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Subject: Analysis of the scale of the crime threat against cultural property in the Member States and the selected countries of the Eastern Partnership

In the annex delegations will find an analysis of the scale of the crime threat against cultural property in the Member States and in the selected countries of the Eastern Partnership.

The document is based on the results of the questionnaire on the cultural property crimes (CM 1927/11).

**ANALYSIS OF THE SCALE OF THE CRIME THREAT AGAINST CULTURAL
PROPERTY IN THE MEMBER STATES AND IN THE SELECTED COUNTRIES OF
THE EASTERN PARTNERSHIP**

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Introduction

The Presidency has undertaken an initiative focusing on the issue of combating crime against cultural property.

In order to ensure a reliable and thorough diagnosis of the aforementioned problem, the Presidency has developed a questionnaire comprising a set of questions relating to the current scale of threat posed by the above-mentioned crime, the behaviour patterns of criminals, the methods for combating this phenomenon under the current legal regime, and the role of Interpol, Europol and CEPOL in the problem area concerned, as well as other essential issues, such as the assessment of the potential impact of mass events on the escalation of the reference crime (in the context of the forthcoming European Football Championships in 2012).

The questionnaire was addressed to 27 Member States and to selected countries of the Eastern Partnership (i.e. Belarus, Moldova and Ukraine). The survey focused on the following issues:

- *legislation* – in the national and international perspective (currently binding conventions, bilateral agreements and criminal laws);
- *the characteristics of crime against cultural property* – the crime dynamics in 2007-2010, in statistical terms;
- *preventing and combating crime against cultural property* – organisational and logistical solutions adopted by Member States and by the selected Eastern Partnership countries (with both current status and future prospects).

This analysis of the crime threat against cultural property was developed on the basis of the answers provided to the questionnaire by 23 Member States (i.e. Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, the Netherlands, Lithuania, Latvia, Malta, Germany, Poland, Portugal, Slovakia, Slovenia, Sweden, the United Kingdom and Italy), and by 3 countries of the Eastern Partnership (i.e. Belarus, Moldova and Ukraine).

Part I
Outline of the issue

1. The scale of the crime threat against cultural property in the light of statistical data provided by the General Secretariat of Interpol

Crime against cultural property has continually occupied a significant position on the criminal map of Europe. The rich cultural heritage left behind by humanity represents a diversified catalogue of property, both tangible and intangible. In many cases, the value of such property also entails a financial dimension, which proves alluring to various perpetrators of crime. The most frequent types of crime which involve cultural property include:

- theft,
- burglary and theft,
- damage (vandalism),
- fencing,
- forgery/fraud,
- illicit export from the country of origin,
- appropriation.

It should be noted that the said crime “catalogue” refers to tangible property, which includes paintings, sculptures, archaeological artefacts, numismatics, liturgical devices, ceramic and glass products, antique furniture, clocks, architectonic elements, incunables, old prints and the like. Such items are intrinsically connected with the place where they were produced or stored, and handed down to posterity. The theft of, or damage to, any item which forms part of the national heritage represents a loss not only to the place of origin, but also to the entire European cultural heritage. Additionally, the recovery or maintenance of a stolen item of cultural property usually entails considerable financial outlays. Damage to archaeological sites constitutes an irreparable loss to the whole of Europe, as it leads to the impoverishment not only of the common cultural heritage but also of the science which allows us to reconstruct the former epochs of human existence.

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2. The need to establish cooperation between the law enforcement agencies in the Member States and in the Eastern Partnership countries

Crime against cultural property poses a significant threat in Europe. The opening of state borders and the abolition of border controls within the EU has led to a free flow of goods, including cultural property. In order to prevent this kind of crime, it is essential to establish close cooperation, not only between law enforcement agencies operating in the Member States, but also with the eastern neighbours at the external borders of the EU (i.e. Belarus, Moldova and Ukraine).

Cooperation between said law enforcement agencies in the Member States and in the selected Eastern Partnership countries in order to prevent crime against cultural property should therefore comprise the following domains:

- **the exchange of information** about crimes and about the missing items of cultural property;
- **the exchange of experience** gained by the law enforcement agencies, e.g. in the field of detecting crimes and criminals;
- **the organisation of training sessions and working visits** for police officers in countries with a comparable scale of threat, facing similar problems relating to combating crime against cultural property (study visits as a practical aspect of expanding knowledge, establishing and strengthening valuable contacts, and making cooperation more dynamic).

Part II

International legislative measures

This section, dealing with the analysis of threat, aims to identify and describe the available international legislative measures, and to assess the current legal regime in the EU and in the selected Eastern Partnership countries, in terms of potential international cooperation between the law enforcement agencies.

1. The UNESCO and UNIDROIT Conventions

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 (referred to as the Paris Convention), is one of the major initiatives relating to the protection of the global heritage.

Pursuant to Article 2, Point 1, *“The States which are Parties to this Convention recognise that the illicit import, export and transfer of ownership 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 cooperation constitutes one of the most efficient means of protecting each country’s cultural property against all the dangers resulting therefrom.**”*

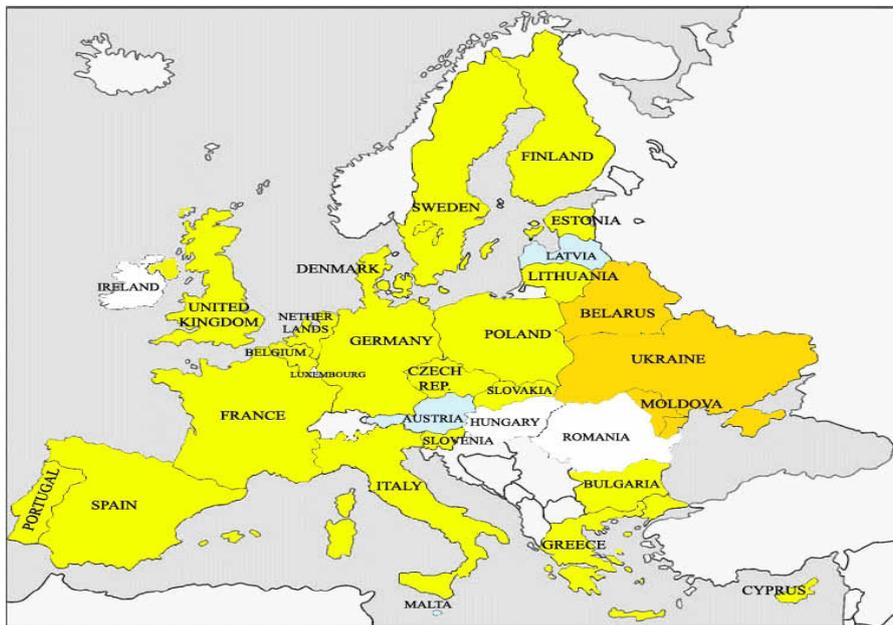
The Convention plays a vital role in protecting cultural assets at international level as the signatories have undertaken, *inter alia*, to

- **set up within their territories one or more national services, with a qualified and adequately large staff complement;**
- **prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;**
- **ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;**
- **permit actions for the recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;**

- recognise the absolute right of each State Party to this Convention to classify and declare certain cultural property as inalienable, which should therefore ipso facto not be exported;
- facilitate the recovery of such property by the State in cases where it has been exported.

The signatories to the Paris Convention include 20 out of the 23 Member States which responded to the questionnaire. These are Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, the Netherlands, Lithuania, Germany, Poland, Portugal, Slovakia, Slovenia, Sweden, the United Kingdom and Italy. The Convention was also signed by all the Eastern Partnership countries surveyed.

Map 1
The Member States and the selected countries of the Eastern Partnership
which are signatories to the Paris Convention of 17 November 1970
(based on the responses provided by 23 Member States,
and by Belarus, Moldova and Ukraine)



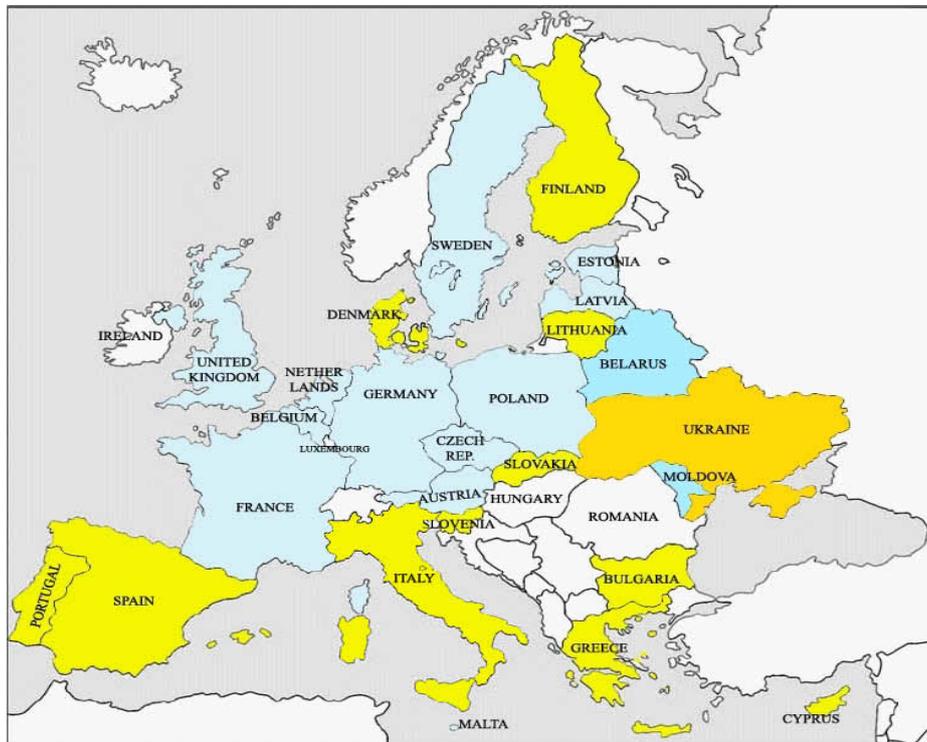
KEY

Member States which are signatories to the UNESCO Convention of 17 November 1970
Member States which are not signatories to the UNESCO Convention of 17 November 1970
Countries of the Eastern Partnership which are signatories to the UNESCO Convention of 17 November 1970

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, signed on 24 June 1995 in Rome, is another significant international act relating to crime against cultural property. Out of 23 countries surveyed, 11 Member States are signatories to the UNIDROIT Convention, namely Bulgaria, Cyprus, Denmark, Finland, Greece, Spain, Lithuania, Portugal, Slovakia, Slovenia and Italy. Among the Eastern Partnership countries, only Ukraine is a signatory to the reference Convention.

Map 2

The Member States and the selected countries of the Eastern Partnership which are signatories to the UNIDROIT Convention of 24 June 1995 (based on the responses provided by 23 Member States, and by Belarus, Moldova and Ukraine).



KEY

Member States which are signatories to the UNIDROIT Convention of 24 June 1995
Member States which are not signatories to the UNIDROIT Convention of 24 June 1995
Countries of the Eastern Partnership which are signatories to the UNIDROIT Convention of 24 June 1995
Countries of the Eastern Partnership which are not signatories to the UNIDROIT Convention of 24 June 1995

The European Convention on the Protection of the Archaeological Heritage of Europe, usually referred to as the Malta Convention, signed in Valletta (Malta) on 16 January 1992 is a significant document regarding the archaeological heritage of the Member States. Currently the parties to this Convention include 35 countries and it has been ratified by most Member States.

2. EU legislation

The cultural heritage of all Member States is viewed as extremely significant to the European Union. The abolition of borders has made Europe more connected, but it has also drawn the EU's attention to the need to deal with combating organised crime, including crime against cultural property, more effectively. Taking into consideration the specific character of the objects which bear witness to previous epochs (their uniqueness and incomparability, combined with their historical and scientific value), the EU has extended special legal protection to this area, based on both primary law (treaties) and secondary law (e.g. directives and regulations).

The provisions included in the Treaty on the Functioning of the European Union (TFEU, Title V – Area of freedom, security and justice, and Title XIII – culture) may prove useful in combating the type of crime in question. From the point of view of combating organised crime, special significance may be attached to the principles stipulated, *inter alia*, under Title V of the TFEU, based on which the EU also contributes to the gathering, storage, processing, analysis and exchange of information provided in particular by the law enforcement agencies operating in the Member States (with the participation of Europol). Under the reference provisions, the Council may, by means of a specific legislative procedure (unanimously and subject to consultation with the European Parliament), adopt certain measures of operational cooperation between police forces, customs services and other law enforcement agencies which specialise in preventing crime or detecting criminals.

Furthermore, Article 83 of the TFEU expressly states that the European Parliament and the Council may, by means of directives adopted in accordance with the normal legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension, e.g. money laundering, corruption or organised crime. It should be noted that works of art lost as a result of crimes of theft, forgery and smuggling are often a source of funding to commit other criminal offences.

The basis for fostering cooperation with third countries and competent international organisations in the sphere of culture is provided under Article 167 of the TFEU, which also expressly provides for the free transfer of goods (Articles 34-35 of the Treaty), including cultural property within the EU. However, it should be noted that Article 36 of the Treaty permits the imposition of certain restrictions on imports and exports on grounds of protection of national treasures possessing artistic, historic or archaeological value.

The legal export of cultural property from a given Member State outside the EU is possible upon obtaining the documents required (export certificates). Legal protection of cultural property within the EU is also ensured in line with the following legislation:

Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L39, 10.2.2009, p. 1).

This document sets out the principles regulating transactions involving cultural property, ensuring that the export of such property is subject to uniform control at the external EU borders. This means that the export of cultural goods outside the customs territory of the EU will be subject to the presentation of an export licence, valid within the entire EU area. Pursuant to the Regulation, each Member State must lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented (based on the principle that any such sanctions must be effective, proportionate and dissuasive).

Council Directive No 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L74, 27.3.1993, p. 74).

This Directive has been implemented by the Member States and by the countries belonging to the European Economic Area (including Iceland and Norway). It sets out the procedures for the return of cultural objects which have been unlawfully removed from the territory of a Member State. The Member States have appointed one or more central authorities to implement the duties provided for in the Directive. This document applies only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993.

The issue relating to combating crime against cultural property has also been dealt with in the non-binding EU acts. These include **the Conclusions of the Council of the European Union of 3 November 2008 on preventing and combating the illicit trafficking in cultural goods** (14224/2/08 REV 2 CRIMORG 166 ENFOPOL 191). This document emphasises the importance of close cooperation between specialised agencies operating in the Member States is essential in order to combat the illicit trafficking of cultural goods, by increasing the scope and scale of the exchange of best practices and experience.

Furthermore, **the Stockholm Programme** (OJ C 115, 4.5.2010. p. 1) referring to internal security strategy and crime prevention stipulates that the enhancement of actions at the European level, combined with better coordination with actions at regional and national level, are essential to protection from trans-national threats, and that crime prevention may not be possible without cooperation between the Member States, the exchange of best practices and the avoidance of duplication of work.

3. Bilateral agreements

Certain Member States (i.e. Austria, Cyprus, the Czech Republic, Estonia, France, Greece, Poland, Portugal, Slovakia and Italy), acting with a view to ensuring the protection of their national heritage, have concluded and implemented bilateral agreements with the aim of jointly preventing and combating crime against cultural property.

Cultural cooperation agreements (signed by Cyprus and Estonia) are yet another legislative area which deals with the issue of protecting cultural property.

For example, Estonia has concluded a number of bilateral agreements and is participating in various cultural cooperation programmes which cover, *inter alia*, the issues of the import, export and return of cultural property. The country has signed bilateral agreements with Armenia, Bulgaria, the Philippines, Georgia, Croatia, Israel, Italy, Cyprus, Latvia, Lithuania, Mexico, Poland, Portugal, France, Germany, the Czech Republic, Turkey, Ukraine, Hungary, the United States of America and the Russian Federation.

Poland is one of a number of countries which have not concluded any international agreements relating specifically to combating crime against cultural property. Nevertheless, it is a party to many bilateral and multilateral agreements on combating organised crime, including crime against cultural property; this concerns the agreements with both Member States and third countries (such as Armenia, Azerbaijan, Belgium, Belarus, Chile, Cyprus, Croatia, the Czech Republic, Egypt, Estonia, Georgia, Spain, India, Indonesia, Lithuania, FYROM, Morocco, Moldova, Germany, Slovakia, Sweden, Tajikistan, Turkey, Ukraine, Uzbekistan, Vietnam and Italy).

The following countries have not signed any bilateral agreements on combating crime against cultural property: Belgium, Denmark, Finland, Spain, the Netherlands, Lithuania, Latvia, Malta, Germany, Slovenia and Sweden.

Ukraine has signed certain agreements on combating crime against cultural property as part of the Commonwealth of Independent States. Belarus and Moldova have not signed any such agreements.

4. National legislation on combating crime against cultural property

Pursuant to the provisions stipulated in the respective national criminal codes and other provisions concerning the issue of combating criminal offences involving the seizure of cultural property, the perpetrators of the following types of crime are liable to punishment in the EU countries:

- export of cultural property without a licence (smuggling),
- sale or agency in the sale of cultural property,
- damage to cultural property,
- forgery of cultural property items.

In most European countries the issue of crime against cultural property is included in “the general domain of crime.” The most frequent criminal offences include theft, burglary and theft, robbery, fencing, illicit export, forgery/fraud, appropriation and damage (vandalism).

Various forms of codifying the provisions relating to the sanctions imposed on the perpetrators of crime against cultural property can be identified in 23 Member States which responded to the questionnaire. The provisions stipulated in the Criminal Code are applicable in most countries (sometimes constituting a separate, independent part of the Code). Additionally, the provisions regarding the criminal offences involving cultural property are regulated, in whole or partly, by separate legal acts. Based on the data provided by the Member States, three major groups of countries can be distinguished in terms of the provisions in this area:

1. Those Member States in which the issue of crime against cultural property is covered under a separate section of the Criminal Code, e.g. Spain;
2. Those Member States in which the issue of crime against cultural property is covered within “the general domain” of the Criminal Code, e.g. Denmark, Germany, Poland, Slovakia and Slovenia;
3. Those Member States in which the issue of crime against cultural property is also covered by separate provisions, e.g. Belgium (EU legislation), Cyprus (the customs law and EU legislation), Finland (e.g. the Monument Protection Act), Greece (Act No. 3028/2002 on Monument and Cultural Property Protection), the Netherlands (the Monument Protection Act), Poland (the Monument Protection and Care Act) and Sweden (the Heritage Protection Act).

More detailed information as regards national legislation in the Member States is set out below.

In Austria the provisions relating to crime against cultural property are included in the Criminal Code. The act of stealing an item with religious, artistic or historical value is punishable by up to 3 years' imprisonment, whereas a person destroying such an item is liable to up to 2 years' imprisonment. In Bulgaria, the Cultural Heritage Act is binding along with the Criminal Code.

Cyprus, along with the national provisions of law (acts and regulations), has also implemented a number of international provisions (including EU legislation) in order to protect cultural property.

In Estonia and Portugal, crime against cultural property is prohibited under the Criminal Code (in Estonia a person who steals a movable property, where the object of seizure has a significant scientific, cultural or historical value, is liable to a fine or up to 5 years' imprisonment; in Portugal, theft of cultural property is punishable by between 2 and 8 years' imprisonment).

In France, the issues discussed are governed by the provisions of the Criminal Code concerning theft, fencing, forgery, fraud and damage. Infringement of these provisions is punishable by a fine or custodial sentence. The punishment for crime against cultural property is also stipulated in Regulation No 2004/178 of 28 February 2008 (referred to as the Cultural Heritage Code) and in the French customs laws.

Greece has adopted Act No 3028/2002 on Monument and Cultural Property Protection, in order to efficiently protect cultural property, supplemented by Act No 3658/2008 on the Means of Protecting Cultural Property. Under Act No 3028/2002, a person guilty of theft or appropriation of cultural property is liable to up to 10 years' imprisonment.

In the Netherlands, a separate Monument Act is currently in force (the infringement of which is punishable by up to 6 months' imprisonment).

In Spain, a separate section of the Criminal Code (Section II, Title XVI) has been devoted to criminal offences against cultural property, in which the legislator foresees that the perpetrators of such crime may be punished by between 6 months' and 6 years' imprisonment.

In Lithuania, the legal regulations concerning this subject matter mostly include various statutes, *the Act on the Protection of Movable Cultural Property in the Republic of Lithuania*, and the Resolution of the Government of the Republic of Lithuania on 31 August 2004 on the Procedure for the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State of the EU. The Lithuanian Criminal Code does not comprise any detailed provisions on protecting cultural property – such criminal offences are treated in the same way as any other crime.

Latvian criminal law distinguishes criminal offences against property (Section XVIII), including crime against cultural property.

In Malta, the reference subject matter was included in the Criminal Code and in the Cultural Heritage Act.

A different legal regime is observed in Germany. As a federal country, Germany is divided into 16 states (referred to as *Länder*). In accordance with the division of powers established under the Basic Act of the Federal Republic of Germany, the cultural issues constitute the responsibility of individual states. With regard to archaeological artefacts, three states operate on the basis of the provisions stipulated in the Civil Code (*Hadrianische Teilung*). In each of the 16 states, it is necessary to obtain a licence issued by the competent Cultural Heritage Protection Office (*Denkmalschutzbehörde*) for searching archaeological sites or items. Each item found must be immediately reported to competent authorities. This means that, under the law, for each item excavated in Germany there must be a documented place of origin, a date of discovery and the name of a person in charge of the archaeological excavations. The German Criminal Code contains general provisions on various types of crime, applicable also to cultural property and monuments.

In Poland, the criminal sanctions for crime against cultural property are stipulated in the Criminal Code and in the Act of 23 July 2003 *on Monument Protection and Care*.

In Sweden, criminal offences against cultural property are governed by *the Inheritance Protection Act*.

In Italy, the protection of culture goods under the national law is ensured, *inter alia*, in *the Italian Culture Property and Landscape Code* (Decree 42/2004).

In Ukraine and in Moldova, legal regulations on combating crime against cultural property are set out in the respective Criminal Codes. In the Criminal Code of Ukraine, the penalty of deprivation of liberty applies to the perpetrators of the following criminal offences: theft – custodial sentence of between 3 and 12 years, robbery – custodial sentence of between 3 and 15 years, and damage (vandalism) of an item of cultural property – custodial sentence of between 3 and 8 years.

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The Member States and the selected countries of the Eastern Partnership agree that the currently existing measures are insufficient to effectively combat the perpetrators of crimes against cultural property. The replies show that it is advisable to take further action at European level to:

1. introduce a uniform system of marking cultural property in Member States and the selected countries of the Eastern Partnership (e.g. Object ID Standard) - a uniform and transparent system for documenting the collections possessed (easy to use, e.g. by collectors or church institutions). A unified standard for identifying cultural property could help to increase the effectiveness of measures to combat the perpetrators of thefts of works of art, not only by gathering information on specific objects, but also through the cooperation of all interested groups and organisations;
2. create an international system of information on matters relating to the theft of cultural property (procedures for the rapid transmission of information on the most important thefts relating to crime against cultural property);
3. develop and implement a uniform template in cases of the theft of cultural property, which should be sent to Interpol and recorded and disseminated there;
4. improve cooperation with Interpol to combat crime against cultural property, especially as regards the exchange of information on crimes and cultural property sought;
5. improve cooperation with Europol to combat crime against cultural property, especially as regards the exchange of information on crimes and cultural property sought. It should be noted that this would require wider participation and greater contributions from Member States;
6. improve cooperation with CEPOL in the organisation of training and working visits relating to the combating crime against cultural property;
7. include the problems of combating the illicit trafficking in cultural property in the existing multilateral exchange programmes between the representatives of law enforcement authorities (e.g. study visits, internships, training);
8. develop a practical handbook on the phenomenon of crime against cultural property (including the relevant contact points, the type and scope of action of the national law enforcement authorities and other institutions involved in combating and preventing such crime).

Additionally, some Member States indicated the possibility of implementing the following forms of cooperation:

1. creating a thematic platform on crimes against cultural property within the Europol Platform for Experts (EPE);
2. possibility of the creation of a target group to combat such crime within the Analysis Work File FURTUM at Europol;
3. possibility of re-establishing a contact point at Europol for combating crime against cultural property in order to exchange information, help establish working relations between the police units in Member States and coordinate international matters in the EU.

It should be noted that these proposals require a further analysis of the possible involvement of the EU agencies and the Member States in their implementation.

The above vision for the further development of European efforts on combating crime against cultural property will not be fully implemented without the involvement of the law enforcement authorities of the Member States and the selected countries of the Eastern Partnership. An act of solidarity is necessary to protect the European cultural heritage and preserve the products of history and culture for future generations. To achieve this goal, in addition to the continuous cooperation of the law enforcement authorities, effective solutions should be implemented at European level which would reduce the phenomenon of crime against cultural property.

Therefore, it would be desirable to adopt Council Conclusions, which would outline the political will and engagement of the Member States to further develop international law enforcement cooperation in combating crime against cultural property.