



[MACE](#), the Brussels-based political magazine, commissioned a series of articles about the trade in cultural property from the ADA and IADAA. Written by Joanna van der Lande who chairs the ADA, IADAA chairman Vincent Geerling and Ivan Macquisten, adviser to both associations, the article draw attention to key considerations in the debate over facts, policy, legislation and the wider implications of what is happening to the art market.

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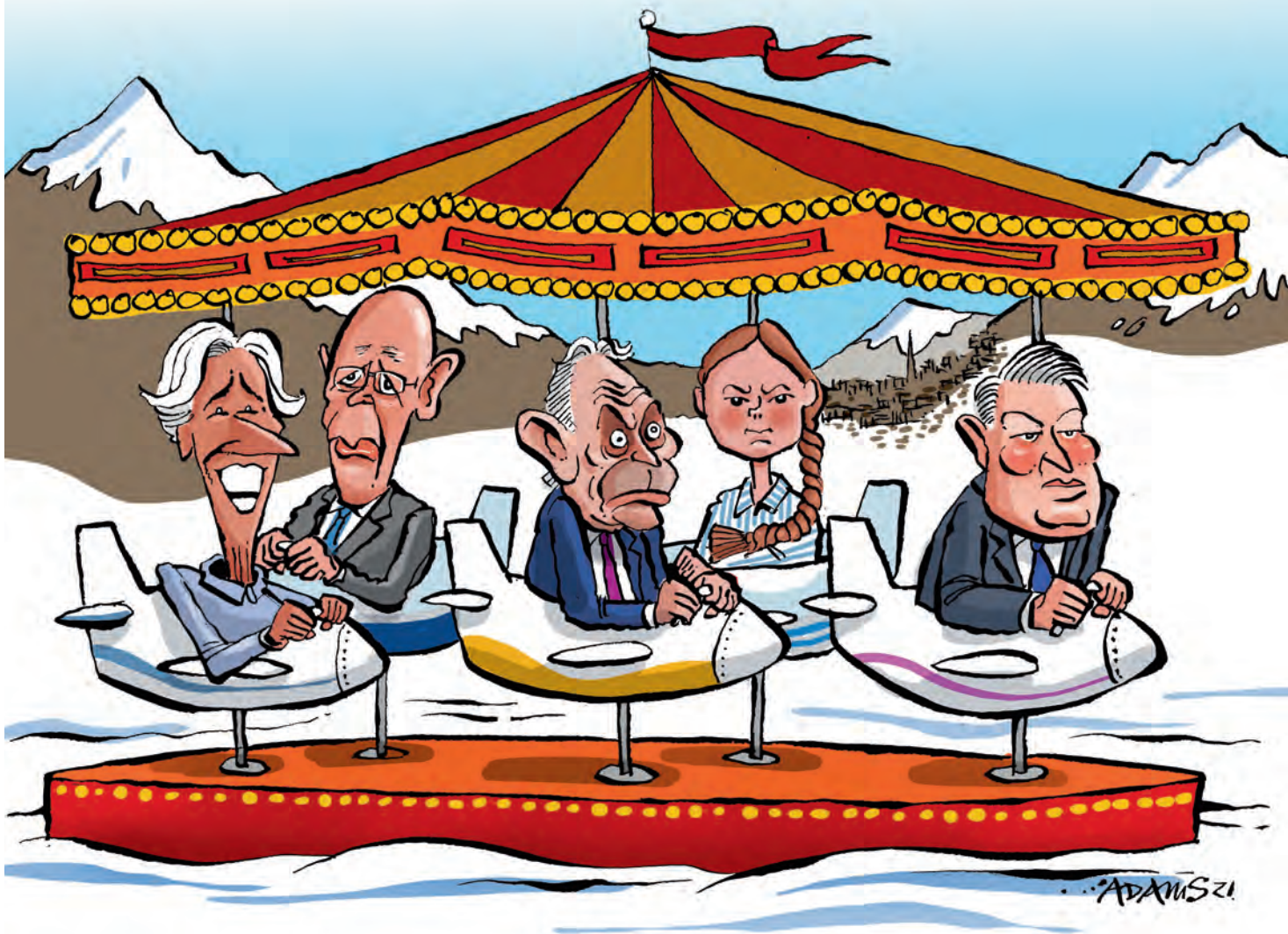
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**MACE SPECIAL REPORT:**

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# THE ART MARKET: IS IT MISUNDERSTOOD?

The art market is a political football in the growing debate over cultural patrimony and the fight for geopolitical influence. **Ivan Macquisten**, **Joanna van der Lande** and **Vincent Geerling** have the inside scoop



This lost member of the treasured Lewis Chessmen – carved pieces of walrus ivory dating back to 12th century Norway – was rediscovered.



In recent years, the international art market has been the subject of much debate and many unflattering headlines.

While claims of misregulation and unscrupulous activity provide great copy for the media, these unfavourable stories are unjustified. Let's face it, if you look hard enough at any industry or institution you will find bad actors, and the more you look the more you will find.

So why is the art market under such scrutiny? Overwhelmingly, the data and evidence used to support accusations of theft, trafficking and associated crimes are poorly researched. They are then repeated in multiple publications – often at the behest of the most influential institutions on which the people and politicians of the European Union rely.

What is seldom, if ever, noted is that the art market is a leading and positive part of the European Union's cultural heritage, as well as being a vital contributor to its economies and jobs.

Despite this, the propaganda against the market continues to grow, accompanied by increasing pressure to restrict its activities. Proposal after proposal fails to take account of the realities of an international trade. In truth, these proposals are seriously risking the livelihoods of ordinary dealers, auction house specialists and other associated businesses.

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Propaganda against the market continues to grow, and with it increasing pressure to restrict its activities

## The inside take

By **Joanna van der Lande**, chairman of the Antiquities Dealers' Association

**Not every musician** is Ed Sheeran or Adele. Most busk on street corners, play in bars or work two jobs. Not every actor has George Clooney's or Angelina Jolie's millions. Many play minor roles in provincial theatre while also waiting tables..

The art market is the same. For every Christie's, Sotheby's and Bonhams, there are hundreds of small town auction houses that work hard to attract bidders; and for every David Zwirner or Thaddeus Ropac, thousands of dealers struggle to break even at the end of the year.

Despite this, a widespread prejudice flourishes that condemns the art market as a shady elite, ungoverned by law and indulging in opaque and dishonest practices. The result is a long-standing, unjustified and damaging campaign to bring it to heel.

As Sakia Hufnagel and Colin King of The Society of Legal Scholars, conclude in their paper, *Anti-money laundering regulation and the art market*: “While it is commonly believed that the art market is a legal void, the reality is that it is significantly regulated.” Trade associations enforce stringent

codes of conduct, covering areas such as due diligence, and encourage best practice – both instill confidence in clients.

The art market is vital to economies across Europe and the world. A source of valuable taxes, it employs hundreds of thousands of people in the EU and millions globally; and it supports other industries, from logistics and transport companies to restorers and craftsmanship, tourism, the food and hotel industries, and technology companies.

Art sales also foster research, development of expertise, innovation in technology, scholarship and learning. The art market supports the heritage sector, including museums and universities. Donations of money and objects, professional advice and scholarly support all help these institutions develop understanding and knowledge of collections. It also supports law enforcement, wider compliance and policy development. Art market professionals sit on advisory committees working with governments and on bodies that assess cultural property for export

### RATTLE RESTORATION

The discovery, restoration and sale of this Etruscan sistrum (left), a musical instrument like a rattle, which was originally from Italy and dates from the 6–4th centuries BC, shows how the ecosystem of public and private interest, involving museums and the art market, can work.

A member of the public took it to Bonhams in a fragmentary state in 2004, having realised it might be ancient after buying it in a house clearance sale. Bonhams then consulted the British Museum on its authenticity and discussed how best to conserve and restore it, which led to the museum allocating the time to carry out appropriate pre-acquisition due diligence and to raise the necessary funds before the sistrum appeared for sale in 2005.

Its acquisition enabled the British Museum to conduct a comparison project with another sistrum in its collection, as well as to further investigate its possible prior provenance, as well as what such scholarship might reveal about trading relationships between the Etruscans and other Mediterranean cultures.

The sistrum is shown in the condition that it was initially taken in to Bonhams (inset picture). The restored sistrum (main picture) is now in the British Museum collection.



and classification as national treasure. They also supply expertise to police and customs for the prevention and solving of crime.

Thanks to Sotheby's, a lost member of the treasured Lewis Chessmen collection – carved pieces of walrus ivory dating back to 12th century Norway – was rediscovered. After selling in Edinburgh for £5 in 1964, it had been left in a drawer for 55 years. It went on to sell for £735,000 at Sotheby's in London in July 2019.

Many major museums had their origins in private collections, from the Prado in Madrid to the Guggenheim Museums in New York and Bilbao, the British Museum in London and the Uffizi Gallery in Florence. The collectors who founded them were served by dealers, agents and specialists. Many collectors continue to share access to their collections with scholars, museums and the public, often publishing their collections at their own expense.

These collections have captured the imaginations of millions over the centuries, generating revenue for their national economies and feeding into intellectual and cultural enlightenment, inspiring artists, researchers, teachers and collectors.

The art market does not operate in a vacuum; it is part of a wider societal ecosystem that includes the public, business, industry, the arts and politics. It helps weave the cultural fabric that underpins civilised society and, as the pandemic has shown, this acts as a salve for mental and spiritual wellbeing. Attacking it damages the public interest, particularly within the EU, which, post-Brexit, is increasingly at a competitive disadvantage compared with larger markets in the US, UK and Greater China because of its more restrictive legal regime. And more restrictions are on the way.

It is true criminals occasionally harness art and objects for dishonest ends, but mostly they have nothing to do with the art market itself. It is known they use stolen artworks as collateral in criminal activities. Much of the time, however, lawmakers clamp down on the market in response rather than focusing on the law breakers. EU politicians have the skills and power to safeguard this valuable asset for member states and their communities – but they need to act now.

# Misguided policies are prompted by fake news and bad data

By **Vincent Geerling**, chairman of the International Association of Dealers in Ancient Art

**Legislation to regulate** the art market is misguided and based on inadequate data and fake news. This damages and obstructs a valuable sector of the economy. It might also undermine the individual rights of the citizen to private property.

One example is the EU Regulation 2019/880 covering impact of cultural goods. The European Commission's own report "Illicit trade in cultural goods in Europe" published in 2019, shortly after the regulation was rushed through the EP, failed in its primary objective of measuring the size, scope and nature of illicit trade in cultural goods because of a lack of reliable data. But this report flagged up serious concerns about the data available for the policymakers drafting this legislation.

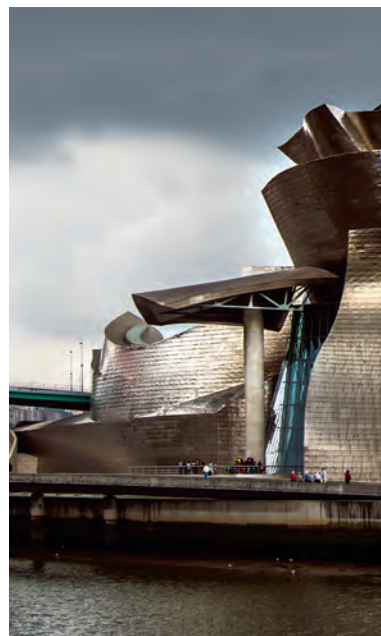
Two of the authors of that report, Neil Brodie and Donna Yates, describe those concerns in an academic paper published in November 2021 – *Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It*.

They state that there was a "dearth of trustworthy evidence for answering even basic questions about the size of the trade". Brodie and Yates say that their EC Report concluded the roots of the problem are "ineffective data collection by law enforcement and criminal justice agencies and poor collaboration and information sharing between those agencies".

And yet the legislation was passed. The market fought it as impractical, unrealistic and disproportionately damaging to legitimate trade. The 2021 academic paper criticises ineffective and wasteful projects to tackle illicit trade that still fail to provide the necessary data. Brodie and Yates argue

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**Legislation to regulate the art market is based on inadequate data and fake news, which damages a valuable part of the economy**



that the authorities “spend time and money asking the same questions, developing the same methods, chasing the same information, conducting the same analyses, and producing the same conclusions as previous or parallel projects”.

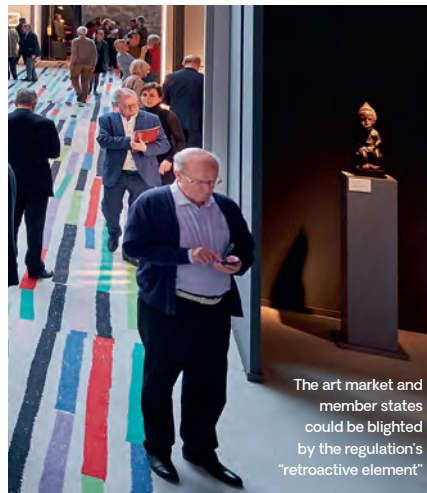
Brodie and Yates identify another ongoing problem – the exaggeration of the financial significance of the illicit trade in cultural objects. In 2020, Unesco claimed that the illicit trade in cultural property is worth \$10 billion a year. The authorities also see the trade as being equivalent to the drugs and arms trades. Brodie and Yates call these claims “vexatious”.

The paper says that because there is no reliable intelligence “policy makers and their bought-in researchers fall back on media reporting and open-access or Osint [open source intelligence] materials”.

### Data failures

I can agree with Brodie and Yates: “Unreliable media reporting provides a treacherous foundation for policy development. Any new policy initiatives developed in an atmosphere of media hype and based on poor-quality data are likely to fail.”

Research also shows that many existing models are based on decades-old cases that do not always reflect the realities of pres-



ent-day illicit trade. The failure – even of the largest organisations – to check sources properly is serious. As data guru Dr Tim Harford argues, confirmation bias is often to blame: if the answer suits your purpose, why check whether it is accurate?

As Brodie and Yates conclude, if policy makers do not have access to reliable information about the nature of the trade, they cannot be expected to draft an appropriate regulatory response.

The authors – experienced in competing for research funding themselves – accuse inter-governmental organisations and NGOs of putting self-interest ahead of remit to the point of excluding other stakeholders in order to assert primacy in policy guidance.

The case of Import Regulation 2019/880 demonstrates how misguided policy is failing. Its stated aim was to combat terrorist financing through cultural goods.

Today, more than four years after the drafting of the regulation, there is still no evidence of terrorist financing with cultural goods to be shown.

As it stands, the retroactive element of this regulation, which has not yet been fully enforced, will blight the art market and the member states whose economies it supports. It is also a direct threat to the private property rights of EU citizens, who may find themselves unexpectedly deprived of their belongings at customs. Perhaps most importantly, it does a disservice to the EU politicians charged with making difficult decisions about our future.

## WHERE DOES UNESCO'S \$10 BILLION CLAIM COME FROM?

In October 2020 Unesco launched its 50th anniversary celebration for the 1970 convention on fighting illicit trade in cultural property with a startling headline claim – that illicit trade in cultural property is estimated to be worth nearly \$10 billion a year.

## WHERE DID THE FIGURE COME FROM?

Unesco said it was sourced from the 2018 Joint European Commission–Unesco Project report, *Engaging the European Art Market in the fight against the illicit trafficking of cultural property*, by Professor Marc-André Renold. The figure appears in section C, said Unesco.

It doesn't.

In fact, the Renold study doesn't mention a \$10 billion figure anywhere. Instead it quotes an estimated figure of \$6 billion to \$8 billion from a 2011 study by Frank Wehinger. This is also wrong, because Wehinger does not claim that the figure is accurate, nor does he give a source for it. He just states that it is a figure “regularly given”.

In addition, the Renold study states: “There are no comprehensive and reliable statistics that would allow us to capture the true scale of illicit trafficking or monetary value of the black market in cultural goods.”

This is a view adopted by Interpol, which has also stated that it never expects to have any reliable figures, as well as by the Rand Corporation report, studying open source data, published in May 2020.

Unesco was asked to correct its misleading statement headline figure at the time but continues to promote it on its website.





# The bigger picture: arts under attack

By **Ivan Macquisten**, art market commentator, adviser and campaigner

**The EU has** legislated new import licensing regulation to cover art and antiques. These will be fully enforced from 2025. The regulations pose serious risks to those who trade in artworks. They also raise serious questions about citizens' rights to personal property.

The new regulations will see art traders required to produce definitive documentation or otherwise be presumed guilty of importing an illegally exported object. This is problematic because this documentation is not always easily available. For example, Germany, with its existing stricter rules, has already seen dozens of items left in limbo as customs frets over what to do with them, having neither the information nor the expertise to decide.

At the heart of this issue are often orphan works, items acquired that either did not require or no longer have documentation verifying their sale and export from their historic countries of origin. The absence of paperwork is commonplace and understandable: the passage of time means much of it has been lost as works changed hands over the decades or centuries. Original export licences (where they existed) were mostly discarded and lacked the sort of detail or photographs demanded to prove their validity today.

Lying behind this issue is the wider context around restitution of artworks from museums to their countries of origin. The Benin bronzes, looted during military actions in the 19th century, are just one example. The countries of origin want their cultural property back. But how can we know what was sold off legally and what was looted? The answer is that mostly we can't, but this on the other hand is proving no barrier to claims.

## Citizens' rights

What makes the problem worse is that cultural property is a very useful tool for soft power diplomacy. Help Egypt reclaim antiquities and you pave the way for your diplomatic, political and business interests in the country. The fact that Egypt licensed the trade in and export of such objects for more than a century up to 1983, including sales direct from the Cairo Museum, is an inconvenience that is now ignored.

How do the new regulations sit with citizens' rights? Personal property rights are enshrined as the first article of the European Convention on Human Rights. They are similarly listed in the US constitution and the UN Universal Declaration of Human Rights.

As John Adams, second president of the United States, stated in *A Defense of the Constitutions of Government of the United States of America* in 1787: "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence." If Europe lists property rights as the first consideration of its rights convention, this surely matters. Yet these rights are at risk from these new regulations.

The regulations were drafted on a basis of false assumptions and inadequate data. It is often claimed that cultural property trafficking to the art market is funding terrorism on a grand

scale. Yet despite millions of euros being thrown at investigations in the EU and the US to prove this, researchers have singularly failed to establish a link.

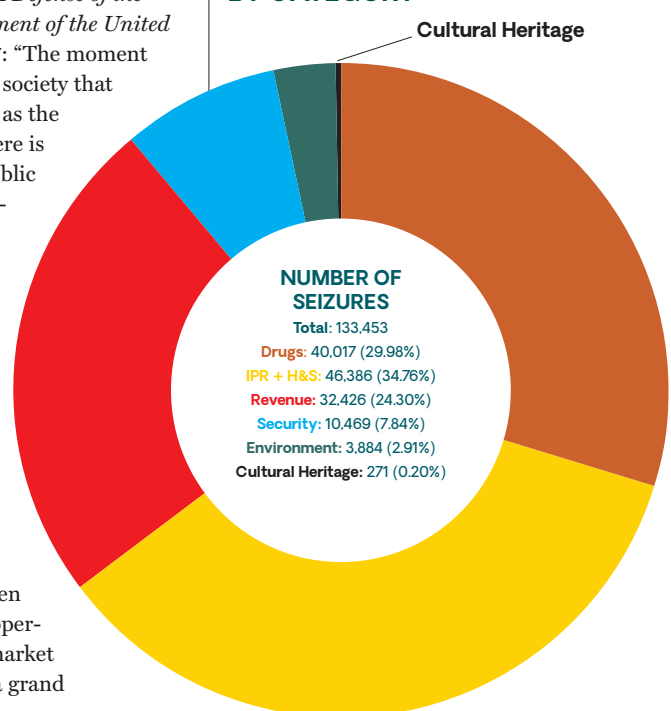
Europol and Interpol, who have helped coordinate massive transnational anti-crime operations since 2014 under names such as Pandora and Athena, publish headline-grabbing statistics about arrests and seizures, which influence policy.

This is not good enough. What policy makers need are the figures for successful prosecutions resulting from these arrests and validation figures for seizures so they can accurately assess the true scale of the challenges involved. Europol has admitted in the past that it does not have this data.

Why not, when so many resources have been dedicated to these initiatives? Such basic failures of governance reduce these operations to little more than expensive propaganda exercises – yet they persist.

Filling the gaps in knowledge and evidence by acting on what you believe to be true rather than what you can prove – a common practice now – simply plays to prejudice and effectively reinforces that

## SHARE OF SEIZURES RISK BY CATEGORY



dangerous adage that the ends justify the means. Such an approach erodes the democratic mandate of institutions. The good news is that the solution already lies at the heart of the European Commission itself.

Ursula von der Leyen set out her mission statement for better policy making in September 2019: “We need to ensure that regulation is targeted, easy to comply with and does not add unnecessary regulatory burdens. The Commission must always have the leeway to act where needed.

“At the same time, we must send a clear signal to citizens that our policies and proposals deliver and make life easier for people and for businesses.”

She continues: “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.”

This statement was not a suggestion but an order, but are its admirable sentiments being enforced? Our own experience suggests that they are not.

## Remove pre-set bias

The European Commission needs to conduct an urgent review of practice to ensure that research and evidence meet standards set. Europe needs an audit of project funding protocols to remove any pre-set bias. And it needs genuine engagement with industry stakeholders rather than the window dressing that takes place at present. These are all systemic issues, but positive change is achievable.

The art market and the ecosystem within which it exists is not separate from wider EU society but fully a part of it. If opportunities are being missed to protect individuals’ rights in the context of the art market, they are being missed to protect the rights of millions of EU citizens.

President von der Leyen’s mission statement presents a massive opportunity for EU legislators and civil servants to lead the way globally in high quality research, analysis and development of policy across all sectors, including the art market, to protect the democratic mandate. They should grasp it with both hands. 🍷



Ursula von der Leyen, president of the European Commission, whose mission statement presents a big opportunity for EU legislators and civil servants to lead the way in high quality research and policy development across all sectors, including the art market

## HOW THE FIGURES ADD UP

Almost all the figures circulating about illicit trade in cultural property are not just wrong, they are wildly inaccurate. Many are based on claims, media articles or reports that are more than 20 (and in one important case 30) years old. In every case, the original source either does not say what is now attributed to it, or simply gives the figure as the unsourced opinion of an individual.

Two current sources come closer than any other in giving some idea of the true figure: the World Customs Organisation’s (WCO) annual illicit trade reports and the national Financial Intelligence Units of some EU member states. For some reason, though, these sources are generally ignored in the policy-making process.

As the WCO is clear to point out, its own figures are hampered by limited reporting via its Central Enforcement Network, the sole source of its statistics. However, comparisons with other risk categories, such as drugs, counterfeit goods and weapons, show that they dwarf cultural property, which barely registers in the crime statistics by comparison. This is true whether you compare the number of seizures, number of items seized, number of cases investigated, value of items seized or arrests. The accompanying pie chart for seizures, prepared by the International Association of Dealers in Ancient Art from the WCO’s 2019 figures, clearly illustrate this.

The Dutch Financial Investigations Unit monitors suspicious cash transactions. Results from its 2018–2020 report raise questions as to why the art and antiques trade is being targeted by new anti-money laundering regulations when vehicle trading is not.

Cash transactions above €2,000 are almost non-existent in the art market, with only 58 for the entire period. Of those, the ministry declared itself suspicious of only two. In the same period car dealers reported a total of 14,513 cash transactions, of which the ministry considered 4,571 suspicious.

Across all sectors of commerce, the Dutch FIU recorded just over 3.9 million cash transactions for the period, with 5.11 per cent of them deemed suspicious.

As can be seen from these figures, even suspected crime associated with cultural property transactions is all but non-existent.

