council Regulation (EU) N°1332/2013 concerning restrictive measures in view of the situation in **Syria**, provides that goods removed without the consent of the legitimate owner, could be returned to Syria upon two conditions: 1) their legitimate owners had been identified; 2) these would not risk being used as economic assets in the conflict.

### 3. CULTURAL POLICY

The Council Work Plan for Culture 2015-2018 adopted in November 2014 foresees that a **study on illicit trafficking of cultural objects**, including EU import rules for cultural objects illegally exported from third countries, should be presented in 2016.

### 4. COOPERATION WITH THIRD COUNTRIES

In January 2014 the Commission and the Joint Africa-EU Support Mechanism organised a workshop on the **protection of cultural goods against plunder, theft and illicit trafficking in Morocco**. The aim of the event was to raise awareness among decision makers on the importance of the protection of cultural goods against plunder, theft and illicit trafficking and to provide recommendations and indicative priority actions to enhance the protection of cultural goods in Africa, taking into due consideration current gaps at pan African and regional level in the field.

The European Neighbourhood Policy Instrument (ENPI) is funding a **project aiming at the emergency safeguarding of Syrian cultural heritage** implemented by UNESCO in partnership with the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) and the International Council on Monuments and Sites (ICOMOS) (2,78 million EUR). In a first phase, the main activities have been training of technical staff from museums and cultural heritage structures. One of the main projects results will be the development of a police database of looted artefacts, which will systematically gather information on Syrian cultural objects which have been stolen and/or illicitly exported.

## 5. COOPERATION WITH INTERNATIONAL ORGANISATIONS

The EU is contributing financially to the establishment and maintenance a **database on illicit trafficking** of cultural goods managed by the International Council of Museums (ICOM).

## 6. EXPORTS OF CULTURAL GOODS

Council Regulation (EC) No 116/2009 of 18 December 2008 on the **export of cultural goods** lays down provisions to ensure that exports of cultural goods are subject to uniform controls at the Union's external borders. It was adopted in view of the creation of the internal market in January 1993, in an attempt to reconcile the principle of free movement of goods and the need for Member States to protect their national treasures. The categories of cultural objects covered by the Regulation are listed in its Annex I. The export of cultural goods outside the Union's customs territory is subject to the presentation of an export licence.

## 7. CUSTOMS

### a) Distribution of ICOM Red Lists to customs officers

The ICOM Red List on Iraqi Cultural Objects of June 2015 and the Red List on Syrian Cultural Objects published in 2013 was made available to Member State customs administrations through the online platform **CIRCABC**. They should be distributed to frontline customs officers to increase their capabilities to detect and identify suspicious goods and shipments.

The **ICOM** has issued **Red Lists on Iraqi and Syrian cultural goods**.<sup>1</sup> The Red Lists classify and illustrate the endangered categories of archaeological objects or works of art that are protected by national legislation in Iraq and Syria, and are, thus, vulnerable to theft and looting and subsequent trafficking.

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<sup>1</sup> ICOM has also published additional Red Lists on other vulnerable areas of the world. See <http://icom.museum/programmes/fighting-illicit-traffic/red-list/>

b) Distribution of list of international databases to customs officers

Various international organisations active in the fight against illicit trafficking in cultural goods have developed databases to help distribute information on thefts of cultural goods, the most notable being **INTERPOL's Stolen Works of Art database**. Information on these databases will be made available through the **Commission TAXUD webpage on cultural goods** to all actors concerned and in particular customs officers for use in case of suspicious goods or shipments.

c) Training of customs officers

In order to increase the expertise of customs officers, 1-2 training sessions for customs officers from all Member States should be arranged by the Commission. The training should draw on **existing training modules** (possibly with the assistance of UNESCO). Elements to be addressed in the training should include **risk assessment** and **clarification of protected goods under Syrian/Iraqi law**, but also **familiarisation with online databases**. The funding of the training will be covered by the Customs 2020 programme.

d) Improving risk management and risk analysis

Pursuant to Article 4g of the Implementing Provisions to the Community Customs Code<sup>2</sup>, **Member States are obliged to exchange risk related information electronically in the Risk Information Form (RIF) via the Customs Risk Management System (CRMS)** whenever a relevant risk is detected. The purpose of the RIF is to exchange risk information with a view to make it accessible and used by all national customs authorities simultaneously. A RIF will raise the awareness of customs offices and national risk analysis centres concerned with regard to a potential or real irregularity or risk. Issuing RIFs will also allow other Member States to take the relevant measures to detect identical type of illegal introduction of cultural goods into the EU.

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<sup>2</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

A RIF can be prepared following a finding of an irregularity (for example an incorrect declaration or finding of an undeclared item). The RIF could give information on the technique used to find the irregularity (a physical examination, a classification decision or a pre-analysis of routing information). Problems in identifying such cultural goods or in controlling them should be reported back to the Commission (DG TAXUD- Unit B1) and/or via a CRMS RIF to get answers from other Member States.

**An EU RIF has been prepared by DG TAXUD on 5 June 2015 providing Member States with the legal basis, an explanation of the current situation and a request for detailed feedback in the CRMS system.** This was the quickest and most efficient way to inform Member states and ask them all to target this risk and inform each other of future seizures.

A specific **Risk Category for cultural goods has also been created** in the CRMS.

The opportunity of **developing specific Common Risk Criteria (CRC)** will be evaluated and examined in order to assess whether the EU RIF would be enough or, a specific CRC under the current CRCs would be required or, as a last option, this subject should be explored in the future, possibly in the context of the general review of existing CRCs. **The Member States that already have risk profiles for cultural goods should share them**, even though risks may not be identical in all Member States.

e) Collect data on seizures from Member States

The Commission has gathered data on seizures and information on difficulties encountered by Member State customs in the enforcement of the sanctions regulations with regard to the prohibition of trade in cultural goods from Iraq and Syria.



The Commission has concluded that **there have not been many seizures of cultural goods from Iraq on Syria**. However, despite the low number of seizures, the circumstances of the seizures have been varied. The main issues limiting the number of seizures included **obtaining proof of origin that the goods in question come from the prohibited countries, the burden of proof and lack of expert information**.

This information will be used to assess the challenge posed by the implementation of the sanction measures, and to improve enforcement where possible.

f) Clarification of procedures at the border

During discussions in various fora, Member States customs administrations have expressed **problems regarding the procedure to follow in the event that they detect goods that potentially fall within the scope of the sanctions regulations or after they seize illicit cultural goods from Syria or Iraq**. A document with practical suggestions has been distributed through CIRCABC, which intends to clarify some aspects of these procedures.

g) General awareness-raising

An important element of the fight against illicit trafficking in cultural goods is **raising awareness on the rules on export and import of such goods**, both for private individuals and companies engaged in art trade.

The **section on cultural goods on the Commission (DG TAXUD) website is being updated and provides links to the websites of international partners**, including UNESCO, ICOM, ICOM International Observatory on Illicit Traffic in Cultural Goods and Interpol.