



IADAA BRIEFING ON

Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU

The final report from Deloitte for the
European Commission

Submitted in June 2017

(published in September)

EXECUTIVE SUMMARY

- The European Commission's 199-page [Deloitte report](#) ¹ into tackling cultural property trafficking now confirms that **there is no evidence at all** that terrorism-related cultural goods are entering the EU, or that an illicit market in cultural property run by organised crime exists.
- **Despite this, the European Commission plans to press ahead with more restrictive import/export legislation from January 2019 to tackle a problem it has identified does not exist, even though the Deloitte report acknowledges this will damage the international art market.** ²
- The findings come after more than a year of investigations involving extensive research, consultation and analysis by Deloitte.
- The conclusion echoes the findings in earlier independent research, operations, investigations and reports conducted by the UCL, CAT (Centre d'analyse du Terrorisme) and the Dutch National Police War Crimes Unit, that were handed to the Commission on March 30th 2017 by art market representatives ³
- Despite consistently failing to find evidence across all of these initiatives and the extensive nature of its own investigation, the Deloitte report concludes that new, tighter measures are required because "the relatively low level of seizures could indicate the weaknesses of the current import controls system". (p.127)
- So if the report had identified new evidence, it would have justified the new measures, while the lack of evidence is simply seen as a failure of the system, thereby also justifying new measures. In other words, whatever the outcome, the European Commission would demand tighter import/export restrictions for cultural property.
- Although the European Commission promoted this as a mass consultation exercise, the Deloitte report has not published some important responses from member states, market operators or international organisations – in other words those most likely to be affected by the proposed changes – but has restricted itself to answers that support its case. This could explain why the three most important questionnaires are lacking in the appendix of the Deloitte report. ¹
- Deloitte put forward four possible solutions, but admits that all would be damaging to the art market and European interests. ⁴
- All of this would be tied into an overarching international database, require a huge budget, additional training for customs officials, enforced cross-border co-operation and access to often technologically incompatible national databases.
- Obligations under Object ID declarations would quickly make it uneconomic to import/export low-value cultural property, a fact the Deloitte report recognises. ⁵
- Despite the evidence in the report, the European Commission has chosen to base its decision on claims and statistics that are either wrong or have no evidence to support them, as set out in the fact sheet it published to accompany its findings. ⁶
- The European Commission's impact assessment, published on July 13, refers to the Deloitte report only three times to support its claims (footnotes 45, 55 and 61),

noting that it has not yet been published (although it had been submitted in June). Meanwhile it ignored extensive evidence in the report that overwhelmingly countered its claims.

- According to the Deloitte report, since 2013 “only a very limited number of [the 28] Member States has actually seized cultural goods moved in breach of Regulation No 1210/2003 and Regulation No 36/2012 [EU sanctions against imports from Iraq and Syria, respectively].”
- The Member States indicating they have actually traced and seized such goods have only done so in a limited number of cases – the report mentions only five despite media coverage giving the impression that Europe is being flooded by such illicit cultural property. None of these has been linked to terrorist activities.⁷

IADAA chairman Vincent Geerling said: “The Deloitte report finds no evidence to justify legislating yet puts forward proposals for doing so. It acknowledges that those proposals will damage the market, but has prompted the European Commission to propose legislation that is very costly but ineffective to protect cultural property.”

“Effective legislation has been in place for some time to deal with trafficking of this nature. The Commission should acknowledge this instead of adding a whole new layer of damaging regulations that will help nobody.”

FOOTNOTES

1. Deloitte’s final report was submitted in June 2017 to the European Commission, Directorate-General for Taxation and Custom Union (<http://goo.gl/iWyMwF>). It related to the study on *Fighting illicit trafficking in cultural goods: analysis of customs issues in the EU*. The study provides for an analysis that may contribute to an impact assessment for a Commission Proposal for EU measures that would regulate the import of cultural goods into the EU in order to tackle the issue of trafficking in cultural goods imported from third countries.

2. “Finding the balance between the interests of traders and the interests of the authorities to combat trafficking in cultural goods is difficult, particularly with regard to this topic. Imposing a too heavy burden on traders could result in the impediment of licit trade, potentially even enhancing the trafficking in cultural goods. “Nonetheless, considering the current state of play, the authorities are not adequately covered by a legal framework safeguarding the respect for currently existing rules and to effectively act against the trafficking in cultural goods.” (p.158) See also (<http://goo.gl/EMKAzN>)

3. See:-

- King’s College London report: ICSR-Report-Caliphate-in-Divine-Decline-An-Estimate-of-Islamic-States-Financial-Fortunes. 2017. (See pages 8, 9 and 11): <http://goo.gl/VidSZj>
- Dutch police war crimes unit report October 2016: Cultural Property War crimes and Islamic State. See page 6, 7, 28, 30, 32, 34, 49, 51-52, 60-61: <http://goo.gl/rNhQgb>

- Centre d'analyse du terrorisme: Note-intermédiaire-commerce-illicitedécembre-2016. <http://goo.gl/iPv2tx>
- IADAA Pandora analysis: Operation Pandora shows that Europe is NOT a haven for cultural property looted from war zones. See <http://goo.gl/145oH7> and <http://goo.gl/8othH3>

4. The Deloitte Report solutions and flaws, as set out in in the report:-

- Declarations by importers: The system will rely on the importer's good faith, while depending on the honesty of an exporter not subject to EU jurisdiction. This could result in false information for which the blameless importer would be held responsible, creating a burden for importers. "The system will rely on the importer's good faith. Moreover the information about the good that the importer will have at his/her disposal will come from the exporter to a large extent. The identification could still result in false information on the good. The importer would however bear the responsibility for such false statements. This declaration will create a burden on all EU importers who want to import goods that potentially fit in the definition of the cultural goods." (p.164)
- Declarations by exporters: Lack of jurisdiction means enforcement would be difficult/impossible. Costs and possibly prohibitive delays caused by processing would also damage trade and add to EU burden. "Many third countries do not provide for such certification would effectively mean that all imports of cultural goods from these countries would be blocked. Even for countries that do provide for such export certification, the lack of arrangements for administrative co-operation between them and the EU which would allow verification (cross- checking with the exporting country's customs) of the certificates by EU customs, means that these imports would de facto also be blocked." (p.165 - p.168)
- Certification (licensing): "Especially in conflict areas, there is not always an authority available to issue a certificate; Especially in conflict areas, the third country authorities could be affected by negative influences, essentially resulting in the untrustworthiness of the certification." Certification also requires a pre-existing administrative cooperation agreement between the EU and the third country, which may not be in place. (p.155 and p.156)
- "Finding the balance between the interests of traders and the interests of the authorities to combat trafficking in cultural goods is difficult, particularly with regard to this topic. Imposing a too heavy burden on traders could result in the impediment of licit trade, potentially even enhancing the trafficking in cultural goods." (p.158)

5. (see DR p.149, p.151 and p.154)

6. eg The unsubstantiated April 2016 claim by the Russian ambassador to the UN that ISIS was making up to \$200 million a year from looted antiquities – a claim completely at odds with reports from the World Customs Organisation, Europol, Interpol and other specialists in studying this area of crime. (p.27)

7. Total seizures, as listed by the Deloitte Report (p.100-101)

- France: March 25, 2016, customs intercept two bas-reliefs en route from Lebanon to Thailand. The investigation of the judicial customs authorities and the central office for combating trafficking in cultural goods has shown that they were looted Syrian cultural heritage. No date is given for the looting, nor any link to terrorist activities shown.
- UK: 2015: HMRC seize consignments of antique coins suspected to have been illegally excavated in Syria (although not shown to be illegal), which were detected in transit to third countries. The British Metropolitan Police Art and Antiques Unit have also seized items (unspecified here). No date is given for the looting, nor any link to terrorist activities shown.
- Slovakia: 2015, three 3 of Mesopotamian origin. No link to terrorist activities shown.
- Netherlands: 2012, cultural goods from Syria were seized. The case is still pending. 2015, the offering for sale of Iraqi cultural goods via the internet investigated, but unlawful removal of the objects could not be proven. No link to terrorist activities shown.
- Germany: one Sumerian clay cuneiform tablet offered in an online auction in violation of the ban on trade of Iraqi artefacts. No link to terrorist activities shown.
- Further cases pending in Sweden and Belgium. Details unspecified.

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