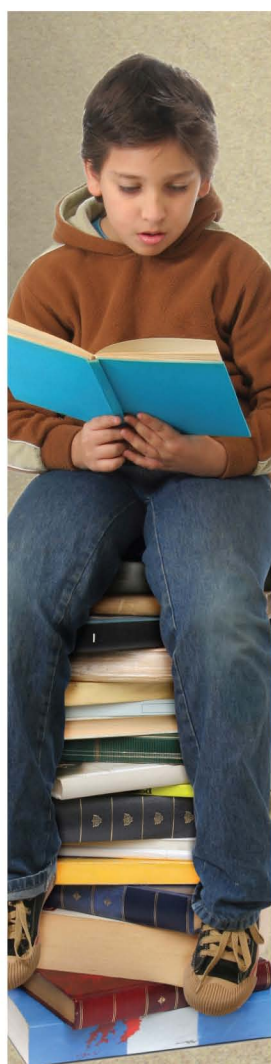


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
STRUCTURAL AND COHESION POLICIES **B**



Agriculture and Rural Development



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Transport and Tourism



**THE MOBILITY OF
WORKS OF ART IN
EUROPE**

NOTE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

CULTURE AND EDUCATION

THE MOBILITY OF WORKS OF ART IN EUROPE

NOTE

This document was requested by the European Parliament's Committee on Culture and Education (CULT).

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DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

CULTURE AND EDUCATION

THE MOBILITY OF WORKS OF ART IN EUROPE

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Abstract

This note provides a panorama of the existing obstacles to the circulation of works of art in the European Union, both for non-commercial purposes and as part of the art market. It focuses on the situation of private galleries. The authors explain how the EU influences the circulation of works of art via its legal framework and make some suggestions on how it could contribute to improving on the *status quo*.

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CONTENTS

CONTENTS	3
LIST OF ABBREVIATIONS	5
EXECUTIVE SUMMARY	7
1. PREFACE	9
2. MOBILITY OF WORKS OF ART IN EUROPE – STATUS QUO	11
2.1. Definition of cultural goods and of cultural goods of high significance	11
2.2. Private entities taking part in the mobility of cultural goods – the art market	11
2.3. Protection of cultural goods – the Community system	12
2.4. Practice of member states in the field of cultural goods protection	13
2.5. Customs in the Community area	13
2.6. VAT in the EU	14
2.7. Droit de Suite	14
2.8. Struggle against illegal transactions	14
2.9. European networks favouring mobility of works of art	15
3. MOBILITY OF WORKS OF ART IN EUROPE – STRENGTHS AND WEAKNESSES	17
3.1. Cultural goods protection system	17
3.2. Procedures / administrative barriers	17
3.3. Transport and insurance	18
3.4. Weak economic situation of private entities	19
3.5. Monitoring	19
3.6. Specificity of the modern art market	20
3.7. The economic crisis and the situation of the art market	20
3.8. Case study	20
4. MAIN FINDINGS	23
5. CONCLUSIONS	25
BIBLIOGRAPHY	27

LIST OF ABBREVIATIONS

- AAF** Artists' Association of Finland
- ACF** Artprice Confidence Index
- ECA** European Council of Artists
- EFAH** European Forum for the Arts and Heritage
- ERICARTS** European Institute for Comparative Cultural Research
- GATT** General Agreement on Tariffs and Trade
- IAA** International Association of Art
- UNESCO** United Nations Educational, Scientific and Cultural Organisation
- UNIDROIT** International Institute for the Unification of Private Law
- VAT** Value Added Tax

EXECUTIVE SUMMARY

Background

The promotion of mobility of works of art is one of the main aims framed in the European agenda for culture in a globalizing world and the new EU Culture Programme 2007-2013 (point 3.1). The realisation of the aim should be based on solutions/mechanisms/actions, relating to mobility of works of art, and aiming at both facilitating public access to them and stimulating the art market. Actions stimulating the mobility of works of art by public cultural institutions have already been undertaken. The Council adopted the Action Plan - for the 2005-2007 period - for the EU Promotion of Museum Collections' Mobility and Loan Standards. Thus now, at the European Parliament's initiative, we draw our attention to the situation of private entities and concentrate on the recognition of obstacles in the mobility of works of art organised by private entities which will be significantly helpful in the future for defining circumstantial recommendations both at the Community and the national level.

Aim

The aim of this paper is to identify barriers in the field of the mobility of works of art in the European Union. It focuses on the mobility of visual arts (paintings, sculptures, installations etc.) that are not part of public museum collections but which belong to private operators: private galleries, private museums and individual artists. The mobility of cultural goods which is the subject of this analysis relates both to all sale and purchase transactions on the art market, and to the exchange of art for exhibition purposes. Cultural dissemination and commercial aims often merge and frequently it is not possible to separate them.

This paper contains the results of a preliminary attempt to analyse the situation of mobility of works of art conducted by private museums, galleries and individual buyers. Even though the paper is concise it was necessary to take into account a wide range of available literature, press articles and documents concerning the mobility of works of art provided by galleries, as well as analysing international and national legislative regulations and interviewing practitioners (mostly art gallery-owners), researchers and officials from Germany, Malta, Romania and Poland. It is worth mentioning that the analysis disclosed numerous gaps in knowledge resulting from the lack of quantitative data available on the mobility of works of art in Europe.

The text has two main parts. The first refers extensively to the current situation and deals with the legal regulations. The legal framework relating to the mobility of works of art has been supplemented with information on European networks acting in the field of mobility of works of art. The second part consists of opinions on the strengths and weaknesses of the European mobility of works of art system and confronts the law in force with the practice. This part also includes reflections on the influence of the specificity of the modern art market and the economic world crisis on the scale of mobility of works of art. The paper is also enriched with two case studies, conclusions and recommendations.

Key findings

The analysis allows us to evaluate the dysfunctions of the current system for the mobility of works of art where private entities are endeavouring to take part both in popularising cultural goods and developing the art market. First of all, the analysis shows that the

mobility of works of art is much simpler between EU countries than between the EU and third countries. However there are many anomalies with regard to the mobility of works of art for these entities within the EU. The analysis proved that most of the existing obstacles are of a general nature and concern all entities, whilst a few have a specific nature.

Some examples of obstacles of a specific character which concern private entities are:

- excessively complicated bureaucratic procedures and inconsistencies concerning the export permits application process, especially in new member countries,
- for many private galleries, the organisation of international exhibitions is very difficult because of the high professional transport and insurance costs,
- most private galleries cannot afford to participate in foreign art fairs (they do not own such valuable works of art, that if sold, would compensate the participation costs).

This identification of the main obstacles in the mobility of works of art by private galleries and museums, and individual artists in the EU, leads to the formulation of conclusions and recommendations, both at the Community and national level. For example:

- (a.)** It would be advisable to create a separate European fund for supporting the insurance of transported cultural goods. In Member States, the funds would be passed on to private entities by the governmental body responsible for cultural matters.
- (b.)** Issuing new European funding lines should be considered. One could aim at supporting the organisation of private galleries' exhibitions with imported works of art and at facilitating their participation in international art fairs. Another could support the translation of exhibition materials and professional works devoted to the art market.
- (c.)** The EU should initiate conferences, seminars and training on the mobility of works of art, devoted to issues such as: the control of the internet art market or standardisation of exhibition organisation procedures and using an electronic signature, addressed to ministries of culture and other public authorities responsible for the implementation of laws on the protection of cultural goods (such as customs and the police).

1. PREFACE

The aim of this paper is to identify the barriers in the field of the mobility of works of art in the European Union. It focuses on the mobility of visual arts (paintings, sculptures, installations etc.) that are not part of public museum collections but which belong to private operators: private galleries, private museums and individual artists. The mobility of cultural goods which is the subject of this analysis relates both to all sale and purchase transactions on the art market, and to the exchange of art for exhibition purposes. Cultural dissemination and commercial aims often merge and frequently it is not possible to separate them.

Recognising these issues should contribute to the realisation of the aim framed in point 3.1. of the European agenda for culture in a globalizing world and the new EU Culture Programme 2007-2013, which relates to the promotion of the mobility of works of art and other artistic expressions. The realisation of the above-mentioned objective should be based on solutions/mechanisms/actions which relate to the mobility of works of art, and facilitating public access to them whilst stimulating the art market. Public cultural institutions have already facilitated the mobility of works of art. Thus it is now necessary to concentrate on the situation of private entities.

This paper contains the results of a preliminary attempt to analyse the situation of mobility of works of art conducted by private museums, galleries and individual buyers. Even though the paper is concise it was still necessary to take into account a wide range of available literature, press articles and documents concerning the mobility of works of art provided by galleries, as well as analysing international and national legislative regulations and interviewing practitioners (mostly art gallery-owners), researchers and officials from Germany, Malta, Romania and Poland.

The analysis disclosed numerous gaps in knowledge resulting from the lack of quantitative data available on the mobility of works of art in Europe. The Eurostat ⁽²⁾ and UNESCO ⁽³⁾ data are mainly concerned with the financial dimensions of the import and export of works of art, in particular for EU countries. The method of data presentation often makes it impossible to determine tendencies in a long-term perspective. For instance it is difficult to map changes that took place in particular countries after their accession to the EU. Moreover a full overview of the mobility of cultural goods should be supplemented by systematic reporting on the number of international exhibitions organised by private entities and comparative analysis of art fairs, the collectors' market and auction houses. Now, we do not know how many works of art are sold during international exhibitions. Does the mobility of works of art influence the demand and if so, to what extent? Do the artists actually become more well-known? How popular are international exhibitions? There is a great lack of analysis of art fairs, which could contribute to a better understanding of the extent of the mobility of cultural goods. How many private galleries cannot afford to take part in art fairs? How do their status and the demand for their collections grow through participation? Fragmented information on the above issues is available on web-sites or in the publications of particular galleries: the number of international exhibitions or of auction houses: the number of works of art sold per year. Reports commissioned by the European Commission aimed at analyzing mobility in the field of arts (e.g. 'Mobility Incentives in

² Eurostat (2007), *Pocketbook on Cultural Statistics*.

³ UNESCO (2005), *International flows of selected cultural goods and services, 1994-2003 – defining and capturing the flows of global cultural trade*, Montreal.

Europe. Programmes and Schemes to Support the Mobility of Artists and Cultural Professionals – Final Report', October 2008, prepared by ERICarts) are becoming a useful source, but unfortunately, to date, none of them has embraced the field of mobility of works of art in Europe.

The results of the analysis are presented in a way that is designed to enable an evaluation of various aspects of the mobility of works of art and provide an indication of any possible dysfunctions of the present system. The text has two main parts. The first refers extensively to the current situation and deals with the legal regulations, in particular the exception to free movement of goods made for works of art, the Community system for protection of cultural goods, especially when stolen, current practices regarding Value Added Tax (VAT) and the 'Droit de Suite'. The legal framework relating to the mobility of works of art has been supplemented with information on European networks acting in the field of mobility of works of art. The second part consists of opinions on the strengths and weaknesses of the European mobility of works of art system and confronts the law in force with the practice. This part also includes reflections on the influence of the specificity of the modern art market and the world economic crisis on the scale of mobility of works of art. The paper is also enriched with two case studies. The first concerns the International Association of Art (IAA) network, which supports the mobility of works of art and the second one contains a transcription of interviews with Polish private gallery-owners. The text finishes with main findings, conclusions and recommendations.

2. MOBILITY OF WORKS OF ART IN EUROPE – STATUS QUO

Among the main factors shaping the status quo of contemporary mobility of works of art in Europe, one can highlight:

- legislative regulations concerning the protection of cultural goods: the definition of goods embraced by special protection, implementation procedures, including the methods of granting permits for export of goods, etc.;
- incentives that relate to trade and mobility of works of art, including customs and Value Added Tax; and
- European networks favouring mobility of works of art.

2.1. Definition of cultural goods and of cultural goods of high significance

In European legislation, a commonly used definition of works of art does not exist. The most developed definitions are to be found in customs law. In accordance with the Community customs regulations, works of art have to be unique, rare, cannot be sold on the basis of ordinary trade transaction, their material value highly exceeds the value of materials they were made of, they should be hand-made and they do not economically compete with similar but industrially produced articles. Additionally, sculptures and graphics have to be marked with proof of their originality. In the case of paintings there is no such requirement. Artistic photography has not been included in the customs definition. Such categorisation is applied regardless of commercial or non-commercial purpose of the mobility.

Some cultural goods are identified as being of high significance and national treasures. Qualifying cultural goods is different in particular countries. The criterion can be the age of the object (Great Britain and Poland – 55 years old, Luxembourg – 100 years old), value of the object (Great Britain and France) or the object's origin.

2.2. Private entities taking part in the mobility of cultural goods – the art market

As mentioned in the introduction, the paper focuses solely on private galleries, private museums and individual artists. It springs from the decision to concentrate on entities which have two aims: the dissemination of cultural goods and the development of the art market. One has to however bear in mind that the scope of private entities playing an active role in the mobility of cultural goods is wider. The world art market is mainly created by auction sale at thousands of auctions per year organised in Europe, Australia and North America. In most cases, trade in works of art takes place in known auction houses, which are not analysed here due to their exclusively commercial character, although a part of the transactions is carried out via online auctions. Private collectors and antiquarians are important players in the market and contribute to the mobility of cultural goods. Also art fairs play an important role in the art market, but the subject is so broad and complicated that it requires separate research.

One should take a brief look at the number and specific characteristics of the chosen entities. Private museums are still a minority among European museums. The exceptions are Denmark (258 museums in total with 198 private museums) and Austria (370 museums in total with 189 private museums) ⁽⁴⁾. In spite of the lack of overall data one can safely assume that in the case of art galleries the proportions are more balanced. For example in Poland 43.9% of all galleries are private ⁽⁵⁾. The current system regulating the mobility of works of art in the EU has a common character and relates equally to both public and private entities. However, the specifics of these entities along with differing aims of their activities determine the various difficulties they encounter. For example, private galleries are usually smaller and more active in the contemporary art market than the public ones. The international exhibitions they organise are often less prestigious and concentrate on presentation of modern art of both acknowledged artists and debutants. One should be aware that what is not a barrier for a public gallery can be an obstacle impossible to overcome for a private entity. Whereas the lack of a bureaucratic mindset – characteristic of public entities – helps private museums and galleries to be flexible within the changing demands of the art market.

In Europe, art buyers are mainly enterprises, especially banks. The American Citibank or the German ThyssenKrupp can pride themselves on collections of a museum value. It is only on the markets of the new EU members that private/individual buyers prevail. It is estimated that they constitute as much as 90% ⁽⁶⁾ of the clients, e.g. in Poland.

2.3. Protection of cultural goods – the Community system

The system of cultural goods' protection is built on three pillars:

- the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property from 1970 which sets out the international system of monument protection. It is supplemented with the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects from 1995. The countries that have ratified the UNESCO Convention have a duty to prepare lists of cultural goods (public and private ones) that would significantly impoverish their heritage if they were exported;
- a set of EU decrees and directives creating a kind of 'regional' mechanism within the community area. The protection is concentrated on the national heritage of Member States in the common market conditions. They do not replace but supplement the national protection regulations. The legal basis for the protection of cultural goods for the Community are: Council Regulation (EEC) No 3911/92 of 9th December 1992 on the export of cultural goods and Council Directive 93/7/EEC of 15th March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State. Council Directive 93/7/EEC and Council Regulation No 3911/92 restrict the export of national treasures from the EU customs area thus creating a legal framework for trade

4 <http://www.egmus.eu>: Austria in 2002: 370 museums, of which 189 are private. Belarus in 2007: 143 museums, of which 2 are private. Belgium in 2004: 162 museums, of which 47 are private. Czech Republic in 2007: 449 museums, of which 55 are private. Denmark in 2004: 258 museums, of which 198 are private. Estonia in 2007: 210 museums, of which 53 are private. Finland in 2006: 322 museums, of which 88 are private. France in 2003: 1173 museums, of which 120 are private. Germany in 2006: 6175 museums, of which 2745 are private. Hungary in 2002: 661 museums, of which 14 are private. Norway in 2007: 173 museums, of which 1 is private. Poland in 2005: 690 museums, of which 113 are private. Portugal in 2006: 592 museums of which 219 are private. Romania in 2007: 748 museums, of which 94 are private. Slovakia in 2003: 85 museums, of which 5 are private. Spain in 2006: 1343 museums, of which 449 are private.

5 Polish Central Statistical Office, Social Surveys Division (2008), *Culture in 2007*, Warsaw.

6 Data from the article about the Polish art market, see: [http://www.twoja-firma.pl/wiadomosc/16777578,art-investing-czyli-sztuka-inwestowania.html](http://www.twoja-firma.pl/wiadomosc/16777578,art-inwesting-czyli-sztuka-inwestowania.html).

with third countries. In the case of the export of cultural goods to the third countries, the aforementioned regulations apply and so does GATT Article XX;

- the national protection regulations, which in the case of mobility, divide cultural goods into two groups: those that are of no interest to the state controlling the export, and those especially significant to the national cultural heritage.

2.4. Practice of member states in the field of cultural goods protection

States usually prohibit the export of the most valuable of their cultural heritage goods (national treasures). They rarely restrict the free flow of other works of art. Historic/antique goods are classified as inalienable or are public property. The rule that cultural goods are inalienable public property is applied in Italy, France, Spain and, in the case of religious goods, also in Germany ⁽⁷⁾. In some countries most or all cultural goods that are specially protected are state property. Those that are perceived as requiring special protection are listed on heritage registries. This is recommended by the UNESCO Convention from 1970, and by the Council of Europe ⁽⁸⁾ and the European Parliament ⁽⁹⁾. Licensing the export of works of art is different in every country – there are significant differences as to the kind of goods that the countries regard as needing special control.

All Member States have introduced obligatory permits for the export of cultural goods outside Community borders. The procedures, costs and requirements vary across the countries. The most popular kinds of certificates are as follows. 'Standard': issued for 12 months. 'Special': for people or organisations assigned by special law. 'Open': for among others private owners and organisations exhibiting: issued for 5 years. 'General open': for time limited periods for exhibiting outside the Community area for museums and other institutions. In some countries permits have been introduced for the mobility of works of art within the Community area and certifying that the object is not a national treasure and thus can freely cross borders.

Here are some examples of the legal differences. The Italians and French have divided works of art and historic goods into two categories – those, that cannot be exported and those that can leave the country in specific circumstances, e.g. after receiving a permit. A different kind of protection is in force in Great Britain. Here cultural goods can either be categorised as those that receive permits for export through a routine procedure and those that are especially significant for the cultural heritage. In the latter case the procedure is suspended for 3 to 6 months in order to allow purchase by state administration, institutions, or even a private buyer. On the other hand in Switzerland and Germany there are no federal restraints in the mobility of cultural goods, except for those that are listed in the federal registry.

2.5. Customs in the Community area

Goods which are legally produced and released onto the market can flow freely within the Community area (with the exception of works of art made from precious metals). This, of course, does not concern goods under the afore-mentioned special protection under national or Community law. Here one should also mention the so-called rule of reason –

7 O'Keefe P.J. and Prutt L.V. (1989), *Law and the cultural heritage*, Butterworth & Co, London.

8 Saba H. and Salame N.G. (1984), *The protection of movable cultural property I. Compendium of legislative texts* United Nations Educational, Paris, p. 36.

9 Opinion of the Committee on Citizens' Freedoms and Rights, Justice, and Home Affairs from 10.04.2001, p. 12.

regulations restricting the free flow of goods justified by protection of public interest. Additionally article 36 of The Treaty of Rome introduces exemptions from the free flow of works of art in the case of justified necessity to safeguard national cultural goods of artistic, historic or archaeological value; allowing states to forbid or restrain import, transit and export.

As the Customs Union exists, the Member States cannot impose customs taxes or other similar fees (or change the existing ones). This would influence the free circulation of goods. Therefore export taxes are forbidden in the Community. In most cases the import of works of art is not subject to restraints. Only occasionally, due to the material or production method, may they be dutiable.

2.6. VAT in the EU

VAT taxation on works of art transactions is subject to general rules which means taxation of imports and imposing a 'zero' rate on exports. In short, the buyer is the taxpayer. A purchase of a work of art by an EU resident encompasses a VAT obligation, regardless of whether the transaction occurred on the inner market or outside it. A sale of a work of art outside of the EU territory does not encompass a VAT obligation.

According to the appropriate regulations, used artefacts, works of art, collectible items and antiques are importable with a reduced VAT rate. The rate itself varies across the EU member states but it is always a minimum of 5%. The same reduced rate is applied in the case of the import of works of art by the artist himself or the heir apparent as well as import from outside the Community area ⁽¹⁰⁾.

It must also be mentioned that the preferential VAT rates apply not only to works of art but also to services connected with their trade. On the basis of the Council Directive 92/77/EEC of 19 October 1992, a list of such services has been created. Among them are fairs and exhibitions.

2.7. Droit de Suite

In most European legal systems the Droit de Suite exists. It gives the author of visual art the right to a share in profits from resale. Also in European law (Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art) such a mechanism has been introduced to create a level playing field for visual art creators, musicians, scientists and writers, who all have a right to royalties. One exemption is the resale, by a private person, to a museum of a non-profit character. The obligation of settlement with the artist lies with the seller (although the directive leaves the issue to the discretion of the member states). This incentive has an influence on increasing the price of works of art and thus is often perceived as controversial.

2.8. Struggle against illegal transactions

Most European countries have signed agreements with Interpol on seeking out stolen works of art and have police squads specialised in hunting criminals in the field. They have also signed agreements (usually bilateral) with other countries that simplify the search for and

10 Paczuski W. (2005), *Handel dziełami sztuki w Unii Europejskiej*, wyd. Zakamycze, Warszawa.

recovery of stolen objects. Countries that have not signed such agreements with Interpol can only count on the good will of the authorities of other countries. A positive phenomenon is the emergence of private companies which focus on establishing the origin of stolen objects exposed by auction houses or independent dealers. They also compile registries of stolen objects for insurance companies such as Art Loss Register or Invaluable.

Regardless of the various forms of transaction, the significance of the code of plain dealing is increasing (which puts an emphasis on verification of the legal origin of the work of art, for example). Such codes are promoted by organisations of art dealers - in order to raise the prestige of sellers or fairs.

2.9. European networks favouring mobility of works of art

In Europe there are many networks which link artists or artistic organisations. There are also many network-portals that aim at an international presentation of artists. It should be noted however, that they have only indirect influence on the mobility of cultural goods. The activity of most of them is focused on creating a platform of cooperation between artists. Many networks that link art galleries exist – such as the Federation of European Art Galleries Association. Portals and networks of artists contribute to spreading the knowledge about artists and their works and, indirectly, influence the quality of the European art market. There are also many lobbying networks that deal with artists' matters – usually a nationwide range of organisations which often join in international debates. One of the most interesting is the Artists' Association of Finland (established in 1864) that links most of the artists' trade unions and smaller networks (e.g. Finnish Painters' Union, The Association of Finnish Sculptors, the Association of Finnish Printmakers, the Union of Artist Photographers, Artists' Association MUU and the Union of Finnish Art Associations). The aim of the AAF is the promotion and protection of artists' interests, as well as influencing national cultural policy. The European Council of Artists (established in Denmark in 1995) has very similar aims, but its activities have a European-wide range and it focuses on international policy issues.

2.9.1. Case Study

The case study presented below illustrates good practice by one of the most meaningful protagonists in the mobility of works of art – the International Association of Art (IAA).

Protagonists in art mobility in the European Union International Association of Art (IAA)

The International Association of Art (IAA) was founded in 1954 under the auspices of UNESCO. IAA links visual artists from five cultural regions: Africa, Arab States, Asia and the Pacific, Latin America and the Caribbean, and Europe. Artists are represented by National Committees which take an active part in the current activities of IAA. For example, in Poland, the Association of Polish Artists and Designers works on many postulates and resolutions, such as the 'droit de suite' resolution. The IAA also cooperates with other European cultural organisations such as the European Forum for the Arts and Heritage (EFAH) and the European Council of Artists (ECA).

The main aim of the IAA is to support international cooperation in the field of exchange of artists, ideas and all kinds of artistic flow. This aim is reached through:

- initiating discussions (in different countries) on topics related to the artistic movement;

- participation in developing the rules and promotion of observance of copyright, customs duties and all matters connected with the free flow of arts;
- involvement in discussions concerning issues related to works of art such as tax law or insurance.

Activities of IAA in the field of artistic cooperation are, *inter alia*:

- becoming one of the founding members of the International Biennial of Drawing, Pilsen, Czech Republic and establishing the IAA award. One of the results of the latest Biennial was the travelling exhibitions of the Biennial of Drawing, Pilsen 2007 – 2008. The exhibition presented the best works of the Biennial in France, USA, Great Britain, Italy and Norway;
- organisation of the 'Mini-Art – European Postcard Exhibition'. Currently, about 1000 European artists take part in the project and 14 exhibitions are planned (in Brussels, Germany, France, Poland, Cyprus, Armenia, Estonia, Hungary, Latvia, Malta, Romania, Slovakia, Switzerland and Turkey);
- organisation of the 'Art and Dialogue' symposium on international artistic exchange projects (Berlin, Germany 2008).

Sources:

<http://www.iaa-europe.eu/>

<http://www.zpap.org.pl/index.php>

3. MOBILITY OF WORKS OF ART IN EUROPE – STRENGTHS AND WEAKNESSES

Close attention was given to the analyses and opinions of practitioners (mostly art gallery-owners), researchers and officials from Germany, Malta, Romania and Poland. This allowed the identification of strengths and weaknesses regarding the mobility of cultural goods in Europe. Reservations concerned the system of cultural goods protection, transportation and insurance costs, administrative barriers and procedures, and also the monitoring of the mobility of cultural goods. Simpler procedures regarding the mobility of works of art within the EU were praised. According to most people interviewed, being an EU member in general facilitates the mobility of cultural goods. The transport and trade of works of art within the territory of the Community does not meet with significant difficulties. Private gallery owners point especially to the EU VAT rate ⁽¹¹⁾ system as a great convenience. Also the common currency and easy international cooperation are important. Some also appreciate the bureaucratic simplifications: "in most cases documents are standardised, it is possible to send them via e-mail and to use an electronic signature". The majority of interlocutors pointed at the specificity of the contemporary art market as one of many limitations on the mobility of works of art. During interviews, the subject of the present economic crisis was impossible to avoid.

3.1. Cultural goods protection system

Opinions on the system of cultural goods protection in Europe are varied. Voices are raised saying that the territorial connection of cultural goods should not legitimise restraining them from being moved if it is possible to assure the necessary protection. What is more, the territorial connection allows countries to lay claim to past cultures that have been present in the past on their present territory. Perhaps the creation of a supranational category of cultural goods could be a solution that would expand the mobility of certain works of art. It should also be mentioned that the cooperation between appropriate authorities of the Member States and between these and the Commission, aimed at observing EU regulations (e.g. Regulation (EEC) No 2603/69 of the Council of 20 December 1969 establishing common rules for exports), has not been really put into practice. In recent years, on the basis of international consultations ⁽¹²⁾, only the authorities of Great Britain and Netherlands refused to issue permits. Administrative cooperation was undertaken only by Germany, Belgium, Spain, France, Italy, Portugal and Sweden ⁽¹³⁾. In the context of eliminating the mobility of stolen cultural goods, the discussion often revolves around examples of insufficient observation of the UNESCO Convention's articles on keeping a register of transactions. As one can see, opinions on the system of cultural goods protection are directed at both loosening it and tightening it up at the same time.

3.2. Procedures / administrative barriers

In this area a significant majority of the people interviewed pointed out various barriers and obstacles. Critical Polish private gallery-owners complained about the excessively developed bureaucratic procedures and inconsistencies in the procedures for obtaining export licenses. In practice, every work of art exported from Poland must obtain a

11 Introduced by the Council Directive 94/5/EC of 14 February 1994.

12 Paczuski W. (2005), *Handel dziełami sztuki w Unii Europejskiej*, wyd. Zakamycze, Warszawa.

13 Ibid.

certificate, which states that the work of art is not an antique (such a mechanism is also present in other EU countries). The procedure of proving that a work of art is no more than 55 years old and can be freely exported, is problematic. The gallery-owners do not understand why this kind of certificate cannot be replaced by the professional documentation given to the buyer at the time of a legal purchase. It would simplify not only the organisation of an international exhibition but also the sale of works of art to tourists. The procedure of obtaining the permit of export is also an onerous matter. Even though the fees per piece are not expensive (3,5 EUR for a permit stating the work is not an antique and 9 EUR for a one time or multiple export permit), "none of the galleries can afford to obtain the permits for every work of art in advance. It is too expensive, moreover the permits are valid only for one year" ⁽¹⁴⁾ - said Janina Górka Czarnecka, the owner of 'Artemis' Art Gallery in Cracow.

The criterion of 'historical, artistic or scientific value' ⁽¹⁵⁾ and the arbitrary one of 'detriment of culture' affect whether or not a work of art can be exported ⁽¹⁶⁾. It means that if someone inherits a piece of no value such as an antique cigarette case or an old iron, she or he cannot legally sell it abroad or export it. "This kind of restriction is in conflict with the constitutional protection of personal property rights and it takes away the right to freely administer one's own property" ⁽¹⁷⁾.

Not being a part of the euro zone is another obstacle for the mobility of works of art. One has to open up additional bank accounts and the currency has to be exchanged, which might create a financial loss.

3.3. Transport and insurance

Many of the interviewed private gallery-owners, from Germany, Malta, Romania and Poland, state that the transport and trade of works of art within the territory of the Community does not meet with significant difficulties. It is enough that the transport organiser "knows and complies with the national legislation. Then you just contact a transport company, pack and insure and let them do the rest" says a Berlin-based graphic designer, Ake Rudolf. It should however be underlined that in comparison to other member states, German export legislation is quite liberal. Nevertheless, a Romanian artist, Ciprian Ciuclea, confirms this opinion: "Perhaps the best thing following Romania's EU integration in 2007 is the opportunity of shipping artworks within the EU Community very easily. On the other hand returning artworks outside EU countries is still complicated, expensive, bureaucratic and takes time". Maltese artist Vince Briffa adds: "Sending works to EU countries has become much easier since Malta became a member in 2004, it has become less bureaucratic and more efficient. I normally use a forwarding company [...] and they take care of all the necessary paperwork, insurance and also packing in some cases. This naturally involves considerable cost which are normally undertaken by the artist". In the case of export of works of art outside the EU territory, opinions are unanimous. For Germans, this is the moment when problems start to appear. The number of formalities, additional payments and taxes rises.

14 Branicka M. (2004), *Rynek sztuki współczesnej*, artbiznes.pl. Internet portal see: <http://www.artbiznes.pl/jsp/artbiznes/artykuly.jsp;jsessionid=B60B95D1440E17D6F28A549ED3C1E75D?Typ=detal&IdArtykulu=619>.

15 By force of article 3 of the act on the protection of monuments from 23rd July 2003.

16 Ibid.

17 Ibid.

The organisation of international exhibitions is a very difficult undertaking for many private galleries. The costs of professional transport and insurance are, for the most part, unattainable. The insurance of works of art is especially expensive: it absorbs, on average, 20-30% of all other costs⁽¹⁸⁾. Besides, "since a work of art may vary so much, insurance companies are sometimes at a loss as to how to insure" - said Maltese artist, Vince Briffa. In practice gallery-owners seldom insure works of art and transport them at their own risk. What is more, in many countries, such as Poland, there is no legal obligation to insure antiques which are exported from a country. "When an antique returns to Poland, a special commission should estimate all possible damages. This is the law, but it is also a dead letter"⁽¹⁹⁾ - commented the spokesman of the Warsaw Voivodeship Office of Monument Preservation. Private companies may fund the import of famous exhibitions from abroad, but they usually prefer to cooperate with public institutions. As a result, private galleries search for other solutions: "When we want to bring an exhibition to Poland, we start by attempting to identify, with our foreign partners, which source of transport would be the cheapest. Basically we concoct solutions. [...] Then the only thing left to do is to turn to unprofessional transport companies and, consequently, transport the paintings at our own risk" - said Leszek Czajka, owner of the private 'WizyTUjąca' Gallery. In Poland, due to a lack of small transport companies, the prices of the existing few big transport companies are very high. As a result the gallery owners transport the works of art by themselves or via courier companies, which transport them in large lorries, with other goods, without proper protection.

3.4. Weak economic situation of private entities

As shown in the above sub-sections the costs of importing and exporting cultural goods are a problem. Transport, insurance and permits generate costs which for many, especially artists, individuals and small galleries and museums are a burden; often too heavy to bear.

What is more, private and public art institutions often cannot afford to buy valuable works of art from abroad. Therefore museums turn to private collectors for the deposit. The museum takes care of the work of art which it cannot afford whilst the owner has a guarantee that it is well protected. This phenomenon can be extended as far as in Germany where collectors open up their own household museums (e.g. Ingvild Goetz in Munich). It is even thought by some that the German museums are becoming too dependent on collectors. A sudden withdrawal of the private deposit can ruin the museum's exhibitions. Such a situation occurred at the Abteiberg museum in Monchengladbach, when the private collector Erich Marx withdrew his collection of Joseph Beuys's works and moved them to the Museum Hamburger Bahnhof in Berlin.

3.5. Monitoring

The lack of effective monitoring of the export and import of works of art is another weak point. It is important to create an efficient system of monitoring, where expert judgment would be binding for the executive administrative powers of organisations such as The Ministry of Culture and National Heritage⁽²⁰⁾. The situation is the same in the case of customs officials – usually, they do not have the appropriate knowledge to ascertain the object's value, so very often, during customs control, the law is misinterpreted.

18 Pałasiński J. (2001), *Sztuka biznesu*, Wprost, nr 17/2001.

19 From an interview with Monika Dziekan, spokesman of the Voivodeship Office of Monuments Preservation.

20 Paczuski W. (2005), *Handel dziełami sztuki w Unii Europejskiej*, wyd. Zakamycze, Warszawa.

3.6. Specificity of the modern art market

The modern market makes up only the 'material' part of art – painting, photography, sculpture and so on. These are objects that are traded. A problem occurs in the case of works of art such as installations, video art and above all intangible artistic activity. Therefore the market consists of the most conservative forms of art and in practice modern art develops itself outside the market, mainly in private non-commercial galleries. The image of the Polish art market has been negatively summed up by the well known critic and curator Adam Szymczyk: "Modern art is a barely tolerated margin here. There is a lack of even one modern art museum collection at an international level, there are no translations of the basic literature in the field, the national modern art market is pathetic, contacts between domestic and foreign exhibiting institutions is occasional and random, academies are fossilised" ⁽²¹⁾. Unfortunately such an image of the art market is deemed adequate in relation to many other European countries.

3.7. The economic crisis and the situation of the art market

Will the present economic crisis influence the European art market? Most people project pessimistic scenarios but there are also those who are more optimistic. One of them is Wojciech Niewiarowski who said: "If we assume that a potential collector is a freelancer or runs a self-reliant economic activity, then the economic growth slowdown does not have to influence the purchasing power. A crisis first affects the blue collar workers and the middle class workers, who lose their jobs. But such people have an insignificant share in the art market, as they are not gallery clients. Lawyers, notaries, doctors and representatives of high-level public administration do not have to bear a decrease in their income. The financiers are in a worse position, although it is the weak that will suffer. The situation of entrepreneurs and businessmen is difficult to determine. [...] What will they do with the accumulated capital from deposits? Naturally they will buy safe government securities, they will invest some of it abroad, but maybe, the growing heap of money will convince them to look closer at the arts. After all, investors have always been advised to invest 10% of the capital in paintings and sculptures. [...] A reflection of the art dealers' moods and of the economic situation of the market is the Artprice Confidence Index (ACF) published on www.artprice.com. [...] The indicator is expressed in positive or negative percentages. When positive it is evidence of a good mood, when it falls below zero, it means that art dealers see the future in dark colours. In June the ACF was over + 25%, in October – 10%, and on 17th February 2009 it was + 2.4%. The mood is thus becoming more positive" ⁽²²⁾.

3.8. Case study

The interview presented below with owners of private galleries illustrates, in an interesting way, the majority of the strengths and weaknesses of the art works mobility system presented in this paper.

21 Branicka M. (2004), *Rynek sztuki współczesnej*, artbiznes.pl. Internet portal. see: <http://www.artbiznes.pl/jsp/artbiznes/artykuly.jsp;jsessionid=B60B95D1440E17D6F28A549ED3C1E75D?Typ=detal&IdArtykulu=619>.

22 According to Wojciech Niewiarowski from 'Rynek Sztuki' Gallery from Łódź.

**Interview with owners of Warsaw private art galleries:
Paweł Sosnowski, 'Appendix2' gallery and Łukasz Gorczyca, 'Raster' gallery**

Question: What are the main obstacles to the mobility of works of art in Europe?

Paweł Sosnowski: I think that issuing the export permits for contemporary art, in the era of open borders, doesn't make sense. In Poland, these permits are a left-over from the former controlling system, which was aimed at restricting the art market. If you own a work of art, you must go to the heritage conservator for a certificate stating that the object is not older than 55 years old. Couldn't this procedure be made easier? In my opinion, the proof of purchase with documentation provided by a private gallery that states the age of the work of art should be enough. It would be a great convenience for us, private gallery-owners, and for tourists who buy works of art and want to take them back home.

Question: So, you want to transfer the responsibility from the heritage conservators to private galleries?

Paweł Sosnowski: Yes, of course, but only in the case of contemporary art. Gallery-workers are qualified professional people. Additionally, the galleries have documentation for every work of art they own and they pay taxes for them. It's odd that when it comes to the decision, the civil servants are considered to be more reliable. It multiplies redundant posts and bureaucracy. At the same time most customs officers don't know what to do with modern art, how to treat a work of art such as an installation, recording of an ephemeral project or a piece of video-art. And this is very important as when something is classified as art the VAT rate is 7%, whereas if it is not, then the rate is as high as 22%. There is also a need for the definition of a work of art to be coherent. For example there are cases where old works have been found in flea markets or in rubbish chutes. They are more than 55 years old, but then they were used by a contemporary artist. Are they still antiques, or contemporary works of art? It's an important matter, because if we're talking about controlling, we should accept one rule – everything or nothing.

Łukasz Gorczyca: Too few books on art are translated into Polish. It could raise consciousness and increase an interest in art as well as educate future customers of the art market. It's also a pity that translating all exhibition materials (e.g. into English) is not a standard procedure.

Question: What hinders the presentation of works of art abroad?

Paweł Sosnowski: Costs in general. Very high transport costs. Transporting one container with a painting costs thousands of Euros, and it's much more than a painting by a Polish contemporary artist is worth. There is no alternative but to turn to unprofessional transport companies and, consequently, transport at one's own risk. Very high insurance costs and participation fees for international art fairs are also important obstacles. My gallery takes part in art fairs, but I know that many others can't afford it. These obstacles absolutely block the mobility of works of art and the promotion of artists.

Łukasz Gorczyca: Lack of a wider range of transport companies on offer (we have 2 significant transport companies in Poland). That's why the transport costs are so high. In other countries, where there is a range of companies on offer, the prices are competitive.

Question: Are there any advantages for the mobility of works of art introduced by your country/region?

Paweł Sosnowski: No. Maybe the only little one is that if a work of art is large, you can present the heritage conservator with a photograph of it.

Łukasz Gorczyca: As for the EU area it would be: lifting customs barriers and introducing the Community VAT rate system.

Sources: Interviews have been conducted especially for the purpose of the briefing paper.

4. MAIN FINDINGS

The analysis allows us to evaluate the dysfunctions of the current system for the mobility of works of art where private entities are endeavouring to take part both in popularising cultural goods and in developing the art market. First of all, the analysis shows that the mobility of works of art is much simpler between EU countries than between the EU and third countries. However there are many anomalies with regard to the mobility of works of art for these entities within the EU. The analysis proved that most of the existing obstacles are of a general nature and concern all entities, whilst a few have a specific nature. In this paper, this distinction is applied in order to present the results of the analysis conducted.

Consequently, the obstacles of a general nature are mainly as follows:

- Legal requirements impeding the flow of works of art between countries, keeping cultural goods which are recognised as especially valuable within a country, based on territorial connection, even when it is possible to assure them the necessary protection;
- The lack of coordination between institutions, in different countries, which are responsible for the protection of highly valuable works of art;
- Examples of insufficient registration of transactions, which makes it difficult to eliminate stolen goods from the art market;
- In many countries, international contacts between exhibition institutions are rare and occasional whilst fine art academies are 'fossilised';
- In many cases, the contemporary art market consists only of 'material' art such as paintings, photography and sculptures. Other modern art (e.g.: installations, video-art or intangible artistic activities) is being developed outside the market, mainly in non-commercial art galleries;
- Despite the preferential VAT rates and the lack of customs rates within the EU, private and public art institutions often cannot afford to buy expensive works of art from abroad (private collectors' deposits is a solution);
- Droit de Suite, which grants the author of visual art works the right to a share in re-sale profits, is considered to be controversial as it makes the art work more expensive. Private museums or galleries with a non-profit status are exempt;
- The weakness of statistics on the mobility of works of art in Europe;
- The possibility of stagnation in the art market caused by the economic crisis.

Specific obstacles, that mainly concern private entities, are:

- Different administrative procedures, in particular in EU countries – more difficult to identify in the case of private entities than public ones (often having special support);
- Excessively complicated bureaucratic procedures and anomalies concerning the export permits application process, especially in new member countries;
- Difficulties resulting from the lack of a common currency in countries not belonging to the Euro zone;
- For many private galleries, the organisation of international exhibitions is very difficult because of the high professional transport and insurance costs;
- Most private galleries cannot afford to participate in foreign art fairs (they do not own works of art with a saleable valuable that is high enough to compensate for the cost of participation).

5. CONCLUSIONS

This identification of the main obstacles to the mobility of works of art by private galleries and museums, and individual artists in the EU, leads to the following conclusions and recommendations, both at the Community and national levels:

- In order to make the system of cultural goods' protection more effective and transparent, it is necessary to standardise the method of classifying an art good as a national treasure, in the context of both national and international law. In order to embrace as many countries as possible, UNESCO should be the coordinating body;
- It is necessary to standardise the regulations concerning control (especially relating to the authenticity of the work of art, method of acquisition and property rights) and to implement works of art mobility monitoring mechanisms. The control should be undertaken by state agencies responsible for cultural matters. The standardised regulations should, however, be prepared jointly by the appropriate agencies at the EU level. Regular mobility monitoring should be commissioned by a body such as the European Commission, through an open call for proposals for European networks and observatories;
- It would be advisable to create a separate European fund for supporting the insurance of transported cultural goods. In Member States, the resources granted would be passed to private entities by the ministry responsible for cultural matters. Such an incentive for both the commercial art market and the non-commercial exchanges would favour the protection of European cultural heritage and facilitate the mobility of works of art. In the case of privately-owned works of art, state guarantees would be worth considering in relation to especially valuable pieces. The financing for this incentive could come from the EU Culture Programme 2007-2013. In such a case, according to the categorisation of eligible participants, the coordinating body would be a chosen network acting in the field of mobility of works of art in Europe;
- Issuing new European funding lines should be considered. One could aim at supporting the organisation of private galleries' exhibitions with imported works of art and at facilitating their participation in international art fairs. Another could support the translation of exhibition materials and professional works devoted to the art market;
- The EU should initiate conferences, seminars, training on the mobility of works of art, (devoted to issues such as: the control of the internet art market, or standardisation of exhibition organisation procedures and using an electronic signature), addressed to ministries of culture and other public authorities responsible for the implementation of law on the protection of cultural goods (such as customs and the police). Such activities would enable the exchange of experience and contribute to better coordination of the protection of valuable cultural goods. It would also facilitate the mobility of other cultural goods by simplifying the existing procedures;
- It is crucial to lobby for the introduction of tax incentives for purchasing works of art for private entities (including individuals). This is necessary to revitalise the art market, especially in times of economic crisis;
- Conducting a circumstantial study on the mobility of cultural goods in Europe is highly recommended. It should include proposals of implementable incentives.

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