

ART MARKET DEMANDS FUNDAMENTAL REVIEW OF LAW MAKING AFTER US TREASURY REPORT FINDS LOW MONEY LAUNDERING RISK

As report after report fails to find any noteworthy evidence linking the art market to widespread trafficking, terrorism financing or money laundering, both trade and policy organisations demand action to prevent further damage to legitimate interests

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The world's largest art trade federation is leading the call for a fundamental international review of policy making after a recent US Treasury report into money laundering and terror finance found the majority of the art market to be low risk

8 reports, 5 of which are funded by governments, find very limited evidence of trafficking, money laundering or terrorism financing in the art market

“The **US Treasury Report** is the latest report looking into possible links between money laundering and terrorism financing through the trade in works of art, for the purpose of advising Congress on anti-money laundering measures,” explained Erika Bochereau, Secretary General of CINOA, the principal international confederation of art and antique dealers.

“What does it conclude? That the justification for urgent and wide scale measures is not there, the risks for the majority of the art market are very low and proposals to regulate the market should be delayed until the US government has dealt with the more pressing problem of shell companies and real estate.

“This means that every major report investigating trafficking, terrorism financing or money laundering links with the art market since the war in Syria began has found very limited issues,” said Erika Bochereau, “Yet still the authorities target dealers, collectors and auction houses with wave after wave of damaging and unjust legislation. This has to stop.”

The government financed reports are: Germany's **Illicid report (2015)**, the European Commission reports: **Deloitte (2017)** and **Ecorys (2019)**, the USA's **The RAND Organisation Report (2020)** and now the **US Treasury Report (February 2022)**. Institutional reports are: **Study by King's College in London into ISIS financing (2017)**, **WCO Illicit Trade Reports**, and the **2020 Trade Based Money Laundering report by The Egmont Group**.

Policy is being driven by assumptions and false claims

“What we have not been short of is **assumptions and false claims**, much of it released and repeated continuously by official bodies and the media,” says Bochereau.

“One such example is the UNESCO claim that the annual value of trafficked cultural property is \$10 billion. If I was being cynical, I would think that this is a very useful figure when it comes to helping UNESCO justify and promote new initiatives as well as ensure funding

across member states, but the figure is completely unfounded. These exaggerations hurt the reputation of the established trade and even those promoting more regulation admit that \$10 billion is not a realistic figure.

“In fact, it is precisely these inflated claims that make the prospect of looting and trafficking more attractive to criminals. This is another reason to stop exaggerated claims.”

It is clear to trade participants at every level that despite the lack of evidence for illicit trafficking and money laundering in every report over the last 10 years, the desire to legislate against the market has not diminished.

“The only conclusion that we can draw from this is that this urge to clamp down on the market is based on misunderstanding and propaganda, not on evidence,” says IADAA’s chairman Geerling. “The persistent claims that the art market is connected to billions of euros worth of trafficking, terrorist financing and money laundering are utterly unproven despite millions of euros of public money being spent over the past decade on numerous projects and studies attempting to prove this connection.”

Geerling’s statement is not in contradiction with some of the findings in the recently-published study “Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It” which explores some of the problems with how policy is currently formulated. The authors, who were also the main authors of the EU Ecorys report mentioned in the previous section, present a gap analysis to assess under-performing policy and practice. Like the trade, they argue that unreliable media reporting provides, in their words, “a treacherous foundation for policy development”. Furthermore, they are convinced that funding structures which encourage short-term ad hoc research which tend to inhibit information sharing are in part responsible for some of the gaps and that an inadequate understanding of the trade along with an unfamiliarity with innovative forms of regulation combine to create questionable policy.

Regarding the well-financed short-term projects, of which many focus on illicit trade, the authors explain that “we see projects continually re-inventing the wheel: they 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.”

The trade agrees that a better understanding of trade practices and the trade’s motivation to prevent and curb any illicit transactions would help draft better policy. CINOA, along with IADAA and other trade and cultural policy organisations, has been calling for a more responsible approach to art market issues, with real engagement between the authorities and market representatives, such as trade associations so the trade can provide their insight, expertise and assistance.

The trade associations and cultural policy organisations argue that unjustified and all-encompassing laws damage the fragile niche markets which make up the sector.

Trade and cultural policy groups propose measures to improve policy

This lack of evidence combined with a lack of first-hand practical knowledge of the art market leads to ineffective policy and legislation indiscriminately targeting the art market. According to the above-mentioned study tens of millions are spent on short term projects

and studies. Despite a willingness to assist, recognised art market representatives are often not consulted by those carrying out the studies.

The trade recommends that improvements are needed to the input and verification process of policy development.

Research must be based on evidence and clearly identify the problem as well as the specific characteristics and patterns of who, how, what and why.

Proposal development and implementation should include stakeholders from major art trade organisations.

“As an example, in January two UNESCO events starkly contrasted approaches,” said Bochereau. “In one almost 100 art market actors took part in a highly constructive debate reviewing UNESCO’s proposed revision of their code of ethics for dealers of cultural property, which showed how taking a good faith approach can pay dividends for all concerned. In the other, debating money laundering and the art market, not one of the invited speakers came from the market and no one from the market was even allowed to ask a question or provide answers to some of the valid questions raised.”

Bochereau added, “It is unacceptable that we have been excluded from most consultation discussions which determine the details of the proposals that affect our sector, responding by a written submission is not the same as having a working dialogue.”

Regarding oversight, the assessment of the impact of proposals should focus on how far they have actively addressed concerns and suggestions raised by market representatives, while all proposals should be tested against clear standards of evidence and proportionality. These assessments should impose modifications on proposals to render them better focused and workable for the market.

For example, the [EU Regulatory Scrutiny Board](#) initially refused to approve the EU import licensing regulations impact assessment, by providing an overall opinion as ‘negative’ stating:

(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; [the latter is not a responsibility of the European Union].

“Now, five years and at least eight independent reports later, still no evidence of cultural property financing terrorism has emerged. So why was the law ever passed, especially as the principle of subsidiarity restricts EU legislation to certain areas like safety and does not extend to protecting cultural heritage outside the EU?” Geerling questions.

In the case of the EU, there are clear **guidelines from the President of the European Commission**, “to ensure that regulation is targeted, easy to comply with and does not add unnecessary regulatory burdens.” Furthermore, “Proposals must be evidence based, widely consulted upon, subject to an impact assessment and reviewed by the independent Regulatory Scrutiny Board. ... ensur[ing] that they respect the principles of proportionality and subsidiarity and show the clear benefit of European action.” However in practice, these

principles are not always followed and often come into direct conflict with the **EU's precautionary principle** approach to legislation, which seeks to remove risk even before any evidence of there being a problem has been identified.

“EU actions do not appear to have met the Commission’s three conditions for the precautionary principle, especially as so much research has come to largely the same conclusion,” said Bochereau.

Bochereau went further: “The art sector contributes to the economy in direct and indirect ways and should be appreciated for its role in conserving and promoting cultural heritage. Instead we are being ignored and saddled with unsuitable legislation.”

In light of these policy making short comings including the failure to live up to the guiding principles of the President of the European Commission, justice demands a critical review of the new legislation affecting the art market.

The EU has an opportunity to prevent further damage by reassessing and revising the regulations regarding AML and Import of Cultural Goods, which have either not yet been passed into law or fully implemented. In light of the evidence, the new AML Regulation should not be extended, as planned, to the art market. Similarly, the EU should scrap the highly damaging import licensing regulation, as the UK did after analysing the damage it would inflict on the cultural landscape, or the EU, at the very least, should scale down the scope and revise the implementation procedures which are, as planned, unworkable.

Recommendations to help overcome some art related policy-making short comings:

1. Policy makers, including governments, when discussing the development of and drafting any policy or legislation which impacts cultural property and the art market, should ensure that recognized representatives from the relevant sector of the art market are co-opted on to any relevant panel or consulting body.
2. Regulatory review boards or panels assessing the impact of government proposals should focus on how far they have actively addressed concerns and suggestions raised by recognized market representatives, while all proposals should be tested against clear standards of evidence and proportionality.
3. A designated contact person at the decision making level of government should be named, whose role is to follow any on-going laws or regulations affecting the art and antiques market, and they should act as a sector contact, with whom the trade can open a dialogue to ensure that the conservation of art or cultural heritage objects is not being unintentionally demoted or ignored.
4. All relevant active and pending cultural property legislation should be reviewed to take account of the facts and data currently available, particularly if those facts are at odds with the assumptions on which legislation was predicated.
5. Legislators, particularly in the European Union, should commission an independent review to analyze the way in which significant public resources, supposedly dedicated to combating illicit trade in cultural goods, have been wasted as a result of relying on misinformation. Clear guidance should be produced to prevent legislation affecting the art market from misdirecting resources in the future.

CINOA, established in 1935, is the principal international confederation of art and antique dealer organisations representing more than 5,000 dealers and auction houses in 20 countries.

Supporting organisations calling for these changes

ACPCP (American Council for the Preservation of Cultural Property)

ATADA (Authentic Tribal Art Dealers' Association) www.atada.org

Committee for Cultural Policy (Cultural policy think tank and information source)

Drouot Patrimoine (Auction House)

EFA (European Federation of Auctioneers)

Global Heritage Alliance (Advocacy organisation campaigning for the interests of collectors, museums and the trade in archaeological and ethnographical objects)

IADAA (International Association of Dealers in Ancient Art)

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