

Newsalert

Brexit: legal consequences for art trade

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After years of negotiations, on December 24, 2020, the United Kingdom (“UK”) and the European Union (“EU”) signed an agreement that sets out the new rules in the relationship between the two parties. The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, on one hand, and the United Kingdom of Great Britain and Northern Ireland, of the other hand (hereinafter the “Agreement” or “TCA”) is applying provisionally as of January 1, 2021 while waiting for the ratification by the European Parliament by February 28, 2021.

The Agreement consists of 7 seven parts and Part Two, covering the trade in goods and services, introduces provisions that will directly affect the European art market and its professional operators.

I. Movements of goods

An important achievement is that the TCA envisages no tariffs, no custom duties, tax, and charge, beside zero quotas on all goods traded between the UK and the EU pursuant to art. 5 and 6, Part Two, Title I.

However, with the official exit of the UK from the EU Customs Union, the movements of goods between the UK and the EU will now be subject to checks and procedures at the customs borders, as for any other non-EU country. Therefore, UK and EU art traders will now need to make custom declarations when importing or exporting goods to the customs office responsible for the place where the exporter is established, or the goods are packed or loaded for export.

Both English and European market operators will also need an EORI (Economic Operator Registration and Identification), released from the customs authority, to import and export goods to and from the UK.

II. Export licenses

Articles 13 and 14 of Part Two, Title I, of the TCA concern the export licensing procedures, requiring that “*each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them*” (art. 14.1).

As to the legal consequences to export in the art market, Brexit means that after December 31, 2020, EU Regulation 116/2009 on the export of cultural goods no longer applies to the UK. Therefore, the Export Licensing Unit (“ELU”) of the Art Council of England (“ACE”) will no longer issue EU licenses (required for the export of cultural goods outside the custom territory of the Community). The EU licenses issued before December 31, 2020 that are unused and not expired, can be still used until their expiration.

Starting from January 1st, the ELU will issue UK licenses for the export of cultural objects from the UK to any Country (except Northern Ireland) including any EU member States.

On the other hand, no license is required for importing objects of cultural interest into the UK, given the need to comply with the EU and each individual member States' export licensing regimes.

III. Looted Art

The so-called looted art – the cultural heritage illicitly removed from the territory of the country where they were created or discovered – has been regulated so far by the EU Regulation on the introduction and the import of cultural goods of April 17, 2019 (Regulation 2019/880). The Regulation sets out the conditions for the introduction of cultural goods from non-EU Member States, in order to safeguard *“humanity’s cultural heritage and preventing the illicit trade in cultural goods, in particular where such illicit trade could contribute to terrorist financing”* (Article 1).

After Brexit, the Regulation will not be binding upon the UK anymore, and therefore English importers will not be required to obtain proof that their cultural goods were legally exported from the country of origin, as required under the Regulation.

Nevertheless, art. 21 of the Agreement provides the commitment of the UK to ensure the protection against illicit trade in cultural goods and against their loss or destruction, to preserve the humanity’s cultural heritage. Indeed, Article 21 of Part Two, Title I of the Agreement states that *“the Parties shall cooperate in facilitating the return of cultural property illicitly removed from the territory of a Party, having regard to the principles enshrined in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 17 November 1970”*.

IV. VAT on the importation of artworks

Even if not regulated in the TCA, since January 1, 2021, movements of goods between the EU and the UK will be regarded as importations and exportations for value added tax purposes (**“VAT”**).

Therefore, after Brexit, while exportations of goods from Italy to the UK are not subject to VAT in Italy, importations of goods from the UK to the EU States are subject to VAT, even if made by non-VAT persons.

Before Brexit, Italian individuals and art dealers were used to import artworks from non-EU States via the UK. Indeed, the importation of artworks from a non-EU State via the UK triggered the application of VAT at 5% rate (one of the lowest rate applicable among the EU States), with no further taxation upon the subsequent transfer of the artworks to another EU State (including Italy).

After Brexit, the importation of artworks from non-EU States (including the UK) to Italy is subject to VAT at 10% rate, if made by an individual. Similarly, Italian art dealers – that usually apply the VAT margin scheme (*regime del margine*) providing for a limited deducibility of the input VAT – shall bear the costs arising from the increase of the applicable VAT rate on the importation from non-EU States.

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