

The Art Market: Money Laundering, Freeports and Provenance — overview and summary

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Every June, collectors, dealers, curators and advisers from all continents gather in the halls of the Messe Basel for Art Basel, the fair whose history the preceding chapter traced from the Mustermesse to the present. For a few days the city becomes a marketplace in which paintings, sculptures and works on paper worth many hundreds of millions of francs change hands. Behind the openings and the dinners lies a legal structure that the visitor rarely sees. It consists of contracts of sale and consignment, transport and insurance arrangements, customs regimes for works entering and leaving the country, warehouses and the documents that establish who owned a work in the past. Each of these elements links the art market with subjects of the financial centre discussed elsewhere in this book, from the prevention of money laundering to the enforcement of sanctions and the protection of cultural property.¹

This chapter examines these questions in turn. It begins with the characteristics that make the art market vulnerable to abuse and with the findings of international bodies on that vulnerability. The Swiss rules on art dealers are then compared with the European and British regimes, before the chapter turns to sanctions, to freeports and to the transformation of the Basel Freilager on the Dreispitz. Its second half is devoted to provenance: the restitution of art looted under National Socialism, the protection of antiquities, the due diligence of a careful buyer and the newer instruments of art finance, from loans secured on paintings to the tokenisation of works. Part E introduced the money laundering aspects of the art trade and the planning questions that collections raise for wealthy families. The present chapter builds on those sections without repeating them.²

1 Notes

1. On Art Basel, founded in 1970 by Basel gallerists, and its role as the leading fair for modern and contemporary art, see the publications of MCH Group and Art Basel, and Part H, chapter IV of this book. To be verified. ↩
2. See Part E, chapter III, section "Dealers, real estate and the art market", and Part E, chapter V, section "Art and collections in wealth planning", of this book. ↩

2 Conclusion of the chapter

The art market of Basel stands at the intersection of culture and finance. Its characteristics, among them opacity, high value, portability, subjective pricing, intermediaries and private sales, make it vulnerable to abuse, as the FATF, the Basel Institute on Governance and the European Commission have found. Swiss law has responded with duties for dealers accepting large cash payments, with the due diligence obligations of the Cultural Property Transfer Act and with the inventory rules introduced for freeports in 2016. The European Union and the United Kingdom have gone further by subjecting art dealers to anti-money laundering duties above ten thousand euros. Sanctions against Russia have drawn galleries, auction houses and warehouses into a new field of compliance.

Provenance has become a legal question of the first rank. The Washington Principles and the Terezin Declaration, the findings of the Bergier Commission, the Glaser agreement of the Kunstmuseum Basel and the Gurlitt bequest in Bern illustrate how Switzerland has confronted the history of looted and flight property. The protection of antiquities has transformed a once lightly regulated trade in which Basel played a notable role. Art-secured lending, art funds and the tokenisation of works show that art is becoming a financial asset with its own collateral, investment and digital forms. For the financial centre, this development connects the expertise of its banks, lawyers and compliance specialists with the oldest public art collection of the city and with the most important fair of the art world.

3 Conclusion of Part H

Part H has followed the economy of the Dreiland from the river to the art market. Chapter I described the Rhine ports, the law of Rhine navigation under the Mannheim Act of 1868 and the Central Commission in

Strasbourg, the logistics hub serving the pharmaceutical industry and the ecological recovery of the river after Schweizerhalle. Chapter II analysed the trinational economy, in which frontier workers from Alsace and Baden cross the border every day. It examined their taxation under the double tax treaties with France and Germany and the EuroAirport, whose binational legal regime is unique in Europe. Chapter III showed how customs control, export control and sanctions enforcement at the border have become the modern counterpart to the French customs officers whom the Basel merchants once sought to avoid.

Chapter IV traced the history of the fairs from the Mustermesse of 1917 through the rise and end of Baselworld to Art Basel, which has made the city the annual meeting place of the international art market. The present chapter has examined the risks of that market: money laundering, sanctions evasion, the opacity of freeports and the burden of provenance, together with the newer instruments of art finance. Together, these chapters show that the location of Basel at the meeting point of three countries creates opportunities for trade and exchange as well as legal risks that require specialised expertise. Because goods, works of art and people moving across borders must also be insured against loss, damage and liability, the next Part turns to Insurance, Reinsurance and Risk.

4 In five sentences

1. The Rhine ports make Basel the gateway of Switzerland to the North Sea, operating under the Mannheim Act of 1868 and the Central Commission in Strasbourg, serving as a logistics hub for pharmaceuticals and benefiting from the river's ecological recovery after Schweizerhalle.
2. The trinational economy of the Dreiland depends on frontier workers from France and Germany, whose taxation follows special rules under the double tax treaties, and on the EuroAirport, whose binational legal regime remains unique in Europe.
3. Customs control, export control and sanctions enforcement at the border form the modern counterpart to the French customs officers of the eighteenth century, linking the Basel trading houses with SECO, the customs authority and international sanctions regimes.
4. The fairs of Basel have developed from the Mustermesse of 1917 through the rise and end of Baselworld to Art Basel, which since 1970 has made the city the annual meeting place of the international art market.

The Art Market

5. The art market exposes the financial centre to money laundering, sanctions and provenance risks, to which Swiss law, the freeport reforms, the restitution principles and the due diligence of dealers, lenders and providers of tokenised art have responded.

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