Exploring the EU perspective on the organised nature of the trafficking in cultural goods

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https://doi.org/10.3013/645j0d93

Abstract

In recent years, the characterisation of the trafficking of cultural property as a form of organised crime has gained prominence in EU policies on the protection of cultural heritage. This article analyses how the EU has conceptualised and operationalised this link in terms of describing the phenomenon and designing countermeasures. Through a content analysis, we evaluate this connection in EU policy documents published from 1993 to 2023 that include both 'organised crime' and 'trafficking of cultural property' or similar terms (*n* = 59). The analysis demonstrates conceptual deficits and a correspondingly weak foundation for EU policy, since misunderstandings relating to the organised nature of trafficking of cultural property and its overlaps with other forms of organised crime, particularly terrorist financing, may result in misguided policies with the potential to undermine law enforcement efforts. We also address the addition of persons trading or acting as intermediaries in the trade of cultural goods to the list of obliged entities and persons in the anti-money-laundering (AML) framework, because it opens new opportunities to disrupt the illicit financial flow in the art market. This paper is one of the results of the EU project on research, intelligence and technology for heritage and market security.

Keywords: organised crime, cultural property crime, terrorist financing, EU crime control policy, money laundering.

Introduction

Since the 2000s, supranational bodies, policymakers, law enforcement actors and advocacy groups have highlighted the organised nature of the illicit trafficking of cultural goods (TCG) (UNESCO, 2018; Chechi, 2019; Blake, 2020; Interpol, 2021, 2022; Clooney Foundation for Justice, 2022). This perspective gained prominence in the early to mid 2010s, coinciding with heightened global awareness of the nexus between TCG and the financing of terrorist activities in conflict zones across the Middle East (FATF, 2015, 2016; Jones, 2018). The alleged link between terrorist financing, money laundering, sanctions evasion and tax fraud has served to reinforce the characterisation of TCG as a form of organised serious crime (Ulph, 2011; Van Duyne et al., 2015; Yates, 2016; Mackenzie, 2020; US Senate, 2020; Baranello, 2021; Yates and Mackenzie, 2021).

The EU has wholly embraced this perspective on the organised nature of cultural property crime. The current EU action plan against trafficking in cultural goods was purportedly adopted as part of the EU strategy on organised crime (European Commission, 2022, p. 1), with TCG being regarded as one of the EU's primary priorities in this endeavour. Notwithstanding this association, some voices caution that there is no inherent relationship between organised crime and TCG (Howard et al., 2016; Brodie et al., 2019), and that an exclusive focus on the organised crime aspect of TCG may result in the formulation of a misguided legislation that fails to acknowledge the diversity of trafficking scenarios (Balcells, 2016), which in turn obscures the complexities of a market that is neither entirely licit nor illicit (a 'grey' market, see Mackenzie and Yates, 2017; Oosterman et al., 2021). A significant number of scholars have also expressed concern regarding the securitisation of the protection of cultural heritage, with worrying implications for efforts to combat TCG (Foradori et al., 2018; Puskás, 2019; Russo and Giusti, 2019; Lostal, 2020). Furthermore, the potential links to other forms of trafficking, corruption, money laundering, terrorism and terrorist financing remain understudied or highly contested (Eber et al., 2022).

The aims of this paper are twofold: (i) to pinpoint the origin and development of the association of TCG with organised crime; and (ii) to assess whether EU policymakers have identified the intersections between organised crime and cultural property crime with sufficient rigour to facilitate a common understanding of the issue and to inform the development of effective measures to enhance European policy on the protection of cultural heritage. To answer these questions, the paper proceeds as follows. The next section presents the research design. The third section shows the results of the content analysis. The fourth section discusses these findings. The fifth and final section offers concluding remarks.

Methodology

The present study surveys EU policy documents published since the foundation of the EU in 1993 through to 2023. The following types of documents and sources were considered: treaties, directives, decisions, framework decisions, regulations, formal policy statements (such as communications and conclusions), reports and reviews of the European Parliament, the Council, the European Commission, the European Public Prosecutor's Office (EPPO), the European Border and Coast Guard Agency (Frontex), the European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Union Agency for Law Enforcement Cooperation (Europol). The policy documents of the seven EU bodies provide a complementary perspective on the substantive issues under consideration.

To identify relevant documents, we conducted searches using EUR-Lex ([4]) and the bodies' websites. We used a range of combinations of terms relating to organised crime: 'transnational organised crime', 'organised and serious international crime', 'serious organised crime', 'serious organised cross-border crime', 'serious international organised crime', 'serious forms of organised crime', 'serious and organised crime', 'serious crime activities' and 'organised property crime'. In the found documents (*n* = 238), we conducted a search for references to the following terms:

([4]) https://eur-lex.europa.eu/homepage.html?locale=en.

'cultural property crime', 'trafficking' of or 'illicit trade' in 'cultural goods', 'cultural property', 'cultural heritage', 'works of art', 'antiques' or 'antiquities' and 'heritage crime'. These terms were found in 58 documents. We then conducted a qualitative content analysis of the documents, exploring linkages to archetypical forms of organised crime, such as conspiracy and participation in an organised criminal group, terrorism, terrorist financing, corruption, smuggling, tax offences, sanctions evasion, money laundering, forgery and fraud. Our purpose was to study how the EU bodies define the nature of TCG and its relationship to other forms of organised crime, exploring the growing identification of the former as a particularly hideous form of serious organised transnational crime, to calibrate whether the foundations of EU policy regarding TCG are solid.

Results

Table 1.1 presents a list of the offences most frequently referenced in EU policy documents as crimes relating to TCG. Terrorist financing is the most frequently mentioned offence, appearing in 18 documents, closely followed by money laundering, in 13. The umbrella category of organised crime ranks third. Terrorism occupies the fourth position. The blocks of crimes ranking fifth to ninth largely cover offences typically considered as forms of organised crime. As we will see in the next sections, there is no adoption of specific measures regarding most of these nexuses, except for the anti-money-laundering (AML) framework, which is explicitly directed against terrorist financing.

Table 1.1. Top categories of crime most frequently referenced as crimes relating to the TCG in EU policy documents mentioning organised or serious crimes

Rank	Crime	No of documents
1	Terrorist financing	18
2	Money laundering	13
3	Organised crime	10
4	Terrorism	6
5	Other forms of illicit trafficking (drugs, persons, arms, oil, cigarettes, wildlife, counterfeit goods)	5 5
6	Corruption	4
7	Extortion Fraud Sanctions evasion	3 3 3
8	Financing of criminal organisations Forgery Tax evasion	2 2 2
9	Racketeering War crimes	1 1

The 'career' of TCG as a serious organised transnational crime in EU policy began in the 1990s, in the area devoted to police and judicial cooperation. The term 'illicit trafficking in cultural goods' was first used in an EU policy document in 1995 to describe a 'serious form of international crime'. The annex to the Europol Convention (Council of the European Union, 1995) provided a list of 18 'serious forms of international crime which Europol could deal with in addition to those already provided for in Article 2(2)'. One of them was the 'illicit trafficking in cultural goods, including antiquities and works of art'. In the following years, the EU legal framework regarding police and judicial cooperation in criminal matters consistently referred to the illicit TCG and related offences (participation in a criminal organisation, corruption, money laundering, other illicit forms of trafficking) in all lists regarding the adoption of special procedures to facilitate police and judicial cooperation in criminal matters ([5]), including the creation of special agencies, such as Eurojust ([6]), explicitly addressing TCG as a form of organised crime.

Despite the relevance of the fight against organised crime during this period, the majority of EU policy documents outlining the EU strategy against organised crime made only perfunctory references to TCG or none at all, while references to overlaps between TCG and other forms of serious organised cross-border crime were totally absent (Council of the European Union, 1998; European Council, 2000, 2010). This is also evidenced by the limited attention given by EPPO, Frontex, Eurojust and Europol in the reviewed documents ([7]). The '2005 EU Organised Crime Report – Public version' (Europol, 2005, p. 22) was the only document to recognise that the criminal interest in cultural property encompasses a wide range of illicit activities, including theft and receiving, illicit trafficking, forgery and fraud, extortion and money laundering. It also acknowledged the involvement of organised criminals in the trade to meet rising demand of cultural objects. This finding was not followed up further until the mid 2010s, when the link between organised crime and TCG became a hot topic due to the connections with terrorism and terrorist financing.

The European Parliament publicly expressed its concerns regarding the use of TCG to finance terrorist activities in 2015. The resolution on the destruction of cultural sites perpetrated by ISIS/Daesh (Islamic State in Iraq and the Levant) claimed that 'illicit trade in cultural goods is now the third most significant illegal trade after drugs and arms' (European Parliament, 2015). In the same year, the European Commission announced its intention to explore the necessity and potential advantages of supplementary measures against terrorist financing and money laundering, including those related to TCG, because the same vulnerabilities in financial systems that allow for anonymity and opacity in transactions that facilitate terrorist financing also exist in the art market (European Commission, 2015, p. 14). Other policy documents emphasised the importance of enhancing international police collaboration and collaboration with customs authorities to disrupt the sources of terrorist funding, including measures relating to the freezing of terrorist assets and the control of the illicit trade in cultural goods (Council of the European Union, 2015, p. 2; European Commission, 2016, p. 12; Council of the European Union, 2023, p. 7) and other types of goods,

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([5]) See the joint action on making it a criminal offence to participate in a criminal organisation (Council of the European Union, 1998), along with the legal instruments on the European Arrest Warrant (Council of the European Union, 2002), the execution in the EU of orders freezing property or evidence (Council of the European Union, 2003), the mutual recognition of custodial sentences or measures involving deprivation of liberty (Council of the European Union, 2008a), probation decisions and alternative sanctions (Council of the European Union, 2008b), supervision measures (Council of the European Union, 2009b), the European Investigation Order in criminal matters (European Parliament and Council, 2014), the use of passenger name records (Parliament and Council, 2016), the mutual recognition of freezing and confiscation orders (Parliament and Council of the European Union, 2018b), the facilitation of cross-border hot pursuits and cross-border surveillance (Council of the European Union, 2022) and the European Production Orders and European Preservation Orders (European Parliament and Council of the European Union, 2023a).

([6]) Initially, the competence of Eurojust covered the types of crime and the offences in respect of which Europol is at all times competent to act, set out in Article 2(1) of the Europol Convention and the annex thereto. Once the Council decision establishing Europol entered into force (Council of the European Union, 2009a), the competence of Eurojust was set up in Article 4(1) of that decision and in the annex thereto. Both annexes mention trafficking in cultural property, antiquities and works of art.

([7]) The serious and organised crime threat assessment (SOCTA) methodology, which initiates the first full policy cycle on serious international and organised crime, merely mentions illicit TCG, without identifying any overlap with other forms of serious organised international crime (Council of the European Union, 2012). Something similar happens in Eurojust's reports, in which the new methodology applied to mobile organised group classification identifies illicit TCG as one of the core offences in the category 'organised property crime', without giving it any additional thought (Eurojust, 2014, p. 30). In fact, as recently as 2021, TCG only merits a short subsection in the chapter on organised property crime in Europol's SOCTA report (Europol, 2021, pp. 88–89). Frontex's general reports and risk analyses and EPPO's reports do not mention the topic.

such as firearms, oil, drugs and wildlife, along with the smuggling of migrants, cigarettes and counterfeit goods by organised crime networks (European Commission, 2016, pp. 12–13; European Parliament, 2016, p. 108; European Parliament and Council of the European Union, 2018a, Article 1). In 2017, the Directive on Combating Terrorism characterised illicit TCG, along with other forms of trafficking, racketeering and extortion, as 'lucrative ways for terrorist groups to obtain funding' (European Parliament and Council of the European Union, 2017, recital 13).

In response to these concerns, the AML legal framework began to address as obliged entities and persons those trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, and persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, in both cases only where the value of the transaction or a series of linked transactions amounts to EUR 10 000 or more (European Parliament and Council of the European Union, 2018a). Transactions relating to cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, were listed as potentially being at higher risk of money laundering.

Other responses to these concerns regarding the link between terrorist financing, money laundering and TCG were the regulation on the introduction and import of cultural goods (European Parliament and Council of the European Union, 2019) and the resolution on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars (European Parliament, 2019). The latter introduced specific provisions requiring importers to exercise due diligence regarding the licit provenance of the cultural goods imported, encouraging compliance through the provision of penalties for infringements. As further steps to adopt, the European Commission (2020) suggested the improvement of the online and offline traceability of cultural goods in the internal market and the cooperation with third countries where cultural goods are looted, along with the provision of active support to law enforcement and academic communities. By then, EU bodies were convinced that TCG was 'one of the most lucrative criminal activities, a source of funding for terrorists as well as organised crime and it is on the rise' (European Commission, 2020, p. 19). They stressed the fact that the illegal excavation, looting and trafficking of cultural property are not only linked to serious security threats, as they provide means for financing organised criminal and terrorist activities, but also instrumental in money laundering (Council of the European Union, 2020, 2023; European Commission, 2021). Explicitly, the Council of the European Union (2021, p. 10) set as one of the priorities on organised property crime the disruption of criminal networks involved in the illegal trade in cultural goods, with a special focus on those that are highly mobile and operating across the EU.

The EU action plan against trafficking in cultural goods (European Commission, 2022) is the first policy document to encompass a description of additional cultural property crimes beyond trafficking, including theft, robbery, looting and forgery. The scope of the action plan also includes other related crimes, such as fraud, disposal of stolen goods, smuggling, corruption, money laundering, sanctions evasion, tax evasion and terrorist financing. The action plan identifies the detection of illicit financial flows as a critical element in the fight against TCG. It acknowledges the need to pay particular attention to the prevalence of money laundering and terrorism financing with legally acquired cultural goods, identifying the business culture in the art market as the main facilitating factor of cultural property crime and one of the most probable explanations of its relative impunity.

Subsequent EU policy documents concentrate on the overlap between TCG and specific criminal activities, such as money laundering (Council of the European Union, 2023) and corruption (European Commission, 2023; European

Parliament and Council of the European Union, 2023b). Corruption is regarded as a crucial instrument for organised crime, as it enables a multitude of illicit operations, including TCG. However, no concrete action is taken to address this connection.

In sum, EU policy documents on TCG and organised crime demonstrate a distinct progression. Earlier documents lack any mention of this link, whereas more recent ones acknowledge that organised crime satisfies a demand for goods and services, including antiquities and works of art, but rarely incorporate specific measures to address it (but see Council of the European Union, 2023, with up to 36 recommended actions). Throughout the whole period, reports and reviews from EPPO, Frontex, Eurojust and Europol did not allude to the topic. A remarkable exception is the relationship between TCG and terrorist financing and money laundering.

Discussion

EU policy documents acknowledge that organised crime groups are involved in various forms of cultural property crime: 'theft and receiving, illicit trafficking, forgery and fraud, extortion, money laundering' (Europol, 2005, p. 22). This view has been repeatedly confirmed in case-law and police operations. However, the extent and nature of this involvement have not been fully investigated, apart from looting, damage and destruction in conflict zones. The literature consistently emphasises the disorganised nature of the illicit market in cultural goods, dominated by small groups and actors that are 'local at all points' (Hobbs, 1998, p. 419). This implies that the organisation of cultural property crime entails ever-mutating interlocking networks of mainly locally based criminality (Campbell, 2013; Brodie and Yates, 2019). Most existing networks are relatively small, opportunistic and highly decentralised, comprising members who are not necessarily full-time criminals (Nistri, 2009; Sargent et al., 2020). These findings are at odds with the stance taken by EU bodies, which consistently characterise cultural property crime as a serious organised cross-border crime.

Since 2017, there has been a notable focus on the areas of overlap between terrorism, illicit excavation and removal, illegal importation and exportation, acquisition, destruction and damage of cultural property in the context of armed conflicts. But the policy instruments that establish the connection appear to lack clarity regarding its extent and importance, sometimes acknowledging, quite cautiously, that illicit trade in pillaged cultural goods may serve as a source of terrorist financing and money laundering activities (European Parliament and Council of the European Union, 2019, recital 11 and p. 126), on other occasions affirming that terrorist groups are generating income from the illicit trafficking of cultural property (Council of the European Union, 2020, p. 8), to the point that it has 'become one of the most lucrative criminal activities' for terrorists and organised crime (European Commission, 2020, p. 19). These contradictory appreciations – it may be a source of funding, it is a source of funding, it is the most lucrative source of funding – touch on another contentious issue, namely the lack of evidence to support any of these claims. The documents in question did not delve further in their exploration, uncritically repeating unsubstantiated facts – or 'factoids' (Yates and Brodie, 2023). The assertion that the illicit trade in cultural property fuels terrorist activities is not based on research by any academic or professional expert, nor is it drawn from crime statistics or any relevant organisation within or outside the EU conducting field research. As a result, it has not been verified. It has been in place since the 2010s, supporting a narrative that equates terrorism with stricter measures against 'serious organised international' activities. In the absence of reliable evidence, the reception of this narrative by EU policymakers can only be considered as problematic (Sargent et al., 2019). It calls into question the foundation of EU policy on the illicit trade in art and antiquities on empirical evidence. Furthermore, the alignment of the fight against TCG with the existing, ideologically charged narrative regarding the 'war on terror' comes at the cost of the former taking a back seat in that war (Puskás, 2019; Rosén, 2023).

However, there are some positive outcomes. The focus on terrorism has enabled archaeologists and art historians to gain political support for their efforts to combat the international trafficking of looted objects. It has helped to place the protection of cultural heritage on political agendas. It has also increased public awareness of the cultural, historical and economic value of cultural heritage and the urgent need to reduce the illicit activities threatening it. And, more importantly, it has paved the way for the inclusion of the art market in the AML framework.

Approaching cultural property crime from the AML framework aligns with a significant body of specialised literature, which posits that TCG should be examined not only or not principally as a form of organised crime, but as a white-collar crime. This perspective views cultural property crime as an unlawful form of entrepreneurship, governed by profit goals and business rationales, vocabularies and rules that normalise illicit behaviour while minimising the harmful consequences (Balcells, 2014; Mackenzie, 2019; Oosterman et al., 2021). It could be argued that TCG is not *per se* a white-collar crime, but it typically ends up as such at the final stage. In any case, precisely this final phase has been identified by the EU as a priority area for intervention, given the similarities between the art market and the financial sector. Imposing due diligence obligations and preventive regulatory requirements on market professionals, creating an effective supervisory framework and improving traceability and reliable information on the object's origin and history mark a significant turning point in the pursuit of robust protection for cultural heritage.

Conclusion

The growing interest of EU policymakers in TCG, evident since the mid 2010s, is closely linked to the fight against terrorism and terrorist financing. This development has undoubtedly provided a new impetus for combating the illicit trade and exploring the intersections with other organised crime typologies, particularly money laundering and corruption. It has increased public awareness of the true extent and impact of TCG activities, including among art market participants and law enforcement agencies that may not be fully aware of the harm this crime can cause (Brodie et al., 2019). Yet, the topic is becoming increasingly securitised. The fight against these crimes has increasingly become a matter of global governance, attracting the attention not only of the EU but also of other international organisations with a political and military alliance and collective defence mandate, such as NATO (Rosén, 2023). This approach places the protection of cultural property in a secondary position to the objective of preventing and combating terrorism. It fails to provide a robust foundation for policy discussions and demonstrates a significant shortcoming in the understanding of the illicit market among EU policymakers. It does, however, contribute to the identification of key areas for improvement, namely the need to control the art market and reduce its vulnerabilities. This seems a promising strategy. By imposing obligations on key players, the EU can foster a legal environment that facilitates the sharing of information among relevant parties, thereby enhancing our ability to combat the TCG. One could say that the existing AML framework presents several significant challenges regarding the obligations imposed on those engaged in the art and antiquities trade, including the scope of these obligations and the likelihood of their effective enforcement. However, given the lack of interest from art dealers and auction houses in implementing self-regulatory measures, the optimal course of action for the EU is to induce behavioural change and create an environment more conducive to the public interest in protecting cultural heritage (Baranello, 2021). In this line, the Council of the European Union (2023) encourages Member States to identify, assess and understand the risks of

TCG in the context of money laundering and terrorism financing as part of their risk assessment under the AML legislation and to adopt adequate measures to mitigate these risks, along with raising awareness and issuing guidance to the private sector on how best to comply with their obligations to prevent money laundering and terrorism financing in cooperation with the competent authorities.

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