

Tick tock: Regulations on the import of non-EU-cultural goods are now in effect. How will this affect the international art market?

27 JUNE 2019

CATEGORY:
[ARTICLE](#)

CLIENT TYPES:
[ART AND CULTURAL INSTITUTIONS](#)



As anticipated in [our article published on 19 February 2019](#), the Regulation on the import of cultural goods (EU 2019/880) (the “Regulation”) was formally adopted by the European Parliament and European Council on 17 April 2019. The Regulation addresses the import and storage in the EU of cultural goods. The impetus for the Regulation was the EU’s intent to prevent the illegal removal of cultural goods from non-EU Member States in order to combat the illicit trafficking of cultural goods and the overall preservation of cultural heritage. Following its official publication on the website of the Official Journal of the European Union on 7 June 2019, the Regulation has entered into force **today, on 27 June 2019**. What happens next?

Entry into force

While the Regulation applies from the date it enters into force, it provides for implementing acts to be adopted within a discretionary 2 year period (following its entry into force, and then for an electronic database system, described below, to be operational within 4 years after the first of those implementing acts). Specifically, the prohibition of the import of cultural goods that have been unlawfully removed from their non-EU country of origin will apply from **December 2020**. For non-EU cultural goods exceeding 250 years in age, as well as those older than 200 years valued at more than EUR 18,000, the Regulation, dictating the requirement of an import licence and an importer statement respectively, will apply from the day the electronic database system becomes operational, or at the latest from **28 June 2025**. It can thus be expected that the Regulation will become effective in its entirety by then.

A centralised electronic database system

In order to facilitate the storage and exchange of information regarding import licences and importer statements, the EU Commission will establish a centralised electronic database system through which primary (import licences and importer statements) and supporting information (evidence on the lawful export from third countries and information that is conducive to identification) will be documented and accessible across Member States. UNESCO has recommended the use of an Object ID standard to assist in the description of cultural goods.

Retention and sharing of information submitted to the electronic database system

EU Member States and the EU Commission will collect personal data only for the purposes of this Regulation or in duly justified circumstances for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. The processing of personal data for this Regulation will respect the right for private and family life recognised in the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and the Charter of Fundamental Rights of the European Union. This personal data will be stored for a period of 20 years, after which it shall be erased.

The effect of Brexit

Currently, there are no licensing requirements for the import of cultural goods into the UK. From today’s point of view, the Regulation applies in the same way it applies in all other EU Member States. By the time the Regulation becomes effective in its entirety, if the UK was to have left the EU while remaining in the customs union, like other EU law, the Regulation would be transposed into UK law on the date of exit. If on the other hand, the UK was to have exited the EU by leaving the customs union, the Regulation would no longer automatically apply in the UK, and it would then be up to UK national legislators to decide whether to mirror the EU measures. The benefit of the UK still adopting the Regulation even if

outside of the customs union would be the lack of disruption and administrative expenses to the UK. However, this would be at the opportunity cost of making London a more flexible and attractive art market for the import of cultural property goods.

Impact on players in the international art market

Potential buyer deterrence at international art fairs

While there are provisions considered for temporary admission at international art fairs, these don't apply for national buyers who are looking to keep their purchased artworks in their local collection. In other words, an artwork purchased by a French art collector at Frieze in London that is to remain in his collection in France after purchase, would require a licence (and not just an importer statement). The seller would have to await receipt of the licence before finalising the deal which could deter the buyer, and could thus lead to lost sales, as pointed out by Clinton Howell, President of CINOA (International Confederation of Art and Antique Dealer Associations).

Increased administrative costs

Following the 5th Anti-Money Laundering Directive of April 2018 introducing more stringent customer due diligence standards, the increased documentation under this Regulation further adds to the aggravation of dealer associations across Europe. Anthony Browne, the chairman of the British Art Market Federation, says the regulations would "set levels of due diligence that are unattainable, imposing licensing costs that would make a significant part of the market uneconomic and cause lengthy delays that would make the temporary import of goods for exhibiting at fairs impossible." CINOA opposes the regulations because they would "add costs and paperwork to the operation of art and antiques businesses throughout Europe."

Lack of differentiated treatment of objects

It is unclear how the Regulation will apply to different types of objects. For example, dealer associations, particularly in the realm of antiquarian books, argue that the Regulation is poorly thought-out. Sally Burdon, the President of ILAB (International League of Antiquarian Booksellers), says that "the legislation is not workable for antiquarian booksellers, European librarians, private collectors or the many others involved for business or pleasure with old books or manuscripts." The ILAB advocate for an upward adjustment to the minimum age threshold of currently 250 years, as well as for an elimination of the requirement to provide documentation on the country of creation or discovery. According to Sibylle Wieduwilt from the Buch- und Kunst Antiquariat Tresor am Roemer, Germany, "As much as 20% of printing in 15th-century Venice was done for England. The books were printed in Italy, then maybe bound in France, illuminated in Belgium then sold to England—what's the so-called 'source country' then? Archaeological artefacts and books are two completely different things and should not be treated in the same way."

Withers' international art team will be monitoring and providing updates on the implementation of the Regulation by EU Member States. Please reach out to any of our team members for further information.

Authors

Eleni Polycarpou

PARTNER | LONDON

Litigation and arbitration

 +44 20 7597 6157


eleni.polycarpou@withersworldwide.com

Diana Wierbicki

PARTNER | NEW YORK

Art law

 +1 212 848 9857


diana.wierbicki@withersworldwide.com

Amanda A. Rottermund

ASSOCIATE | NEW YORK

Art law

 +1 212 848 9892


amanda.rottermund@withersworldwide.com