

# INTERVIEWS

Céline Chazelas-Baur\*  
talks to Antoinette Maget Dominicé\*\*  
and Andrzej Jakubowski\*\*\*

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## Combating the Illicit Trade in Cultural Objects: Re-visiting the 2022 EU Action Plan against Trafficking in Cultural Goods

**Antoinette Maget Dominicé (AMD) and Andrzej Jakubowski (AJ):** Thank you very much for agreeing to this interview. According to many experts and authorities, trafficking in cultural objects is one of the most money-making activities in the world. In your view, does the EU have sufficient tools to combat this type of trafficking?

**Céline Chazelas-Baur (CChB):** The EU action plan against trafficking in cultural goods, adopted in December 2022, illustrates well that the European Commission and the European

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\* **Dr. Céline Chazelas-Baur** is a policy officer in the unit “Organised Crime and Drugs” at the European Commission, Directorate-General Migration and Home Affairs. She focuses on financial crime and cultural goods trafficking and has been in charge of coordinating the adoption and implementation of the EU action plan against trafficking in cultural goods of 13 December 2022. Céline is a German-qualified lawyer, with degrees from the Universities of Cologne and Paris I. Her PhD dealt with terrorism prevention at the intersection of criminal and police law. Previously, she worked for the German government, and as a competition lawyer for the European Commission as well as in the private sector. The information and views set out in this article are those of the author and do not necessarily reflect the official opinion of the European Commission.

\*\* **Antoinette Maget Dominicé** has been a Junior Professor for the Value of Cultural Goods and Provenance Research 2018-2023 at LMU Munich and has been appointed Full Professor for Art Law at the University of Geneva from Fall 2023.

\*\*\* **Andrzej Jakubowski** is Assistant Professor at the Institute of Law Studies of the University of Opole, and Deputy Editor-in-chief of the “Santander Art and Culture Law Review”.

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External Action Service (EEAS) have already developed a significant set of relevant instruments and capabilities to address the different kinds of threats to cultural goods from organized crime.<sup>1</sup> The tools which the action plan provides are enabling the EU, alongside Member States, to contribute to tackling trafficking in cultural goods and the negative effects related to it. We conducted extensive consultation activities in the preparation of the action plan, to identify the areas where there is room for improvement in preventing and fighting cultural goods trafficking. Based on this assessment, you will learn what the European Commission already does and further intends to do. As the consultation activities leading to the adoption of the action plan have shown, it is not only a question of having sufficient tools. It is also essential to use the existing tools effectively – specific tools related to cultural goods trafficking, but also those more generally addressing cross-border law enforcement or judicial cooperation in the fight against crime. Examples of such existing tools are the support provided by EU agencies Europol and Eurojust, EU legislation regarding mutual legal assistance within the EU and also the Digital Services Act, and tools developed by international partners such as Interpol’s stolen art database or the guidance developed by UNESCO for law enforcement and the judiciary. There are also several measures under development to improve the arsenal of tools in the fight against cultural goods trafficking. An example for a future tool improving this fight would be the proposed extension of the scope of the Directive on asset recovery and confiscation to cover the illicit trafficking in cultural goods to the extent that the offence is committed within the framework of a criminal organization, as contained in the Commission proposal of May 2022; or the extension of the electronic system for the import of cultural goods to also include the export of cultural goods, decided at the beginning of 2023. The European Commission is also engaged in the development of IT and further technical tools supporting law enforcement agencies in detecting trafficking cases with funding (Horizon Europe<sup>2</sup> and Internal Security Fund – Police) or through the Europol Innovation Lab; for example the development of web crawlers or technical means to improve the traceability of cultural goods.

**AMD: The EU action plan against trafficking in cultural goods was published on 13 December 2022. How do you assess the reception of the action plan by EU Member States and art market actors so far?**

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<sup>1</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU action plan against trafficking in cultural goods*, 13 December 2022, COM(2022) 800 final.

<sup>2</sup> See for example European Commission, *Museums and Police in Europe Join Forces to Fight Illicit Trade in Artefacts*, 23 May 2023, <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/museums-and-police-europe-join-forces-fight-illicit-trade-artefacts> [accessed: 19.07.2023].

**CChB:** We are very pleased with the reception that the action plan has received so far. The action plan against trafficking in cultural goods is a historic milestone in the EU's fight against cultural goods trafficking and related criminal phenomena. This is the first time that the European Commission and the EEAS present their current and future actions in this field under one umbrella, centred around four strategic objectives: improving prevention and the detection of crimes by market participants and cultural heritage institutions; strengthening law enforcement and judicial capabilities; boosting international cooperation; and gaining the support of other key stakeholders to protect cultural goods from crime. One of the aims of the action plan was to give the need to prevent and fight against cultural goods trafficking more visibility. The feedback we receive from EU Member States and other stakeholders confirms that we have succeeded in this. We have been working on presenting and promoting the action plan at various levels and occasions. Many stakeholders have welcomed it explicitly, including UNESCO, UNODC, and Interpol, as well as most recently the EU Member States in the Council conclusions of 8 June 2023. Art market actors have also shown great interest in the actions announced in the action plan, such as the enhanced dialogue with the art market. This dialogue will also be a good occasion to further address questions and concerns of art market participants and other stakeholders.

**AJ:** In 2023, many events and collaborative initiatives to curb the illicit trade in cultural objects have already been undertaken in Europe and beyond. For example, in January experts from several European countries, the European Commission, UNESCO, and other international organizations met in Warsaw to discuss ways to combat the illicit trade in cultural objects, especially those originating from Ukraine; while in February Brazil published the list of cultural objects at risk of being trafficked. Can it therefore be said that the action plan's strategic objectives are gradually being implemented?

**CChB:** Absolutely! There is a lot of momentum indeed regarding the implementation of the action plan by the European Commission and the EEAS, in all its four dimensions. And on top of that we are happy to observe additional actions of Member States, international organizations, non-EU countries, and further stakeholders that fit well into the objectives of the action plan.

**AMD:** In relation to the current threats to cultural heritage in armed conflicts, the notion of "safe haven" is not included under strategic objective 3. Could preventive protection through safe haven nevertheless help to achieve this objective?

**CChB:** The EU is strongly committed to all dimensions of the protection of cultural heritage – internally and externally. And when it comes to cultural property

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in armed conflict, I would like to point your attention to the 2021 Council conclusions on the “Concept on cultural heritage in conflicts and crises. A component for peace and security in the European Union’s external action”, in which *safe havens* are in fact considered as an important protective instrument. Coming back to the action plan against illicit trafficking in cultural goods, I would like to take this opportunity to recall that this action plan is a policy document without any limiting characteristics. This means that it is not a legal document seeking to interpret international law, meaning both treaty law as well as such rules that are known as customary international law. In other words, as stressed in the action plan, the European Commission definitely welcomes any efforts on the part of Member States to take measures to protect cultural property threatened by conflict, and is itself very active in numerous actions to preserve cultural heritage in conflicts and crises, such as in Ukraine or the Middle East. For example, the Commission is working on setting up an expert group to safeguard cultural heritage in Ukraine, as a dedicated sub-group to the Commission expert group on cultural heritage. The group will be composed of 26 experts, including experts from Ukraine, and will help lay out the foundations of the EU’s support in safeguarding Ukrainian cultural heritage.

**AJ: Given strategic objective 1, is the Commission taking concrete action to strengthen standards on detecting cultural goods trafficking by market participants and cultural heritage institutions? Would the introduction of mandatory due diligence standards for the trade in cultural goods help to mitigate the risks of looted cultural objects from war zones being traded?**

**CChB:** The EU is addressing the standards on detecting cultural goods trafficking by market participants and cultural heritage institutions at various levels, and the EU action plan also includes references to the work of UNESCO and UNIDROIT. When it comes to EU legislation, for example the rules on the prevention of money laundering require certain market participants to report suspicious transactions that they observe. Moreover, in the action plan we also announce that we are taking a closer look at the obligations of market participants to record transactions, in line with the 2022 UNESCO Draft Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property. With an increase of restitution claims in individual cases, market participants are becoming more and more aware that well-documented due diligence is in their own interest.

On the flipside, the European Commission supports the development of technical tools that can help to better detect the cases where due diligence has been less thorough (e.g., web crawlers able to scan online offers of market participants to flag objects recorded as stolen or cultural goods at risk of trafficking).

**AMD: In the field of culture and heritage, but also research, the EU is rapidly reaching the limits of its competences. The fight against illicit trafficking requires the attention of everyone, not only in the market but also in the academic world and cultural institutions. In this regard, strategic objective 4 of the action plan seems particularly reduced and does not involve the Member States. Why is this?**

**CChB:** Actually, cultural heritage institutions and the academic world are addressed throughout the entire action plan.

Let me recall the four strategic objectives of the action plan: (1) improving prevention and detection of crimes by market participants and cultural heritage institutions; (2) strengthening law enforcement and judicial capabilities; (3) boosting international cooperation; and (4) gaining the support of other key stakeholders to protect cultural goods from crime. For example, cultural heritage institutions are directly named in strategic objective 1. The EU support to research and innovation in the fields of traceability of cultural goods under Horizon Europe (with four new projects recently started) is mentioned under strategic objective 2. Under strategic objective 3, cultural heritage institutions and the academic world are addressed by projects such as the expert group to safeguard cultural heritage in Ukraine that I have just mentioned.

In general, EU support for research has so far aimed to bring together the research community, public and private actors, and policy makers at national and international levels working on issues related to the illicit trafficking of cultural goods and on the protection, preservation, or reconstruction of cultural heritage in danger.

Finally, please keep in mind that the action plan is a policy document focussing on selected priority areas of action, not a compendium seeking to list everything that could and should be done. Against this backdrop, I can confirm that Member State action is appreciated and needed in the area of strategic objective 4, even if the action plan does not list explicit recommendations to Member States in this regard. The action plan leaves plenty of room for Member States and other stakeholders who would like to go further on the basis of the action plan, or specifically advance certain priorities. Some Member States are already very active when it comes to cooperation with cultural heritage institutions and in this context can be a good inspiration to others. For example, I have recently been to Stockholm for an EU CULTNET meeting and learned about the close cooperation between the Swedish police and Swedish researchers as well as cultural heritage institutions – such as the Church of Sweden and the Museum of World Culture – in the prevention and fight against cultural goods trafficking.

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**AMD:** Another aspect is the involvement of experts, who are mentioned in strategic objective 2 but not in the key actions. Couldn't the EU fund the establishment of a dedicated and funded pool of experts? This is often an activity that comes on top of a professional activity and is hardly (or not at all) compensated, while on the other hand dealers do not hesitate to call on expert advice, often for high sums.

**CChB:** As mentioned in the action plan, the European Commission understands the crucial role of cultural goods experts in cultural goods trafficking investigations. What we have also concluded – in particular from the consultation phase of the action plan and previous work on connecting cultural goods stakeholders – is that such a network only has a practical value if it is tailored to the needs of law enforcement authorities. Such a network is only useful if it is ultimately trusted and used by law enforcement authorities in their daily work and functions in a way that is in line with the operational needs of law enforcement authorities. This is why we recommend the development of such a network to Member States. Their national law enforcement authorities are best placed to do so.

The EU is fostering various activities in this context, for example through its support for law enforcement cooperation on cultural goods trafficking – including access to experts – within the “European Multidisciplinary Platform against Criminal Threats” (EMPACT), or the funding of the project ANCHISE under Horizon Europe Cluster 2, which includes a continuation of the NETcher network of cultural heritage professionals.

**AJ:** Finally, what are the current and planned steps to implement the action plan?

**CChB:** There is a lot in the pipeline. Here are some of the most recent achievements and planned activities. In February the Financial Action Task Force (FATF) adopted the EU-US co-led report on the misuse of art and antiquities for money laundering and terrorism financing. In May, the EU's Global Facility against Money Laundering and Terrorism Financing held a conference on anti-money laundering and countering the financing of terrorism in the investigation of Art and Antiquities Criminality in Mexico City – further regional conferences are planned in Asia and Europe for 2024. The Commission has also recently decided to extend the electronic system for the import of cultural goods to the export of cultural goods from the EU. Furthermore, several projects have been launched lately under Horizon Europe to increase traceability of cultural goods by technical means and to protect cultural heritage sites at risk from looting. The Dialogue with the Art Market, announced in the action plan, will be conducted in the framework of the sub-group to the Cultural Heritage Expert Group. Next steps will be a first meeting of the sub-group, and later a high-level event. As to the external dimension of the activities

of the EU, countering trafficking of cultural property has also been included in the strategic guidelines of the recently released revised 2023 Civilian CSDP (Common Security and Defence Policy) Compact.<sup>3</sup> Hence, CSDP missions and operations can also tackle the fight against cultural goods trafficking. Besides, the Commission is working on setting up an expert group to safeguard cultural heritage in Ukraine, which I have already mentioned earlier. Finally, as a further important<sup>4</sup> milestone in the fight against cultural goods trafficking of the Commission together with the EU Member States, the Council adopted Council conclusions on the fight against cultural goods trafficking on 8 June 2023, thereby endorsing the EU action plan and setting out the Member States' priorities in this area.

**AMD and AJ: Thank you again for your time, expertise, and most valuable comments.**

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<sup>3</sup> Council of the European Union, *Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on the establishment of a Civilian CSDP Compact*, 22 May 2023, 9588/23.

<sup>4</sup> Council of the European Union, *Council conclusions on the fight against trafficking in cultural goods*, 8 June 2023, 10249/23.