

The Importance of Communication and Information Systems for the Operation of Systems Controlling the Movement of Cultural Assets - Selected Issues

KATARZYNA ZALASIŃSKA

Abstract After 2015, the illegal movement of cultural assets has been identified by the international community as one of the main sources of funding for international terrorism. This paper discusses selected issues related to the introduction of information exchange tools at European Union and national levels, with particular focus on the importance of systems for controlling the legality of the movement of cultural assets at the Ukrainian border. Electronic tools and systems have the potential to enhance cooperation, but they cannot replace it. The emphasis therefore should be up on building specialised human resources and creating the conditions for their cooperation in an international environment. The VINCI II system is an electronic database system for collecting data on permits for the permanent and temporary overseas export of monuments. Authorities issuing permits for the permanent and temporary export of antiquities abroad enter scans of these export decisions into a system, subsequently accessed by law enforcement authorities, including the Police, the National Tax Administration, the Border Guard and conservation services. The VINCI II system enables the rapid and efficient exchange of information on the movement of cultural property.

Keywords: • cultural assets • communication • information systems • VINCI II

CORRESPONDENCE ADDRESS: Katarzyna Zalasinska, Ph.D., Associate Professor, University of Warsaw, The Faculty of Law and Administration, Ul. Krakowskie Przedmieście 26/28, 00-927 Warszawa, Poland, e-mail: kasiazalasinska@op.pl, ORCID 0000-0003-2171-2560.

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After 2015, the illegal movement of cultural assets has been identified by the international community as one of the main sources of funding for international terrorism. The contemporary battle against international terrorism is also therefore necessary for countering crimes against heritage. Therefore, concerns regarding global security have been added to the catalogue of threats related to the protection and integrity of the cultural heritage of countries where cultural assets originate from. The activity of international organisations has resulted in legal developments both at the level of the European Union and individual national legislations. In the context of the changes that have been introduced in recent years, the importance of communication and information systems for ensuring the effectiveness of such systems for controlling the movement of cultural assets has increased significantly. This paper discusses selected issues related to the introduction of information exchange tools at European Union and national levels, with particular focus on the importance of systems for controlling the legality of the movement of cultural assets at the Ukrainian border.

A milestone for the international community to intensify its commitment to ensuring effective control over the movement of cultural assets was the UN Security Council Resolution 2199/2015 of 12 February 2015 (S/RES/2199 (2015)) and Resolution 2347/2017 of 24 March 2017 (S/RES/2347 (2017)). Resolution 2199/2015 requires UN Member States to undertake measures to prevent terrorist groups from raising funds from, inter alia, the trafficking of antiquities, as well as to take appropriate measures, in cooperation with Interpol, UNESCO and other international organisations, aimed at preventing the trafficking of objects of cultural, scientific and religious value from Iraq and Syria, and to enable the safe return to their countries of origin. Resolution 2347/2017, for the first time, explicitly indicated that the protection of cultural assets is one of the areas for ensuring global peace and security throughout the world. This was the first UN Security Council Resolution addressing the protection of cultural assets in relation to contemporary threats, and its intention was to highlight the role of the UN and its institutions, in particular UNESCO, for securing endangered monuments. Like before, states were obliged thereunder to adopt measures to combat the illegal trafficking of cultural assets, as well as to undertake extensive international cooperation in this field. The European Union's response to the challenges identified was to undertake legislative work, resulting in Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the entry and the import of cultural assets. Beforehand, taking into consideration Council Conclusions of 12 February 2016 on combating the financing of terrorism and communication from the Commission to the European Parliament and the Council of 2 February 2016 on an Action Plan for strengthening the combat against the financing of terrorism, as well as Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ EU L 88, 31.3.2017, p. 6), it is necessary to adopt common rules on trade with third countries to ensure effective protection against the illicit trafficking of cultural assets and against their loss or destruction, to safeguard the cultural heritage of mankind and to

prevent the financing of terrorism and money laundering from the sale of seized cultural assets to purchasers in the Union. The proposal to adopt new EU legislation with direct effect was presented by the European Commission in 2017 as part of the implementation of the European Security Agenda and Action Plan to intensify the combat against terrorist financing.

When preparing Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the entry and import of cultural assets (OJ EU L 151, 07.06.2019, p. 1), it was understood that, considering the different rules applied in Member States to the importing of cultural assets into the customs territory of the Union, measures should be taken, in particular, to ensure that the importing of certain cultural assets shall be subject to uniform controls when they enter the customs territory of the Union. This should be carried out following existing processes, procedures and administrative tools to achieve uniform implementation of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 establishing the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1. In this context, it should be recalled that the protection of cultural objects recognised as national treasures of the Member States was previously covered by Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural assets (OJ EU L 39, 10.2.2009, p. 1) and Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 on the return of cultural assets unlawfully removed from the territory of a Member State, amending Regulation (EU) No 1024/2012 (OJ EU L 159, 28.5.2014, p. 1). Accordingly, this Regulation should not apply to cultural assets which originate, or were discovered, in the customs territory of the Union. The common rules introduced should cover the customs clearance of cultural assets from outside the Union introduced into the customs territory of the Union. Furthermore, it is accepted that for the purpose of the present Regulation the relevant customs territory should be the customs territory of the Union at the time of importation.

Under the approved 2019 Regulation, considering that certain categories of cultural assets, mainly archaeological sites and elements of monuments, are particularly vulnerable to looting and destruction, it was deemed necessary to introduce a system of enhanced inspections before they are allowed to enter the customs territory of the Union. Such a system should require the presentation of an import licence issued by the competent authorities of a Union Member State before such cultural assets are released for marketing in the Union or placed under a special customs procedure other than transit. Regarding categories of cultural assets the importation of which does not require an import licence, the Regulation accepts that persons intending to bring such goods into the customs territory of the Union should, by means of a declaration, certify and assume responsibility for their lawful export from a third country and should provide sufficient information on cultural assets to enable them to be identified by customs authorities. To facilitate the procedure and for reasons of legal certainty, information on cultural assets should be provided using a standardised document. As recommended therein, the Object ID standard (<https://icom.museum/en/resources/standards-guidelines/objectid/>),

promoted by UNESCO, could be used to describe cultural assets. Particularly pertinent to the subject of this paper is the fact that the holder of the assets is expected to record this information in an electronic system in order to facilitate identification by customs, to enable risk analysis and targeted controls, as well as to guarantee the traceability of the cultural assets once they have entered an internal market.

According to the Regulation, the European Commission shall be responsible for establishing a centralised electronic submission system for import licence applications and importers' declarations, as well as for storing and exchanging information between Member States' authorities, more specifically with regard to importers' declarations and import licences. The system is to become operational by 2025 at the latest.

The Regulation itself does not provide detailed information on an electronic system. The only indication provided is that it is intended both for the submission of applications and for the exchange of information between competent authorities. The Regulation also states that data processing should be able to include personal data and should be performed in accordance with the Union law. Member States and the Commission should process personal data only for the purposes thereof or in duly justified circumstances for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the protection against and prevention of threats to public security. Any collection, disclosure, transmission, communication and other processing of personal data made within the framework the Regulation should be subject to the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (The General Data Protection Regulation) (OJ EU L 119, 4.5.2016, p. 1 and (EU) 2018/1725 of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ EU L 295, 21.11.2018, p. 39). The processing of personal data for the purposes thereof should also be in compliance with the rights to respect for private and family life as recognised in Article 8 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms as well as with the right to respect for private and family life and the right to the protection of personal data as recognised in Articles 7 and 8, respectively, of the Charter of Fundamental Rights of the European Union. The protection of personal data has been set out in Article 10 thereof. Customs authorities and the competent authorities of Member States shall act as the controllers of personal data obtained pursuant to Articles 4, 5 and 8 of the Regulation. The processing of personal data thereunder shall be limited to the purposes laid down in Article 1 (1) therein. Only duly authorised staff of the authorities shall have access to personal data obtained pursuant to Articles 4, 5 and 8 thereof, and such data shall be appropriately protected against unauthorised access or communication. The data may not be disclosed or transmitted without the express written consent of the authority that

originally obtained it. However, such consent shall not be necessary where the authorities are obliged to disclose or transmit data pursuant to the provisions in force in the Member State concerned, particularly in connection with legal proceedings. The authorities shall retain any personal data obtained in accordance with Articles 4, 5 and 8 for a period of twenty years from the date of their acquisition. Upon expiry of that period such personal data shall be deleted.

The Regulation stipulates that an information system shall not only serve administrative processes, but also the international exchange of information between operators. Information on the movement of cultural assets is to be collected in electronic form. Under the Regulation, they are to be exchanged between Member States and the Commission in order to support the effective implementation thereof and provide a basis for its future evaluation. To ensure the transparency of this data collection, as much information as possible should be made public. However, this issue is not specified any further in the Regulation, which may raise some uncertainties at the future stage of application.

Pursuant to Article 8, which refers to an electronic system, it has been accepted that the storage and the exchange of information between Member States' authorities, in particular with regard to import licences and importers' declarations, shall be carried out by means of a central electronic system. In the case of temporary failure of the electronic system, other means of storing and exchanging information may be used in a provisional manner. Pursuant to Article 8(2), the Commission is required to define, by means of implementing acts, rules for the implementation, operation and maintenance of an electronic system referred to in Paragraph 1 and to provide detailed rules relating to the submission, processing, storage and exchange of information between Member States' authorities using an electronic system or other means referred to in Paragraph 1. These implementing acts were adopted on 24 June 2021 (Commission Implementing Regulation (EU) 2021/1079 of 24 June 2021 laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods (OJ EU L 234, 2.7.2021, pp. 67-89). The date mentioned is important in that, according to Article 9, the Commission is obliged to set up an electronic system which needs to be operational at the latest four years after the entry into force of the first mentioned implementing act.

To summarise the above discussion, it should be noted that the primary objective of the Regulation was to define the conditions for the entry of cultural assets into the Community. While the previously adopted provisions applicable to the control of the export of cultural assets outside the Community were introduced in view of the security of trade and the associated risks to cultural heritage, the 2019 Regulation was based on the issue of preventing the illegal trade in cultural assets, especially where such trade could contribute to the financing of terrorism. Moreover, it is worth emphasising that the Regulation makes the creation of an electronic system a prerequisite for the entry into

force of individual provisions. Meanwhile, the Commission has been given four years to develop such a system, adjusting to the level of implementing legislation and the rules on the implementation, operation and maintenance of an electronic system. It would appear that the launch of an electronic system six years after the adoption is a long time to wait to start the actual functioning of a system for controlling the movement of cultural assets so that both the core assumptions and the detailed arrangements (including Annex C) may undergo amendment. It should be anticipated that the Regulation will need to be updated before 2025. It is worth noting, for example, that in an era of the dynamic development of new technologies, it is impossible to predict in advance what the possibilities for the development of electronic systems will be.

As a complement of the above discussion, it is worth transferring the discussed issues to a national level. In this regard, it is worth presenting the use of electronic systems and tools, including the exchange of information between authorities adopted in Poland. An example of such measures may be the VINCI II system launched in Poland in 2021. The further part of this paper will provide a brief outline of the operation of this system.

The VINCI II system is an electronic database system for collecting data on permits for the permanent and temporary overseas export of monuments. Authorities issuing permits for the permanent and temporary export of antiquities abroad enter scans of these export decisions into a system, subsequently accessed by law enforcement authorities, including the Police, the National Tax Administration, the Border Guard and conservation services. The VINCI II system enables the rapid and efficient exchange of information on the movement of cultural property.

Therefore, to describe the operation of this system, it is necessary to provide a brief outline of the currently applicable regulations. According to the Act on the Protection and Care of Historical Monuments, the permission for the permanent and temporary export of historical monuments abroad is granted by the Minister of Culture and National Heritage and the Voivodship Conservators of Historical Monuments, respectively. These decisions are made on paper and current legislation does not allow proceedings to be conducted electronically. Therefore, it is impossible for information to circulate rapidly between authorities. Paper-based proceedings prevent the competent authorities from quickly and effectively verifying documents and the legality of the export of cultural assets abroad. Moreover, experience indicates that export documents themselves are often forged or falsified, which further raises the necessity to verify the reliability of documents presented during inspections.

The objective of the VINCI II system is to adopt tools, based on existing technical solutions, for the electronic recording of decisions on permits for the permanent and temporary export of antiquities abroad and, consequently, of data on exported objects. Furthermore, additional documents will be stored in the database (e.g., reports on the inspection of an object, which is performed before the issuance of a permit). In this

system, it is possible to search for an export permit using a search engine by entering, for example, the author, the title of the work of art, its name, the permit number or the date of issue. Gathering data on trade in this manner, as well as providing easy access for authorised entities, will undoubtedly contribute to the strengthening of security in the area of the trade in works of art by prompt and effective verification by competent authorities (border guards, the National Fiscal Administration, the police) of permits issued for the export of antiquities abroad.

The VINCI II programme provides an example of searching for new tools to optimise the performance of public administration. Finally, it is the first step towards a change in the administration model within the heritage conservation field, which in the future should make greater use of electronic systems. However, it is worth emphasising that this project has been implemented without the need to amend current legislation. Indeed, it was an example of a paradigm shift to make the export control system more efficient by providing tools for the rapid exchange of information, which is crucial for the movement of assets. This is an example of interoperability and cooperation based on bilateral agreements, which is acceptable at the level of the authorities.

These two examples of the use of electronic systems represent two differing approaches to their meaning and function. Regarding the VINCI II system, it is assumed that the performance of the control system, including through the issuing of permits, is not conditional on the creation of electronic tools. The adopted proceedings are conducted in paper-based form. The system created to support public administration authorities, on the other hand, is an example that, despite the maintenance of paper form proceedings, it is possible to ensure increased efficiency of export controls through the use of modern electronic tools. Another example is the creation of an electronic system, described in the introduction and provided for in Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the entry and import of cultural assets, which supports applications but also allows the exchange of information between relevant entities. There are particular doubts as to the length of time required for the implementation of the regulation and the fact that its entry into force is conditional on the achievement of efficiency in an electronic system, the rules for the implementation, operation and maintenance of which were laid down two years after the adoption of the regulation. Accepting such a long period between the adoption of the Regulation and the commencement of its operation in its entirety means that it may prove to be inadequate to the challenges and problems of trading. It would therefore appear that, where the achievement of the performance of an electronic system is specified as a condition for the enactment of legislation, resolving basic implementation issues should precede the adoption of the regulations under which the systems are to operate. Consideration should also be given as to whether an electronic system is always to be a condition for the functioning of the rules (e.g., when the obligation to operate in an electronic system should apply to citizens) or a tool used by the administration during the implementation phase (aimed at increasing the efficiency of tasks by means of closer cooperation between

state bodies). In conclusion, the key to the effectiveness of legislation is the cooperation of authorities and institutions. Evidently, electronic tools and systems have the potential to enhance cooperation, but they cannot replace it. The emphasis therefore should be up on building specialised human resources and creating the conditions for their cooperation in an international environment.

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Object ID standard, available at: <https://icom.museum/en/resources/standards-guidelines/objectid/>
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