



"On Dealing with the Fifth EU Money Laundering Directive in the German Art Trade"

Webcast | July 15, 2020

Money laundering in the art trade – today, this is a reality and poses new challenges for art market players. In January 2020, the Fifth EU Money Laundering Directive came into force. Art dealers, gallery owners, auctioneers and art warehouse keepers must henceforth comply more closely with obligations to combat money laundering and terrorist financing.

In the course of this, on July 15, 2020, we hosted a virtual seminar on how to deal with the new Money Laundering Directive in the German art trade. The webcast was moderated by **Dr. Ralph Wyss** (Partner, Financial Crime Advisory, Deloitte, Zurich) and was attended by more than 160 participants. Together with five experts, we discussed the current situation in Germany and also took a look at Switzerland.

Dr. Anne Laure Bandle (Lawyer at Borel & Barbey, Geneva; lecturer for art, copyright and cultural heritage law and director of the Art Law Foundation), began with a short introduction to the "Responsible Art Market Initiative" (RAM), a non-profit, cross-market initiative founded in Geneva in 2015 to raise awareness of the risks of money laundering and terrorist financing to which the art industry is exposed and to provide practical guidance and a platform for the exchange of responsible practices to address these risks. The guidelines published in this context in 2017, are complemented by a "Red Flag List", a list of various indicators that can provide hints of money laundering in the context of a transaction. Further guidance as well as an "Art Transactions Due Dilligence Toolkit" and

"Best Practices Guidelines" are freely available online on the website of the Responsible Art Market Initiative (<http://responsibleartmarket.org/>).

Katharina Stoll (Lead Auditor for Anti-Money Laundering and Sanctions at Commerzbank AG and PhD Candidate at the University of Glasgow), is intensively engaged in the subject of money laundering in the art market, both professionally and academically, and gave a brief insight into what art market participants can learn from banks and how a lean but robust risk management system can be set up. A solid risk analysis is fundamental - the better the analysis, the better measures and controls can be defined and implemented. Factors that can influence the risk of money laundering in the art trade include the size of the market, the value of the respective work of art and the provenance, which includes the history of the collection as well as the geographical origin, for example in the case of antiques from high-risk countries. Likewise, various risk factors must also be defined for the client. For example, it is necessary to discuss where the customer is located and whether the customer is a new customer or a long-standing customer for whom the buying behaviour is known and where possible suspicious activities could be more easily identified.

Birgit Maria Sturm (Managing Director of the Bundesverband Deutscher Galerien und Kunsthändler e.V. (BVDG)), presented guidelines published by the Bundesverband Deutscher Galerien und Kunsthändler e.V. (BVDG) on how to deal with the new Money Laundering Directive and on the prevention of money laundering. Every participant in the art market is obliged to carry out and document an annually updated risk analysis, i.e. an inventory of his own company. In addition, there are internal, personnel-related precautions to prevent money laundering as well as the appointment of a money laundering officer for companies with ten or more employees. In addition, the art dealer or gallery owner must identify his customer before the sale is concluded for all art sales from a value of EUR 10.000 upwards, regardless of the payment method. All documents concerning the customer's identity must be kept for five years and destroyed after a maximum of ten years. Any suspicious transaction must be reported to the Financial Intelligence Unit (FIU).

Thole Rotermund (Art dealer and Board Member of the Bundesverband Deutscher Galerien und Kunsthändler e.V. (BVDG)), then talked about the impact of the 5th EU Money Laundering Directive in the German art trade from the perspective of art dealers. According to Mr. Rotermund, art dealers have a special role to play in connection with the new Money Laundering Directive, as they must educate customers, be able to answer questions about the new regulations and also deal with the resulting scepticism of customers. The majority of gallery owners and art dealers are owner-managed, small to medium-sized companies, which means that most art dealers should not face any major difficulties in implementing the due diligence requirements, as they generally know their customer base. Documentation, on the other hand, is very time-consuming and is sometimes met with incomprehension. Selling at art fairs is also a challenge, as these fairs usually live from the fact that sales are concluded directly on site. Here, the short-term determination of the beneficial owner as well as the documentation of the customer's identity is much more complicated, especially if they are dealing with a new customer.

Dr. Christina Berking (Art law expert, Buse Heberer Fromm, Hamburg and spokeswoman of the "Interessengemeinschaft Deutscher Kunsthandel GbR", Cologne), finally pointed out parallels and differences in dealing with the new EU Money Laundering Directive in the German art trade from the perspective of the art auctioneers. The implementation of the new guidelines for auctioneers is similar to gallery owners and art dealers - in theory, the right goals are pursued, but in practice, they are difficult to implement. After all, these are predominantly owner-managed, medium-sized companies, for which the Money Laundering Directive is not tailored to. Since surcharges and value-added tax are added at auctions, the relevant limit is already at a hammer price of about EUR 7.500. In addition, the implementation of the due diligence obligations not only leads to additional bureaucratic effort, but

also to difficulties, for example, when the identification of all bidders and, if applicable, of the respective beneficial owner, has to be carried out before the respective auction, i.e., in the course of the allocation of the bidder numbers, although in the end only one of them will buy the artwork.

During the webcast, it became clear that the implementation of the new legal provisions still raises many practical questions, especially in connection with the identification of the beneficial owner, which is not only a time-consuming and costly additional task, but also causes great difficulties in practice. Overall, around 80% of the participants assessed the new regulations as useful or at least partially useful, and half of the participants were convinced that dealers in goods who are obliged to comply with the 5th Money Laundering Directive, already carry out KYC checks for their customers.

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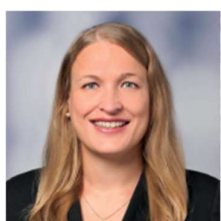


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