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Indice-Sommario 2026, n. 2

Editoriale

La riforma della legislazione sulla cittadinanza tra Corte costituzionale e Corte di giustizia dell'Unione europea p. 1
Bruno Barel

Saggi, Articoli e Commenti

Free movement of persons in the agreement between the EU and the United Kingdom in respect of Gibraltar. Special status of military personnel p. 21
Pablo Antonio Fernández Sánchez

Storia diplomática: Italia-Europa-Occidente p. 44
Massimo Panebianco

¿Hacia un modelo de Estado híbrido? Entre *court-packing* e intentos de revertir la *backsliding* p. 53
Valentina Faggiani

Vulnerabilità digitale del minore e forme di tutela nel contesto europeo p. 93
Gisella Pignataro

The case law of the European Court of Human Rights regarding contested territories: “Differentiated” jurisdiction as a panacea or as an Achilles’s heel? p. 120
Elisa Ruozzi

The EU legal framework on social security for migrants: A comparative assessment of national practices p. 139
Paolo Iafrate

Il danno ambientale sistemico e la soglia di gravità: tra qualificazione giuridica e tutela giurisdizionale p. 163
Adelaide Francesca Daniela Luminari



FOCUS

The EU as a Global Security Provider: Countering Transnational Crime and New Cooperation Architectures

Collected Papers of the Jean Monnet Module (2023-2026) Transnational Crime & EU Law: Towards Global Action against Cross-border Threats to Common Security, Rule of Law and Human Rights (EU-GLOBACT) – (Coordinator: Prof. Dr. Anna Oriolo)

Presentazione del Focus/Focus Overview
Anna Oriolo

p. 185

Parte I

Contrasto alla criminalità transnazionale e minacce globali/Countering Transnational Crime and Global Threats

Traffico illecito di armi via mare, criminalità transnazionale e sicurezza globale: verso un nuovo paradigma di legalità universale
Anna Oriolo

p. 191

The tragedy of the global commons in the age of artificial intelligence: Illegal mining, transnational crime, and the future of EU global enforcement
David Schultz

p. 216

The European legal framework on the return of cultural objects: An effective tool to foster civil and administrative cooperation between EU Member States?
Fulvia Staiano

p. 241

Il ruolo degli Stati nella prevenzione e nella repressione degli illeciti contro il patrimonio culturale subacqueo: obiettivi e strumenti comuni tra la Convenzione UNESCO del 2001 e le politiche dell'Unione europea
Patrizia Vigni

p. 257

Parte II

Nuove architetture di cooperazione e strumenti di contrasto dell'Unione europea/New Cooperation Architectures and Enforcement Tools of the European Union

Il principio di fiducia reciproca nella cooperazione giudiziaria penale a dieci anni dal caso *Aranyosi*. Alcune considerazioni sull'attualità del “doppio test” alla luce della sentenza *Commissione c. Ungheria (Valeurs de l'Union)*
Angela Festa

p. 281

Intelligence, diritti umani e sicurezza: criticità e prospettive in ambito internazionale ed europeo
Francesco Focillo

p. 312



War-crimes investigations: New technologies, new complexities, new vulnerabilities. A strategic shortfall or evolutionary opportunity for NATO p. 334
Luigi Bramati

AI tools for combating transnational crime within the EU p. 345
Roxana Matefi

Parte III

Responsabilità e giustizia penale/Accountability and Criminal Justice

Luci e ombre (soprattutto) occidentali sul consolidamento della giustizia penale internazionale p. 355
Paolo Bargiacchi

The EU's cross-border cybercrime enforcement and the limits of extraterritorial jurisdiction p. 388
Heybatollah Najandimanesh

La vittima di tratta al centro della sicurezza in Europa tra standard CEDU e nuove sfide nell'era digitale p. 410
Anna Iermano

La regolamentazione delle catene di approvvigionamento in Europa come strumento per combattere la criminalità: dall'opposizione alla convergenza dei modelli francese e italiano p. 442
Virginie Mercier

La responsabilità penale degli enti creditizi nella gestione delle misure restrittive UE: tra obblighi di garanzia e nuove fattispecie sovranazionali di incriminazione p. 453
Carmine Renzulli

Parte IV

Diritti umani e minacce transfrontaliere/Human Rights and Cross-Border Threats

La *transnational repression* quale minaccia "rinnovata" a diritti umani e sicurezza: la necessità di una risposta mirata da parte dell'Unione europea p. 465
Stefano Busillo

Children pornography, online sextorsion, revenge porn: the provisions of Greek penal code and the EU regulatory developments p. 507
Georgios Nouskalis

Intelligenza artificiale e "fenomeno religioso" nel prisma dei diritti umani p. 518
Daniela Marrani

Postfazione/Afterword p. 539
Angela Di Stasi

Appendice p. 541
EU-GLOBACT Policy Recommendations and Guidelines
Francesco Focillo, Emanuele Sorgente

THE EUROPEAN LEGAL FRAMEWORK ON THE RETURN OF CULTURAL OBJECTS: AN EFFECTIVE TOOL TO FOSTER CIVIL AND ADMINISTRATIVE COOPERATION BETWEEN EU MEMBER STATES?

Fulvia Staiano^{*}

SUMMARY: 1. Introduction. – 2. The international and EU legal framework on inter-State cooperation in relation to the illicit trade in cultural objects. – 3. The definition of unlawfully removed cultural objects in Member States' legal orders. – 4. The digitalisation of intra-EU cooperation in relation to the unlawful trade in cultural objects. – 5. Concluding remarks.

1. Introduction

On 22 May 2025, Interpol and Europol shared with the general public the results of Operation Pandora IX, which had involved law enforcement and custom authorities from 23 countries and had led to 80 arrests as well as the seizure of more than 37.000 of cultural objects (including archaeological pieces, coins, and artworks). This operation had involved law enforcement and custom authorities from 23 countries, including several Member States of the European Union (EU), and had been coordinated by the Spanish *Guardia Civil*.¹

Such a concerted effort is only the latest illustration of the potential of coordinated transnational responses to several forms of trafficking, including the illicit trade in cultural objects. The need for multilevel inter-State cooperation in this area has been evidently felt also by EU institutions, leading to the progressive construction of a legal framework aimed at tackling various aspects of this phenomenon. In addition to a number of soft-law sources highlighting the importance of inter-State cooperation in this field (both between Member States and with third countries), this objective has been pursued

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¹ Europol, *80 arrests and more than 37 700 cultural goods seized in major art trafficking bust*, press release, 22 May 2025, <https://www.europol.europa.eu/media-press/newsroom/news/80-arrests-and-more-37-700-cultural-goods-seized-in-major-art-trafficking-bust> (accessed on 30 May 2026); Interpol, *80 arrests and more than 37,700 cultural goods seized in major art trafficking bust*, press release, 22 May 2025, <https://www.interpol.int/News-and-Events/News/2025/80-arrests-and-more-than-37-700-cultural-goods-seized-in-major-art-trafficking-bust> (accessed on 30 May 2026).

through the adoption of secondary EU legislation concerning the export, import and return of cultural objects. The resulting legal framework, however, is premised on a close and stable cooperation between national authorities. The effectiveness of Regulation 2019/880 on the import of cultural goods,² for instance, is strongly reliant on the capability of Member States' custom authorities to establish the cooperation envisaged by this legal source, which includes a systematic use of a centralized electronic system of information storage and exchange.³ Similarly, the effective implementation of Directive 2014/60 on the return of unlawfully removed cultural objects⁴ hinges on the convergence of Member States on crucial matters, including the definition of "national treasures" as well as the uniform recourse to the Internal Market Information System (IMI System).

Against this background, this contribution analyses the EU legal framework and more broadly the EU strategy on the fight against the illicit trafficking in cultural objects in an effort to identify its strengths and weaknesses, with the ultimate aim of assessing its actual effectiveness. To do so, after contextualizing such EU sources within the broader international legal framework on the subject, it will use the Italian case study to test their impact on Member States' capability to draw up an effective and coordinated response and to identify eventual grey areas where further legal intervention may be needed. A special focus in this context will be dedicated to two of the main novelties introduced by Directive 2014/60⁵ – i.e., the definition of cultural objects and the reference to the use of a digital information system as a means of cooperation between Member States. Both of these aspects deserve closer scrutiny because they appear to be among the most challenging matters with regard to its transposition. Dealing with the interpretative and applicative issues they raise is therefore essential for the effective establishment of the intra-EU cooperation that EU institutions are currently pursuing.

² Regulation (EU) 2019/880 of the European Parliament and of the Council, *on the introduction and the import of cultural goods*, of 17 April 2019, in OJ L 151, 7.6.2019, pp. 1-14.

³ For a detailed analysis of the main hurdles to Member States' compliance with Regulation 2019/880, see M. Gibson, *Relics & Regulation: Evaluating the EU Approach to the Introduction and Importation of Cultural Property*, in *New York University Journal of International Law and Politics Blog*, 27 January 2026, available at <https://nyujilp.org/eu-regulation-on-the-introduction-and-importation-of-cultural-goods/> (accessed on 30 May 2026).

⁴ 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 and amending Regulation (EU) No 1024/2012 (Recast)*, of 15 May 2014, in OJ L 159, 28.5.2014, pp. 1-10.

⁵ Other changes with respect to the previous regulation of the return of cultural objects under Council Directive 93/7/EEC, such as for instance the extension of time limits to initiate return proceedings or the introduction of new criteria with respect to the application of due diligence standards to possessors of cultural objects, are less relevant for the matter of intra-EU cooperation and are thus beyond the scope of this article. For an in-depth analysis on the transition from the regime under Directive 93/7/EEC to that established by Directive 2014/60, see A. MIGLIO, *La restituzione dei beni culturali nell'Unione europea: dalla direttiva 93/7 alla direttiva 2014/60, tra mercato interno e competenza esterna dell'Unione*, in *Diritto del commercio internazionale*, 2016, no. 4, pp. 863-884.

2. The international and EU legal framework on inter-State cooperation in relation to the illicit trade in cultural objects

The fight against trafficking in cultural objects has been on the international agenda for more than five decades, but in recent years it has increasingly gained traction in EU legislation. At international level, the first source to tackle the issue with reference to peacetime was the 1970 UNESCO Convention on the illicit import, export and transfer of ownership of cultural property (the UNESCO Convention).⁶ The definition of cultural property under the UNESCO Convention is premised on a specific designation by States Parties of certain property as being “of importance for archaeology, prehistory, history, literature, art or science”, as well as on its ascription to one of the categories listed under its Article 1 (which include – among others – property relating to history, products of archaeological excavations or discoveries, and property of artistic interest). Its substantive provisions mainly establish States Parties’ duties to adopt civil or administrative law and policy measures to counter the illicit trade in cultural property.⁷ The cooperation mechanisms envisaged by the UNESCO Convention are strictly extra-judicial. In relation to the return of cultural property stolen from another State Party, Article 7(b)(ii) clearly states that request for recovery and return “shall be made through diplomatic offices”, while Article 9 refers to “a concerted international effort” as the means through which States Parties must adopt the necessary measures to counter pillage of archaeological or ethnological objects that jeopardizes another State Party’s cultural patrimony.

As a quintessential public international law source, the UNESCO Convention had left open questions concerning the identification of applicable national laws. To fill this gap, in 1995 the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the UNIDROIT Convention) was adopted.⁸ The latter, indeed, aims to establish “common, minimal legal rules for the restitution and return of cultural objects” between States

⁶ Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, adopted by the General Conference at its sixteenth session, 14 November 1970, UNTS 823, p. 231.

⁷ For instance, Article 5 of the UNESCO Convention envisages a duty to set up national services in charge of, among other tasks, contributing to the formation of draft laws and regulations on the prevention of the illicit import and export of cultural property, to keep lists of protected cultural property, as well as supervising archaeological excavations. In the same vein, Article 6 establishes States Parties’ duty to introduce mandatory export certificates for protected cultural property. On the other hand, Article 8 of the UNESCO Convention requires States to impose either penalties or administrative sanctions for infringing the prohibitions under its Articles 6(b) and 7(b) – suggesting that States may also criminalize the relevant conducts.

⁸ For a comparative analysis of the UNESCO and UNIDROIT Conventions, see A. F. VRDOLJAK, *Introduction*, in A.F. VRDOLJAK, A. JAKUBOWSKI, A. CHECHI (eds.), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen Or Illegally Transferred Cultural Property: A Commentary*, Oxford, 2024, pp. 3- 30. See also F. FRANCONI, *Public and Private in the International Protection of Global Cultural Goods*, in *European Journal of International Law*, 2012, no. 23, pp. 719-730, pp. 723-725; A. QUARTA, *Il traffico illecito dei beni culturali: l’evoluzione dei rimedi internazionali*, in E. BARONCINI (ed.), *Tutela e valorizzazione del patrimonio culturale mondiale nel diritto internazionale*, Bologna, 2021, pp. 147-175; M. FRULLI, *Tutela dei beni culturali e obblighi di criminalizzazione: uno sguardo d’insieme sugli strumenti internazionali*, in O. PORCHIA, M. VELLANO (eds.), *Il diritto internazionale per la pace e nella guerra. Sviluppi recenti e prospettive future*, Napoli, 2023, pp. 209-229, pp. 219-221.

Parties by envisaging two judicial mechanisms – namely, the submission of a claim for restitution to be brought either by private individuals or States against the possessor of a stolen cultural object⁹ and requests for the return of illegally exported cultural objects submitted by one State Party to another State Party’s domestic courts.¹⁰ While ascribable to different legal sectors, both the UNESCO and UNIDROIT Conventions appear to rely on a concept of cultural objects as property, whose import, export and ownership must be strictly regulated in the interest of their “possessors” (States or, in the case of the UNIDROIT Convention, private individuals as well).¹¹

At regional level, the so-called Nicosia Convention represents an interesting and relatively recent development. Adopting the model of a typical suppression convention – first and foremost, the UN Convention against Transnational Organised Crime¹² – this Council of Europe Convention¹³ mainly establishes States’ duties to qualify a number of conducts pertaining to trafficking in cultural objects as criminal offences in their respective domestic criminal law. These include, among others, the unlawful excavation and removal of cultural property (Article 4), illegal exportation (Article 6), as well as acquisition and placing on the market of stolen cultural property (Articles 7 and 8 respectively). The Nicosia Convention also envisages the grounds on which each State Party may exercise its criminal jurisdiction over such offences.¹⁴ Its Preamble appears to lean toward a conceptualization of cultural objects as heritage, as can be inferred from

⁹ On the entitlement of both States and private individuals to bring an action for restitution under Art. 3 of the UNIDROIT Convention, see G. MAGRI, *The Impact of the UNESCO and UNIDROIT Conventions and the EU Directives on the International Art Market: An Analysis Fifty Years after the Introduction of the Obligation to Return Stolen or Illegally Exported Cultural Goods*, in *Brazilian Journal of International Law*, 2020, no. 17, pp. 61-74, p. 67.

¹⁰ Art. 5(3) of the UNIDROIT Convention envisages this possibility whenever the relevant cultural object removed from the requesting State’s territory “is of significant cultural importance” for the latter or significantly impairs the physical preservation or integrity of the object or the preservation of information or the traditional or ritual use of the object itself. For an in-depth analysis of the substantive norms of the UNIDROIT Convention, see M. FRIGO, *La circolazione dei beni culturali: diritto internazionale, diritto comunitario e diritto interno*, II ed., Milano, 1997, p. 17 ff.

¹¹ More broadly on the debate concerning the dichotomy between cultural property and cultural heritage, see M. FRIGO, *Cultural property v. cultural heritage: A “battle of concepts” in international law?*, in *International Review of the Red Cross*, 2004, no. 86, pp. 367-378; J. BLAKE, *On Defining Cultural Heritage*, in *International and Comparative Law Quarterly*, 2000, vol. 48(1), pp. 61-85; L.V. PROTT, P.J. O’KEEFE, ‘Cultural Heritage’ or ‘Cultural Property’?, in *International Journal of Cultural Property*, 1992, no. 1(2), pp. 307-320.

¹² United Nations Convention against Transnational Organized Crime, 15 November 2000, UNTS 2225, p. 209. For a definition of suppression conventions, see N. BOISTER, S. GLESS, F. JEBBERGER, *Introduction*, in N. BOISTER, S. GLESS, F. JEBBERGER (eds.), *Histories of Transnational Criminal Law*, Oxford, 2021.

¹³ Council of Europe Convention on Offences relating to Cultural Property, CETS No. 221. On the Nicosia Convention and its implementation in the Italian order, see A. ORIOLO, *Nuove disposizioni in materia di reati contro il patrimonio culturale e criminalità transnazionale: l’adeguamento dell’ordinamento italiano agli standard della Convenzione di Nicosia*, in *SIDIBlog*, 5 April 2022, available at <https://www.sidiblog.org/2022/04/05/nuove-disposizioni-in-materia-di-reati-contro-il-patrimonio-culturale-e-criminalita-transnazionale-ladeguamento-dellordinamento-italiano-agli-standard-della-convenzione-di-nicosia/> (accessed on 30 May 2026).

¹⁴ Art. 12 of the Nicosia Convention, in particular, establishes a duty to exercise jurisdiction on territorial or active nationality grounds, envisages the *aut dedere aut iudicare* principle when the offender is present on a State Party’s territory and merely refers to a duty of mutual consultation to resolve active conflicts of jurisdiction.

the reference to cultural property as “belonging to peoples” and as part of their cultural heritage, or from the concern that the growth in offences against cultural property is leading “to the destruction of the world’s cultural heritage”.

A conception of cultural objects similar to that underlying the UNESCO and UNIDROIT Conventions is instead observable in the EU legal context, where trafficking in cultural goods has been receiving increasing attention since the adoption of the first secondary law source on the subject in 1993 (namely, Directive 93/7/EEC on the return of unlawfully removed cultural objects)¹⁵. EU secondary legislation currently regulates the cross-border movement of cultural objects in relation to three main areas – namely, their import, export and return in case of unlawful removal.¹⁶ The abovementioned Regulation 2019/880 as well as Regulation 116/2009¹⁷ respectively deal with the import and export of cultural goods listed in their Annexes, subjecting it to the issuance of special licences and essentially prohibiting their cross-border circulation in case of unlawful removal from a Member State. Both Regulations establish Member States’ duty to ensure mutual administrative cooperation to fulfil their objectives and to envisage penalties for the infringement of their provisions. Directive 2014/60, on the other hand, strives to foster intra-EU cooperation to ensure the return of unlawfully removed cultural objects classified or defined by a Member State as “national treasures”. To this end, it envisages two main mechanisms aimed at ensuring such a return – namely, an administrative form of cooperation between the Member State from whose territory a cultural object has been unlawfully removed and the Member State on whose territory the object is found (under Article 5) and judicial proceedings to be initiated by the former before the latter’s domestic courts against the possessor or the holder of the cultural object (pursuant to Article 6). While both Regulations identify their legal basis in Article 207 of the Treaty on the Functioning of the European Union (TFEU) on the establishment of a common commercial policy, Directive 2014/60 construes its definition of cultural objects within the boundaries of Article 36 TFEU. This provision establishes exceptions to the general prohibitions of quantitative restrictions on imports and exports – respectively envisaged by Article 34 and 35 TFEU – also in relation to restrictions justified by “the protection of national treasures possessing artistic, historic or archaeological value”, provided that such restrictions are not arbitrarily discriminatory or a disguised restriction on intra-EU trade.

The EU’s legislative framing of cultural objects as items with commercial value, and as such potentially subject to transactions, has clashed in the past with a different understanding of these objects as national heritage under Italian law. In the landmark

¹⁵ Council Directive 93/7/EEC, *on the return of cultural objects unlawfully removed from the territory of a Member State*, of 15 March 1993, in OJ L 074, pp. 74-79.

¹⁶ For a comprehensive overview of the EU legal framework on the transfer of cultural objects, see P. VIGNI, *Il ruolo dell’Unione europea nella protezione transnazionale del patrimonio culturale alla luce del piano di azione della Commissione europea contro il traffico di beni culturali*, in A. ORIOLO, A. R. CATALDO, A. DI STASI, M. NINO (eds.), *Criminalità transnazionale e Unione europea*, Napoli, 2024, esp. pp. 621-625.

¹⁷ Council Regulation (EC) 116/2009, *on the export of cultural goods*, of 18 December 2008, in OJ L 39, pp. 1-7.

1968 judgment on the case of *Commission v. Italy*,¹⁸ the Court of Justice of the European Union (CJEU) rejected Italy's argument whereby its imposition of a progressive tax on the export to other Member States of items with artistic, historic, archaeological or ethnographic value was not subject to the general prohibition to apply custom duties on intra-EU imports and exports (at the time established under Article 16 of the EEC Treaty). In Italy's view, the special character of such items set them apart from any other merchandise. The CJEU held instead that said items "whatever may be the characteristics which distinguish them from other types of merchandise, nevertheless, resemble the latter, inasmuch as they can be valued in money and so be the subject of commercial transactions".¹⁹

More recently, the same tension between notions of cultural objects as property and as heritage has been observable in the European Court of Human Rights (ECtHR) judgment on the case of *J. Paul Getty Trust v. Italy*²⁰ – although in this context the Italian and EU understanding were aligned by the ECtHR and juxtaposed to that of a foreign legal person. As is well known, the case originated from a claim of violation of the right to the peaceful enjoyment of one's possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR) raised by the J. Paul Getty Trust against Italian authorities, after their issue of a confiscation order in respect of a classical Greek statue bought by the Trust itself. In adjudicating this dispute, the ECtHR recognized the "very particular" nature of the issue of protection of cultural heritage and recovery of an unlawfully exported cultural object²¹ due to its "unique and irreplaceable nature".²² While allowing in principle for the application of Article 1 of Protocol No. 1 to such objects, it recognized State's wide margin of appreciation as a result of this special nature, citing Directive 2014/60 among the evidence of such specificity.²³ The ECtHR ultimately concluded that no violation had occurred, also taking into account the "strong consensus

¹⁸ Court of Justice, Judgment of 10 December 1968, *Italy v Commission*, Case 7/68, p. 429. On possible issues of consistency between national and EU notions of cultural objects, see M. FRIGO, *The Implementation of Directive 2014/60/EU and the Problems of the Compliance of Italian Legislation with International and EU Law*, in *Santander Art and Culture Law Review*, 2016, no. 2, pp. 71-84, esp. pp. 79-81; A. VISCONTI, *The Reform of Italian Law on Cultural Property Export and Its Implications for the "Definitional Debate": Closing the Gap with the European Union Approach or Cosmetics? Some Systemic Considerations from a Criminal Law Perspective*, in *Santander Art and Culture Law Review*, 2019, no. 2, pp. 159-186. For an analysis of the evolution of the understanding of cultural property in EU law and policy, see A. PUSKÁS, *Trade control and protection of cultural goods in the European Union: an evolving approach?*, in *Journal of Strategic Trade Control*, vol. 2, 2024, pp. 1-26.

¹⁹ *Ibid.*, p. 429.

²⁰ European Court of Human Rights, First Section, judgment of 2 May 2024, application no. 35271/19, *J. Paul Getty Trust and Others v. Italy*.

²¹ *Ibid.*, para. 278.

²² *Ibid.*, para. 289.

²³ *Ibid.*, para. 279. The ECtHR held, in particular, that "the specificity of the subject matter of the present case is further demonstrated by the fact that similar measures aimed at recovering unlawfully exported cultural objects have been progressively regulated under international law (...) and EU law", recalling the 1970 UNESCO Convention, the UNIDROIT Convention as well as the Nicosia Convention in addition to Directive 2014/60.

in international and European law with regard to the need to protect cultural objects from unlawful exportation and to return them to their country of origin”.²⁴

On a more general level, the transposition of Directive 2014/60 by Member States has raised some questions pertaining to both the scope and the effectiveness of its provisions. Before delving into this matter, however, it is important to note that the need for inter-State cooperation, particularly between domestic law enforcement and customs authorities, has been emphasized also by the EU Commission in several communications concerning the EU security strategy. In 2022, in particular, the Commission drew up an action plan specifically on the subject of trafficking in cultural goods,²⁵ where it identified EU trade legislation as the crucial playing field for the prevention and detection of this phenomenon.²⁶ The communication also highlighted the need to strengthen and harmonise information sharing between Member States’ custom authorities²⁷ and to foster cross-border cooperation between national law-enforcement and judicial authorities.²⁸ The action plan also identified the lack of uniform criminalization of relevant conducts as a crucial obstacle to effective investigations and successful recovery of cultural objects, pointing to the ratification of the Nicosia Convention by Member States as the solution to this issue.²⁹ While the relevance of the Nicosia Convention in the EU context is quite limited due to its low ratification rate among Member States, Italy – as one of the only five EU Member States that are parties to it – has amended its Criminal Code to ensure its implementation.³⁰ The resulting domestic legal framework on trafficking in cultural

²⁴ *Ibid.*, para. 408.

²⁵ 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*, of 13 December 2022, COM(2022) 800 final. See also 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 Strategy to tackle Organised Crime 2021 – 2025*, of 14 April 2021, COM/2021/170 final; Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, on the *EU Security Union Strategy*, of 24 July 2020, COM(2020) 605, p. 19.

²⁶ *EU Action Plan against Trafficking in Cultural Goods*, cit., p. 4.

²⁷ *Ibid.*, p. 8.

²⁸ *Ibid.*, p. 12.

²⁹ *Ibid.*, p. 11-13.

³⁰ In Italy’s domestic order, the described multi-level legal framework has prompted legislative reforms both in the area of criminal law and in that of civil and administrative law. As to the former, after the ratification of the Nicosia Convention new provisions were included in the Italian Criminal Code (the Criminal Code) to envisage criminal offences relating to cultural property. This reform was carried out through Law no. 22 of 9 March 2022, *Disposizioni in materia di reati contro il patrimonio culturale*, in GU no. 68 of 22 March 2022. The criminal offences envisaged by the reform included, among others, the crime of “unlawful export of cultural objects” (*uscita o esportazione illecite di beni culturali*) under the new Article 518-undecies of the Criminal Code. This offence is defined by the latter as the transfer abroad of cultural objects or objects of “artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary, or archival interest” or other objects subject to specific protection under cultural heritage legislation, without an export licence or free circulation certificate. Such a reform, however, did not encompass the adoption of specific measures aimed at strengthening international cooperation in criminal matters within this framework between Italian and foreign authorities – nor did it envisage additional resources or funding for the enforcement of the new provisions. Article 6 of Law 22/2022 specifically establishes that its implementation must occur through the use of existing human and financial resources under current legislation and in any case without any additional burden on public finance. On the lack of

objects makes Italy a particularly interesting and telling illustration of the complexities of the multi-level regulation of this phenomenon, as further compounded by Member States' duty to comply with an increasingly developing EU law and policy on the subject.

3. The definition of unlawfully removed cultural objects in Member States' legal orders

Directive 2014/60 significantly expanded the scope of its predecessor – namely, Council Directive 93/7/EEC. The latter, indeed, adopted a much more restrictive definition of cultural object, limiting it to object classified by Member States among national treasures of artistic, historic or archaeological value and either listed in its own Annex or belonging to public collections listed in specific inventories.³¹ Article 2 of Directive 2014/60, on the other hand, encompasses a looser definition by including within it also cultural object simply defined (as opposed to strictly classified) by a Member State as national treasures “possessing artistic, historic or archaeological value” and shedding its predecessor's Annex. What Directive 2014/60 avoids doing, however, is to provide a working definition of “national treasures”, instead leaving this aspect to each Member States' discretion “within the meaning of” Article 36 TFEU.

The Directive's definition of unlawful removal of cultural objects from a Member State's territory (beyond the case of lawful temporary removal) is equally broad, since it refers to either the breach of Regulation (EC) No. 116/2009 on the export of cultural goods or a violation of each Member States' rules on the protection of national treasures. The choice to leave such a wide discretion to Member States can be seen as in line with the decision to regulate the return of cultural object through an EU Directive in the light of the principle of proportionality, as well as with Article 36 TFEU. At the same time, the Directive's actual capability to fulfil the aspiration expressed in the tenth recital of its Preamble - whereby “in order to foster mutual trust, a willingness to cooperate and mutual understanding between Member States, the scope of the term ‘national treasure’ should be determined (...)” – remains to be seen.

With this respect, a terminological confusion is observable already between different language versions of Directive 2014/60. This is exemplified by a comparison between, for instance, the use of expressions referring to national heritage (*patrimonio nazionale* or *patrimonio nacional*) in the Italian and Spanish versions in contrast with the terms

measures to facilitate cross- border cooperation between law enforcement authorities, see also G. PICCI, *Protecting Cultural Heritage Through Criminal Law: The Italian Experience*, in *The Italian Law Journal*, 2024, vol. 10, pp. 635-651, pp. 646-647. On the Italian implementation of the Nicosia Convention, see C. VENTURINI, S. SCHIAVON, *The Criminalization of the Intentional Destruction of Assets Belonging to Humanity's Cultural Heritage*, in A. FABBRICOTTI (ed.), *Intentional Destruction of Cultural Heritage and the Law*, London, 2024, pp. 389 - 404. For a critical take on the potential of the Nicosia Convention to produce an impact on the repression of crimes against cultural property, see T. SCOVAZZI, *Luci e ombre della Convenzione di Nicosia*, in this *Journal*, 2022, no. 2, pp. 140-150.

³¹ Council Directive 93/7/EEC, cit., Article 1(1).

“national treasures” and “*trésors nationaux*” in the English and French ones. According to some scholars, this discrepancy may suggest the former countries’ propensity towards a more extensive and thus protectionist interpretation of the concept of cultural objects.³² What is certain is that several Member States have transposed Directive 2014/60 by broadening their legal definitions of such objects and by establishing a wide scope for State ownership of such objects.³³

The result of the significant discretion left by Directive 2014/60 to EU Member States is a quite uneven and heterogeneous picture, whereby various levels of legal protection are afforded to different cultural objects across the European territory. While this is not in principle incompatible with the fulfilment of the Directive’s objectives, such heterogeneity may generate disputes concerning the rightful ownership of certain cultural objects, undermining effective cooperation between Member States’ authorities and hindering return proceedings. This may be the case for cultural objects of uncertain provenance, such as for instance ancient coins³⁴, but also more broadly for objects which may be identified by more than one Member State as cultural objects of artistic or archaeological interest.

The lack of a common definition of national treasures in Directive 2014/60 is clearly premised on the existence of a relationship of mutual trust between EU Member States, which are expected to rely on each other’s definitions at domestic level in the context of return proceedings in the spirit of intra-EU cooperation. The system designed by the Directive, therefore, may work only in so far as a requested Member State are willing to accept the definition of national treasure adopted under the requesting State’s domestic

³² M. GRAZIADEI, B. PASA, *The Single European Market and Cultural Heritage: The Protection of National Treasures in Europe*, in A. JAKUBOWSKI, K. HAUSLER, F. FIORENTINI (eds.), *Cultural Heritage in the European Union: A Critical Inquiry into Law and Policy*, Leiden/Boston, 2019, pp. 79-112, p. 97.

³³ In Greece, a wide range of cultural objects have been qualified as national treasures belonging to the State, alongside a general prohibition to trade them. On the matter, see I. STAMATOUDI, *Greek Law 4355/2015 Implementing Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State*, in *Santander Art and Culture Law Review*, 2016, no. 2, pp. 57-70, pp. 63-66; see also S. VRELLIS, *Questions on protection of cultural heritage*, in *Collection of Papers Faculty of Law, Niš*, 2019, no. 58(2), pp. 37-60, p. 42. France, on its part, has qualified as national treasures all cultural objects belonging to public institutions and of special interest, as detailed by S. VIGNERON, *The Return of Illicitly Exported Cultural Objects: The Implementation of the 2014/60/EU Directive in France*, in *Santander Art and Culture Law Review*, 2016, no. 2, pp. 35-56, pp. 47-49. The concept of cultural property adopted in Polish law is even broader, encompassing all cultural objects whose permanent export is either prohibited under national law or subject to authorisation; the definition of unlawful removal of cultural objects is similarly broad, and goes as far as to include objects removed as a result or in connection with the Second World War. On the difficulties raised by such legal definitions also from the point of view of inter-State cooperation within the EU, see A. JAKUBOWSKI, *The concept of national treasures under Polish and EU cultural heritage law*, in *Revija Kopaoničke škole prirodnog prava*, 2021, no. 2, pp. 61-76, as well as P. STEC, *The Lady or the Tiger? Legal Pitfalls of Implementing the Return of Cultural Goods Directive*, in *Santander Art and Culture Law Review*, 2016, no. 2, pp. 135-148. On Spain, M.J. ELVIRA BENAYAS, *Transposición al ordenamiento español de la Directiva 2014/60/UE sobre restitución de bienes que hayan salido de forma ilegal de un estado miembro mediante la Ley 1/201*, in *Revista Española de Derecho Internacional*, 2018, no. 70, pp. 181-200.

³⁴ R. ANTAL, M. LEWIS, *Legal Definitions as a Cornerstone for Protecting ‘Archaeological Finds’*, in *Public Archaeology*, 2024, no. 23, pp. 122-141, pp. 132-134.

law.³⁵ However, in 2021 the first report of the Commission on the application of the Directive (the 2021 report) highlighted the need to improve “mutual understanding of national definitions (...) so that all Member States recognise and protect each other’s protected cultural objects”.³⁶ Incidentally, the report confirmed that the identification of the country of origin of looted archaeological objects removed from their sites, of those belonging to civilisations that occupied vast geographical areas (such as for instance the Greco-Roman one) and of isolated items such as coins and jewellery are particularly challenging areas with this respect.³⁷

A closer look at the Italian order serves to illustrate this point. In Italy, the transposition of Directive 2014/60 prompted a partial reform of the main domestic legal source on the protection of cultural heritage. The so-called *Codice dei beni culturali* (CBC)³⁸, in particular, was amended to incorporate the definition of cultural objects adopted by Article 2 of the Directive.

On occasion, Italian courts have tackled definitional issues in this realm, albeit not with specific reference to Italy’s compliance with Directive 2014/60. Most notably, in 2017 the Lazio Regional Administrative Tribunal (*TAR Lazio*) ruled on Italian authorities’ denial of an export licence for a Salvador Dalí painting, which prevented its sale by an Italian owner to a Spanish foundation.³⁹ Such a denial relied on Article 68 CBC(4), which establishes that the issue of an export licence is subject to an assessment of the cultural character or relevant objects. Article 2 CBC defines cultural objects (*beni culturali*) as “immovable and movable property which is of artistic, historical, archaeological, ethno-anthropological, archival, or bibliographic interest, and other property” qualified by the law “as testaments to civilization” (*testimonianze aventi valore di civiltà*). Article 10 further specifies this definition through a list that includes – among others – objects owned by the State or by other public entities or non-profit legal persons (including ecclesiastical entities), national museum collections and archives, as well as privately-owned items qualified as objects of cultural interest by the Ministry of Culture. The *TAR Lazio* rejected the owner’s argument whereby the painting could not be qualified as an object of cultural interest because the author was not Italian, nor was the object an expression of Italian culture, holding that that the scarcity of Dalí’s paintings in Italy as well as the notoriety and importance of the author were sufficient grounds for Italy’s interest to retain it on its territory. Moreover, it refused to submit a request for preliminary

³⁵ M. GRAZIADEI, B. PASA, *The Single European Market*, cit., pp. 92-93.

³⁶ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *First report on the application of 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 and amending Regulation (EU) No 1024/2012 (Recast)*, of 18 November 2021, COM(2021) 705 final, p. 4.

³⁷ *Ibid.*

³⁸ Legislative decree no. 42 of 22 January 2004, *Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 della legge 6 luglio 2002, n. 137*, in GU n. 45 of 24 February 2004.

³⁹ *Tribunale Amministrativo Regionale per il Lazio* (Section II-quater), judgment no. 4395 of 14 March 2017. For a comment on the judgment, see S. FERRAZZI, *EU National Treasures and the Quest for a Definition*, in *Santander Art and Culture Law Review*, 2019, no. 2, pp. 57-76, pp. 70-71.

ruling to the Court of Justice of the European Union in relation to the interpretation of Article 36 TFEU, holding that the latter could not be interpreted as restricting Member States' discretion in defining national treasures within the scope of national prohibitions or restrictions on exports. The same principle whereby the definition of cultural objects under Italian law is not confined to those of Italian origin, or even to those "not attributable to Italian cultural expression or tradition", has been affirmed by the criminal section of the Italian Supreme Court.⁴⁰

Despite their isolated character, these cases suggest that a possible overlap may arise between Member States' definitions of protected cultural objects – especially when, as in the Italian case, the domestic understanding of protected cultural objects is not limited to items directly or strictly pertaining to national culture or heritage.

4. The digitalisation of intra-EU cooperation in relation to the unlawful trade in cultural objects

Among the mechanisms adopted to foster cooperation and mutual consultation between Member States' central authorities,⁴¹ Directive 2014/60 envisages the use of a special module of the pre-existing IMI System specifically devoted to cultural objects. The IMI System was established by Regulation 1024/2012⁴² as a tool of administrative cooperation between Member States' authorities, with the aim to facilitate the exchange and processing of information as well as mutual assistance for the ultimate purpose of "better application of Union law".⁴³

Directive 2014/60 requires Member States' authorities to use the IMI module on cultural objects in the context of both the administrative cooperation regulated by its Article 5 and the judicial proceedings referred to in its Article 6. As to the first, Article 5 establishes a number of duties for Member States on whose territory a cultural object which may have been unlawfully removed from another Member State is found. The former, in particular, must notify the latter and enable it to check its status of cultural object, as well as take necessary measures for its preservation, prevent any action that may undermine its return, as well as act as intermediary between the possessor and the requesting Member States to ensure the return. In addition, Member States have a duty to

⁴⁰ *Corte di Cassazione (Criminal Section III)*, judgment no. 36265 of 15 June 2023.

⁴¹ According to Article 4 of Directive 2014/60, each Member State has a duty to designate at least one central authority in charge of carrying out the tasks envisaged by the Directive itself. Many Member States, including Italy, have designated their respective Ministries of Culture for this purpose. For a complete list of central authorities nominated pursuant Article 4 of Directive 2014/60, see *List of central authorities nominated by the Member States to deal with the return of cultural objects unlawfully removed from a Member State and applying Article 4 of Directive 2014/60/EU*, in C/2024/906 of 17 January 2024, pp. 4-12.

⁴² Regulation of the European Parliament and of the Council, *on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC*, of 25 October 2012, in OJ L 136 of 14 November 2012, pp. 1-11.

⁴³ *Ibid.*, Article 5.

comply with each other's requests to seek unlawfully removed cultural objects and to identify their possessors. In the context of such a cooperation, Article 5 of Directive 2014/60 establishes that the IMI module on cultural objects must be used by central authorities "to cooperate and consult with each other", and possibly also to disseminate information on cases concerning stolen or unlawfully removed cultural objects. As to Article 6, the latter allows the requesting Member State to initiate judicial proceedings against possessors before the domestic courts of requested Member States with the aim of obtaining the return of unlawfully removed cultural objects. In that regard, Article 7 requires central authorities to exchange information on such judicial proceedings through the IMI. Information on their initiation must be shared with the competent central authorities of the requested Member State as well as those of all other Member States. On a practical level, the cultural objects module of the IMI system comprises four sections (in addition to a fifth one concerning information about legislation on the return of cultural objects), respectively devoted to notifications about unlawful removals of cultural objects, requests to seek unlawfully removed cultural objects and the identity of its possessor or holder, notifications about the finding of such objects, and notifications of initiation of return proceedings.⁴⁴

Despite the promising character of the IMI System, its actual use by Member States' authorities as a coordination tool in relation to the unlawful removal of cultural objects appears to have been limited so far. In the 2021 report, available data revealed a quite low rate of inter-State exchanges on cultural objects. From 2016 to 2020, only 304 notifications of unlawful removal had been carried out (with less than 5 in 2020). The number of requests to seek unlawfully removed objects were even less encouraging, amounting to a total of 65 for the same period.⁴⁵ Among the reasons conveyed by Member States for such a low recourse to the IMI System, the report mentioned time constraints in the context of ongoing national investigations and their general preference to recover cultural objects through judicial proceedings rather than the IMI System.⁴⁶ At the same time, such proceedings did not consist in those regulated by Article 6 of the Directive. The report clearly stated that since the entry into force of the Directive, only two judicial proceedings under this provision had been initiated – referring to their high cost and logistic complexities (e.g. storage, transport and insurance costs) as the main obstacles in this area.⁴⁷

More recent data on the use of the IMI System can be extracted from a 2025 report drafted by the Italian Ministry of Culture and concerning the implementation of international and EU norms on the export and restitution of unlawfully removed cultural

⁴⁴ On the subject, see the IMI Library available on the European Commission website at https://ec.europa.eu/internal_market/imi-net/library/index_en.htm (accessed on 30 May 2026).

⁴⁵ *First report on the application of DIRECTIVE 2014/60/EU*, pp. 9-10.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p. 11.

objects (the 2025 report).⁴⁸ This source suggests that the overall number of notifications of unlawful removal has not increased dramatically since 2021, while Member States appeared to have fared slightly better in relation to requests to seek an unlawfully removed object.⁴⁹ The number of notifications concerning the initiation of return proceedings, however, remains low.⁵⁰

In addition to operationalization issues which may have compounded the obstacles already highlighted in the 2021 report⁵¹, the underutilisation of the IMI system for the purpose of obtaining the restitution of cultural objects is also symbolic of a more general tendency to prefer less complex and less costly procedures. The Italian case once again provides a telling illustration in this regard. In the 2025 report, the Ministry of Culture declared that in the almost three decades of application of Directive 2014/60, administrative collaboration pursuant to its Article 5 had revealed to be “the most effective tool for the recovery of unlawfully taken cultural objects”.⁵² At the same time, however, it pointed to “cultural diplomacy” (*diplomazia culturale*) as the main route followed in this context – essentially equating the mechanism envisaged under Article 5 with the conclusion of long-term bilateral agreements between Italy and foreign museums for the purpose of ensuring the return of cultural objects. Such an understanding is compatible with the letter of Article 5 but reveals a quite narrow approach, heavily reliant on individual museums’ willingness to cooperate and apparently overlooking the possibility to use the mechanism regulated under Article 5 to recover objects held by other legal persons or by private individuals. This impression is confirmed by the concrete cases referred to in the 2025 report, almost all of which relate to more or less formal dialogues with other Member States’ museums.

Against this background, the generally low rate of notifications in the IMI system of unlawful removal and the even lower number of notifications on the initiation of return proceedings is not surprising, but it is certainly disappointing considering the potential of

⁴⁸ *Relazione sull'attuazione delle norme sulla circolazione internazionale dei beni culturali e sull'attuazione in Italia e all'estero degli atti europei riguardanti l'esportazione di beni culturali e la restituzione dei beni culturali usciti illegittimamente dal territorio di uno Stato membro dell'Unione europea (anno 2024)*, Doc. XXIX No. 2, transmitted on 21 November 2025.

⁴⁹ *Ibid.*, p. 10. The 2025 report relates that, according to the updated statistics submitted by the European Commission, in 2024 the total number of notifications of unlawful removal and that of requests to seek unlawfully removed cultural objects amounted respectively to 342 and 138 (as opposed to 304 and 65 respectively in 2020, according to *First report on the application of DIRECTIVE 2014/60/EU*, cit., pp. 9-10).

⁵⁰ The 2021 Commission report related that from 2016 to 2020 only five notifications had been recorded in the IMI System to this effect (*First report on the application of DIRECTIVE 2014/60/EU*, p. 10), while the 2025 report refers to a total number of 13, only one of which in 2024 (*Relazione sull'attuazione*, cit., p. 10).

⁵¹ See for instance O. JAKUBOWSKI, *The Internal Market Information System (IMI) on the Return of Cultural Objects – Its Principles, Application, and Evaluation of Its Effectiveness for the Protection of Cultural Heritage*, in *Santander Art and Culture Law Review*, 2016, n. 2, pp. 290-312, pp. 304-307, who points out that the EU norms regulating the use of the IMI System leaves open key questions concerning the rules governing data processing, the procedural rights of individuals identified as possessor or holders of unlawfully removed cultural objects, as well as the use of evidence stored on the IMI System in the context of judicial proceedings before Member States’ domestic courts.

⁵² *Relazione sull'attuazione delle norme*, cit., p. 6.

digital tools in relation to intra-EU cooperation. With this respect, it is sufficient to recall Italian authorities' efforts in this sense with respect to the criminal prosecution of crimes against cultural objects – including their trafficking – to strengthen international cooperation in this field. Such efforts have concerned, in particular, the connection of the so-called Leonardo database to the Interpol Stolen Works of Art Database through a system of automatic transmission of data from the former to the latter.⁵³ On a more general level, the effective realization of a stable and durable intra-EU cooperation in relation to the return of cultural objects appears a still distant goal in the light of Member States' straying away from the mechanisms designed by Directive 2014/60.

5. Concluding remarks

The mechanisms designed by EU law for the purpose of regulating the circulation of cultural objects within the EU and of ensuring the return of those that are unlawfully removed from a Member State's territory bear a significant potential to foster an effective intra-EU cooperation in civil and administrative matters pertaining to this field. Nevertheless, such a potential so far has not been entirely fulfilled. Currently available sources suggest Member States' propensity to favour criminal law responses on the one hand and diplomatic routes on the other, rather than embarking on costly and logistically complex administrative or civil procedures. The cross-border character of the latter would also require a strong level of inter-State cooperation and convergence on crucial issues – such as, for instance, the definition of cultural objects and unlawful removal, or the preservation and use of evidence.

Such choices are not *per se* incompatible with the EU legal framework on the return of cultural objects. In fact, diplomatic efforts to ensure the return of cultural objects have been qualified by the Commission as one of the “privileged [ways] of working together” for interested parties.⁵⁴ Similarly, Article 16 of Directive 2014/60 expressly preserves the possibility for Member States as well as owners to initiate criminal proceedings to retrieve an unlawfully removed cultural object. Nevertheless, while criminal proceedings, diplomatic efforts and the mechanisms designed by Directive 2014/60 may be carried out

⁵³ Managed by the *Comando Carabinieri Tutela Patrimonio Culturale* (a special police force division in charge of dealing with crimes against cultural heritage), Leonardo is the largest database on stolen cultural property in the world. It gathers thousands of records and lists more than 3 million cultural objects, including those unlawfully removed from Italian territory, thanks to the notifications of armed and police forces, local cultural heritage authorities as well as customs offices. On the subject, see L. CASERTANO, *Combating the Illicit Trafficking of Cultural Property: The Multifaceted Response to a Complex Challenge*, in *Global Jurist*, 2020, no. 20, pp. 1-14, pp. 8-9. See also <https://www.journalchc.com/wp-content/uploads/2025/04/TPC-Attivita-operativa-2024.pdf> pp. 17-20, https://www.unodc.org/documents/data-and-analysis/briefs/Trafficking_in_cultural_properties_brief.pdf, pp. 16-19; R. CRISTOFOLETTI, *International Heritage: New Approaches, Old Concerns*, Cham, 2014, pp. 68-69; N. OOSTERMAN, *Regional Overviews of the Policing of Art Crime in the European Union*, in S. HUFNAGEL, D. CHAPPELL (eds.), *The Palgrave Handbook on Art Crime*, London, 2019, pp. 213-235, pp. 222-223.

⁵⁴ *First report on the application of DIRECTIVE 2014/60/EU*, p. 9.

in parallel, it is doubtful whether Member States will possess the human and financial resources to do so. Realistically, when put before a choice, they will lean towards diplomatic mediation, or towards the most consolidated forms of cooperation available under EU law in order to ensure the successful return of cultural objects. In the field of criminal law, in particular, national law enforcement and judicial authorities may rely on a well-established legal framework that – while not specific to transnational offences against cultural property, much less to trafficking in cultural property – provides them with effective tools to collaborate with each other.⁵⁵

The current state of affairs suggests the need for a reflection at EU level on how to further enhance inter-State cooperation in relation to the prevention and repression of trafficking in cultural objects beyond the criminal law realm. It is likely that the second report on the implementation of Directive 2014/60, which is expected to be published by the end of this year, will offer further indications as to the actual recourse by Member States to the mechanisms envisaged therein and possibly suggest some ways forward. A broader debate however, should be carried out within EU civil society and involve a diverse group of stakeholders at various levels – including national and supranational law enforcement organs and agencies, custom authorities, scholars from diverse academic backgrounds as well as cultural heritage and archaeological superintendencies – in order to identify the most effective strategies to ensure an actual and durable intra-EU cooperation on the subject.

ABSTRACT: This article assesses whether the EU legal framework on trafficking in cultural objects effectively fosters intra-EU cooperation. After situating EU law within the broader international regime, it focuses on administrative return procedures regulated at EU level. Using Italy as a case study, it is argued that, while the EU legal framework may in theory strengthen intra-EU cooperation, its practical effectiveness remains limited by the broad discretion left to Member States in defining “national treasures” and by the limited use of the mechanisms envisaged by

⁵⁵ These include, for instance, Council Framework Decision 2006/783/JHA, *on the application of the principle of mutual recognition to confiscation orders*, of 6 October 2006, in OJ L 328 of 24 November 2006, p.59; Directive 2014/41/EU of the European Parliament and of the Council, *regarding the European Investigation Order in criminal matters*, of 3 April 2014, in OJ L 130 of 1 May 2014, p. 1; Regulation (EU) 2018/1805 of the European Parliament and of the Council, *on the mutual recognition of freezing orders and confiscation orders*, of 14 November 2018, OJ L 303 of 28 November 2018, p. 1, as well as of course the inter-State cooperation carried out in the context of Regulation (EU) 2016/794 of the European Parliament and of the Council, *on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA*, of 11 May 2016, in OJ L 135 of 24 May 2016, p. 53. The latter includes “illicit trafficking in cultural goods, including antiquities and works of art” among the serious crimes affecting two or more Member States within the scope of its Article 3, which provides that Europol “shall support and strengthen” Member States’ authorities action and their mutual cooperation “in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy”.

Directive 2014/60. The article concludes that the current framework is an important but still incomplete tool, requiring further harmonisation and stronger coordination among national authorities.

KEYWORDS: Trafficking in cultural objects – National treasures – Return of cultural objects – Intra-EU cooperation – IMI System.