



**EU Consultation ending November 18, 2021, for :**

**Proposal for a Regulation of the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (Brussels 20.7.2021 COM (2021) 420 final, 2021/0239 (COD))**

[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13146-Preventing-money-laundering-and-terrorist-financing-new-rules-for-the-private-sector\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13146-Preventing-money-laundering-and-terrorist-financing-new-rules-for-the-private-sector_en)

Submission by CINOA<sup>1</sup>

### **Art Sector Background**

Art market businesses are regulated by the same laws and regulations that all businesses must adhere to in the EU, as well as many national and international regulations, policies and treaties focusing on cultural property that require additional administrative procedures to be followed. Best business practices include appropriate and proportionate due diligence measures on buyers and works of art and requests for provenance information relating to works. Codes of ethics, such as CINOA's, reinforce these obligations for art dealers and help to heighten awareness in the art market. CINOA and other sector trade bodies play a key role in disseminating information and sector updates to members.

91% of art market dealers are micro businesses employing three people or fewer. Approximately 75% are considered micro enterprises with turnovers of well under €2 m. Art galleries have a median of 3 employees<sup>2</sup> and 38% of galleries have a turnover under € 250.000 and 13% have a turnover between € 250.000€ to 500.000<sup>3</sup>. Nowadays, very few cash transactions for art occur, and if cash transactions over thresholds do occasionally occur, they are subject to existing AML controls. All non-cash transactions already flow through highly

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<sup>1</sup> Established in 1935, CINOA is the principal international confederation of art & antique art market professional associations. Affiliated dealers, from 30 leading dealer associations, cover a wide array of specialties from antiquities to contemporary art. CINOA, and all of its member organizations, have a strict membership application process to ensure acceptance for peer-vetted art professionals that have established businesses, reputable galleries and/or practices. CINOA affiliated groups follow a high standard of business practices and abide by codes of ethics which require appropriate levels of due diligence. Membership does not include people involved in low-grade internet sales. During the past nearly 70 years, dealers have been changing their practices to adhere to biodiversity, cultural property and heritage legislation. The CINOA Code of Conduct is updated regularly to reflect these changes.

The vast majority of CINOA's members are businesses of 4 people or less who work hard to cultivate their clientele: [www.cinoa.org](http://www.cinoa.org).

<sup>2</sup> The Art Market Report 2020 by Dr Clare McAndrew <https://www.artbasel.com/about/initiatives/the-art-market> page 361

<sup>3</sup> The Art Market Report 2021 by Dr Clare McAndrew <https://www.artbasel.com/about/initiatives/the-art-market> page 53

regulated financial institutions and gatekeepers<sup>4</sup> that have departments and resources to monitor transactions, regardless of the business activity. All gatekeeper parties scrutinize the details of how and with whom the transaction is executed and must report any suspicious activity relating to AML. For this reason it has been a source of some confusion to us as to why small shopkeepers should *also* be required to carry out detailed customer due diligence on the very same parties who have been checked by gatekeepers, particularly if those gatekeepers operate from the same jurisdiction as the art gallery.

In AMLD1, 2, 3 and 4 the trade in artworks was not mentioned, neither was it included in the Commission's proposed amendments in document *COM (2016) 450 final* that have led to AMLD5. "*Persons trading or acting as intermediaries in the trade of works of art*" were added as obliged entities at the last minute to the AMLD5 by the European Parliament, without any prior consultation with the trade and without an impact assessment having been performed.

Those of our members who operate within the European Union are now required to comply with the same anti-money laundering obligations as any large financial institution. These new measures impose compliance procedures for art intermediaries that involve training and because of their small size, hiring staff or outsourcing the work in order to meet the new obligations. For SMEs and micro enterprises these extra administrative costs and interruptions linked to AMLD5, for sometimes only a handful of "in scope" transactions per year, represent a disproportionate interference for little added benefit. It should be understood that many sellers of art are simply small shopkeepers, with very limited resources.

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<sup>4</sup> Gatekeepers as defined by ACAMS (Association Of Certified Anti-Money Laundering Specialists): Professionals such as lawyers, notaries, accountants, investment advisors, and trust and company service providers who assist in transactions involving the movement of money, and are deemed to have a particular role in identifying, preventing and reporting money laundering. Some countries impose due diligence requirements on gatekeepers that are similar to those of financial institutions-

## **CINOA's position: a summary**

In accordance with President von der Leyen's mission statement, CINOA is fully supportive of easy to comply with, evidence-based policies that are subject to an impact assessment, and which do not add unnecessary regulatory burdens.

As representatives of the art and antiques trade, CINOA supports effective measures against money laundering and terrorist financing and would like to work with the EU institutions to help provide information and insight into the art market sector and the sector's business practices. CINOA believes that through further analysis and dialogues with all stakeholders, a workable policy can be defined properly pinpointing with whom, when and how new measures should be carried out.

Art dealers and art intermediaries have already for many years had to abide by the EU's anti-money laundering rules concerning payments in cash, and art dealers are already obliged to report suspicions regarding possible illicit funding. We therefore suggest a cautious, proportionate approach to amending AML legislation. Unless a proportionate approach is adopted there is a risk of a reduction in sales of works of art, less promotion of works of art, ultimately leading to reduced interest for the preservation of heritage works and a loss of tangible movable culture.

This document explains our rationale for reducing the sector scope by implementing an increase in the transaction threshold used to define the in-scope sector. We summarise immediately below the main issues that the existing directive - and the new regulation – pose for the art market. Each of these points is expanded on in further detail in the subsequent sections of our document.

### **A: Revisiting the Rationale**

**Available data does not support subjecting small art trading entities to AML measures for all art transactions above EUR 10,000, when there are no established EU links to terrorism financing (TF), no known convictions for money laundering involving works of art in the EU (ML) and allegations of ML in the EU and other jurisdictions relate primarily to very high value paintings.**

- A.1 No significant evidence exists that terrorist financing lies behind illicit movements or trade in art works in the EU.
- A.2 No credible overview has been compiled of successful convictions in the EU for money laundering directly linked to art dealing.
- A.3 Art works do not offer a straightforward route to the laundering of money as they are not liquid, require special care, are readily identifiable and require some expertise to sell.
- A.4 The Commission's SNRA evaluation of risk exposure does not accurately characterize the art business and makes unsubstantiated assumptions, leading to inappropriate risk scores, which should now be revisited.
- A.5 Art transaction funds mainly pass through banks and VAT margin scheme rules require more detailed records of buyers, sellers and artefacts than for other retail sectors.
- A.6 Costs of implementing AML measures are not easily absorbed by micro-businesses and disproportionate to the likely AML benefit.
- A.7 Art trade micro-businesses are not well-placed to effectively identify and guard against ML and TF.

**B: Applying a More Proportionate Approach**

**There needs to be a focus on high-risk transactions that are the most likely to attract those who wish to launder money or fund terrorism and a filtering out low risk sales by defining the in-scope art market sector using a transaction threshold of EUR 500,000.**

- B.1 Applying the Pareto Principle will ensure a proportionate approach to the targeting of higher risk art market transactions.
- B.2 Higher risk transactions involve recognized high value, non-speculative art works.
- B.3 Using a risk-based approach and art market sales statistics, CINOA proposes an increase in the transaction threshold to EUR 500,000, enabling entities to:
  - a. concentrate on the top 50% of art traders with a turnover of more than EUR 500,000.
  - b. focus on the high-risk transactions representing more than 50% of the market value, which are over EUR 862,000.
  - c. cover transactions where the businesses have the resources to fulfill AML obligations.
- B.4 A higher threshold will help protect businesses from unintended negative consequences on the sector, such as being “de-banked”

**C: Suggested Practical Measures**

**Introduce practical measures that will improve the ability of art businesses to implement the AML regulations.**

- C.1 Remove ambiguity by more carefully defining and rephrasing “persons trading or acting as intermediaries in the trade of works of art” (article 3 (3) (i)).
- C.2 Review and refine the list of higher risk factors in paragraph (2)(e) of Annex III to reflect known risks, to recognise that persons trading in works of art are already defined as in scope and to prevent financial institutions from withdrawing services from entities engaged in lawful activity in the listed products.
- C.3 Publish AMLA regulatory guidelines and technical standards at least 12 months before the regulation goes into force, including a definition of a “customer” as it applies to the art market.
- C.4 The AMLA should publish standards against which AML/CLT service providers should operate and issue a list showing which providers achieve each standard.

We request that any campaign to raise awareness of the AML regulation should not paint an inaccurate picture of the art trade. As previously mentioned, the trade is supportive of combatting money laundering. There is no evidence that those involved in money laundering of art works are more than perhaps a few rogue individuals. Therefore, phraseology should ensure that the art trade is not portrayed as one comprising money laundering criminals.

We wish to be active in any consultations and dialogues regarding new measures affecting our important sector and its role in promoting, preserving and protecting movable cultural heritage. We are keen to illustrate in detail all aspects of the art business and discuss them with you.

## **In-depth analysis of issues A, B and C**

### **A: Revisiting the Rationale**

**Available data does not support subjecting small art trading entities to AML measures for all art transactions above EUR 10,000, when there are no clearly proved EU links to terrorism financing (TF), no known convictions for money laundering (ML) involving works of art in the EU and allegations of ML in the EU and other jurisdictions relate primarily to very high value paintings.**

Article 3 of the proposed regulation lists the obliged entities, which includes among other sectors:

*“(i) persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or linked transactions amounts to at least EUR 10,000 or the equivalent in national currency”*

No fact-based justification has been provided for including all persons trading or acting as intermediaries in the trade of works of art as obliged entities for all transactions, occasional or linked, with a value above a threshold of EUR 10,000.

#### **A.1 No significant evidence exists that terrorist financing lies behind illicit movements or trade in art works in the EU.**

First, it needs to be understood that allegations of terrorism financing and the art market concern antiquities, that is to say artefacts from ancient civilizations<sup>5</sup>. Secondly, despite these allegations having been made, they have not been proved beyond doubt. The only documentation that we are aware of relating to the removal of “precious things that come out of the ground” is that produced by the United States State Department in the Abu Sayyaf case, which demonstrated that minerals as well as artefacts were sought by groups such as ISIS and that the types of objects yielded up by raids on Abu Sayyaf’s Syrian property were either fakes or items which museum curators (to whom images were shown by the *New Yorker* magazine) described as being of low value and little in demand in the West. Images of antiquities were also found, but only one was described as having evidence that it had been sold.

That antiquities are illicitly removed from the ground in the Middle and Near East is not disputed, but the extent to which any funds that their removal may generate are being used to support terrorist bodies such as ISIS, rather than to feed the unfortunate populations caught up in civil wars and poverty, is less clear. The routes to market of low value antiquities are particularly tricky from unstable regions and there has been little or no evidence to suggest that such items actually get much further than Turkey.

Furthermore, the antiquities trade actually only accounts for less than 0.5% of the art market and these allegations concern Middle Eastern antiquities which account for less than .05% of the art market. Many studies, including the four mentioned below (of which two were commissioned by the European Commission), confirm that there is insufficient data from which to draw any concrete conclusions on connections between the funding of terrorism and the EU art market. As explained above, assumptions have been made based on a handful of

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<sup>5</sup> Antiquities are objects from antiquity, especially the civilizations of the Mediterranean: the Classical antiquity of Greece and Rome, Ancient Egypt and the other Ancient Near Eastern cultures.

anecdotal cases, incomplete data and assumptions. (See the document *Fighting Bogus Information about the Art Market – 2021*<sup>6</sup>)

The four studies of relevance are:

*Rand Report 2020*<sup>7</sup>

This demonstrates that most widely-held assumptions and current theories are wrong about antiquities trafficking and the role of antiquities in terrorist financing. The report argues that this has led to poor policy decisions in tackling the problem of terrorist financing and proposes more effective ways to prevent illicit trade.

*The Deloitte Report*<sup>8</sup>

*The Ecorys Report*

*World Customs Organisation (WCO) 2019 Illicit Trade Report*

These confirm that no evidence exists that it is terrorist financing that lies behind any illicit movements or trade in cultural goods within the EU.

## **A.2 No credible overview has been compiled of successful convictions in the EU for money laundering directly linked to art dealing.**

There have been cases of alleged money laundering (ML) in the art world, but the reported cases are rare and we are not aware of any meaningful statistics having been compiled by anyone on the subject. More specifically we are not aware of any figures having been compiled in respect of *convictions* for money laundering that relate to works of art, including convictions in the EU. Media outlets have produced sensational headlines about money laundering cases involving the purchase of high value works of art, and these headlines have grabbed the attention of the public and authorities alike because the artworks have been by well-known artists and the parties involved high profile figures mainly operating outside the EU.

In order to make a properly-informed judgement as to what does and does not constitute a proportionate response, more detailed information about cases and convictions is needed, yet a global and/ or EU overview of the situation is lacking. Only once such information has been properly compiled and analysed can legislators hope to understand the extent to which artworks attract money launderers, the value and types of works that attract laundered money, the frequency with which this occurs and to use this information to help compile the statistical data needed to help design policies to prevent laundering through art.

The lack of proper, fact based, data has been excused by the Commission through comments such as “The share of the illegal market should, of course, be considered but is by definition difficult to detect” or “Law enforcement agencies consider that this kind of traffic occurs mostly in freeport zones and that this makes it more difficult to measure the extent of the phenomenon.”<sup>9</sup> Yet, how can policy be driven by speculation as to what might occur, in contrast to evidence based on prosecutions? It should not be forgotten that failing to report

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<sup>6</sup> [https://www.cinoa.org/cinoa/perspectives?action=view&id=VoZu6XcBrQ\\_E\\_O4rixrh](https://www.cinoa.org/cinoa/perspectives?action=view&id=VoZu6XcBrQ_E_O4rixrh)

<sup>7</sup> *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data* RAND Corporation Homeland Security Operation and Analysis Centre 2020 [https://www.rand.org/pubs/research\\_reports/RR2706.html](https://www.rand.org/pubs/research_reports/RR2706.html)

<sup>8</sup> *Fighting illicit trafficking in cultural goods: Analysis of customs issues in the EU: final report June 2017* Deloitte for EU Commission DG TAXUD

<sup>9</sup> [https://ec.europa.eu/info/sites/default/files/supranational\\_risk\\_assessment\\_of\\_the\\_money\\_laundering\\_and\\_terrorist\\_financing\\_risks\\_affecting\\_the\\_union.pdf](https://ec.europa.eu/info/sites/default/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf) p. 152

known money laundering is already a crime in many jurisdictions, which begs the question, why has little or no evidence already come to light of the art market being used in this way?

As many countries issue a yearly report on suspicious transactions and money laundering through their financial intelligence units (FIUs)<sup>10</sup>, we reviewed the information on money laundering obtained from suspicious transaction reports (STRs) or Suspicious Activity Reports (SARs), especially those of financial institutions such as banks and credit card companies, when compared with non-financial obliged entities such as jewellers, traders in vehicles and art dealers. Unfortunately, the format for reporting varies from country to country, making comparison very difficult. It is clear, however, that evidence relating such activity to works of art is not available and such items are not even mentioned in FIUs' annual reports. (See Annex A)

We also reviewed the 2020 report *FATF/Egmont Trade-Based Money Laundering: Trends and Developments*<sup>11</sup>, in which the terms “works of art” and “cultural goods” do not appear even once. The words “art/antiquities” appear once, but only in the context of awareness raising and training in Germany (see page 45 Box 4.2. “Co-operation between Financial Intelligence Units and Designated Non-Financial Businesses and Professions. In 2019, the FIU of Germany provided guidance to DNFBPs and other regulated entities (e.g. auto traders and art/antiquities traders), through a series of regular lectures and engagement through the chamber of industry and trade.”) This contrasts with the word “vehicles” which appears 15 times (see page 24, Box 2.6. “Use of vehicles in a trade-based money laundering scheme” and page 36, Box 2.13. “Trade-based terrorist financing case”). Again, there is no evidence of a rampant ML problem in the art market.

We recommend that the Commission obtains a clear overview of the number of EU money laundering convictions directly linked to art dealing and the proportion of all art transactions it represents – 0.0001% or 5% ? - as well as a comparison to the figures for other sectors. We ask to be shown justification for why the art dealing sector has been singled out, when other sectors selling items or services well over the EUR 10,000 threshold (such as luxury brands, automobiles, luxury tourism packages or yachts) are not listed as obliged entities. According to the Deloitte Report, figure 30, no EU Member State Customs and Culture administrations reported evidence of links to terrorist activities and only four stated they had evidence of links to money laundering. Analysis is required to know if those committing the crimes are art professionals, amateurs or criminals who knowingly skirt the law and are unlikely to adhere to any of the new AML restrictions. Only with this data will it be possible to evaluate if ‘*persons trading or acting as intermediaries in the trade of works of art*’<sup>12</sup> should be subject to measures and which measures would be the most effective.

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<sup>10</sup> It should be noted that in the *Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities* (COM(2019) 370 final), no reference at all is made to any of the available FIU reports

<sup>11</sup> <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-based-money-laundering-trends-and-developments.html>

<sup>12</sup> AMLD5, Article 2, 3 (i) and (j)

**A.3 Art works do not offer a straightforward route to the laundering of money as they are not liquid, require special care, are readily identifiable and require some expertise to sell.**

Most other businesses required to follow EU AML measures operate in the financial sector or in related sectors, where the movement of or the planning for large financial transactions is the focus, as for example accountants and lawyers when assisting with corporate financial transactions or real estate sales. Besides persons trading or acting as intermediaries in the trade of works of art, entities selling precious metals and stones are the only targeted group of businesses handling specific types of moveable property, which feature in the proposed regulation.

First, we should point out that there has been no acceptable definition provided for “persons trading in precious metals and stones”. It is not clear whether the adjective “precious” applies to metals alone or to stones. We presume the term refers to persons handling those materials as a commodity, such as gold bullion dealers and diamond traders, but a definition making this clearer is needed. Precious stones and precious metals are considered liquid, easy to care for and to transport and are always in demand. In contrast, art works are unique, more readily identifiable, often fragile, physically require expensive special care, particularly when being transported. Damage to such works can reduce their value and marketability. The marketability of works of art, particularly those on the lower price points, is subject to trends and changing tastes. Art dealers will frequently hold works in stock for several years before a buyer interested in acquiring them can be found, and many works offered at auction receive no bids at all. Consequently, they are far from liquid and this is particularly the case if the items can also be classified as antiquities or fine art. Given these characteristics, art works at lower to mid-range price points are not generally seen as an easily convertible means of storing wealth.

The 2019 EU Commission’s Supranational Risk Assessment (SNRA) report’s conclusion regarding the threat of money laundering acknowledges these characteristics and lack of evidence:

*“This risk scenario may be an attractive tool for organised crime groups to convert the proceeds of crime in clean cash. However, it requires high level of expertise and is not a secure activity for them. The level of money laundering threat related to the trafficking of artefacts and antiques is therefore considered as moderately significant (level 2).”*<sup>13</sup>

**A.4 The Commission’s SNRA evaluation of risk exposure does not accurately characterize the art business and makes unsubstantiated assumptions, leading to inappropriate risk scores, which should now be revisited.**

The part of the 2019 EU Commission Supranational Risk Assessment (SNRA) report<sup>14</sup> and its annex<sup>15</sup>, that focuses on *high value goods – artefacts and antiquities* (pp.152-6) takes a

<sup>13</sup>[https://ec.europa.eu/info/sites/default/files/supranational\\_risk\\_assessment\\_of\\_the\\_money\\_laundering\\_and\\_terrorist\\_financing\\_risks\\_affecting\\_the\\_union.pdf](https://ec.europa.eu/info/sites/default/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf) p. 152

<sup>14</sup>[https://ec.europa.eu/info/sites/default/files/supranational\\_risk\\_assessment\\_of\\_the\\_money\\_laundering\\_and\\_terrorist\\_financing\\_risks\\_affecting\\_the\\_union.pdf](https://ec.europa.eu/info/sites/default/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf)

<sup>15</sup>[https://ec.europa.eu/info/sites/default/files/supranational\\_risk\\_assessment\\_of\\_the\\_money\\_laundering\\_and\\_terrorist\\_financing\\_risks\\_affecting\\_the\\_union\\_-\\_annex.pdf](https://ec.europa.eu/info/sites/default/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union_-_annex.pdf)



speculative and hypothetical approach, while repeatedly acknowledging that there is hardly any evidence of illicit transactions, nor have any means been developed for monitoring their occurrence.

The SNRA's risk scenario for artefacts contains statements which have not been verified against the original source and these false claims have been debunked. For more detail concerning this please read the document *Fighting Bogus Information about the Art Market – 2021*<sup>16</sup>.

The report's evaluations, which mostly lack evidence-based justification, assess the threat of TF and ML as moderate (level 2) whilst the vulnerabilities of both are considered significant to high (level 3-4). We must point out that much of the speculation and many of the details in the report's annex involve non-EU actors. For EU traders and art intermediaries, these experiences do not reflect the reality of today's typical art business practices.

The paragraphs of the report which highlight possible links with terrorist financing are vague and rely on a handful of reported incidents, yet these appear to be the basis on which an evaluation of the entire art sector has been based. In contradiction of the anecdotal examples, the report recognizes the innate difficulties of using art works for terrorism funding or money laundering.

Concerning the **threat of terrorism financing** (TF) the report makes the following statements (emphasis added):

*“The share of the illegal market should, of course, be considered but is by definition difficult to detect. From the national studies conducted so far, it appears that the main threat comes from looting such products in third countries, notably in conflict zones such as Syria, and the terrorist organisations that control the territory then imposing taxes on these activities.”*

*“From the intent and capability point of view, this risk scenario represents a financially viable option considering that looting of artefacts may generate a substantial amount of revenue. However, it is not an easy method. It requires (in the source countries): access to the illegal/dark economy (the items being then often laundered and mixed with legal circuits in the destination countries); technical expertise; and knowledge of the art market, which is not in all terrorist groups' capability. Furthermore, transporting such products is not secure or discrete enough and converting them into cash requires time to plan, which is not consistent with terrorist groups' needs to access cash quickly.”*

*“Conclusion: At this stage, there is limited evidence that the trafficking of looted artefacts and antiques would be specifically used to finance terrorist activities in the EU.”*

The threat of TF was evaluated as *moderately significant (level 2)*.

Regarding the **vulnerability to terrorism financing**, the risk exposure analysis describes the imagined actions of EU collectors purchasing artefacts direct from non-EU countries online and through social media, yet fails to explain why placing restrictions on EU-based businesses would have an impact on such actions.

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<sup>16</sup> [https://www.cinoa.org/cinoa/perspectives?action=view&id=VoZu6XcBrQ\\_E\\_O4rixrh](https://www.cinoa.org/cinoa/perspectives?action=view&id=VoZu6XcBrQ_E_O4rixrh)

It states in the SNRA text,

*“Investigations show that antiquities are offered to EU collectors from various non-EU countries, generally through internet auction sites or specialised online stores. Terrorist organisations may use concealment measures, such as IP-address spoofing, which makes it difficult to identify and determine the actual location of the seller. Exploitation of social media is also identified as more and more frequent tool so as to cut out the middleman and sell artefacts directly to buyers.”*

*“Conclusions: Although there is little evidence that such methods are used in the EU, it appears that the risk exposure is only emerging at present but may increase due to the geopolitical context. The legal framework does not allow for an efficient monitoring of such transactions due to the fact that obliged entities seem not to be aware of this terrorist financing vulnerability (no reporting, no record keeping). The level of terrorist financing vulnerability related to the purchase of artefacts and antiques is therefore considered as significant/very significant (level 3/4).”*

It is hard to see how the AML regime in the existing directive and the similar one in the proposed regulation will have any impact on those types of seller or business whose location is unknown – they could be based in any country in the world – and who make ad hoc sales over the internet.

Furthermore, the RAND report, when looking at the extent of antiquities trading (antiquities being the focus of TF allegations), states:

*“We find no evidence that illegal sales are occurring in large or even steady quantities on deep web platforms, such as Facebook or Telegram, and we find virtually no evidence of antiquities being traded on the dark web.”<sup>17</sup>*

RAND also devoted a chapter to the subject of “Antiquities Trafficking Online”, where it analysed antiquities trading on Arabic-language Facebook groups and reported that:

*“...users would share glamorous images of gold artifacts, treasures, and valuable antiquities, with occasional accounts of treasure-hunting explorations of finds that make the riches seem attainable. The group projected the idea that this was a world in which treasure hunting—looting—could yield wealth within easy reach. This curated image is largely an illusion. Using Google’s reverse-image search quickly reveals that the majority of the images posted on these groups are actually recycled images from news articles and museum websites. Similarly, images that show gold artifacts still buried in the ground are often photos from professional archaeological excavations or stock photographs ...”<sup>18</sup>*

To add to this, it should also be borne in mind that an increasing number of antiquities offered online are fake objects, not genuine antiquities obtained from illegal excavations. As RAND explained:

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<sup>17</sup> *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data* RAND Corporation Homeland Security Operation and Analysis Centre 2020, summary findings page (xii).

<sup>18</sup> *Ibid.*, page 54

*“Maamoun Abdulkarim, Directorate-General for Antiquities and Museums in Syria, said the percentage of fakes among looted antiquities seized in Syria and Lebanon had risen from 30 percent to 70 percent in the past three years....”<sup>19</sup>*

*“Perhaps more striking [about sales on eBay] is the high volume of sales from Thailand, a country not typically associated with Roman antiquity. An analysis of a sample of the individual sales suggest that many, or perhaps most, of these the items are fake.”<sup>20</sup>*

The SNRA’s envisaged scenario of internet sales was written before the publication of the RAND report, so the evidence produced by RAND will not have been taken into account.

Registered art trader businesses are not cash intensive businesses<sup>21</sup> processing a large number of anonymous transactions. If businesses do not adhere to the legislation already in place regarding cash transactions, they are breaking the law. Interestingly, as we have often stated for the art sector, the SNRA text concerning TF vulnerability also confirms the monitoring role of “*the financial institution to identify*” the “*real owner/buyer of the antiquities*” for non-cash transactions.

The section on the possible threat and vulnerability to money laundering presented by the trade in works of art continues in a similar vague vein to the sections addressing terrorism financing above.

Specifically, regarding the **threat of money laundering**, a short general paragraph in the SNRA is the basis for the conclusions.

*“Conclusions: This risk scenario may be an attractive tool for organised crime groups to convert the proceeds of crime in clean cash. However, it requires high level of expertise and is not a secure activity for them. The level of money laundering threat related to the trafficking of artefacts and antiques is therefore considered as moderately significant (level 2).”*

The first two short SNRA paragraphs describing the **vulnerability to money laundering**, are imprecise, misleading and inconclusive:

*“ a) risk exposure*

*Given its sensitive nature, the artefacts and antiques market tends to favour informal channels where there is no specific security or monitoring of the transactions. It involves payments in cash (sometimes high amounts) where the identification of the buyer is almost impossible.*

*b) risk awareness*

*The sector seems more aware about the money laundering risk than the terrorist financing ones. In several Member States, high value dealers receive relevant training and guidance. However, there is a very low level of suspicious transaction reporting (STR) which raises questions on the understanding of the list.”*

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<sup>19</sup> Ibid., page 39

<sup>20</sup> Ibid. page 80

<sup>21</sup> Neither the U.S. Internal Revenue Service IRS nor North American Industry Classification System NAICS list art intermediaries as cash intensive businesses

CINOA does not recognize the characterisation of art market entities provided by the first (risk exposure) paragraph above, concerning “informal channels” and “no specific monitoring of the transaction”. It would appear that the author of such comments has never visited an auction house or followed the operations of an art gallery. Had they done so they would realise that such businesses are similar to all other small and micro entities and are required to:

- Submit tax returns to the tax authorities
- Register for VAT
- Maintain accounts records to support their tax submissions and VAT returns
- When operating the VAT margin scheme (which most do), to maintain records of the names and addresses of buyers and sellers

The requirement to carry out customer due diligence in respect of any cash transactions above EUR 10,000 has been in place for many years. To conclude on the extent to which large cash payments are or are not being accepted without reference to data to back this up is speculative at best and could be misleading at worst. We suggest that the Commission should ascertain the extent of cash being used in the auction and dealer sectors – we know that international auction houses do not accept large sums of cash and in some Member States there are significant restrictions on its acceptance. Specialist businesses that are either registered with the tax authorities or members of trade bodies and often maintain a fixed shop premises, should not be confused with sellers of low value items available at flea markets, boot sales or pawn shops, where cash prevails. The latter types of operations are selling low value second-hand household items, which are unlikely to appeal to money launderers, due to their lack of salability, the long time they take to sell, the uncertainty regarding resale proceeds and the large volume of such items that would have to be handled in order to launder large sums of cash.

It is dangerous to draw too many conclusions in respect of the numbers of suspicious transaction reports (STRs) lodged by a particular sector. Low numbers of STRs could indicate that the incidence of suspected money laundering activity in a particular sector is low, not that the STRs are not being made when they should have been. We are aware that there is a tendency in some sectors (particularly the financial sector) to submit STRs in an extremely precautionary way, so we believe that the Commission should guard against drawing too many conclusions regarding numbers of STRs. A better metric would be the number of successful prosecutions brought as a result of STRs – low numbers of prosecutions would suggest a low incidence of criminal activity.

It is hard to see the link between the SNRA’s descriptions of risk exposure and risk awareness above and the conclusions (see below) concerning vulnerability that follow them, since it is equally possible that there are not many cash payments and that there is no reason to file STRs, as very little suspicious ML activity is being observed.

*“Conclusions: Despite the fact that the risk awareness is higher than that for terrorist financing, the assessment's other elements have common features. These include a low level of reporting and no evidence that cash payment limitations have limited the risks. The level of money laundering vulnerability posed by the purchase of artefacts and antiques is therefore considered as significant/very significant (level 3/4).”*

In the SNRA evaluations, anyone selling any kind of art work has been grouped together under the same blanket description of *high value goods – artefacts and antiquities* without a proper sectorial analysis. The art market is made up of different niche markets which operate quite independently of each other, depending on the types and ages of items being handled. We have

seen no evidence of risk factors being applied by the Commission to the different parts of the market. A good example of this is the different way in which the contemporary art market functions when compared with the market for historic works.

We find it particularly concerning that the conclusion above has been based primarily on an uninvestigated and unsubstantiated allegations that:

- cash payment limitations have not limited the risks; and
- the low number of STR reports submitted in relation to art transactions suggests high vulnerability

To back up its cash payment allegation it would be necessary for the Commission to compile data from before and after the introduction (and lowering) of the AML directive's cash threshold limits.

The above points demonstrate that there has been insufficient evidence for imposing AML measures on art traders in respect of transactions with a threshold as low as EUR 10,000.

The remaining text of the SNRA's art section which highlights the legal framework and controls and the mitigating measures, take up a full two pages which corresponds to about 50% of the section devoted to high value goods – artefacts and antiquities. We would have expected to read in this section about solutions to clearly identified problems based on evidence and risk, and not general speculation.

We strongly urge the Commission to carry out a reassessment of the risks of ML and TF in the context of the art market and to engage with trade bodies such as CINOA when doing so, thus ensuring that a more meaningful and realistic assessment of risk can be produced.

#### **A.5 Art transaction funds mainly pass through banks and VAT margin scheme rules require more detailed records of buyers, sellers and artefacts than for other retail sectors.**

The experience we have is that by far the largest proportion of transactions in the art market, by both number and value, flow through financial institutions and do not involve cash.

Art traders and art intermediaries, who are often shopkeepers, are already required by law to maintain a permanent record about each item sold and the party it was bought from and sold to. For example, Value Added Tax (VAT) registered traders are required by law to maintain certain records when they operate the VAT margin scheme for art works, and in doing so many traders keep a "stock book" which lists all the items purchased under the scheme. Inter alia, this can comprise a spreadsheet on a computer or a handwritten ledger. Traders in EU countries are expected to maintain the name and address details of all those from whom the goods in the stock book have been obtained and to whom they are subsequently sold, as well as a description and price for each item.

Compared with most other retailers, established art businesses' transaction records are frequently more comprehensive, due to the invoicing of unique objects. Most other retailers, selling items in the same price bracket, such as luxury goods, accept payment without noting the contact name or details of a customer. For example, someone who purchases several haute couture outfits and handbags could easily spend EUR 35,000 without having any questions asked regarding their identity or source of income, and simply leave the store with a credit card receipt and a bag full of merchandise. The fact is that most retailers do not obtain information

on the buyer and depend on the financial institutions through which the money flows to monitor the payment.

#### **A.6 Costs of implementing AML measures are not easily absorbed by micro-businesses and disproportionate to the likely AML benefit.**

Small, one or two people operated art businesses, as obliged entities, are required to take on substantial administrative work, regardless of the ML risk presented by the handling of EUR 10,000 works of art. Staff must be trained, or new staff hired, risk assessments carried out and policies and procedures put in place, either in house or outsourced, to immediately fulfill obligations should a sale, or linked sale, reach the threshold. The practicalities of these obligations require dedicated resources and an adequate infrastructure.

The EU Commission's impact assessment<sup>22</sup> does not address the question of the cost to micro businesses, such as art traders, of having to perform customer due diligence. In contrast, the United Kingdom's regulatory policy committee carried out an impact assessment on the transposition of the Fifth Money Laundering Directive into UK law and this provides an indication of the cost involved. It estimated that one-off familiarisation costs would be between £3.2 million and £5.2 million and ongoing annual staff training costs between £1.9 million and £2.9 million.<sup>23</sup> This amounts to additional costs of nearly £4,000 for each business (more than EUR 4,500) in the first year of operation and £1,500 (or EUR 1,800) for each year thereafter.

One can assume that these estimates can be applied to similar EU obliged entities as well. It is very unlikely that those shop keepers making occasional sales over the proposed threshold would be involved in money laundering schemes, but despite this they are expected to bear these annual costs.

As stated in recital 19 of the draft regulation:

*“It is important that AML/CFT requirements apply in a proportionate manner and that the imposition of any requirement is proportionate to the role that obliged entities can play in the prevention of money laundering and terrorist financing.”*

For many micro-businesses, whose sale volume of in-scope art works is irregular, these added expenditures are hard to swallow and moreover they represent a disproportionate cost to them when measured against the low probability of any money laundering prevention being achieved.

Furthermore, it would be far better for businesses to concentrate due diligence efforts on high value transactions, rather than to conduct “tick box” exercises in respect of low value transactions involving unremarkable art works that are unlikely to be used as ML vehicles.

#### **A.7 Art trade micro-businesses are not well-placed to effectively identify and guard against ML and TF.**

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<sup>22</sup> Impact assessment report - SWD(2021)190

<sup>23</sup> Regulatory Policy Committee, date of issue: 16 January 2020 [www.gov.uk/rpc](http://www.gov.uk/rpc) *Opinion: final stage impact assessment Origin: European RPC reference number: RPC-4432(1)-HMT* p. 2 & 3

Today's art market comprises almost entirely bricks-and-mortar businesses which do not have access to the resources necessary to implement sophisticated compliance programs. These micro-businesses have thin margins and semi-liquid assets. The only art businesses today which could be considered "sizable" are international auction houses. Large established businesses such as these are in a position to apply customer and item due diligence measures tailored to the origin and value of the item, the client, the market demands, available data, and resources, but businesses with resources to do this using a compliance department represent a tiny minority of art businesses. Many dealers handling fine art already have tailored and proportionate codes of professional standards, which can be interpreted in such a way as to allow their measures to reflect the size of the business. Large international auction houses already implement voluntary compliance protocols worldwide, which are aligned with AML practices. In the 2019 research paper *Anti-money Laundering Regulation and the Art Market*, researchers from Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK, discuss the appropriateness of imposing wholesale AML restrictions on the art market and on art dealers in particular. The abstract reads:

*"Following concerns that the art market is being used to launder criminal money and fund terrorist activities, measures have recently been introduced to subject the market to the anti-money laundering (AML) regime – such as the EU 5th Money Laundering Directive (2018) and the US Illicit Art and Antiquities Trafficking Prevention Bill (2018).<sup>22</sup> The expansion of the AML regime to include art dealers has been attributed to the failure of regulation and the vulnerabilities inherent in the market to laundering. This paper considers vulnerabilities to money laundering and examines the types of regulation that apply in the art market. The paper then goes on to analyse the application of AML criminal law and preventive measures in the UK context, demonstrating that art dealers can be criminally prosecuted for engaging in normal commercial activities. Even if dealers do comply with AML reporting rules, such compliance can significantly impact upon their business. These are important considerations given the government's emphasis on striking a balance between the burdens on business and deterring money laundering activities. Drawing upon the AGILE analytical framework, we remain sceptical about the continued expansion of the AML regime."<sup>24</sup> "Moves to include art dealers within the AML framework are further evidence of a wider trend, in 'policing beyond the police'<sup>90</sup> or the 'responsibilization strategy',<sup>91</sup> whereby private actors act as 'frontline workers' in efforts to tackle money laundering.<sup>92</sup> In her study involving bank compliance officers, Verhage reports that 'compliance and AML can be seen as a type of outsourcing by the government'.<sup>93</sup> Indeed the UK AML/CTF Action Plan specifically emphasises that: 'The private sector forms the first line of defence against money laundering and terrorist financing'.<sup>94</sup> Given that private actors act as gatekeepers to the financial system, then – so the reasoning goes – they ought to be required to play a role in protecting the integrity of the financial system.<sup>95</sup> But is it really their responsibility?*

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<sup>24</sup> *Anti-money laundering regulation and the art market* by Saskia Hufnagel and Colin King  
Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of  
London, London, UK. \*Corresponding author. Email: colin.king@sas.ac.uk

*Banks and others have performed this role for over two decades but, as Verhage reports, there is no consensus as to whether AML is a private sector task.<sup>96</sup>”<sup>25</sup>*

This independent study raises key points for consideration on effectiveness and roles. We believe that it would be unreasonably burdensome for micro-businesses to also apply the same regulatory requirements drawn-up for much larger financial institutions which already monitor non-cash transactions. We believe that all parties, regardless of their sector, should be vigilant against possible ML, but small private sector, low-risk micro-businesses are ill equipped to fulfill AML measures and should not be subject to the regulation.

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<sup>25</sup> p.140, *Anti-money laundering regulation and the art market* by Saskia Hufnagel and Colin King Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK.\*Corresponding author. Email: colin.king@sas.ac.uk



## **B: Applying a More Proportionate Approach**

**There needs to be a focus on high risk transactions that are the most likely to attract those who wish to launder money or fund terrorism and a filtering out low risk sales by defining the in-scope art market sector using a transaction threshold of EUR 500,000.**

### **B.1 Applying the Pareto Principle will ensure a proportionate approach to the targeting of higher risk art market transactions**

Based on available data, a more proportionate risk-based approach focused on high risk transactions should yield the desired results of preventing illicit funding involving art works. It will also help eliminate the financial and administrative burden for businesses selling items less attractive to money launderers.

From what we know of the few reported ML cases allegedly involving the art market, schemes consist of many layers to hide the real buyer and source of money and are developed to make international purchases of expensive well-known artists' works. A more proportionate approach to AML should focus on high value transactions of artworks, which can more easily be resold. High value works by known artists are better suited to being used to launder money or fund conflict than low value purchases, which are harder to sell as they do not have an international market.

The current monetary threshold of EUR 10,000 for "in-scope" transactions, which is appropriate for cash transactions, is far too low for non-cash transactions and in respect of artworks priced in the low tens of thousands of euros will subject AML controls on customers who are extremely unlikely to be part of a money laundering scheme. We are not aware of evidence that works of art priced in the low tens of thousands of euros are involved in money laundering and the extra measures risk disrupting all commercial transactions with a value over EUR 10,000.

Our risk-based approach takes into account the Pareto Principle<sup>26</sup> or 80-20 rule, the rule of the vital few and the trivial many. In the 80-20 rule, you prioritize the 20% of factors that will produce the best results. Therefore, we suggest concentrating on the higher-risk, high value sales.

### **B.2 Higher risk transactions involve recognized high value, non-speculative art works.**

Risks for potential money laundering can be evaluated in terms of whether art works are likely to maintain or increase their value and of their liquidity, in other words, their investment characteristics for being considered non-speculative. Using these characteristics, "blue chip art" is an example, of non-speculative or "investment grade" art. Blue chip artworks are those which have been created by the most important and widely recognized artists, whose position in the auction market has been solidified by exceptional sales volumes over the course of several years. They consist of high value works, usually by well-known artists, which can easily be resold.

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<sup>26</sup> "The 80-20 rule, also known as the Pareto Principle, is an aphorism which asserts that 80% of outcomes (or outputs) result from 20% of all causes (or inputs) for any given event. A principle of the 80-20 rule is to identify an entity's best assets and use them efficiently to create maximum value. This "rule" is a precept, not a hard-and-fast mathematical law." <https://www.investopedia.com/terms/1/80-20-rule.asp>

The division between established or “blue chip” and speculative art can be complex, however, price serves as a strong signal in the marketplace. While you can easily purchase a painting for as little as EUR 10,000 at galleries or at auction, in the hope that it will one day be worth millions, the chances of doing so are as likely as winning the lottery. On the other end of the spectrum, so-called “investment grade” art, which have a six-to-eight-digit price tag and has a deep collector base, have much more predictable appreciation rates. The artists in this category are often household names, with a track record of achieving high, often record-breaking, auction sales.<sup>27</sup> They represent a safer and more reliable investment, since their values often remain stable or increases over time. Furthermore, they are easier to sell as the art works are scarce and in high demand for those who can afford them. The majority of art works by lesser known speculative artists have a slow turnover and often no resale value. It is reasonable to assume that a criminal wanting to launder illicit funds is surely more likely to target higher value works than to run a greater risk of being detected when making multiple low value purchases which will be difficult to sell.

### **B.3 Using a risk-based approach and art market sales statistics, CINOA proposes an increase in the transaction threshold to EUR 500,000.**

Taking into account a risk-based approach and the statistics relating to sales in the art market, the high risk works make up a small percentage of sales by number, but still represent a significant proportion by total value. Most registered art trade businesses have a limited number of clients, with a high proportion being locally based (i.e. in the same country), and have very low annual sales turnovers. These statistics, which render most transactions involving art low risk, need to be taken into account when establishing AML measures.

For auction houses in 2020, the EU had only a small part of the global art market since the three largest public auction hubs are located outside the EU, and globally second-tier auction houses had an average of 1,260 buyers of which 73% were local.<sup>28</sup> The great majority (92% by number) of works sold for less than \$50,000 representing just 12% of sales values. 54% of the total market value corresponds to works selling for more than \$1 million each (EUR 862,000) but just 1% of the total number of works sold.<sup>29</sup>

For dealers in 2020, globally the majority (72%) had 50 clients or fewer, while just 15% had over 100.<sup>30</sup> The estimated median number of works sold per dealer was 34<sup>31</sup> and most (82%) works sold for less than \$50,000 (EUR 43,000). As was the case for auction houses, works sold for more than \$1 million each (EUR 862,000) corresponded to just 1% of the total number of works sold.<sup>32</sup>

Taking into account these data, AML measures should subject a variety of business models and clients to more scrutiny by targeting high value art work transactions, particularly “investment grade” art but also speculative art, while filtering out the lower priced, lower risk art.

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<sup>27</sup> <https://medium.com/@masterworksio/what-is-blue-chip-art-and-how-does-it-stack-up-against-the-s-p-500-2d2abe23a96f>

<sup>28</sup> The Art Market Report 2021 by Dr Clare McAndrew <https://www.artbasel.com/about/initiatives/the-art-market> page 115

<sup>29</sup> Ibid. page 120

<sup>30</sup> Ibid. page 74

<sup>31</sup> Ibid. page 60

<sup>32</sup> Ibid. page 60

For transactions not carried out within freeports<sup>33</sup>, we suggest that a more appropriate figure to include in the regulation for sellers and intermediaries involved in the sale of art would be to define the in-scope sector as relating to both occasional and linked transactions above EUR 500,000.

More specifically, CINOA recommends that such an AML measure would:

- a. concentrate on the top 50% of art traders with a turnover of more than EUR 500,000.<sup>34</sup>
- b. focus on the high-risk transactions over EUR 862,000 representing more than 50% of the market value
- c. cover transactions in businesses which have sufficient resources to properly fulfil AML obligations.

Such an approach would relieve micro-businesses (small dealers and small auction houses) from the resource burdens associated with registration and compliance.

It should be clear that micro-businesses under the threshold, are already expected to keep accurate client, transaction and item records and practice in-house due diligence measures.

#### **B.4 A higher threshold will help protect businesses from unintended negative consequences on the sector, such as being “de-banked”.**

Applying a higher threshold will also help mitigate against unintended consequences of AML, as highlighted by the University of London 2019 research *Anti-money Laundering Regulation and the Art Market*:

*“So, for example, dealers might become more risk averse leading to ‘de-risking’. In other sectors, there is evidence of, inter alia, remittance firms being de-banked and correspondent banking accounts being closed due to banking sector concerns as to AML compliance.”*<sup>35</sup>

We are aware that this unintended consequence is already occurring in the market. We are aware of some cases of dealers being refused business by banks simply due to concerns linked to perceived risks of ML in the art market, despite there being no data to support such an assessment.

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<sup>33</sup> For freeports, CINOA does not have any insight and accepts that, as stated in Chapter I, Article 3 lists the obliged entities which includes among other sectors:

(j) *persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out within free zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10,000 or the equivalent in national currency;*

<sup>34</sup> The Art Market Report 2021 by Dr Clare McAndrew <https://www.artbasel.com/about/initiatives/the-art-market-figure-2.1> page 53

<sup>35</sup> p.146, *Anti-money Laundering Regulation and the Art Market* by Saskia Hufnagel and Colin King Queen Mary, University of London, London, UK and Institute of Advanced Legal Studies, University of London, London, UK.\*Corresponding author. Email: colin.king@sas.ac.uk

### **C: Suggested Practical Measures**

**Introduce practical measures that will improve the ability of art businesses to implement the AML regulations.**

#### **C.1 Remove ambiguity by more carefully defining and rephrasing “*persons trading or acting as intermediaries in the trade of works of art*” (article 3 (3) (i)).**

##### ***“Persons trading or acting as intermediaries in the trade of works of art”***

The positioning of verbs and nouns in this phrase renders it confusing, as it is not clear which verb acts on which noun. We presume that the words “as intermediaries...” work solely in conjunction with the verb “acting”, rather than with the verb “trading”, in other words:

Persons:

- (a) trading or
  - (b) acting as intermediaries in the trade of
- works of art.

Consequently if persons acting as intermediaries in the trade of works of art are removed from the sentence, you are left with “Persons trading works of art”, which lacks an “in”.

A better wording would be:

Persons:

- (a) trading in or
  - (b) acting as intermediaries in the trade of
- works of art.

This reduces to “Persons trading **in** or acting as intermediaries in the trade of works of art”.

We therefore recommend the insertion of “in” after the word “trading”.

##### ***“as intermediaries”***

We suggest that there should be a clear definition of the term “intermediaries” and that it should refer to those people who have a direct financial involvement in a sale (such as agents, auctioneers, dealers, etc.).

Those who introduce buyers to sellers, ‘introducers’, should only be within the scope if they receive a financial value which directly relates to their active participation in the transaction.

Unless this point is made clearer there will continue to be confusion in the market.

We see no reason why the act of shipping (by road, air, fast parcel courier service, etc) should be within scope and likewise those simply valuing a work of art, or the artisans who perform restoration or repair work on it, should be out of scope when they are providing those services.

However, if they act in a dual capacity and also receive a financial value which directly relates to an active participation in the transaction then to that extent they should be considered intermediaries.

The following should therefore be specifically excluded from scope: people carrying out tasks who are not directly involved in a transaction, but who may be paid for information or specific knowledge not related to the sale transaction itself e.g. framers, restorers, shippers, advisors, valuers or people providing contact information but who do not actively participate in purchase/sale transactions.

**Works of art :** It is important to have a workable definition of a ‘work of art’ on which the industry can rely internationally. Such a definition already exists in EU financial legislation and we suggest that the ‘works of art’ definition should be linked to that in Annex IX of the EU VAT Directive (2006/112/EC) which is explicit, well understood by the industry, the authorities and customers. Given the international nature of the art market, a commonly held definition would help facilitate the smoother running of the market and remove misunderstandings for buyers and sellers alike.

**C.2 Review and refine the list of higher risk factors in paragraph (2)(e) of Annex III to reflect known risks, to recognise that persons trading in works of art are already defined as in-scope and to prevent financial institutions from withdrawing services from entities engaged in lawful activity in the listed products.**

The current list of potentially higher risk factors relating to the art market in Annex III’s paragraph (2)(e) is:

*“transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species”*

This list is confusing and would cover the businesses trading in art works which are already in scope, but also provides what appears to be a somewhat random inventory of goods. What is the justification for suggesting that there is a higher money laundering risk in selling, let us say, an inexpensive medieval German polychrome statue of a saint or a small quantity of protected species of butterfly?

Many of the listed items that are art-related are already covered by other stringent trade rules, as explained below:

- The meaning of the term “*Cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value*” is extremely broad and imprecise and for those categories of item to which the word “importance” applies, the meaning depends on whether they are protected by the laws and regulations of the country where they were created and/or discovered. Such items are already covered and controlled by the new EU regulation on the Import of Cultural Goods and by regulation EC 116/2009 concerning the Export of Cultural goods.
- Regarding “*ivory and protected species*”, the EU’s internal and external trade is already extensively covered and controlled by other legislation. In the EU, CITES is implemented through Council Regulation (EC) No 338/97 and associated Commission Regulations

(jointly referred to as the ‘EU Wildlife Trade Regulations’). In the case of elephant ivory, the EU has adopted stricter measures than CITES provisions and is in the process of further refining the regulation and guidance document.

As explained above, the list is very generalized and imprecise. Although we fully understand that the intention of the list is to give guidance concerning factors which could *potentially* indicate a higher risk of money laundering or terrorism financing, and that not all examples of items within the categories listed will necessarily present a higher risk, this is not how some banks are viewing the situation.

As noted elsewhere in this submission we are aware of cases where banks are denying business to dealers in works on the basis that they are historical and cultural items that appear to be covered by the (2)(e) list. This is particularly unfair for small businesses handling legally acquired cultural objects, when those very same banks (rightly) continue to maintain bank accounts for businesses buying and selling oil, such as the large refining and petrol distribution companies.

In the section A: Revisiting the Rationale of this document, it has been explained in detail why most works of art do not represent a risk of money laundering, terrorist financing nor of illegally removed items, so it is highly inappropriate for Annex III to imply that cultural artefacts always represent a high risk. This is even more so when you consider that no substantive evidence has been put forward to suggest that they do represent a high risk.

For all the reasons provided above we therefore suggest exclusion of those items adequately covered in other EU legislation so the text reads:

*“(e) transactions related to oil, arms, precious metals and tobacco products. ~~cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species;~~”*

Alternatively, if some cultural artefacts are to remain listed we strongly recommend that it be made clearer in the regulation’s text that inclusion of particular products, services and transaction or delivery channels on the list does not in itself indicate that all forms of these represent high risk activity.

### **C.3 Publish AMLA regulatory guidelines and technical standards at least 12 months before the regulation goes into force, including a definition of a “customer” as it applies to the art market.**

For the new regulation to be adhered to, it is vital that entities have adequate time to set up their internal rules in compliance with the regulation.

We note that some Member States were extremely slow to provide guidance to the art market sector following the addition on 10 January 2020 of the art market into the AML regime via the Fifth Anti-Money Laundering Directive.

We therefore request that:

- The EU’s Anti-Money Laundering Authority (AMLA) guidance should be published no less than 12 months prior to the regulation coming into force. This will not only provide time for obliged entities in Member States where domestic legislation does not

fully reflect the Fifth AML Directive to put in place policies, controls and internal and external reporting procedures, but also give them adequate time for training of employees. Entities' written procedures may need to be updated and enhanced in order to ensure full compliance with this regulation.

- Part of the AMLA's Guidance should be tailored specifically to traders or intermediaries involved in the sale of works of art. The way in which the regulations will operate for those handling art works is very different from those in the financial sector and the experience of countries such as the United Kingdom is that a great deal of time will need to be devoted to interpreting those measures in the regulation which were primarily designed for financial services so that they work for traders in art. The relationship between an art trader and a purchaser of a work of art is not a continuous one unlike the case of a bank or accountancy firm but relates to one particular transaction. At the time the transaction is entered into it is not known whether the purchaser will in future make a further purchase.

The AMLA's Guidance will need to address the question of defining the "customer" of an art business:

Who is the customer of an auction house?

Who is the customer of an art dealer?

Who is the customer of an art agent?

It would also be reasonable to expect that tailored training for art market obliged entities, access to required information and databases as well as a helpdesk specifically geared to art businesses are provided to entities at no cost.

#### **C.4 The AMLA should publish standards against which AML/CLT service providers operate and issue a list showing the providers which achieve each standard**

Given the size of most business in the art sector, meeting some customer due diligence requirements will be very difficult for small shop-keeping entities which are not staffed for this kind of work. Information received about a customer must ascertain information such as their source of wealth, the extent of control over an entity for express trusts and similar legal entity arrangements, knowledge of close associates of politically exposed persons and any cross border information which might be available in a foreign language (depending on access to databases and translations). For many, engaging a third-party to perform this function is the only solution.

Anti-money laundering statistics show a worldwide growth for the AML solutions market. The global market for anti-money laundering solutions is expected to grow at a compounding annual growth rate of 15.6% from 2020 to 2025. This means that from \$2.2 billion in 2020, the market will be valued at \$4.5 billion by 2025.<sup>36</sup> Given the increasing multitude of businesses offering AML solutions, businesses need reassurance through EU certification or approval of third-party service providers to help them select a solution they can trust and ensure that they have carried out their customer due diligence obligations.

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<sup>36</sup> <https://legaljobs.io/blog/money-laundering-statistics/>

For this reason, we believe that the Anti-Money Laundering Authority should publish minimum criteria that a service provider would be expected to meet when providing information, storing data and carrying out searches of databases. A published list of service providers and the extent to which they meet these criteria would give valuable information to small entities that cannot afford to employ compliance staff.

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## Annex A

### Comparing FIU reports from various European countries concerning the share of suspicious transaction reports (STRs) made by art market operators

As most countries issue a yearly report on Money Laundering by the Financial Intelligence Unit (FIU), we reviewed the figures given on money laundering through the reporting of Suspicious Transactions (STRs), especially those of **financial institutions** such as banks and credit card companies compared with **non-financial obliged entities** like jewelers, traders in vehicles and art and antique dealers. Unfortunately, the format of reporting is different in every country making comparisons difficult.

**The Netherlands report** (table 6) singles out reporting from the side of Dealers in: Precious stones, Other goods, Vessels, Vehicles and Art and Antiques which makes comparison possible and one can calculate a percentage of the total. There is no reason to believe why this comparison would be entirely different in other countries. The relevant figures speak for themselves.

Total reporting of suspicious transactions (STR) in 2020	<b>103,947 = 100%</b>
Reporting of suspicious transactions from the dealers in vehicles	<b>574 = 0.55%</b>
Reporting of suspicious transactions from the art & antiques trade	<b>0 = 0%</b>

Please keep in mind that suspicious transactions are reported but nowhere the final result of investigations in these transactions in the form of convictions is reported.

The Netherlands report also reports in Table 9 on financial sums corresponding to single reported cases.

The total Netherlands value of all STR's is almost **€15 billion**

About **99,000 transactions** below € 1,000,000 each, represent about 99 % of transactions, with a total reporting of about **€2 billion**. That is a share of only 14.3% of the total amount. Around **900 transactions** over € 1,000,000 each, represent about **1 %** of transactions by number, amounted to a total of about **€13 billion**. That represents **86%** of the total value.

FIGURES FROM THE MAIN EUROPEAN COUNTRIES SHOW SIMILAR RESULTS:

#### Germany FIU 2020

**Total** reporting of suspicious transactions **144,005**

Reporting of suspicious transactions by "Goods Traders"; **436 = 0.3%**

As "Goods Trader" art dealers are obliged to report according to the AML.

Güterhändler (=goods trader includes Jewels, vehicles and art)

The art & antiques trade is not mentioned separately

#### France FIU 2020

Total reporting of suspicious transactions **111,671**

Marchands de biens précieux et d'arts: reported suspicious transactions **22 = 0.02%**

#### UK FIU 2020

Total reporting of suspicious transactions **573,085**

Reporting by market operators (page 9) "High value dealers" **370 = 0.06%**

The art & antiques trade is not mentioned separately

#### The Netherlands FIU 2020

Total reporting of suspicious trans actions **103.947**

Reporting of suspicious trans actions from the art & antiques trade **0 = 0%**

#### **Austria FIU 2019**

Total reporting of suspicious trans actions **3.073**

Nr of suspicious Reporting of “gewerbetreibende” Commercial activity **7 = 0.23%**

The art & antiques trade is not mentioned separately

#### **Sweden FIU 2019**

Total reporting of suspicious trans actions **21.709**

Nr of suspicious Reporting of Professional trading in goods\* **83 = 0.38%**

The category professional trading in goods **includes** auction centres and companies trading in vehicles, scrap metals, precious stones, **antiquities and art** with a value that exceeds EUR 15,000.

#### **Belgium FIU 2020**

Total reporting of suspicious trans actions **28.649**

Reporting by market operators **0** (page 53) = **0%**

The art & antiques trade is not mentioned separately

#### **LINKS TO THE FIU REPORTS QUOTED ABOVE:**

Germany

[https://www.zoll.de/DE/FIU/FachlicheInformationen/Jahresberichte/jahresberichte\\_node.html](https://www.zoll.de/DE/FIU/FachlicheInformationen/Jahresberichte/jahresberichte_node.html)

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France [https://www.economie.gouv.fr/files/2021-07/RA\\_TRACFIN\\_2020\\_VDEF\\_0.pdf](https://www.economie.gouv.fr/files/2021-07/RA_TRACFIN_2020_VDEF_0.pdf)

UK <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/480-sars-annual-report-2020/file>

The Netherlands [https://www.fiu-nederland.nl/sites/www.fiu-](https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/5324-fiu_jaaroverzicht_2020-eng-web_v1.pdf)

[nederland.nl/files/documenten/5324-fiu\\_jaaroverzicht\\_2020-eng-web\\_v1.pdf](https://www.fiu-nederland.nl/files/documenten/5324-fiu_jaaroverzicht_2020-eng-web_v1.pdf)

Austria [https://www.bundeskriminalamt.at/308/files/Geldwaesche\\_2019\\_20200623.pdf](https://www.bundeskriminalamt.at/308/files/Geldwaesche_2019_20200623.pdf)

Sweden [https://polisen.se/siteassets/dokument/polisens-arsredovisning/fipos-arsrapport/financial-intelligence-unit\\_annual-report-2019\\_webb.pdf/download](https://polisen.se/siteassets/dokument/polisens-arsredovisning/fipos-arsrapport/financial-intelligence-unit_annual-report-2019_webb.pdf/download)

Belgium [https://www.ctif-cfi.be/website/images/EN/annual\\_report/ra2020-en.pdf](https://www.ctif-cfi.be/website/images/EN/annual_report/ra2020-en.pdf)

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