

GENERAL CONSIDERATION REGARDING EU LAW IN THE DOMAIN OF CULTURAL HERITAGE

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Abstract

The cultural heritage is a rich and diverse mosaic of cultural and creative expressions, our inheritance from previous generations of people and our legacy for those to come. In the terms of the Convention concerning the protection of the world cultural and natural heritage, the cultural heritage includes: monuments, such as architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature; groups of buildings and sites, such as works of man or the combined works of nature and man and areas including archaeological sites, all of these being of outstanding universal value from the point of view of history, art or science. Because of its substantial importance for the evolution of humanity, all nations in general and the European Union in particular, should have the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage. EU law states through the Treaty on the Functioning of the European Union at article 167 that the action of the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing the action in areas such as: improvement of the knowledge and dissemination of the culture and history of the European people; conservation and safeguarding of cultural heritage of European significance and others. While policy in this area is primarily the responsibility of Member States, regional and local authorities, the EU is committed to safeguarding and enhancing Europe's cultural heritage through a number of policies and programmes. Due to the lack of such policies and programmes, the lack of consistent terminology and legal definitions, especially between EU languages, the lack of information and data on the crimes that affect cultural goods, the purpose of the essay is to emphasize the need of a rigorous legal program and policy and to observe the legislation concerning this area existing in Member States.

Keywords: European Union; cultural heritage; EU law; Member States legislation; European Commission.

Introduction

The subject of the study, “General considerations regarding EU Law in the domain of cultural heritage”, is a matter concerning public law. Europe’s cultural heritage, both tangible and intangible, is our common wealth – our inheritance from previous generations of Europeans and our legacy for those to come. It is an irreplaceable repository of knowledge and a valuable resource for economic growth, employment and social cohesion¹. It is our responsibility as humans to respect our history and help perpetuate our most important values, which coexist in both the tangible and intangible cultural heritage. As humans we have to provide the society our better moral assets and all acts and facts relevant to our culture must stand as testimony for the future. Nowadays we live in a world that, from the point of view of technology, evolves so fast, that we are caught up in the so called “machineries”, that we look forward so much for the future, that we forget to remember our past, responsible for all our gained knowledge until present. But this should not be a bad thing, because in our matter of subject it can be constructive. Society today, encompasses a diversity of cultures in a civilization based on science and technology. Whereas cultures, with their beliefs and values breathes the air of virtual,

the universal civilization is more comfortable with reality². Inside this civilization we find that economic, social, military and cultural dimensions have great impact and for peoples to live in a democratic system, international and regional organizations are a solution. European Union has a major role as an actor on the international stage. And because 28 states are members of this organization and others have already signed an association agreement, it seems reasonable to say that the actions of these countries should be in line with the principles and policies of EU. Our cultural heritage and way to preserve and valorize it, is a major factor in defining Europe’s place in the world and its attractiveness as a place to live, work and visit. Cultural heritage is a shared resource, and a common good. Like other such goods it can be vulnerable to over-exploitation and under-funding, which can result in neglect, decay and, in some cases, oblivion. According to the Treaty on the Functioning of the European Union, heritage protection is a primarily matter for national, regional and local authorities. We understand the meaning of the principle of subsidiarity and its importance, but, after careful researches, we have come to the conclusion that the legally effective norms and policies regarding cultural heritage are not efficiently implemented. In other words, the purpose of the study is to observe the effective regulations and instruments that have the role to protect, to preserve

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¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards an integrated approach to cultural heritage for Europe. (Brussels, 22.07.2014)

² Self translation from: Mircea Malița, Homo Fraudens (București: RAO, 2012).

and to promote European cultural heritage and to state why there is a necessity of upgrading and diversifying them. The way we have chosen to respond to the undertaken objective is the examination of the opened sources and the analytical and comparison methods on the acts and facts. The element of innovation of the study is that there haven't been any specialized studies which relate to this subject. But it represents a present problem, approached by the institutions of the European Union, in 2014, the main purpose being an integrated approach to cultural heritage for Europe.

Content

Translating from the Latin "patrimonium", the word patrimony/heritage means paternal legacy. UNESCO³ defines this concept, inserting in its meaning the duty that falls upon each one of us to pass on the legacy, which we gain from the past, to the future generations. Beyond the intrinsic wealth, the cultural heritage doesn't represent a personal property, but a defining attribute for maintaining and perpetuating the social cohesion and identity. During the French Revolution, when the concept of nation was beginning to appear, Henri Jean Baptist Grégoire⁴ (1750-1831) said that the common heritage was one of the bindings of society. The patrimony is an alive and perennial concept, which, over the time, enriches with new meanings and extended to much more domains.

In a general way, modern law defines the concept of patrimony as all the rights and obligations that can be measured in money, which belong to a natural or legal person⁵. During the time of Justinian, the elements of the patrimony, in the terms of what romans call them during the classic law, were the real rights and the personal ones. The real right emanated from the legal relationship between a person and all the other members of the society and the personal right emanated from the legal relationship of two determined persons. The first classification we take a special account of lays out in Justinian's *Institutiones*, which divides things in two categories: *res in patrimonium* and *res extra patrimonium*. The first ones could have made the object of a private property, but the others were considered outside the patrimony, because through their nature they couldn't have made the object of property. In the same category were included the things, which, by their destination, couldn't be in the property of a person and as an example, these were

considered to be the temples or the walls of the castles⁶.

Nowadays, in the civil law, the concept of patrimony has a technical and precise meaning, but because of its several specific meanings, this concept appears in other branches of law. For example, "the public international law talks about common heritage of humanity and its object is the free sea and also the mineral resources, solid, liquid or gaseous in situ⁷, which are found on the bottom of the seas and in their undergrounds. It is obviously that this kind of use of the heritage concept has in view all of these resources and the free sea, belonging to the entire community."⁸

In the history of Romanian civil legislation, we come across the concept of patrimony without having a clear definition allocated to it. Over the time, the importance given to it is evolutionary. For example, if in the Romanian Civil Code from the second half of the 19th century (1864), we find only a few implicit and explicit references to the patrimony, in the civil legislation adopted after 1950, the concept of patrimony is much more invoked.

"The most general reference to the concept of patrimony – of an implicit manner – was made in the art. 1718 former Civil Code, which according to it "whoever is legally bound, is under the obligation to carry out his debts with all his assets, movable and immovable, present or future." The reference to all assets that belong to the debtor, "present and future", which were used to warrant the fulfilling of the obligations owed to the creditor, had in consideration all his goods, in their universality. The former Civil Code referred explicitly to this concept, when it regulated the so called separation of property. According to art. 781 former Civil Code, the creditors of a deceased person could have demanded "a separation of property between the deceased and the heir", in order not to cause the confusion – as in the reunion – between the deceased person's patrimony and the inheritor's own patrimony."⁹

The examples can continue with the dispositions of art. 238 from Law no. 31 of 16 November 1990 on trading companies - republished, as they were modified through the Law no. 441/2006 and the Emergency Ordinance no. 82/2007 referring to the merger and division of trading companies¹⁰. Also, the Law no. 215/2001 regarding local public administration, republished¹¹, which states that according to art. 119, the patrimony of the territorial-

³ United Nations Educational, Scientific and Cultural Organization

⁴ French Roman Catholic priest, constitutional bishop of Blois and leader of the French Revolution.

⁵ Self translation from: Gabriel Boroi, Carla Alexandra Anghelescu și Bogdan Nazat, *Curs de drept civil. Drepturi reale principale* (București: Hamangiu, 2013), 1. (Civil Law Course. Principal Real rights).

⁶ Self translation from: Emil Molcuț, *Drept privat roman, ediție revăzută și adăugită* (București: Universul Juridic, 2007), 106-107. (Private roman Law, revised and added edition)

⁷ Biology term which designates the process of examination on the spot and in the same surrounding.

⁸ Self translation from: Corneliu Bîrsan, *Drept civil. Drepturile reale principale în reglementarea noului Cod Civil* (București: Hamangiu, 2013), 1. (Civil law. Principal real rights in the regulation of the new Civil Code).

⁹ Bîrsan, *Drept civil*, 4.

¹⁰ Official Journal no. 446 of 29 June 2007.

¹¹ Official Journal no. 123 of 20 February 2007.

administrative entity is consisted of all movable and immovable goods which belong to its public domain, its private domain and the patrimonial obligations that such administrative unit can have.

In Romania, we find the concept of patrimony in several special normative acts, intended to determine the legal regime of some categories of goods. For example, in art. 1 par. 2 from the Law no. 182 of the 20th of October 2000 regarding the protection of the movable national heritage¹², with the subsequent modifications, „the national cultural heritage includes the totality of objects identified as such, regardless of the ownership right over them, representing a testimony and an expression of the values, beliefs, knowledge and traditions in continuous evolution; it comprises all the elements resulted from the interaction, in the course of time, between human and natural agents”. Also, the Law no. 311 of the 8th of July 2003¹³ regarding museums and public collections – republished states that “the museum patrimony represents the totality of goods, rights and duties with patrimony value belonging to a museum or, if the case may be, of the public collections. The goods that compose the museum patrimony may be subject to the public ownership right of the state and/or of the territorial-administrative entities, or, if the case may be, of the private property right”. Also, Ordinance no. 43 of the 30th of January 2000 on the protection of the archaeological heritage and declaring certain archaeological sites as national interest areas – republished¹⁴, refers to the archaeological heritage as signifying the ensemble of archaeological objects comprising: 1. the archaeological sites registered in the National Archaeological Repository, except the ones that have been destroyed or disappeared and the sites classified in the Historical Monuments List, situated underground or underwater, comprising archaeological vestiges: habitations, necropolis, structures, buildings, groups of buildings, as well as sites with located archaeological potential, as defined by the legislation in force; 2. movable objects, objects or traces of human existence, together with the ground where they were uncovered. The Law no. 26 of 29 February 2008 on the protection of intangible cultural heritage refers to the intangible cultural heritage as signifying the totality of practices, representations, expressions, knowledge, abilities – along with the instruments, objects, artifacts and cultural spaces associated with them – which the communities, groups or, if the case, individuals recognize as an integral part of their cultural heritage.

Over the time, the concept of cultural heritage has known several definitions and interpretations. The

International Centre for the Study of the Preservations and Restoration of Cultural Property has found not less than 60 definitions of the cultural heritage and cultural property, the oldest one dating from year 6 AD. Keep in mind the next definition offered by UNESCO, which says that “the cultural heritage may be defined as the entire corpus of material signs - either artistic or symbolic - handed on by the past to each culture and, therefore, to the whole of humankind. As a constituent part of the affirmation and enrichment of cultural identities, as a legacy belonging to all humankind, the cultural heritage gives each particular place its recognizable features and is the storehouse of human experience.”¹⁵

According to the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the UNESCO on 17 November 1972, the following shall be considered as cultural heritage:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; **groups of buildings:** groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; **sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Romania is intense implicated in the UNESCO actions, especially within the conventions that it is a part of:

- the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), adopted by Decree no. 187/1990¹⁶;

- the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), adopted by Law no. 73/1993¹⁷;

- the Convention for the Safeguarding of the Intangible Cultural Heritage (2003), adopted by Law no. 410/2005¹⁸;

¹² Official Journal no. 530 of 27 October 2000.

¹³ Official Journal no. 207 of 24 March 2014.

¹⁴ Official journal no. 951 of 24 November 2006.

¹⁵ http://cif.icomos.org/pdf_docs/Documents%20on%20line/Heritage%20definitions.pdf

¹⁶ Official Journal no. 46 of 31 March 1990.

¹⁷ Official Journal no. 268 of 19 November 1993.

¹⁸ Official Journal no. 17 of 9 January 2006.

- the Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹⁹ (2005), adopted by Law no. 248/2006²⁰;

- Convention on the Protection of the Underwater Cultural Heritage (2001), adopted by Law no. 99/2007²¹.

European wide, Romania has ratified the following conventions:

- the UNIDROIT²² Convention on stolen or illegally exported cultural objects, adopted in Rome on 24 June 1995 and ratified through Law no. 149/1997²³;

- the European Convention on the Protection of the Archaeological Heritage (revised), adopted in Valetta on 16 January 1992 and ratified through Law 150/1997²⁴;

- the Convention for the Protection of the Architectural Heritage of Europe, adopted in Granada on 3 October 1985 and ratified through Law no. 157/1997²⁵;

- the European Landscape Convention, adopted in Florence on 20 October 2000 and ratified through Law no. 451/2002²⁶.

The ensemble of legal instruments that have as main purpose the protection and conservation of cultural heritage of all kind doesn't stop here. It can be completed with a long list of legal norms. We will name only a few of them:

- Decree no. 672/2006 regarding the submission for ratification before the Parliament of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, adopted in Hague on 26 March 1999;

- Government Ordinance no. 47/2000 establishing certain measures for the protection of historical monuments included on the World Heritage List, as approved by Law no. 564/2001 – published in the Official Journal of Romania no. 695 of 1st of November 2001;

- Law no. 6/2008 concerning the legal status of technical and industrial heritage;

- Government Decision no. 493/2004 for approval of the methodology for monitoring historical monuments included on the World Heritage List – published in the Official Journal of Romania no. 380 of 30th April 2004;

- Council Regulation (EC) no. 116/2008 on the export of cultural goods;

- the Order of the Minister of Culture no. 2436 of 8th July 2008 regarding the elaboration of the National Programme for safeguarding, protection and highlighting the intangible cultural heritage, etc.²⁷

World wide, the organs and organizations specialized in cultural heritage or which take action in order to prevent and combat the crime phenomenon against art are:

United Nations Educational, Scientific and Cultural Organization (UNESCO) - UNESCO has adopted a three-pronged approach: it spearheads worldwide advocacy for culture and development, while engaging with the international community to set clear policies and legal frameworks and working on the ground to support governments and local stakeholders to safeguard heritage, strengthen creative industries and encourage cultural pluralism²⁸.

1. The International Council of Museums (ICOM) – in general, The International Council of Museums works for society and its development and it is committed to ensuring the conservation, and protection of cultural goods²⁹

2. International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) - ICCROM is an intergovernmental organization dedicated to the conservation of cultural heritage. Its members are individual states which have declared their adhesion to it. It exists to serve the international community as represented by its Member States, which has the currently number of 134³⁰. Romania is a member state since 19th January 1960³¹.

3. Getty Research Institute (GRI) - The J. Paul Getty Trust is the world's largest cultural and philanthropic organization dedicated to the visual arts. The Getty Conservation Institute advances the practice of art and cultural heritage conservation worldwide³².

4. Smithsonian Institute – the Smithsonian is the world's largest museum and research complex, consisting in 19 museums and galleries, the National Zoological Park and nine research facilities and its vision is to shape the future by preserving our heritage, discovering new knowledge, and sharing its resources with the world³³

¹⁹ Romania was the first country from Europe and 4th from the world which ratified the Convention on the Protection of the Diversity of Cultural Expressions.

²⁰ Official Journal no. 559 of 28 June 2006.

²¹ Official Journal no. 276 of 25 April 2007.

²² International Institute for the unification of private law.

²³ Official Journal no. 176 of 30 July 1997.

²⁴ Official Journal no. 175 of 29 July 1997.

²⁵ Official Journal no. 274 of 13 October 1997.

²⁶ Official Journal no. 536 of 23 July 2002.

²⁷ <http://www.cultura.ro/page/49>

²⁸ <http://en.unesco.org/themes/protecting-our-heritage-and-fostering-creativity#sthash.EMI6SGNv.dpuf>

²⁹ <http://icom.museum/the-organisation/icom-missions/>

³⁰ <http://www.iccrom.org/about/what-is-iccrom/>

³¹ The interest of Romania regarding the conservation of the cultural heritage developed shortly before the two great powers, France and Germany, which became members later on 1964

³² <http://www.getty.edu/about/whoweare/>

³³ <http://www.si.edu/About/Mission>

5. International Foundation for Art Research (IFAR) - The International Foundation for Art Research (IFAR) is a 501(c)(3) not-for-profit educational and research organization dedicated to integrity in the visual arts. IFAR offers impartial and authoritative information on authenticity, ownership, theft, and other artistic, legal, and ethical issues concerning art objects³⁴

6. Art Loss Register - The ALR is the world's largest private database of lost and stolen art, antiques and collectables. Its range of services includes item registration, search and recovery services to collectors, the art trade, insurers and worldwide law enforcement agencies³⁵

7. Association for research into crimes against arts (ARCA) - The Association for Research into Crimes against Art (ARCA) is a research and outreach organization which works to promote the study and research of art crime and cultural heritage protection. Association seeks to identify emerging and under-examined trends related to the study of art crime and to develop strategies to advocate for the responsible stewardship of our collective artistic and archaeological heritage³⁶

8. Museum Security Network (MSN) - Its original aim was to be a source of information for cultural property protection professionals. Gradually, the Museum Security Network Google Group has become the main channel for the distribution of news and information pertaining to cultural property protection, preservation, conservation, and security³⁷

9. Legislative institutes and agencies for the implementation of law

10. The International Institute for the Unification of Private Law (UNIDROIT) - The International Institute for the Unification of Private Law is an independent intergovernmental organization and its purpose is to study needs and methods for modernizing, harmonizing and co-ordinating private and, in particular, commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives³⁸

11. The United Nations Office on Drugs and Crime (UNODC) - UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism³⁹

12. The World Customs Organization (WCO) - The World Customs Organization, established in 1952 as the Customs Co-operation Council (CCC) is an

independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of Customs administrations⁴⁰

13. INTERPOL - INTERPOL is the world's largest international police organization, with 190 member countries and its mission is to prevent and fight crime through enhanced cooperation and innovation on police and security matters⁴¹

14. EUROPOL - Europol is the **European Union's law enforcement agency** whose main goal is to help achieve a safer Europe for the benefit of all EU citizens. Their mission is to assist the European Union's Member States in their fight against serious international crime and terrorism⁴².

For a correct and flawless approach of the subject, we must clearly establish the object of the national, European or international regulations, specifically we must establish what does the cultural heritage, in all his forms, resume at. We have observed that the cultural heritage comprises two subdomains: tangible cultural heritage, which is formed of the movable and immovable cultural heritage and the intangible cultural heritage.

According to the Romanian legislation, the movable national cultural heritage includes objects of exceptional historical, archaeological, documentary, ethnological, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliographic, cartographic and epigraphic value, representing material evidence for the evolution of the natural environment and for the relation of humans with it, the potential creativity of man and of the Romanian contribution to the universal civilization⁴³. We will observe that we will find a part of this definition in the one given by the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage. The classification offered by the Romanian law has no implementation on the European Union level, the movable and immovable cultural heritage having no freestanding definition. A reference to the types of goods that the law talks about is given by the UNIDROIT Convention on stolen or illegally exported cultural objects, which determines that "for the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention"⁴⁴. In concrete, the convention refers to the following cultural goods:

³⁴ <https://www.ifar.org/about.php>

³⁵ <http://www.artloss.com/about-us/our-company>

³⁶ <http://www.artcrimeresearch.org/our-work/>

³⁷ <http://www.museum-security.org/>

³⁸ <http://www.unidroit.org/about-unidroit/overview>

³⁹ <http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>

⁴⁰ <http://www.wcoomd.org/en/about-us/what-is-the-wco.aspx>

⁴¹ <http://www.interpol.int/About-INTERPOL/Overview>

⁴² <https://www.europol.europa.eu/content/page/about-us>

⁴³ Law no. 182 of 25th of October 2000 regarding the protection of the movable national heritage.

⁴⁴ UNIDROIT Convention on stolen or illegally exported cultural objects.

(a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) objects of ethnological interest;

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in

any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) original works of statuary art and sculpture in any material;

(iii) original engravings, prints and lithographs;

(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

Continuing with the definition series, by immovable national cultural heritage we understand an ensemble of immovable goods, buildings and lands situated on the Romanian territory, significant for the national and universal history, culture and civilization. The immovable goods and the ensemble of immovable goods of archaeological, historical, architectural, religious, urban, artistic, landscaping or technical and scientific value are considered historical monuments⁴⁵. Projections of this definition shall be found in the two European conventions regarding this domain. Thus, according to the Convention for the Protection of the Architectural Heritage of Europe it is considered that the architectural heritage comprises the following immovable goods:

- monuments: all buildings and structures of conspicuous historical, archaeological, artistic, scientific, social or technical interest, including their fixtures and fittings;

- groups of buildings: homogeneous groups of urban or rural buildings conspicuous for their historical, archaeological, artistic, scientific, social or

technical interest which are sufficiently coherent to form topographically definable units;

- sites: the combined works of man and nature, being areas which are partially built upon and sufficiently distinctive and homogeneous to be topographically definable and are of conspicuous historical, archaeological, artistic, scientific, social or technical interest.

Further more, the European Landscape Convention defines the landscape the area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors and the landscape protection means the actions to conserve and maintain the significant or characteristic features of a landscape, justified by its heritage value derived from its natural configuration and/or from human activity.

The intangible cultural heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development. As defined above, the intangible cultural heritage is manifested inter alia in the following domains:

- oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;

- performing arts;

- social practices, rituals and festive events;

- knowledge and practices concerning nature and the universe;

- traditional craftsmanship.

The first European community appeared in 1951 for a 50 years term, through the signing of the Treaty establishing the European Coal and Steel Community. The primary purpose of this community was the avoidance of a new world conflagration and its major objective resumed to the achievement of a supranational control over the main branches of the arms industry, namely coal and steel. Paul-Henri Spaak's report constituted the keystone in realizing the European Economic Community and the European Atomic Energy Community, their constituent treaties being signed in Rome, entering into force from 14 January 1958. After the institutional merge of the Commissions and the Councils of Ministers from the three communities from 1965, an important stage in accomplishing the internal market within the European Economic Community, was the moment when the

⁴⁵ Law no. 422 of the July 18th 2001 on the Protection of Historical Monuments – Codified.

Single European Act entered into force (1987)⁴⁶. According to the preamble of this treaty, the European Communities of that time were determined to work together to promote democracy and improve the economic and social situation by extending common policies and pursuing new objectives. Although, the formulation is general, it is the first time when an expansion of the community policies is wanted, at the same time with an EU extension. The most important changes and innovations were brought by the Treaty on European Union, signed in Maastricht on 7 February 1992. Firstly, the concept of European Union is introduced and it represents a *sui generis* entity, based on three pylons: the community pylon; foreign affairs and security policy; justice and home affairs⁴⁷. Secondly and what's important for us directly, a new title was introduced, Title IX, called "Culture" Thus, art. 128 stipulated:

„1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;
- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;
- artistic and literary creation, including in the audiovisual sector.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe.

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty.

5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

- acting in accordance with the procedure referred to in Article 189b and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedures referred to in Article 189b;
- acting unanimously on a proposal from the Commission, shall adopt recommendations.⁴⁸

Through the Maastricht Treaty, the European Union undertakes some obligations referring to the cultural heritage, but what we will see is that the ambiguous formulation, used by the above art. 128, is the reason why the European Union didn't act in a concrete way regarding this domain, but until later on. On 1st of May 1999, the Amsterdam Treaty entered into force. This is the one that amends the Treaty on European Union and the treaties establishing the European Communities. The amends didn't apply to culture aspects, namely to cultural heritage. Having into consideration the extension by 10 states that was preparing to take place in 2004, an institutional reform was becoming to be necessary. So, because of that reason, the Treaty of Nice was signed in 2001 and it contributed with the needed adjustments. Content modifications were brought within the common security and cooperation policies, but also within the domain of police and judicial cooperation in criminal matters. The last one is of a distinguished importance, because the European Judicial Cooperation Unit is introduced.

Eurojust is enabled to facilitate proper coordination between Member States' national prosecuting authorities and is supporting Member States for criminal investigations in cases of serious cross-border crime, particularly in the case of organized crime, taking account, in particular, of analyses carried out by Europol. Which also implies illicit trafficking of cultural goods. Further more, the Treaty of Nice proclaims the Charter of Fundamental Rights of the European Union, which will ulteriorly achieve legal personality as the fundamental treaties. With regard to the Charter of Fundamental Rights of the European Union and in particular Articles 11⁴⁹, 21⁵⁰ and 22⁵¹ thereof, the cultural and creative sectors make an important contribution to the fight against all forms of discrimination, including racism and xenophobia, and are an important platform for freedom of expression and for the promotion of respect for cultural and linguistic diversity. Last, but not least is the Treaty of Lisbon which includes the European Union among the subjects of international law, conferring to it legal personality. This status implies the achievement of a more powerful and coherent position on the external plan, the EU having now the competence to take action, in a more efficiently way, against the criminal groups that handle with the trafficking of persons and also to promote and sustain actions regarding the criminal prevention and combating terrorism. Acquiring legal personality means that the EU can directly get involve in promoting the conservation and protection of his cultural heritage. The Treaty of Lisbon mentions in art.

⁴⁶ Self translation from: Augustin Fuerea, *Manualul Uniunii Europene* (București: Universul Juridic, 2011), 14-55. (The European Union Manual).

⁴⁷ The pylon became Police and judicial cooperation in criminal matters, after the Amsterdam Treaty entered into force(1999)

⁴⁸ http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf

⁴⁹ Freedom of expression and information.

⁵⁰ Non-discrimination.

⁵¹ Cultural, religious and linguistic diversity.

2 that the union “shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced”. “Culture” is approached in Title XIII of the Treaty on the Functioning of the European Union and the changes that appear refer only to the last paragraph, because the European Parliament became a law-making institution along with the Council. Therefore content changes don’t apply to this chapter. An interesting fact is that there is no legal definition of the European cultural heritage, as there is no list of movable or immovable cultural goods at the EU level.

The builders of Europe were the people who launched the process of European construction by founding the Council of Europe in 1949 and setting up the European Coal and Steel Community (ECSC) and the European Economic Community (EEC). We are grateful to the following persons: Winston Churchill (Prime Minister of the United Kingdom); Konrad Adenauer (Chancellor and Minister for Foreign Affairs of the Federal Republic of Germany); Robert Schumann (French Republic Minister for Foreign Affairs); Paul-Henri Spaak (Prime Minister and Foreign Minister of Belgium in the 40s and 50s); Alcide de Gasperi (Prime Minister of the Republic of Italy); Ernest Bevin (United Kingdom Secretary of State for Foreign Affairs). The Council of Europe advocates freedom of expression and of the media, freedom of assembly, equality, and the protection of minorities. A first instrument which has approached the issue of the European cultural heritage has been the European Cultural Convention, settled in Paris, on 19 December 1954. In art. 1 of the convention it is stipulated that „each Contracting Party shall take appropriate measures to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe”. Nowadays, all 47 Member States of the Council of Europe, including all 28 EU Member States, have ratified the convention, plus Belarus, the Holy See and Kazakhstan. The Council of Europe is actively involved in the domain of cultural heritage and the high number of adopted conventions stand as evidence. We will enumerate them:

- Convention on the Conservation of European Wildlife and natural Habitats, entered into force on 1 June 1982;
- European Convention on Offences relating to Cultural Property, opened to signature on 23 June 1985;
- Convention for the Protection of the Architectural Heritage of Europe entered into force on 1 December 1987;
- European Convention on Cinematographic Co-production, entered into force on 1 April 1994;
- European Convention on the Protection of the Archaeological Heritage (revised), entered into force on 25 May 1995;

- European Convention for the Protection of the Audiovisual Heritage, entered into force on 1 January 2008;

- European Landscape Convention, entered into force on 1 March 2004;

- Council of Europe Framework Convention on the Value of Cultural Heritage for Society, opened for signature on 27 October 2005.

The Lisbon Treaty increased the scope for European Union action in many areas where the Council of Europe already has significant experience and expertise. This has led to increased cooperation on issues such as fighting human trafficking, the sexual exploitation of children and violence against women. It has also opened the way for the European Union itself to sign up to the European Convention on Human Rights, and to other Council of Europe agreements. Therefore, in accordance with the objective of the European Union to supervise the protection and development of the European cultural heritage, and also with the fact that it gained legal personality, we consider that an important step towards realizing this objective, in a concrete and efficient way, should be the ratification of the conventions that regard the cultural heritage theme, under the aegis of the Council of Europe. Acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms will allow the unification of the jurisprudence regarding the protection of human rights on the European continent, thus consolidating the protection level of the EU citizens, which they should enjoy⁵². We can’t invoke the same reason to convince about the importance of EU ratifying the conventions regarding the cultural heritage, but we can establish a direction in this way by analyzing the legislation in matter.

The organs of the EU have only those competencies which have been attributed to them in the treaties (the principle of attributed powers). The regulatory capacities of the European Union are currently limited to the development of supportive measures:

- Art. 167 Treaty on the Functioning of the European Union – “...the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States...”

- Art. 36 Treaty on the Functioning of the European Union – “...shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value...”

⁵² <http://www.mae.ro/node/4492>

This is the only primary legislation of EU we found on cultural heritage. Secondary legislation of EU on this domain contains:

- 2013/743/EU - Council Decision of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020);
- 1295/2013/EU - Regulation of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020);
- Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods;
- 1352/2008/EC - Decision of the European Parliament and of the Council of 16 December 2008 amending Decision No 1855/2006/EC establishing the Culture Programme (2007 to 2013);
- 1855/2006/EC - Decision of the European Parliament and of the Council of 27 December 2006 establishing the Culture Programme (2007 to 2013);
- 2011/711/EU - Commission Recommendation of 27 October 2011 on the digitization and online accessibility of cultural material and digital preservation;
- 2011/831/EU - Council Decision of 1 December 2011 on the practical and procedural arrangements for the appointment by the Council of four members of the European panel for the European Union action for the European Heritage Label;
- 1194/2011/EU - Decision of the European Parliament and of the Council of 16 November 2011 establishing a European Union action for the European Heritage Label;
- 2010/238/EU - Commission Recommendation of 26 April 2010 on the research joint programming initiative Cultural Heritage and Global Change: a new challenge for Europe;
- 2001/C73/04 - Council resolution of 12 February 2001 on architectural quality in urban and rural environments;
- 94/C235/01 - Council conclusions of 17 June 1994 on drawing up a Community action plan in the field of cultural heritage;
- Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, which was amended afterwards, but today there is a proposal from 2013, not published in the Official Journal, for a Directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State. The purpose of this proposal is to recast Directive 93/7/EEC and strengthen EU law in this field.
- 86/C320/01 - Resolution of the Ministers with responsibility for Cultural Affairs, meeting within the Council of 13 November 1986 on the protection of Europe's architectural heritage;
- 75/65/EEC - Commission Recommendation of 20 December 1974 to Member States concerning the protection of the architectural and natural heritage.

In essence, the European Commission's recommendation from 1974 invites the Member States to ratify the convention concerning the protection of the World Cultural and Natural Heritage, justifying that since the architectural and natural heritage is generally felt to be a determining factor in the quality of life, both these initiatives are of major importance for the protection and improvement of the environment in the Community.

The Resolution from 1986 emphasizes a very important aspect regarding the approach to our subject: „...Recognizing that this resolution **does not result in any modification of the powers of the Community and the Member States regarding the protection of the architectural heritage**, but considering that they should take greater advantage of each other's experience; Agree to develop effective cooperation on aspects of Europe's architectural heritage, opening this to other European countries where appropriate; Agree to encourage the exchange of experience and the transfer of information on the architectural heritage, in particular through the **standardization of terminology and the establishment of a network of data bases prepared in this area in the Member States...**”

A very important step was made as result of the European Commission's recommendation from 26 April 2010. This recommendation referred to the development of a common strategic research agenda establishing medium to long-term research needs and objectives in the area of preservation and use of cultural heritage in the context of global change.

The Decision of the European Parliament and of the Council from 16 December 2011 has approached a new initiative, taking the shape of the programme named „European Heritage Label”, which afterwards became an action of the Union. Through this Decision, some definitions became official on the EU area:

a. “sites” means monuments, natural, underwater, archaeological, industrial or urban sites, cultural landscapes, places of remembrance, cultural goods and objects and intangible heritage associated with a place, including contemporary heritage;

b. “transnational site” means:

(1) several sites, located in different Member States, which focus on one specific theme in order to submit a joint application; or

(2) one site located on the territory of at least two Member States;

c. “national thematic site” means several sites, located in the same Member State, which focus on one specific theme in order to submit a joint application.

The European Commission's recommendation on the digitization and online accessibility of cultural material and digital preservation talk about the Digital Agenda for Europe which seeks to optimize the benefits of information technologies for economic growth, job creation and the quality of life of European citizens, as part of the Europe 2020 strategy. With this occasion we find out about Europeana, Europe's

digital library, archive and museum, which was launched on 20 November 2008. The overall target for 2015 of 30 million objects is in line with Europeana's strategic plan, and a stepping stone for getting Europe's entire cultural heritage digitized by 2025.

Regarding the proposal to recast Directive 93/7/EEC, The European Commission proposes to enable Member States to recover any cultural object identified as national treasure that was unlawfully removed from their territories on or after 1 January 1993. For this purpose, the scope of the definition of cultural goods would be extended to include all those classified as "national treasures of artistic, historic or archaeological value" in line with the laws of EU countries. It would also extend the deadline for initiating proceedings, make use of the EU's internal market information system to facilitate cooperation and exchanges between countries' authorities and place the burden of proof on the possessor.

The decision of the European Parliament on establishing the Culture Programme (2007 to 2013) states that an active cultural policy aimed at the preservation of European cultural diversity and the promotion of its common cultural elements and cultural heritage can contribute to improving the external visibility of the European Union (we have a further more reason to sustain the necessity of a clear legislation in the domain). For this reason and, also because of the final evaluation of the impact that the cultural programmes Kaleidoscope, Ariane, Raphael and Culture 2000, set out respectively in Decisions No. 719/96/EC⁵³, 2085/97/EC⁵⁴, 2228/97/EC⁵⁵ and 508/2000/EC⁵⁶, had on the communities, significant funding was earmarked for establishing a Community action programme for the European Capital of Culture event for the years 2007 to 2019⁵⁷. The specific objectives of the programme are to promote the transnational mobility of cultural players, to encourage the transnational circulation of works and cultural and artistic products and to encourage intercultural dialogue.

Since its adoption, Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods has been amended on several occasions. For reasons of rationality and clarity, it is repealed in order to be replaced by the current regulation, Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods. This regulation establishes exactly the list of cultural goods which make the object of the export rules. Therefore, in order

to ensure that uniform controls are carried out on these exports at the external borders of the European Union, the categories of cultural objects are:

1. Archaeological objects more than 100 years old which are the products of:
 - excavations and finds on land or under water;
 - archaeological sites
 - archaeological collections.
2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years.
3. Pictures and paintings, other than those included in categories 4 or 5, executed entirely by hand in any medium and on any material (which are more than 50 years old and do not belong to their originators)
4. Watercolours, gouaches and pastels executed entirely by hand on any material (which are more than 50 years old and do not belong to their originators).
5. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material (which are more than 50 years old and do not belong to their originators)
6. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters (which are more than 50 years old and do not belong to their originators)
7. Original sculptures or statuary and copies produced by the same process as the original, other than those in category 1 (which are more than 50 years old and do not belong to their originators)
8. Photographs, films and negatives thereof (which are more than 50 years old and do not belong to their originators)
9. Incunabula and manuscripts, including maps and musical scores, singly or in collections (which are more than 50 years old and do not belong to their originators)
10. Books more than 100 years old, singly or in collections
11. Printed maps more than 200 years old
12. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old
- 13.a. Collections and specimens from zoological, botanical, mineralogical or anatomical collections; (as defined by the Court of Justice in its judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading No 97.05 of the Common Customs Tariff are articles which possess the

⁵³ Decision No 719/96/EC of the European Parliament and of the Council of 29 March 1996 establishing a programme to support artistic and cultural activities having a European dimension (Kaleidoscope) (OJ L 99, 20.4.1996, p. 20). Decision as amended by Decision No 477/1999/EC (OJ L 57, 5.3.1999, p. 2)

⁵⁴ Decision No 2085/97/EC of the European Parliament and of the Council of 6 October 1997 establishing a programme of support, including translation, in the field of books and reading (Ariane) (OJ L 291, 24.10.1997, p. 26). Decision as amended by Decision No 476/1999/EC (OJ L 57, 5.3.1999, p. 1).

⁵⁵ Decision No 2228/97/EC of the European Parliament and of the Council of 13 October 1997 establishing a Community action programme in the field of cultural heritage (The Raphael Programme) (OJ L 305, 8.11.1997, p. 31). Decision as repealed by Decision No 508/2000/EC (OJ L 63, 10.3.2000, p. 1).

⁵⁶ Decision No 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the Culture 2000 programme (OJ L 63, 10.3.2000, p. 1). Decision as last amended by Council Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

⁵⁷ Romania was designated the European Capital of Culture in 2007.

requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value – also applies to b.)

b. Collections of historical, palaeontological, ethnographic or numismatic interest

14. Means of transport more than 75 years old

15. Any other antique items not included in categories 1 to 14

a. between 50 and 100 years old

- toys, games
- glassware
- articles of goldsmiths' or silversmiths' wares
- furniture
- optical, photographic or cinematographic apparatus

apparatus

- musical instruments
- clocks and watches and parts thereof
- articles of wood
- pottery
- tapestries
- carpets
- wallpaper
- arms

b. more than 100 years old

The cultural objects in categories 1 to 15 are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds applicable to certain categories (in euro):

Value:

- Whatever the value
 - 1 (Archaeological object)
 - 2 (Dismembered monuments)
 - 9 (Incunabula and manuscripts)
 - 12 (Archives)
- 15 000
 - 5 (Mosaics and drawings)
 - 6 (Engravings)
 - 8 (Photographs)
 - 11 (Printed maps)
- 30 000
 - 4 (Watercolors, gouaches and pastels)
- 50 000
 - 7 (Statuary)
 - 10 (Books)
 - 13 (Collections)
 - 14 (Means of transport)
 - 15 (Any other object)
- 150 000
 - 3 (Pictures)

The Regulation of the European Parliament and of the Council from 11 December 2013 brings up a new element of interest, namely that the Union is a party of the 2005 UNESCO Convention on the

Protection and Promoting of the Diversity of Cultural Expressions, which underlines that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must not, therefore, be treated as solely having commercial value. In addition, it stipulates that the Commission Communication entitled "Europe 2020 – A strategy for smart, sustainable and inclusive growth" (the "Europe 2020 Strategy") defines a strategy that aims to turn the Union into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion. This Regulation establishes the Creative Europe Programme for support to the European cultural and creative sectors. For the purpose of the regulation, new definitions are applied and, for our interest, we mention:

a. "cultural and creative sectors" means all sectors whose activities are based on cultural values and/or artistic and other creative expressions, whether those activities are market- or non-market-oriented, whatever the type of structure that carries them out, and irrespective of how that structure is financed. Those activities include the development, the creation, the production, the dissemination and the preservation of goods and services which embody cultural, artistic or other creative expressions, as well as related functions such as education or management. The cultural and creative sectors include inter alia architecture, archives, libraries and museums, artistic crafts, audiovisual (including film, television, video games and multimedia), tangible and intangible cultural heritage, design, festivals, music, literature, performing arts, publishing, radio and visual arts;

b. "SMEs" means micro, small and medium-sized enterprises, as defined in Commission Recommendation 2003/361/EC⁵⁸;

The specific objectives of Creative Europe are "to support the capacity of the European cultural and creative sectors to operate transnationally and internationally; to promote the transnational circulation of cultural and creative works and transnational mobility of cultural and creative players, in particular artists, as well as to reach new and enlarged audiences and improve access to cultural and creative works in the Union and beyond, with a particular focus on children, young people, people with disabilities and under-represented groups; to strengthen the financial capacity of SMEs and micro, small and medium-sized organizations in the cultural and creative sectors in a sustainable way, while endeavouring to ensure a balanced geographical coverage and sector representation."⁵⁹

Regardless, the Council' Decision on establishing the specific programme implementing Horizon 2020 - the Framework Programme for

⁵⁸ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁵⁹ Regulation of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020).

Research and Innovation (2014-2020) is the newest in this domain. Horizon 2020 is the financial instrument implementing the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness. By coupling research and innovation, Horizon 2020 is helping to achieve this with its emphasis on excellent science, industrial leadership and tackling societal challenges. The goal is to ensure Europe produces world-class science, removes barriers to innovation and makes it easier for the public and private sectors to work together in delivering innovation⁶⁰.

Recent declarations show that the issue of protecting the cultural heritage has attracted the European Commission's attention. The lack of a formal frame of regulations, but also the lack of a rigorous defined vocabulary, have started to make a point. The crimes against the cultural heritage are continuously increasing and, only now, when we confront ourselves with such illegal phenomenon, we realize their real value. Now, when we find ourselves in the era of advanced technologies, of robots and intelligent machines, our history seems to point out on the lack of perpetuation. Indeed, responsible are both the states and their citizens, but in a context where 28 of the Europe's countries are a part of, what it seems to be, the world's most powerful economic organization, having policies in all the important domains, economic, social, cultural, energetic, the only thing that remains to say is that the European Union must implement real and applicable measures regarding the protection of cultural heritage. What represents a scientific, archaeological, artistic, historical, etc. value for a Member State, must be equally for the Union itself.

The issue regarding the patrimony and the culture, in general, has remained, a long period of time, underestimated within European general policies. Not only should we show interest for the crimes against the cultural heritage, but also because of its nature, it is a very fragile patrimony and it is exposed to multiple risks due to ageing, adverse environmental conditions, and human pressure.

In July 2014, the European Commissioner for Education, Culture, Multilingualism and Youth, Androulla Vassiliou, said: *“Europe needs to maximize the intrinsic, economic and societal value of cultural heritage. It should be the centre of heritage-based innovation, seizing the opportunities created by digitization and promoting our heritage expertise worldwide. Across the EU, we need to encourage a more people-friendly approach in heritage sites and museums, using new techniques and technologies to attract visitors and reach young people in particular. In short, we need to bring history alive. I am pleased that heritage stands to gain from stronger European support over the next seven years.”*⁶¹

The vice president of the Commission for Education and Culture himself, the Romanian Mircea Diaconu, has elaborated a project report entitled *“Towards an integrated approach to cultural heritage for Europe”*. The project was debated by the members of the Commission for Education and Culture since the beginning of this year and the reactions were obviously positive. The discussion emphasized the idea of participatory governance, as a democratic model and as a valuable alternative, which can be applied for the purpose of boosting the instruments of cultural policies. Also, it was taken into consideration the theme of digitizing the cultural heritage, not so much with the purpose of archiving it, but with the intention of getting in touch with the young generation about the European cultural history, through new technologies⁶². Mircea Diaconu declared that in September 2015, he will propose to the Council and the European Parliament to adopt a European normative act that will regulate the European cultural heritage.

At the same time, the Council of Europe is continuing its mission and announces the Conference of Ministers responsible for Cultural Heritage which will take place in Namur (Belgium) on 23 and 24 April 2015 in the context of the Belgian Chairmanship of the Committee of Ministers of the Council of Europe. The conference is aimed at defining the conditions for elaborating a European strategy for cultural heritage. This strategy, while confirming the role of heritage as the touchstone of European values, should also project heritage as the means of their transmission and the ideal tool for intercultural and intergenerational dialogue.

So, as the role of the EU is limited, for the moment, to promoting cooperation between the cultural operators of the different Member States or to complementing their activities in order to contribute to the flowering of the cultures of EU countries, while respecting their national and regional diversity, these are the first measures that the European Union will apply:

- The Council adopted conclusions establishing a Work Plan for Culture (2015-2018). This is a strategic document setting out the priorities for European cooperation in cultural policy-making for the next four years, focusing on topics that represent a clear EU added value and encourage cross-sectorial cooperation. And we will quote from the press release from 25 November 2014: *“The Work Plan has four sectorial priorities (accessible culture; cultural heritage; creative economy and innovation; and cultural diversity, including culture in EU external relations), which are complemented for the first time by two cross-sectorial priorities (digital shift and statistics). They are all structured around the Europe 2020 strategy for growth and jobs. The focus is on topics that represent a clear EU added value and*

⁶⁰ <http://ec.europa.eu/programmes/horizon2020/en/what-horizon-2020>.

⁶¹ http://europa.eu/rapid/press-release_IP-14-854_en.html

⁶² <https://www.mirceadiaconu.eu/>

encourage cross-sectorial cooperation, taking into account the dual nature - economic as well as cultural - of culture.”⁶³

- The Council adopted conclusions on participatory governance of cultural heritage, inviting member states to promote a more active involvement of civil society and of the private sector in the governance of cultural heritage, at local, regional, national and European levels. “Cultural heritage is one of the priorities of the new Work Plan for Culture. It is a common good, a shared resource that requires a collective responsibility. The involvement of all interested parties in decision-making, planning, implementation, monitoring and evaluation of cultural heritage policies and programmes can increase public awareness of the values that it represents, reinforce transparency and accountability in the use of public resources, and build trust between citizens and public authorities.”⁶⁴

In conclusion, we all understand the importance that the protection and conservation of the cultural heritage represents. The reasons are both historical and moral and also economical. As members of the European Union, which gave up to a part of their sovereignty, through the treaty, the states are encouraged to act for the purpose of sustaining and developing the cultural domain. If the Union encourages the cooperation between Member States, supporting and supplementing their action in this sector, then the Member States will do the same thing, if the Union will act directly by implementing efficient policies and adopting a rigorous legal frame.

Another reason to point out the necessity to adopt general policies, but also normative acts in the cultural heritage domain, would be the fact that the Treaty on the Functioning of the European Union also establishes citizenship of the Union, which complements national citizenship of the respective Member States and is an important element in safeguarding and strengthening the process of European integration. For citizens to give their full support to European integration, greater emphasis should be placed on their common values, history and culture as key elements of their membership of a society founded on the principles of freedom, democracy, respect for human rights, cultural and linguistic diversity, tolerance and solidarity. It is essential to promote cooperation and cultural exchanges in order to **respect** and promote the diversity of cultures and languages in Europe and improve knowledge among European citizens of European cultures other than their own, while at the same time heightening their awareness of the common European cultural heritage they share.

Finally, as an example, we will present a few statistics referring to the profile of cultural policies of some of the European Union Member States.

Romania

- Funding (2010)
 - Culture as share of total central government spending: **2.10 %** ↓
 - Government expenditure on culture: **885 131 974 Euro** ↓
 - Government expenditure on culture per capita: **41.00 Euro** ↓
 - Share of spending on culture by central government: **18.87 %** ↓
- Employment (2009)
 - Share of cultural workers in total employment: **0.75 %** ↓
 - Share of self-employed in cultural employment: **7.80 %**
 - Share of self-employed in total employment: **32.78 %**
- Markets (2012)
 - CUIPX⁶⁵: Cultural goods: **83 %**⁶⁶
 - CUIPX: Public cultural services: **21 %**
 - Annual exp. per capita for recreation and culture: **300 USD (30 %)**⁶⁷
- Participation
 - Cinema admissions per capita/year: **0.3 times (2010)** ↑
 - Internet penetration rate: **45.2 % (2012)** ↑
- Ratification of Key Cultural Conventions
 - European Cultural Convention (1955): **19/12/1991**
 - European Charter for Regional or Minority Languages (1992): **Entered into force 1/5/2008**
 - European Convention for the Protection of the Audiovisual Heritage (2001): **Signed 30/5/2002. Not yet ratified.**
 - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005): **Acceded on 20/07/2006**

⁶³ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145953.pdf

⁶⁴ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145953.pdf

⁶⁵ Cultural Price Index on selected goods and services

⁶⁶ European average = 100%.

⁶⁷ OECD (The Organization for Economic Co-operation and Development) PPP (prices and purchasing power parities) Index = 100%.

France

- Funding (2002)
 - Culture as share of total central government spending: **N/A**
 - Government expenditure on culture: **12000000000 Euro** ↑
 - Government expenditure on culture per capita: **197.20 Euro**
 - Share of spending on culture by central government: **51.00 %** ↓

- Employment (2009)
 - Share of cultural workers in total employment: **1.70 %** ↓
 - Share of self-employed in cultural employment: **16.96 %**
 - Share of self-employed in total employment: **10.91 %**

- Markets (2012)
 - CUIPIX: Cultural goods: **110 %**
 - CUIPIX: Public cultural services: **204 %**
 - Annual exp. per capita for recreation and culture: **1 924 USD (188 %)**

- Participation
 - Cinema admissions per capita/year: **3.2 times (2010)** ↑
 - Internet penetration rate: **80.0 % (2012)** ↑

- Ratification of Key Cultural Conventions
 - European Cultural Convention (1955): **5/5/1955**
 - European Charter for Regional or Minority Languages (1992): **Signed 7/5/1999. Not yet ratified**
 - European Convention for the Protection of the Audiovisual Heritage (2001): **Entered into force 1/8/2010**
 - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005): **Acceded on 18/12/2006**

Spain

- Funding (2010)
 - Culture as share of total central government spending: **1.36 %** ↓
 - Government expenditure on culture: **6 862 252 000 Euro** ↓
 - Government expenditure on culture per capita: **149.00 Euro** ↓
 - Share of spending on culture by central government: **15.31 %** ↑
- Employment (2009)

- Share of cultural workers in total employment: **1.28 %** ↓
- Share of self-employed in cultural employment: **19.69 %**
- Share of self-employed in total employment: **16.92 %**

- Markets (2012)
 - CUIPIX: Cultural goods: **120 %**
 - CUIPIX: Public cultural services: **189 %**
 - Annual exp. per capita for recreation and culture: **1 589 USD (155 %)**

- Participation
 - Cinema admissions per capita/year: **2.2 times (2010)** ↓
 - Internet penetration rate: **68.4 % (2012)** ↑

- Ratification of Key Cultural Conventions
 - European Cultural Convention (1955): **4/7/1957**
 - European Charter for Regional or Minority Languages (1992): **Entered into force 1/8/2001**
 - European Convention for the Protection of the Audiovisual Heritage (2001): **Not yet signed**
 - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005): **Ratified on 18/12/2006**

Austria

- Funding (2011)
 - Culture as share of total central government spending: **0.82 %** ↑
 - Government expenditure on culture: **2 298 250 000 Euro** ↓
 - Government expenditure on culture per capita: **273.00 Euro** ↓
 - Share of spending on culture by central government: **34.04 %** ↑

- Employment (2009)
 - Share of cultural workers in total employment: **1.57 %** ↓
 - Share of self-employed in cultural employment: **30.70 %**
 - Share of self-employed in total employment: **13.37 %**

- Markets (2012)
 - CUIPIX: Cultural goods: **128 %**
 - CUIPIX: Public cultural services: **176 %**
 - Annual exp. per capita for recreation and culture: **2 431 USD (237 %)**

- Participation
 - Cinema admissions per capita/year: **2.1 times (2010)** ↓
 - Internet penetration rate: **77.7 % (2012)** ↑
- Ratification of Key Cultural Conventions
 - European Cultural Convention (1955): **4/3/1958**
 - European Charter for Regional or Minority Languages (1992): **Entered into force 1/10/2001**
 - European Convention for the Protection of the Audiovisual Heritage (2001): **Signed 5/6/2002. Not yet ratified**
 - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005): **Ratified on 18/12/2006**⁶⁸

Conclusions

Firstly, the study is aiming to approach general considerations regarding the EU legislation on cultural heritage. The main directions of the study are the following:

- General definitions of the patrimony/heritage;
- National Romanian legislation on cultural heritage and definitions;
- International and European Conventions regarding cultural heritage that Romania ratified;
- International organs and organizations that specialized in cultural heritage or which take action in order to prevent and combat the crime phenomenon against art;
- Comparison between Romanian and International definitions regarding cultural heritage and slight references on the subject regarding the European Union;
- A short history on the evolution of the treaties, starting with the constitutive treaties and continuing with the ones that modified them and an analysis regarding the norms on cultural heritage from each of the treaties;
- A short presentation of the European parents and the contributions brought by the Council of Europe in the domain of cultural heritage;
- A short motivation on why should the European Union involve in general policies on cultural heritage, in accordance with its new legal status, conferred by the Lisbon Treaty;

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- A presentation of the primary and secondary EU legislation on cultural heritage and a short analysis of them;

- The recent interests of the European Commission on cultural heritage;
- Declarations made by some members of the European Parliament on the subject and the work of the Council of Europe in present;
- The future applying measures adopted by the European Union on cultural heritage;
- Conclusions on the presented facts
- Statistics referring to the profile of cultural policies of some of the European Union Member States

On a global basis, it is shown an evolving interest on the revolution of cultural and creative industries, based on technology, communication infrastructure, networks, but also on traditions and cultural manifestations. The biggest global centers of creativity, like New York or London, are characterized by clearly regulations on the copyright laws, local educational systems, strong transportation hubs and support from the local administration authorities. The newest programmes and initiatives that European Union has come with, are believed to have a greater impact on society, regarding the aspects of cultural heritage, but in the same time, if we look back on the programmes applied until 2013, we will find several similarities, which didn't make a difference in the mind of European citizens. The number of criminal acts on cultural goods has been increasing and the number of reactions to these offences have been stagnated. And when we talked about reactions, we mean that individuals are directly confronted with these problems, even though the national/European authorities should be more aware of them, taking into consideration the importance and high value of these objects for humanity in general. In these words, the study emphasize the necessity of awareness in all levels, especially social, economical and political levels, with a directly projection on the European Union.

For further more research, I suggest a more extensive approach of the effects of certain policies and programmes, with an evaluation of the real impact on the civic education in the domain and on the criminal phenomenon on cultural heritage. Statistics are all the time well received and they have a certain influence on the way authorities react to this problem.

⁶⁸ <http://www.culturalpolicies.net/>

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