

British Art Market Federation

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Response to HM Government's Review of the Balance of Competences

Background

The British Art Market Federation (BAMF) represents the leading elements of the UK's art market, from large companies operating at an international level to the hundreds of small and medium sized businesses active in this sector.

The UK has the world's third largest art market. It generates direct employment of 60,000 in 10,000 businesses, which spend £1.3 billion on ancillary services, which in turn support a further 66,000 jobs. Total sales in 2012 amounted to about £8.3 billion, representing 23% of global art sales. The British art market is particularly active in cross-border trade and in this respect is significantly the largest global competitor to the USA and China. In 2012, fine and decorative art to the value of £4.21 billion was imported to the UK, with exports worth £4.32 billion.

The British art market and the 'Balance of Competence'

The British art market is unique within the European Union, not only because of its size - it accounts for 66% of the EU's art market by value (its nearest rival, France, has only 16%) - but because it is the EU's only genuinely global art market.

In relation to EU Directives, this raises two principal problems. First, most Member States do not share the UK's interest in defending and fostering the art market. They either have very small markets or they have domestic markets catering for local buyers and sellers, usually operating only within the confines of the EU. They therefore can seem to have little interest in the possible impact that EU legislative proposals might have on the art market in an international context.

Antiquarian Booksellers' Association Antiquities Dealers' Association Bonhams
The British Antique Dealers' Association Christie's
LAPADA, The Association of Art and Antique Dealers
The Royal Institution of Chartered Surveyors Society of Fine Art Auctioneers and Valuers
The Society of London Art Dealers Sotheby's

Because of its global outreach, the British art market must ensure that it remains competitive, both within and outside the EU, particularly as London's major international rivals, New York, Hong Kong and Geneva are beyond the scope of EU legislation. While the EU Single Market may have brought some marginal benefits to the British art market, largely by facilitating to a limited extent the movement of some categories of art within the EU, legislation designed to benefit the EU Single Market has tended to look upon the Single Market as if it is detached from competitive pressures coming from the world beyond the EU. On balance, BAMF therefore concludes that Single Market legislation has mainly been detrimental to the UK's ability to compete internationally, because its primary aim has been to establish harmonization within the EU, rather than to protect the EU's competitive position in the wider world.

Qualified Majority Voting (QMV) makes it very difficult for a Member State with an unusually large interest in a specific economic sector to stop EU directives that might prejudice its global competitiveness. An example of this was the Artists Resale Right Directive (ARR), which the Labour Government voted against but was unable to prevent. For other Member States, it appeared that the goal of a European level playing field outweighed considerations of competition from art markets outside the EU.

In general, BAMF's main concern about the balance of EU competence centres on the uniqueness of the British market and the difficulty that British Governments have had in attempting to defend its interests in the context of a very competitive global art market. We suggest that greater subsidiarity, or mutual recognition of the differing priorities of Member States, should prevail so that decisions, which can impact disproportionately on Britain's art market, are made in Westminster rather than in Brussels.

Artists Resale Right

Directive 2001/84/EC introduced ARR into the UK for the first time. Because of the size and nature of its art market, the UK, above all other Member States, was disproportionately affected. The Directive was introduced under the rules governing the Single Market, the justification being that the existence of the ARR charge in some Member States and not in others caused a competitive distortion to the EU's art markets. As a Single Market measure, the Directive was therefore subject to final agreement by QMV, with the UK unusually voting against.

There are strongly held arguments both in favour of and against the principle of ARR. But the only opportunity to debate the issue in Parliament has been in the context of the formal transposition of the EC Directive into English law, when the option as to whether or not to introduce ARR at all was not open to the decision of Parliament.

Recent economic research now demonstrates that the Directive has, in any case, failed in its Single Market objective. There has been no significant effect on the distribution of the internal EU art market since the Directive was introduced. Instead the EU's global share of the sector to which ARR applies has declined, with the UK's share having declined the most (from 25% in 2005 to 18% by 2010). It is a matter of conjecture as to how much ARR has influenced the UK's declining fortunes,

but the opinion of British dealers and auction houses is that, at the very least, it has contributed to the perception that the EU has become a more expensive and complicated place to sell art.

The British Parliament should be free to decide whether the potential damage caused to the UK's art market is outweighed by the benefits that ARR might bring for some artists and their heirs. But Parliament has never been asked to make this judgment.

We see no reason why responsibility for the continued existence of ARR should remain with the European Union, and we would therefore urge that this should rest with the British Government. It may be that there are reasons why copyright in general should be agreed at a more international level, but ARR, although categorized under the heading of copyright, differs so fundamentally from other forms that it deserves to be looked at separately.

Cultural Goods Directive and Regulation

The British art market is a global entrepot which relies on the free movement of works of art across national boundaries. Such freedom is tempered by the legitimate right of nation states to protect their cultural patrimony and Article 36 of the EEC Treaty reflects this right by allowing EU Member States to control the export of objects that they define as 'national treasures'.

The UK has had its own system of export control in place since it was introduced as a wartime measure. It centres on export licensing, linked to assessments made by the Reviewing Committee for the Export of Works of Art, which applies agreed criteria (the Waverley Criteria) and which recommends to the Secretary of State whether or not an export licence should be granted.

The advent of the European Single Market prompted the European Commission to superimpose a system of EU export licensing, on top of the arrangements made by the UK and other Member States. But, while the UK export licensing system has been adapted to take account of the increase in art values by raising the threshold values above which a UK licence applies, the EC licensing arrangements (92/C 53/14), also based on value thresholds, have never been updated, resulting in a substantial increase in the number of licences required when objects are exported from the EU. For a market as international as the UK's, this adds to the costs and complication of doing business across national borders.

The Regulation was accompanied by a Directive on the return of cultural objects unlawfully removed from the territory of a Member State (93/7/EEC), which is currently the subject of revision in Brussels. The proposed revision can only increase the potential for uncertainty. Since the UK has a good record of co-operating with overseas countries in connection with the illicit trade in art, and the UK has acceded to the 1970 UNESCO Convention, which itself provides a framework for recovering lost national treasures beyond the confines of the European Union, we believe that the time is right to regain competence in this area from the inflexible and bureaucratic framework created by the European Union. The British Art Market Federation is supportive of balanced and clear regulations designed to protect national treasures and to counter the illicit art market, but these should be a matter for the British Government to decide upon.

Taxation

The UK is in a better position to resist potentially damaging proposals to do with taxation, because of the requirement for unanimity amongst Member States. However, even the principle of unanimity has its limitations, as we discovered when the British Government was forced to introduce import VAT on artworks in the mid-1990s, following the threat of infraction proceedings. A recent example was the infraction case brought in the European Court of Justice over the VAT status of the auctioneers' buyer's premium on art imported for sale in the UK. In spite of opposition from the British Government, the UK was forced to impose this additional tax which affected the British art market's competitive position when attracting art for sale on behalf of non-EU sellers.

Another example has been pressure from within the EU to strengthen the regulations governing the use of customs warehouses – a hitherto important feature of our entrepot market – to a point at which such warehouses lose much of their purpose. HMRC have done much to try to mitigate the financial impact of these changes on UK dealers and auction houses, but their effect on other sectors of the art trade, such as international participation in top British art and antique fairs, remains at best uncertain.

Successive British governments have been mindful of the need to avoid imposing taxes which can divert overseas trade from the British art market. By fostering a strong international market based in the UK, the economic and fiscal benefits are substantial. While the requirement for unanimous agreement offers some protection, it is clear that decisions can still be taken either by the European Commission or through the ECJ, which the British Government seems unable to resist.

We therefore consider that the Government should examine very carefully EU measures that were introduced in the name of tax harmonization, but which may have placed the UK at a competitive disadvantage in the global context.

At the risk of blowing our own trumpet, the British art market remains one of the areas where the UK holds a world class position, but we are increasingly vulnerable to competition from new and emerging markets.