



INTERNATIONAL ASSOCIATION OF DEALERS IN ANCIENT ART

Amsterdam 12-01-2017

Re: Additional comments on the EU consultation about cultural goods,

We are extremely concerned about the scope, nature and suitability of this survey and fear that regulation introduced from its findings will have unintended consequences that risk seriously damaging the wider art market.

The closed nature of many of the questions inappropriately simplifies complex points and sets up false comparisons.

A number of premises within the survey are misguided or naive, which raises doubts about the competence of those who have put it together. For instance, there appears to have been little attempt to quantify the nature or size of the problem of trafficking, that has been enormously exaggerated without any proof.

The survey also lacks the clarity and level of detail required for respondents to give informed answers, which is why we have left some questions unanswered, giving our explanations here instead.

For instance, the survey asks a number of questions relating to cultural goods **without defining what cultural goods are**. The proposed description as in Regulation 116/2009 is unfit for the purpose. Definitions vary from member state to member state, as well as from convention to convention, which means that any survey results will not be comparing "like with like".

**The only definition of "cultural goods" that could be valid, especially for non EU countries is the one as defined in UNESCO 1970 Art.1.**

The survey should have started with a valid definition, as we have proposed In our letters to Mr. Larrieu from May 24<sup>th</sup> and June 29<sup>th</sup> that we attach for your convenience.

Without the proper information about the problem, there is a huge risk for the legitimate trade as we expressed in our e-mail from October 5<sup>th</sup> 2016 and our letter from the same date (also attached): *"Please especially note our concerns that the failure to consult with the trade in how to approach this exercise correctly prior to its launch means that in its current form it risks adding unnecessary measures, costs and bureaucracy to member states and EU institutions."*

Taking the questions that cause our concern in turn, here are our comments:

- *Please indicate you annual turnover or you balance sheet total.*

Providing the options of above or below €50 million is entirely inappropriate as no European art market company has a turnover that comes anywhere close to even a significant fraction of €50 million. (with the exception of some auction houses)  
This renders this question pointless.

- Q1: This question is loaded and to our astonishment ignores the fact that numerous laws and regulations already exist to tackle this problem such as the EU Iraq and Syria regulations, effectively in place for many years. (Council Regulation (EC) **No 1210/2003** of 7 July 2003 and Council **Regulation (EU)** No 1332/2013 of 13 December 2013)

• Q2: It is possible that additional measures may well contribute a bit to the fight against crime and terrorism, but what the survey fails to address is how, in doing this, **it will prevent causing damage to the legitimate trade**, which has long formed a part of cultural heritage. We would want to see a credible proposal for the continuing trade in legitimate orphan works or works exported legally years ago that either did not require an export license at the time or whose paperwork is no longer extant because the authorities and owners were not required to retain it, as was long the case. We would also want to know how customs would identify when a work was exported from a source country. For example, would a Mesopotamian work, exported legally a century ago but without paperwork to show this be required to secure an Iraqi export license even though it has been in a private collection in the USA for the past 50 years? How would customs be able to identify when it was exported from Mesopotamia?

Q3: This question is irrelevant to anyone without the expertise to answer it, which is almost everybody. Respondents could only hazard a guess, which is meaningless in this context.

Q5: Section 3: *The EU formally endorsing existing codes etc*: we could only give an informed response by having these codes identified and would then have to do so on a case-by-case basis. We cannot see how anyone else could answer this question responsibly without doing the same. Our members adhere to our code of ethics since 1993.

Q5: Section 4: *Adopt legislation empowering the EU customs to prevent the import... etc*: Again, this depends on the terms of reference. There are simply too many unknowns here to give an informed answer. For example, how do you ensure that customs has the appropriate level of expertise **across all affected disciplines** to make the right decisions within a short time? How do you deal with orphan works?

Q5: Section 5: *Promote co-operation with third countries... etc*: This is where the focus needs to be as a whole, ensuring third countries adhere to their obligations under Article 5 of the UNESCO 1970 Convention, to protect their cultural property. Far too many fail to do so. If they did adhere to it, they would largely cut off the trafficking problem at source.

Q6: Adopt the reversal of the burden of proof and you will kill the trade, breach human rights and set a dangerous precedent that will lead to widespread abuse. **The reversal of the burden of proof violates most, if not all European constitutions!** The fact that this option is included at all in the survey causes us the gravest concern and undermines our faith in how any of the other proposals would be administered fairly and effectively. With regards to importing goods from countries in armed conflict, customs would have to show that this has actually happened, that the goods have come directly from there and are not simply artefacts exported many years ago that have been sitting in a collection for decades in another country. How would customs do this?

Q7: Again, we are unable to answer this question because the terms of reference are not sufficient. No definition. Far more detail is needed. For example, would there be a value threshold? What about orphan works? How could one possibly have knowledge of the laws of 200+ countries?

Q8: Customs would need very significant additional resources, not just in terms of people, but also in terms of expertise, an almost impossible task given the wide scope of cultural goods intended. They would need to **process licensing in a timely manner to prevent delay and damage to the trade**. Again, there are too many unknown variables here.

Q9: Faced with increased bureaucracy and cost, as well as uncertain delay and lack of confidence in the expertise and competence of the authorities, **the art market would be highly likely to move elsewhere, such as the UK, USA or the Far East.** On top of recent regulations, such as the new German cultural property law, which is already having an undesirable impact on trade, these proposals risk having an even greater negative impact on the EU art market. Apart from anything else, the additional red tape and cost would effectively create a minimum price threshold, condemning many legitimate artworks to oblivion on the trade front. How much would the licensing process cost the EU? All that in an attempt to combat something that certainly is not as important as presumed.

We remain extremely concerned about this ill-informed exercise.

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