



### **EU import licensing regulation fears shared with exhibitors at TEFAF**

TEFAF Maastricht: March 6: IADAA adviser Ivan Macquisten and cultural property lawyer Pierre Valentin followed up their presentation to the Syndicat National des Antiquaires in Paris on February 29 with another to TEFAF exhibitors at the High Expert Dialogue, the day before the fair opened.

As before, Valentin set out the conditions of the import licensing legislation, EU Reg 2019/880, which will apply in the EU from June 28, 2025. Macquisten set the regulations in context, explaining what the challenges would be for the art market, while also explaining that solutions were possible via negotiations with the European Commission and its devolved powers, with legal instruments available for consideration in the quest to improve the law.

Understandably, those who had heard little about the regulation before were shocked and outraged.

An *Art Newspaper* article published on March 18, titled **Art trade figures voice major concerns over new EU import licensing regulations**, quoted an unnamed European Commission official, whose response to the art market's deep concern over the EU import licensing regulations has more than a whiff of 'Let them eat cake'.

"Legitimate art dealers, museums and traders who have already been practicing due diligence should not need to worry about extra compliance burdens," they said. "They should already be aware and complying with those countries' laws and regulations on the export of cultural property."

This ignores the very serious and valid concerns of market professionals and a wide body of trade associations over the insurmountable demands that the new law will make on them. What the official has not done is to answer the following questions to any degree of satisfaction whatsoever – an irresponsible position to take over a market that contributes so significantly to EU Member States' coffers:

1. How do you provide documentation to prove original legal export from a source country if that documentation doesn't exist?
2. How can you tell when an item was originally exported from its source country if no information regarding that is available?
3. How can you prove that a local law covering such exports did not exist at the time of export if that information is also not available?
4. How do you persuade a source country to provide retroactive confirmation of legal export where an item has been legally exported if it has since changed its laws and has no incentive to do so?

The new law presents all these challenges and more to importers who have carried out due diligence and followed their codes of conduct.

Showing just how out of touch they are, the Commission official followed up their first comment with the following: "The new law should also change attitudes among buyers, who will learn to expect some form of documentation providing information on the provenance and guaranteeing the legitimate character of the goods, thereby improving the market standing of law-abiding traders."

This completely ignores market realities where all buyers already seek such documentation, and all sellers expect to provide it. Attitudes have changed over the years, but the law is

retroactive, imposing these modern standards on items traded years ago when acceptable standards were different, thereby rendering vast numbers of objects 'orphan' and so impossible to import – and by extension trade – under the new law.

As Pierre Valentin, also quoted in the *Art Newspaper* article, says, while the law may be laudable in principle, "in practice, establishing the legality of an export that may have occurred centuries ago could be an evidential nightmare for collectors".

The shameless response of the Commission official goes further. Having admitted that the EU extended the remit of the law from combatting terrorism financing (having found no evidence of it), they say: "The Commission stands by the estimates contained in its impact assessment supporting the new rules which come from very reputable sources, including world-renowned archaeologists, criminologist reviews and publications and international law enforcement reports. That said, they are estimates. Criminals do not submit tax declarations or balance sheets that make it easy for authorities to come up with statistics." This is astonishing. The 2017 impact assessment was roundly condemned by both the European Parliament and the Commission's own Regulatory Scrutiny Board. The latter at first refused to approve the impact assessment because of its numerous flaws, and only did so eventually under protest with a long list of further recommendations, at least some of which have not been followed up. The Commission's own Fact Sheet produced in July 2017 to justify the proposals was riddled with inaccurate statistics, which have now been widely debunked.

The Commission official's statement to the *Art Newspaper* effectively admits that hard evidence to support its case does not exist and that it has relied on anecdotal evidence – this despite the Commission President's guiding principles that all policy should be "evidence-based" and proportionate.

The official stands by estimates in the impact assessment that were shown to be wildly wrong at the time. For example, while the impact assessment relied on a EUROSTAT figure of €3.7 billion as the value of "works of art, collectors' pieces and antiques", the Commission's briefing based on the impact assessment stated that the figure referred to the value of "classical antiquities and ancient art". In other words, it had not even understood its own impact assessment.

The briefing also contained numerous other inaccurate statements relying on widely debunked data including:

- 80-90% of antiquities for sale have illicit origins
- illicit trade in antiquities is third only to that in drugs and weapons and is worth €3 billion to €6 billion a year.
- "The Islamist profit from illicit trade in antiquities and archaeological treasures is estimated at \$150-200 million". (A claim that originated with the Permanent Representative of the Russian Federation to the United Nations to the UN Security Council in a letter dated March 31, 2016)

Is the Commission really standing by all this nonsense, as they have told the *Art Newspaper*? If so, the EC president should launch an inquiry into what is going wrong here.

### *Art and antiques trade unites against EU import rules*

Antiques Trade Gazette: March 26: Front page coverage for our campaign over the EU import licensing regulation 2019/880. ATG's thorough report promotes the ongoing effort to unite the industry in the bid to dilute the worst effects of the legislation before it is enforced on June 28 next year.

The article gives extensive space to IADAA adviser Ivan Macquisten and BADA Secretary General Mark Dodgson as they explain where the challenges lie. "While the law extends powers to the Commission for change, it does so in very specific areas, and these are not necessarily where the problems lie, so we have a lot of work to do to see what practical

solutions are available,” said Macquisten. Dodgson added: “If left unchanged the regulation reverses the burden of proof – it assumes that an object left its country of origin illicitly unless it can be proved that it left lawfully. It is also retroactive in nature, and this could have been avoided had it not applied to any goods shown to have left their country of origin before 2019 (the year the regulation was passed).”

A response from EU officials involved, like that published in the *Art Newspaper*, shows a distinct lack of concern for the market’s fears over the legislation, reinforcing the view that those overseeing the regulation in the Commission either do not understand the market or do not care about damaging it.

In the meantime, work continues gathering support from influential quarters to pursue change in Brussels and elsewhere – an effort that is already paying dividends.

### **European Commission anti-money laundering consultation**

Trade associations across the EU, including IADAA, have submitted hard-hitting critiques of the latest European Commission working document reviewing AML measures. The document sparked widespread outrage among the associations for its continued reliance on false data that has been long exposed as such, as well as an illogical approach that concludes lack of evidence to be a clear sign that money laundering is a significant problem within the art market.

IADAA chairman Vincent Geerling reminded the Commission that proposals to include the market in the 5AMLD update to the regulation were made at the last moment and without consulting the market.

“It was only at the very last moment that the trade in works of art was included. That decision was obviously made based on inaccurate and false information, information that persists in the current proposals.

No assessment of the impact on the art market was made,” his submission for the current review states.

Together with the UK’s ADA, he is demanding that the Commission recategorize the market as low risk for both money laundering and terrorism financing. Following revelations from Financial Intelligence Units across Europe that 90-95% of art market money laundering cases involve single items value at more than €1 million, he has also called for the value threshold for the application of AML rules to be raised from €10,000 to €1 million.

### **Battle to keep sculpture in Britain highlights European museums’ struggles**

Financial Times: March 2: Although focused on the exceptional 12th century walrus-ivory carving of Christ being taken from the Cross with Joseph of Arimathea, *seen here*, this article by Cristina Ruiz, Editor-At-Large for *The Art Newspaper*, provides an excellent overview of issues concerning patrimony.

Unlike so many other articles of this type, which adopt a hectoring tone, Ruiz takes a far more engaging and considered approach.

“The tussle between two of the world’s great museums over the “Deposition” is emblematic of the current reality of European countries battling to hold on to their cultural heritage in the face of the vastly superior purchasing power of buyers in the US, the Middle East and Asia,” she writes. “Behind the fight stand big questions about the declining public funding of museums, the role of philanthropists and who should have access to important objects.”

Just as the Portable Antiquities Scheme (PAS) puts England and Wales at the vanguard of enlightened cultural protection, so the Waverley Criteria, designed to protect true national treasures without damaging legitimate business interests, govern what should be prevented from leaving Britain’s shores.

Ruiz provides a neat explanation of how the system works, adding that it is generally seen as “necessary, efficient and fair”.

By contrast, Italy operates much more draconian laws, and Ruiz notes that decisions as to which items should be saved for the nation and which allowed to leave are not taken by specialists with relevant expertise who are invested in matters cultural, but by bureaucrats.

The *Art Newspaper*'s Founder Editor, Anna Somers Cocks, who has strong ties with Italy, is critical of the regime there, saying it engenders “a bad relationship between the state and the citizen”.

“Italian authorities treat private owners of art as potential criminals and art dealers as actual criminals, instead of encouraging everyone to work together for the common good,” she argues.

All of this will echo strongly with IADAA members and subscribers to this newsletter, especially when Ruiz additionally highlights the fact that the Italian authorities will go as far as blocking the export of items for which no licence has been sought.

Fittingly, she also points the finger in Germany, whose 2016 Cultural Property Act was the bonfire on which the country's art market largely went up in flames. As the antiquities trade has often argued in standing up to the neverending stream of regulation that blights it, Munich dealer Daniel Blau accuses Germany's intervention as ‘expropriation’ because the state does not compensate owners as it takes away their rights.

The article also sheds light on the thinking of Mark Jones, new Director of the British Museum, whose approach to deaccessioning and repatriation will prove crucial. He suggests putting the onus on overseas buyers to explain how they might help mitigate damage to the public interest if allowed to take possession of an item deemed a national treasure.

All in all, this is a thoughtful article that demonstrates how others might approach contentious issues around cultural heritage.



*Deposition from the Cross* (around 1190-1200).  
Photo: © Department for Culture, Media and Sport

### ***Footnotes to History: Law and Diplomacy – crucial thoughts of one of the fathers of the 1970 UNESCO Convention***

Published last year and highlighted in a recent talk is the fascinating book by Mark B. Feldman, *Footnotes to History: Law and Diplomacy*.

Feldman has been engaged in U.S. foreign relations law and transnational litigation since 1965, including 16 years at the U.S. Department of State, where he played a pivotal role in developing the concept of the bilateral treaty and the 1970 UNESCO illicit cultural property Convention.

More than 50 years on from his work on the UNESCO Convention, he shares his thoughts on its origins and objectives, as well as what he thinks now.

When the idea of the convention arose, Feldman noted how museums, collectors and dealers feared that a clampdown via UNESCO “would lead to demands for the repatriation of the great collections of ancient art in the United States and Europe”.

He clearly saw his role as balancing interests, describing how he brought together stakeholders across the American art world – archaeologists, art museums, antiquities

dealers, and attorneys, later co-authoring a report, which addressed a bilateral treaty with Mexico; an Act of Congress prohibiting the import of Pre-Columbian sculptures from Latin America without the permission of the country of origin; and a multilateral UNESCO Convention based on the principle of non-retroactivity with import controls on archaeological materials threatened by pillage.

Feldman was precise and targeted in his approach. On the pre-Columbian Act of Congress, he writes: "It was the first step by any art importing country to address illicit trade in stolen cultural property, but the reciprocal obligations 'to recover and return' were limited to pre-Columbian and colonial objects 'of outstanding importance' [and official archives] that had become government property in the other country."

The bilateral treaty with Mexico was "in practice" a one-off and has been superseded by more aggressive actions by U.S. agencies".

He is enlightening on just how ambitious original plans for the UNESCO Convention were, explaining that the Secretariat "proposed a comprehensive scheme, brutal but coherent, that would have required all parties to refuse import of any cultural property, broadly defined, not accompanied by an export certificate from the country of origin".

Needless to say, art rich countries blocked measures that they considered would destroy the international art market.

The United States continued to take the lead, drafting a compromise convention.

"The most fundamental points were two: first the convention would not be retroactive – acquisition guidelines would be forward looking – and two, import controls would be limited to cultural property stolen from museums and to specific categories of archaeological interest threatened by pillage to be determined by agreement among the countries concerned."

Even at that point, however, the antiquities trade was alert to potential abuses. Feldman describes how dealers were "always doubtful about the convention" and "opposed import controls because they feared the State Department would use that authority as a bargaining chip for diplomatic purposes unrelated to protecting the cultural heritage...". Prescient indeed.

The U.S. market was also concerned that as it abided by the terms of the convention, others would not, putting it at a competitive disadvantage, leading to Feldman proposing that the State Department "make bilateral agreements for import controls with countries damaged by pillage of their cultural heritage".

Next came the establishment of the Cultural Property Advisory Committee (CPAC). The idea was for it to be a bulwark in defence of the art market, but, as history has shown, if anything its role has been the opposite.

"Over the years the State Department has negotiated dozens of bilateral agreements and there have been numerous complaints that State has abused the process for diplomatic reasons as the dealers originally feared," Feldman accurately observes, as he acknowledges that times have changed, and the behaviour of the trade and wider market has got a great deal better.

He also considers that current U.S. policy on cultural heritage protection in relation to foreign patrimony is out of step and "contrary to the U.S. position negotiated in UNESCO in 1970 and adopted by Congress in 1983".

Many in the market hope that the State Department will take as much notice of what Feldman has to say today on these matters as it did in the late 1960s.

### ***British Museum exhibition will look at legacy of imperialism***

Daily Telegraph: March 12: Guyanan artist Hew Locke has been commissioned to create an exhibition at the British Museum showing how its collection "reflects the legacies of imperialism".

Locke, whose focus is often colonialism, will show how “the museum collection reflects the legacies of British imperial power”, according to promotional information.

This means looking at the repatriation debate in earnest, from the Elgin Marbles to the Rosetta Stone.

“I want to bring people beautiful objects with awkward histories, and smaller objects easy to walk by, that are just as compelling when you stop and look,” says the artist.

### *Thefts of historic stone and objects from museums and galleries on the rise*

The Independent: March 13: A new report from Historic England reveals that thefts of historic stone as well as cultural objects from museums, art galleries and stately homes are on the rise.

York stone slabs have proved particularly vulnerable, with museums exhibits of art and antiques also at risk. In all, £32 million worth of items were stolen in the 2021/22 period.

### *EU and Egypt Declare Strategic, Comprehensive Partnership*

Mirage News: March 18: As part of a strategic and comprehensive partnership between the two nations, Egypt and France have signed an agreement to unleash the full potential of their relationship. This includes “enhancing political dialogue” and building on bilateral agreements, whose topics include security: “Egypt and the EU will further explore cooperation in the field of law enforcement, serious and organized crime, and training and capacity building. Both parties will explore operational cooperation in areas related to preventing the trafficking of cultural goods, and restitution of illicitly trafficked cultural properties in the line with international law.”

### *Antiquities Authority issues list of 50 antiquities that smuggled abroad*

Saba, Yemen: March 19: A new list of looted and trafficked antiquities from Yemen highlights items identified as having been sold at auction in Israel, America, and the Emirates, Britain, Poland, Switzerland, Germany, according to the country’s General Authority of Antiquities and Museums.

Titled *Our Looted Antiquities*, the list is the 15th published and features pieces monitored and tracked by the authority’s specially appointed team, working with researchers abroad.

A spokesman “stressed that the team is working with some researchers abroad, whether Yemenis or foreigners, who are responsible for sending all information about the ancient Yemeni antiquities that are being displayed or sold, whether they are being sold abroad or being promoted for sale at home, based on social media, various media outlets, and monitoring and documenting them in a database and submit it to the competent authorities to enable them to request the return of these artifacts.”

The statement implies that the authority considers any items offered for sale abroad as looted. Is this the case? Or has the team found evidence of illicit trade?

The authority estimates that more than 13,000 antiquities have been trafficked out of the country since 1994, including about 8,000 allegedly looted and smuggled out of the country during the period of the Saudi-Emirati aggression against Yemen.

### *Bronze age objects from ‘Pompeii of the Fens’ to go on display*

The Guardian: March 20: News of one of the most extraordinary and important finds for decades, if not longer: a Bronze Age settlement preserved almost intact in The Fens of East Anglia, in England.

Archaeologists have worked out that the buildings in the settlement, constructed on stilts, dropped “like a coffee plunger” into a river under the weight of their roundhouse roofs after



**Archaeologists excavating Must Farm with a Bronze Age bowl.**

**Photo: Cambridge Archaeological Unit/PA**

a catastrophic fire. The inhabitants had to flee so quickly that they left all their possessions, including food being cooked in pots, behind, and it was all preserved in very good condition, having been sealed beneath the roofs in the silt.

Finds have included jewellery, pottery, clothing, and tools, cushioned by vegetation in the river as the settlement collapsed. The 2015-16 excavation unearthed almost 200 wooden artefacts, more than 150 fibre and textile items, 128 pottery vessels and more than 90 pieces of metalwork. More than 18,000 pieces of structural wood were recorded.

“Must Farm, nicknamed the Pompeii of the Fens, offers ‘exceptional clarity’ because of a combination of charring and waterlogging,” said Mark Knight, of Cambridge University’s archaeological unit.

Two open-access publications (see below) have been launched that comprehensively detail the finds from the excavation at a working brick clay quarry. Some of the preserved objects will go on display at Peterborough Museum in April as part of an exhibition that tells the story of Bronze Age life in the short-lived settlement and its discovery almost 3,000 years later.

It is thought that Must Farm, which dates to about 850BC, was inhabited for only about nine months before it was destroyed by fire.

- *Must Farm pile-dwelling settlement, Volumes 1 and 2, are available at [McDonald Institute Monographs & Conversations \(cam.ac.uk\)](https://www.mcdonaldinstitute.cam.ac.uk/). *Introducing Must Farm, a Bronze Age Settlement is at Peterborough Museum & Art Gallery, 27 April to 28 September 2024.**

### **UK government pledges to cut red tape around art imports**

The Art Newspaper: March 20: “The UK government says it is streamlining customs processes to boost the domestic art market and simplify the importing of art and antiques in the wake of Brexit,” this article begins.

The promise came from arts minister Stephen Parkinson who said in a January 29 speech that the long-term aim is to create the “world’s most effective border”.

Evidence shows that since Brexit came into force in 2020, the UK’s art and antiques sector has lost ground in the global market, with import from the EU attracting 5% import VAT and significant red tape.

The Temporary Admission (TA) scheme allows dealers to import from the EU and then sell on to overseas buyers for re-export without having to pay the levy, although sales to UK buyers are still subject to it. This helps maintain Britain's entrepot status, says Mark Dodgson, the secretary general of the British Antique Dealers' Association.

The problem is that the burdensome paperwork associated with TAs mean that only businesses with adequate administrative support can afford to take advantage of them. Now the aim is to simplify the process, with the minister's promise following on from the December 2023 publication of a summary of customs simplification measures by HMRC (the UK's revenue and customs agency) and the UK Treasury, along with the opening of a consultation.

The question is: will that simplification process continue under any new government after the UK general election later this year?

### ***The Met Appoints Head of Provenance Research***

Metropolitan Museum of Art press release: March 22: The Met has appointed Lucian Simmons to a newly created role within the Director's Office as Head of Provenance Research. Simmons, who recently served as Vice Chairman and Worldwide Head of the Restitution Department and Senior Specialist for the Impressionist and Modern Art Department at Sotheby's, will begin in the role in May 2024.

"As The Met engages more intensively and proactively in examining our collection, we are delighted to welcome Lucian Simmons to help lead this crucial and ongoing work," said Max Hollein, the Met's Director.

Meanwhile the Met's CEO, Marina Kellen, said of Simmons: "His vast experience with cultural property and restitution over the past several decades will be invaluable to the Museum. We are grateful to the curators, conservators, and existing provenance researchers who have been deeply engaged in studying the collection for many decades. Our hiring of additional experts will help further these efforts and play a vital role in coordinating the work amongst departments."

### ***Spanish police stop the sale of a Sudanese statue stolen from northern Sudan***

Breaking Latest News: March 23: A Sudanese antiquity (a statue called a shabti) was either exported to London in the 1930s, according to a legal document from the Sudanese government dated May 27, 1967, or the documentary provenance is forged, and it was looted from the Jebel Barkal Museum between 2000 and 2003. Believing the looting story to be true, Spanish police have blocked its sale for €100,000 to the Dutch National Museum in Leiden by a Barcelona gallery.

A senior official in the Sudanese Antiquities Authority is reported as saying: "In my belief, it is one of the 3 Shabti that were stolen from the Jebel Barkal Museum in the year 2014," a date that contradicts the earlier 2000-2003 claim.

### ***British Museum sues former curator over stolen artifacts***

DW: March 26: Confirmation that former British Museum curator Peter Higgs is the subject of legal action from the BM over the theft of more than 1,800 artefacts stolen over decades. "Peter Higgs 'abused his position of trust' to steal ancient gems and other pieces from storerooms over the course of a decade, said lawyers for the museum."

A High Court judge has ordered Higgs, who has not been charged with any crime, to list or return any items in his possession within four weeks. She also ordered the disclosure of his eBay and PayPal records.

The museum says it has recovered 356 of the missing items so far and hopes to get more back. Higgs did not attend Tuesday's hearing due to poor health, lawyers said. He denies the allegations and intends to dispute the museum's legal claim.