

# THE BUREAUCRATISATION OF THE EUROPEAN ART MARKET



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## The art trade in the focus of anti-money laundering legislature

The art market is currently changing. The European Union is pushing with further regulations of this market. In the name of transparency, a number of laws have been and are being enacted which entail various disclosure and reporting obligations.

### Due Diligence obligation

As of January 10 2020, all EU member states had to implement a new, fifth EU money laundering regulation in their national legislation. The new regulation subjects all persons to national money laundering laws who trade works of art or act as intermediaries in the trading of art - thus art galleries and auction houses are also affected. This far-reaching tightening of the rules applies regardless of the form or size of the company. The

decisive factor is that the value of a single transaction or the value of a series of linked transactions must amount to EUR 10,000 or more - and this applies regardless of the medium of payment. This threshold implies that suddenly, individuals and companies who are active in the European art market are obliged to introduce and implement the complex processes that already apply to financial intermediaries or banks. In concrete terms, this means that in the future customer due diligence must be performed. However, the concrete details are left to the 27 member states. Apart from that, the legal terms, including the term "art", remain little specified in the regulation itself and it remains open how the individual nations will define them in their implementation process.

### Import notification obligation

However, the bureaucratisation requires even more. These measures are not yet sufficient. On the 17th of April 2019, the European directive on import of cultural goods was introduced. Directives are directly binding legal acts which the EU member states must implement entirely. As a result, works of art may now only be imported into the European economic area if it is ensured that the works of art have been legally exported from the country of origin. This is achieved by entering the data via an electronic system that has yet to be introduced. The required entry must contain detailed information about the object of art and must confirm the legality of the export. The point in time from which these reporting obligations must be applied is still unclear and depends on the start of the operation of the electronic system in

question. The deadline for implementation is 28 June 2025 at the latest.

### Conclusion and perspective

The additional expense for art dealers resulting from the new regulations will be considerable and it is expected that the processing of transactions will become considerably more complicated. The anonymity established in the art market will thus be largely abolished.

However, the aforementioned European legislation does not directly affect Swiss art dealers. Nor is a similar solution proposed in the planned revision of Switzerland's money laundering law. Switzerland continues to rely on the proven system of self-regulation and, with the exception of cash transactions, only imposes obligations on banks and financial intermediaries. A corresponding obligation to report the import of art has existed for some time in Switzerland in a similar, but slightly less stringent form.

For Swiss art dealers and gallery owners doing business in Europe, depending on the situation, a direct or indirect link to the aforementioned European legal situation cannot be entirely excluded. The various differing national arrangements and interpretations of those legislatures might also constitute possible pitfalls.

If any questions on this topic arise, we will be happy to advise you.