

# White Paper

## Compliance in the Fine Artworks Market



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The world of art has always been about showing the more beautiful side of life. Throughout millennia artists have managed to build bridges between nations in forms that no statesmen have achieved. Art trade is not like buying and selling other commodities because of the cultural and historic value works of art have. But like traditional trade, it is not immune to the risks of exposure to malign intentions and criminal practices.

Certain features of the art industry make it vulnerable to subjects who may seek to exploit it to finance illicit activities or hide the origin of their illegally derived funds. First, it is the culture of discretion which often allows for the buyer and seller not to know each other and intermediaries and proxies are commonly used to facilitate art transactions. Art trade usually takes place in an international setting involving parties from multiple countries, including offshore and opaque jurisdictions, where information is scarce and real intentions are masked behind a wall of vagueness and mystery. Artworks, artefacts and antiquities are items with high value, which converts them into assets for criminals who want to transform their obscure wealth into legitimate funds with no time limitations.

Recent political developments in Europe and the Middle East have brought to light emerging new trends regarding the way lawbreakers operate and finance their activities. Unfortunately, law-enforcement authorities have documented cases where artworks have been stolen, transferred and sold and the proceeds of these transactions have been used to finance activities like terrorism.<sup>1</sup>

Thousands of archaeological treasures from war-torn Iraq and Syria have been looted by anonymous individuals or terrorist groups like the ISIS, and then smuggled to foreign countries, including European ones. In Iraq alone at least 170,000 artefacts were stolen from offenders during the very first days of the US-led invasion in the country in 2003.<sup>2</sup>

In Syria, many historic sites have been pillaged too since 2011. Traffickers have set up complex networks that offer the stolen antiquities to Western art collectors even on social media websites like Facebook.<sup>3</sup> Dealers have also fabricated false documentation for the illicitly obtained items, part of which are kept in storage, with some experts expecting them to remain hidden for years before being reintroduced to the art market.<sup>4</sup>

According to information collected by UNESCO, the police in Germany has arrested a trafficking ring that has stolen cultural objects to support armed groups like Ahrar al-Sham, Junud al-Sham and ISIS in Syria. In 2014, the Civil Guard of Spain detained a group that had been selling antiquities from Egypt in order to finance jihadists.<sup>5</sup>

Tragically, investigators have also established connections between known perpetrators of terrorist attacks in Europe and the illicit trade of art works. In November 2016, Paris Match revealed that Khalid el Bakraoui, the suicide bomber who attacked Maelbeek metro station in Brussels on 22 March 2016, had attempted to obtain ransom for restoring previously stolen items from Museum Van Buuren in Belgium. The proceeds may have potentially been used to fund the terrorist activities of the offender.<sup>6</sup>

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<sup>1</sup> <https://www.un.org/press/en/2015/sc11775.doc.htm>

<sup>2</sup> <https://www.nytimes.com/2003/04/13/world/a-nation-at-war-looting-pillagers-strip-iraqi-museum-of-its-treasure.html>

<sup>3</sup> <https://www.bbc.com/news/world-middle-east-47628369>

<sup>4</sup> <https://malingallery.com/art-news-1/tag/Benoit+Faucon>

<sup>5</sup> <https://en.unesco.org/courier/october-december-2017/curbing-spoils-war>

<sup>6</sup> [https://www.rtb.be/info/belgique/detail\\_terrorisme-du-artnapping-de-khalid-el-bakraoui-pour-financer-ses-activites?id=9462801](https://www.rtb.be/info/belgique/detail_terrorisme-du-artnapping-de-khalid-el-bakraoui-pour-financer-ses-activites?id=9462801)

## What is new and how it can affect the art market?

On the last working day before the Christmas holidays the UK Parliament adopted regulations that transposed the provisions of the 5<sup>th</sup> European Union AML Directive. They entered into force on 10 January 2020 and will have serious consequences for the UK art market.

This step makes sense because according to The Art Market 2019 report, published by Art Basel & UBS, the UK art market is ranked second in the world and is the largest in the European Union, accounting up for 66% of market share.<sup>7</sup>

According to the new rules, people trading, storing or acting as intermediaries in the trade of works of art, where the value of the transaction or a series of linked transactions amounts to or exceeds 10,000 euro, fall under the scope of anti-money laundering and counter-terrorist legislation. The subjects affected are not only individuals, but also art galleries, auctions houses and free ports.

Going forward, art businesses will have to adopt a number of measures that are focused not only on performing due diligence on the actual works of art as part of their anti-fraud policies, but also on the subjects they deal with.

According to the guidance published by the British Art Market Federation on 24 January 2020 and approved by HM Treasury, obliged subjects from the art industry must take the steps below:

- Register with Her Majesty's Revenue and Customs (HMRC) before they carry on with their business, where this involves a transaction of 10,000 euros or more, or a series of linked transactions of 10,000 euros or more
- Carry out a risk assessment of the extent to which they are exposed to money laundering
- Carry out customer due diligence measures on customers before they conclude a transaction
- Appoint a nominated officer
- Maintain a prescribed range of policies, controls and procedures
- Train staff appropriately
- Report suspicious transactions to the authorities
- Keep appropriate records of customer due diligence and of transactions.<sup>8</sup>

## What kind of checks must be performed?

Art market participants must establish the identity of the natural persons and the ultimate beneficial owner(s) of the legal persons they deal with. In order to do this, they are obliged to obtain proper documentation and detect whether the names fall within the following lists:

- Politically Exposed Persons (PEPs), their relatives and business associates
- Sanctioned individuals and entities or persons subjected to restrictive measures on national, regional and international levels
- Lists of individuals that are subjects to criminal investigation, prosecution or conviction
- Terrorist financing watchlists, law enforcement and financial regulators lists.

When government and official sources do not provide relevant information, media searches using the names of the clients, intermediaries, businesses, subsidiaries and beneficial owners must be conducted, if necessary, in multiple languages.

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<sup>7</sup> <https://d2u3kfwd92fzu7.cloudfront.net/The Art Market 2019-5.pdf>

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/864253/BAMF.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864253/BAMF.pdf)

## What art market participants should be careful about

There are many red flags that may alert art businesses about potential risks falling within the scope of their anti-money laundering and counter-terrorist financing interest and obligations. Some of the warning signs are easy to detect, others require additional efforts and more in-depth investigation.

The Responsible Art Market, a non-profit, cross market initiative aimed at “raising awareness of risks faced by the art industry in Switzerland and abroad” has published a document detailing red flags that art market participants should be looking for.<sup>9</sup> The Antiquities Coalition, another non-governmental organisation working to stop the looting and trafficking of antiquities, is also publishing educational pieces and has launched the #Buyerbeware Awareness Campaign, which is dedicated to informing art traders how the looting and trafficking of ancient artefacts is used to fund crime, conflict and terrorism. Its website even features a video showing how a consumer unknowingly buys a piece of looted ancient art online.<sup>10</sup>

Here are some of the important questions every art dealer should be able to have clarity on when conducting a transaction with artworks:

- Is the price too good to be true or is it too inflated?
- Why doesn't the seller have documents proving the provenance of the artwork(s)?
- Why does the client operate in a high-risk jurisdiction where corruption, money-laundering and drug-trafficking flourish and regulations are not strict enough?
- Is the art piece coming from a country with a violent conflict?
- Does the artwork belong to a museum?
- Why is the client relying on multiple intermediaries, including offshore companies?
- Why does the client get evasive when asked to provide additional documentation or explanation?
- Why does the client insist to pay in multiple low-value transactions instead of making one single payment?

The new rules are pushing art businesses out of their comfort zone by requiring more transparency in the relationship between buyers and sellers. Auction houses and other obliged subjects will have to dedicate more resources to identifying their clients and acquiring information about their background and funds. Art-trading organisations will also have to be aware of the risks associated with the transactions they enter into, especially when these involve items of archaeological, historical, cultural and religious importance. Cross-industry organisations can help with guidance on good practices that can ease up the bureaucratic burden and technical complications reporting companies may face.

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<sup>9</sup> [http://responsibleartmarket.org/wp/wp-content/uploads/2017/01/RED-FLAG-LISTS\\_web.pdf](http://responsibleartmarket.org/wp/wp-content/uploads/2017/01/RED-FLAG-LISTS_web.pdf)

<sup>10</sup> <https://theantiquitiescoalition.org/developing-implementing-solutions/buyer beware-awareness-campaign/>