

It is time to ask again for the opinion of the Regulatory Scrutiny Board.

The Regulation 2019/880 and its proposed Implementing rules do not comply with European Commission President Ursula von der Leyen's leading principles on new EU legislation:

*"We need to ensure that regulation is targeted, easy to comply with and does not add unnecessary regulatory burdens.our policies and proposals deliver and **make life easier** for people and **for businesses**. Proposals must be evidence based, **widely consulted upon**, subject to an impact assessment and **reviewed by the independent Regulatory Scrutiny Board**. You will ensure that they respect the principles of **proportionality and subsidiarity** and show the clear benefit of European action."*

Below I will explain why I think it necessary to ask for a new opinion of the independent Regulatory Scrutiny Board, before spending huge amounts of money on a new electronic system that will not help achieving the primary goals of the Regulation.

On March 31, 2017 the Regulatory Scrutiny Board (RSB) published its first opinion on the Impact Assessment / Import of cultural goods in the EU. Its overall opinion was negative.

Let's have a look at some of the main considerations:

*"The Board gives a negative opinion, because the report contains **important shortcomings** that need to be addressed particularly with respect to the following aspects:*

- (1) The report does not clearly circumscribe the problem **or substantiate its magnitude**;*
- (2) It is not clear whether the primary objective of the initiative is combatting terrorism financing via illicit trafficking in cultural goods, as envisaged in the Action Plan, or more widely protecting third countries against loss of their cultural goods and preserving humanity's cultural heritage;*
- (5) The preferred option introduces various obligations on importers of cultural goods in the EU without an adequate evaluation of the associated costs."*

<https://ec.europa.eu/transparency/regdoc/rep/2/2017/EN/SEC-2017-337-3-EN-MAIN-PART-1.PDF>

The result was some minor changes, after which the RSB reluctantly gave a positive opinion, although it remained strongly critical of what it felt compelled to approve. After that, the Regulation has been changed over and over again and was rushed through the European Parliament in 2019 without even waiting for the results of a new specially commissioned study on the subject by the Commission: "*Illicit trade in cultural goods in Europe*", known as the Ecorys report, published in June 2019; <https://op.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1>

The Regulation 2019/880 on the import of cultural goods (14 pages) has become so complicated that it needed 17 pages of draft implementing rules, and an Annex to the draft implementing rules of 14 pages, in an attempt to explain it and make it workable. Representatives of the art trade have not been permitted to contribute to this process, in spite of calling for participation, and this means that their practical expertise has been ignored completely. The result is a total of 45 pages of very complex recitals and articles that sit uncomfortably with international law, potentially abuse the European Human Rights charter and show a lack of knowledge about the actual workings of the UNESCO Convention 1970.

Whether the Regulation 2019/880 will accomplish its main objectives as formulated in Article 1 is questionable;

"Article 1

Subject matter and scope

*This Regulation sets out the conditions for the introduction of cultural goods and the conditions and procedures for the import of cultural goods for the purpose of **safeguarding humanity's cultural heritage and preventing the illicit trade in cultural goods, in particular where such illicit trade could contribute to terrorist financing.**"*

Instead of “**safeguarding humanity’s cultural heritage**” (an important task of the art trade), it hinders the art trade by making the international trade in cultural goods disproportionately complicated.

From the beginning, the Commission had no reliable information on the size of the illicit trade in cultural goods it wished to prevent. Even after the conclusion of two specially commissioned reports, it was no wiser. Instead the Commission relied for ‘evidence’ on newspaper and magazine articles, without properly checking the facts. From its own Fact Sheet, published in July 2017, it was possible to show that the Commission’s belief that illicit trade in cultural property was a multi-billion Euro business was false. It simply had not checked the reliability of sources that it quoted to support its claims. Among other sources now researched by IADAA, (International Association of Dealers in Ancient Art) the recent series of WCO Illicit Trade Reports (world-wide) present data that allows one to calculate that cultural goods make up just 0.02 % of all illicit trade seizures globally.

CINOA, the principal international confederation of Art & Antique dealer associations, representing 5,000 art and antique dealers world-wide has recently published a paper: FIGHTING BOGUS INFORMATION ABOUT THE ART MARKET – 2021

<https://files.constantcontact.com/e2d46e59601/45a32416-1d57-49e5-9ac6-0d79ac2b4312.pdf>

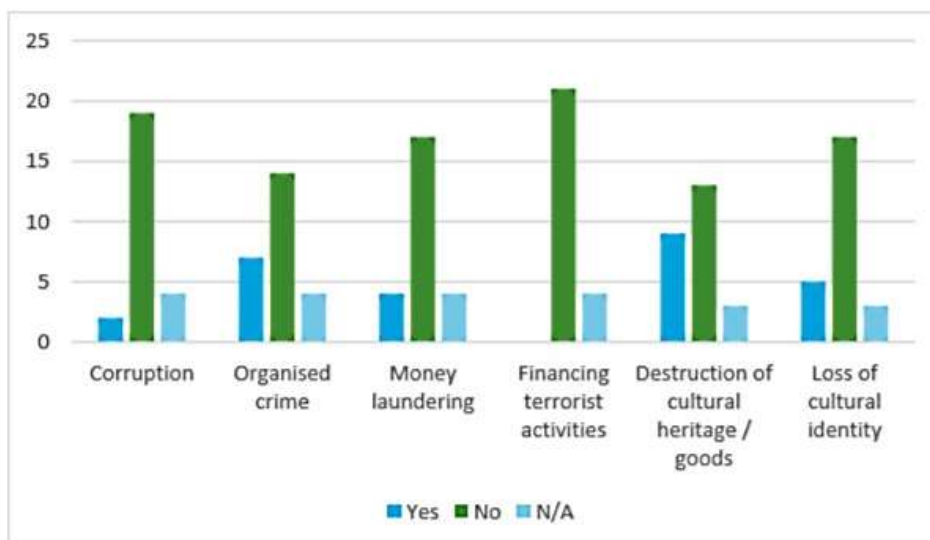
containing up to date, factual information on the subject.

This brings me to the most important element of the prime objective of regulation 2019/880: “**in particular where such illicit trade could contribute to terrorist financing.**”

Before embarking on this project, the Commission asked Deloitte to conduct research on the extent of terrorism financing through trade in illicit cultural property among the (then) 28 Member States of the EU. Member States agreed fully on only one answer, covered on page 120 of the report: Figure 30 illustrates “*Effects: available evidence*”, showing that **NONE of the Member States had any evidence whatsoever of “Financing terrorist activities”** (with cultural goods). In light of this, Deloitte concluded: “*As shown from the surveys to the Member States’ administrations, hard evidence on the existence of these effects is currently often lacking.*”

As shown from the surveys to the Member States’ administrations, hard evidence on the existence of these effects is currently often lacking.

Figure 30 – Effects: available evidence



Source: General survey to the EU Customs and Culture administrations (2016)

https://ec.europa.eu/taxation_customs/sites/taxation/files/annex_08_dg_taxud_study_fighting_illicit_trafficking_in_cultural_goods_en.pdf

So, to conclude, Regulation 2019/880 has as its prime objective the prevention of terrorist financing via illicit trade in cultural property, yet its own specially commissioned research found no evidence whatsoever of this happening within the EU. As the Regulatory Scrutiny Board concluded, "*the magnitude has not been substantiated*".

Now we have a consultation process that presents such a confusing and complex picture (in breach of the EC President's Mission Statement), that many interested parties feel unable to comment on it.

Having read many of the critical reports uploaded on the Have Your Say website, I believe it is time to let the Regulatory Scrutiny Board have their say on this process as well.

Vincent Geerling (chairman) 21-04-2021

