

Italy

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A. Protection of Cultural Property

1. What are the key characteristics of your country's regulations on cultural heritage and national patrimony?

The Italian cultural heritage legal framework traces its origin back to centuries before the country's unification in 1861. Scholars believe that the first legislation setting forth a control on the exportation of cultural objects is the Decision dated 24 October 1602 by Ferdinando I de' Medici, Grand Duke of Tuscany.¹ In that Decision, the Tuscan ruler provided that the exportation of artworks made by non-living artists from the territory of the Grand Duchy required an export licence to be granted by the Academy of the Arts of Drawing (*Accademia del Disegno*). The Decision listed 18 artists (including Leonardo, Michelangelo Buonarroti, Raphael, Correggio), whose works could not be exported from the Grand Duchy's territory.

The first comprehensive Italian cultural heritage law was approved by the Italian parliament in 1909 (Law No 364/1909). During the Fascist era, Law No 364/1909 was replaced by Law No 1497/1939, which was abrogated by the Decree 490/1999. Fifteen years later, the Italian Parliament approved by Legislative Decree No 42 of 22 January 2004, the current Cultural Heritage Code (CHC).

According to Article 10 of the CHC, any object with a 'cultural interest', from an artistic, historical, archaeological or ethno-anthropological viewpoint, may be declared of cultural interest and, consequently, classified as 'cultural property', whether it is owned by a public entity (state, region, municipality), a private entity (corporation or not-for-profit organisation) or an individual.

More specifically:

- As a general rule, objects with a cultural interest made by non-living authors more than 70 years ago may be declared of cultural interest. Conversely, objects made by living artists or by non-living artists less than 50 years ago cannot be declared of cultural interest and are not subject to cultural heritage protection. Objects with a cultural interest made by a non-living author between 50 and 70 years ago may be declared of cultural interest only if they show an exceptional interest for the integrity and completeness of the Italian cultural heritage.
- If an object is declared of cultural interest, its private owner is entitled to sell or donate it but he/she has an obligation to notify the contract to the Italian State within 30 days of the date of the transaction. In case of sale, the State has a pre-emption right to be exercised within 60 days of the date of receipt of the sale notice (Article 59 of the CHC).

¹ Carugno, Mazzitti e Zucchelli, *Codice dei Beni Culturali annotato con la giurisprudenza* (Milan: Giuffrè 2006), p 1.

- Classified objects may be moved within the Italian territory, but their movement must be authorised by the Ministry. Furthermore, any restoration of a classified work needs to be authorised by the Ministry (Article 21 of the CHC).
- Objects made by non-living authors more than 70 years ago may be exported provided that an export licence is granted by one of the Export Offices of the Ministry of Cultural Property.
- Artworks made by a non-living artist, older than 70 years and with a value of less than €13,500 do not need an export permit. However, if they are exported, they must be accompanied by a unilateral declaration by the exporting party detailing their nature, author and the year of creation. The €13,500 threshold has, at the time of writing, not yet been applied.²
- If an export licence is denied with respect to an artwork, the latter is automatically declared to be of cultural interest (Article 68(6) of the CHC).

2. Under your national law, which criteria must be met, in order to classify goods as cultural property?

Pursuant to Article 2 of the CHC, goods may be classified as cultural property if they have an artistic, historical, archaeological, ethno-anthropological, archival or bibliographical interest, whether they belong to the State (or any other public entities) or to a private owner.

Goods with an artistic, historical, archaeological, ethno-anthropological, archival and bibliographical interest belonging to the State (or any other public entities) or a not-for-profit organisation are presumed to be cultural property, unless the Ministry acknowledges that they do not have such a cultural interest.

If the same goods belong to a private individual (or a private entity other than a not-for-profit organisation), the cultural interest must be assessed by the Ministry through an administrative procedure in which the private owner is entitled to participate.

Collections or series of objects may also be classified as cultural property, but they must show an ‘exceptional’ cultural interest (Article 10(3)(e) of the CHC).

The assessment by the Ministry is largely discretionary. Neither the law, nor the Ministry provides any guidelines on how the notion of ‘cultural interest’ should be interpreted.

3. What are the legal consequences arising from classifying an asset as cultural property? Does the classification of a private asset as cultural property affect the right of ownership?

If a good owned by an individual or a private entity is classified as cultural property, the owner is under an obligation to preserve its integrity (Article 20(1)(a) of the CHC). Furthermore, an authorisation by the Ministry is required for moving the good from its current location, for example, for showing it at an exhibition (Article 20(1)(b) of the CHC)³ and for restoring it (Article 20(4) of the CHC).

² On 9 July 2018, the Ministry of Cultural Heritage issued Decree No 305, which suspended the application of the monetary threshold until 31 December 2020. Although the aforesaid term has elapsed, the threshold is still not applied by the Export Offices.

³ If the listed good is only moved from one domicile of the owner to another also located in Italy, the Ministry must only be informed in advance of the object’s relocation.

A privately owned cultural property may be sold, but the seller has an obligation to notify the contract to the Italian State within 30 days of the date of the sale. In case of sale, the State has a pre-emption right, to be exercised within 60 days of the date of receipt of the sale notice (Article 59 of the CHC).

A cultural property shall not be exported from the national territory on a permanent basis.

This prohibition is deemed to determine a reduction in the commercial value of the good in the region of two-thirds of the international market value of the relevant property.

4. Which authorities in your country define cultural property and who advises these authorities?

Pursuant to Article 14 of the CHC, the authority entitled to declare a good as cultural property is the Ministry of Cultural Property at the initiative of one of its local offices (Soprintendenza archeologica, belle arti e paesaggio). Normally, the Ministry relies on the expertise of its officers, but it may happen that the opinion of external advisers (art historians, university professors, etc) is sought.

Decisions declaring an object as cultural property must be adequately motivated and may be challenged in court (regional administrative courts) if they violate a law provision (eg, if an object made by a living artist is declared to be of cultural interest) or if their motivation is incoherent or illogical (for instance, a painting attributed to artist X is declared cultural property and then it results that the attribution is wrong).

5. Has your country ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?

On 2 October 1978 (Law No 873/1978), Italy ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, without adopting any specific reservations or declarations and the Convention became effective on 2 January 1979. The Convention is expressly mentioned in Article 87 of the CHC. The Convention did not have any particular impact on Italian cultural heritage law: as a source country, Italy already provided for a very strict control over exportation of artworks and antiquities.

6. Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and, regarding the illegal export of cultural objects and artworks: what are the main characteristics of the national implementation?

On 1 April 2000, Italy ratified the 1995 UNIDROIT Convention. The UNIDROIT Convention introduced the following relevant changes:

- while according to the general provisions of the Civil Code (Article 1153 of the Italian Civil Code), which states that a good faith purchaser of a stolen property may become the legitimate owner of that property if they have acquired possession of the property and the ownership was transferred in accordance with an adequate title (eg, sale, donation), a plaintiff bringing a claim under the 1995 UNIDROIT Convention against the possessor

of a stolen item may prevail over a good faith buyer but is obliged to pay him or her a compensation; and

- in the case of an illegally exported cultural object, a possessor who acquired the object after it was illegally exported shall be entitled, at the time of its return, to payment by the requesting state of fair and reasonable compensation, provided that the possessor neither knew nor reasonably ought to have known at the time of acquisition that the object had been illegally exported. The requesting state shall make its request for return within a period of three years from the time it knew the location of the cultural object and the identity of its possessor, and in any case within a period of 50 years from the date of the illegal exportation.

7. Has your country ratified any other international conventions or bi-lateral agreements relating to the export of cultural objects?

Further to the UNIDROIT Convention, Italy ratified several other international conventions related to the export of cultural objects, namely:

- 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage;
- 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage;
- 1969 European Convention on the Protection of the Archaeological Heritage;
- 1954 European Cultural Convention; and
- 1954 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Furthermore, Italy entered into the following bilateral agreements:

- 2017 Bilateral Agreement between Italy and Greece to fight the illicit traffic of cultural property;
- 2008 Bilateral Agreement between Italy and Switzerland on the import and repatriation of cultural property; and
- 2001 Memorandum of Understanding against the art trafficking between Italy and the US, concerning the imposition of import restrictions of archaeological material representing the pre-classical, classical and imperial Roman periods of Italy (the Memorandum was amended in 2016);

Italy also signed agreements with several museums, including the following:

- 2018 Agreement between Italy and the Speed Art Museum of Louisville in the US for the restitution of a krater of the IV century BC (2 February 2018);
- 2016 Agreement between Italy and the Ny Calsberg Glyptotek of Copenhagen in Denmark for restitution of archaeological pieces to Italy (5 July 2016);
- 2013 Agreement between Italy and the Dallas Museum of Art in the US for the restitution of six archaeological pieces to Italy (31 October 2013);

- 2010 Agreement between Italy and the Museum of Fine Arts of Boston in the US for the restitution of a medieval embroidery to Italy (20 December 2010);
- 2006 Agreement between Italy and the Museum of Fine Arts of Boston in the US for the restitution of thirteen archaeological pieces to Italy (28 September 2006); and
- 2006 Agreement between Italy and the Metropolitan Museum of Art of New York in the US for the restitution of five archaeological pieces to Italy (21 February 2006).

B. Restrictions on the export of cultural property and artworks

1. What are your country's export restrictions regarding cultural property and artworks?

Pursuant to Articles 10 and 65 of the CHC, the following categories of goods shall not be exported on a permanent basis from the Italian territory:

- works with an artistic, historical, archaeological, ethno-anthropological interest owned by the State (or any other public entities) non-profit private organisations (ie, foundations, associations and ecclesiastic legal entities) and made by non-living authors more than 70 years ago, whose export could be harmful for the cultural heritage in relation to the objective characteristics and the provenance of the aforesaid goods and to the milieu to which they belong; and
- privately owned goods made by non-living authors more than 70 years ago, provided they were classified as cultural property (see question A.1 above).

Privately owned works with a cultural interest made by non-living authors more than 70 years ago and not classified as cultural property may be exported on a permanent basis from the Italian territory provided that an export permit be granted by one of the Export Offices of the Ministry of Cultural Property.

If the exportation of the good is to an EU Member State territory, the document issued by the Export Office is a certificate of free circulation (*Attestato di libera circolazione*: Article 68 of the CHC). Furthermore, according to the Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, if the exportation is towards a third country (non-EU Member State), in addition to the aforesaid certificate, an export licence must be obtained (Article 74 of the CHC).

Works by living artists or made by non-living artists less than 70 years ago and works realised more than 70 years ago whose value is lower than the €13,500 threshold established by Law No 124/2017 can be exported on the basis of a unilateral declaration (*autocertificazione*) by the interested party addressed to one of the Export Offices of the Ministry detailing the work, the author and the year of creation.⁴

According to the Ministerial Decree of 17 May 2018, No 246, which implemented Law No 124/2017, the declaration can only be filed online through the website of the Ministry.⁵

⁴ See n 2 above.

⁵ At www.beniculturali.it – *Sistema informativo degli Uffici Esportazione* (SUE).

The Ministry must acknowledge receipt of the declaration by applying an official stamp and delivering the original to the interested party within five days.

Privately owned objects with a cultural interest made by a non-living author between 50 and 70 years ago may be exported on the basis of the *autocertificazione* but the Ministry may declare the exceptional cultural interest of the object for the integrity and completeness of the Italian cultural heritage within 60 days from the day of the *autocertificazione* and, consequently, their exportation would be prohibited.

Furthermore:

- within ten days after the submission of the declaration, the competent Export Office can demand the physical delivery of the good;
- within 20 days after the submission of the declaration, the competent Export Office can exercise the compulsory purchase of the good in agreement with the competent General Direction;
- within 30 days after the submission of the declaration, if the Export Office declares the exceptional cultural interest of the object, it can open the declaration procedure and give notice to the interested party and to the competent General Direction; and
- within 60 days after the submission of the declaration, the General Direction adopts the final decision.

1.1 Under which conditions export permission is granted?

In order to determine whether the exportation of an artwork or any other object with a cultural interest should be granted or denied the Ministry relies on guidelines, which were released in 1974⁶ and amended in 2017.⁷

In applying the 2017 guidelines the Export Offices of the Ministry exercise a very wide discretionary power because the guidelines refer, in particular, to the following criteria: the aesthetic quality of the artwork, its rarity from a quantitative and qualitative point of view (ie, whether or not artworks by the same artist are present in public collections), the particular meaning of what is being represented in the artwork, the historical, artistic, archaeological or monumental relevance of the object, its importance for the history of collecting and for the intercultural relationships.

1.2 Which authority grants such export permission and who advises this authority?

The authority granting export permissions is the Ministry of Cultural Property (Ministero dei beni e delle attività culturali e del turismo or MiBACT) through its 18 local Export Offices. There is no clear indication as to which local Export Office is empowered to grant (or deny) an export licence (eg, the Export Office of the

6 Circular of the Ministry of public Education issued on 13 May 1974, General Direction for antiquities and fine arts – Section VI – prot No 2718: *Criteri generali per valutare quando l'esportazione di cose di interesse storico, artistico, archeologico ed etnografico costituisce danno per il patrimonio storico e culturale nazionale.*

7 Ministerial Decree of 6 December 2017, No 537: *Indirizzi di carattere generale per la valutazione del rilascio o del rifiuto dell'attestato di libera circolazione da parte degli uffici esportazione delle cose di interesse artistico, storico, archeologico, etnoantropologico.*

place where the artwork is normally located or of the domicile of the owner or of the shipping agency in charge of the exportation of the artwork): this uncertainty gives rise to a forum shopping that is widely criticised.

1.3 What does the proceeding look like, who are the parties to the proceeding and what is the duration of the proceeding?

The export proceeding must be initiated by the interested party online through SUE (see question A.1 above). The Export Office (Ufficio Esportazione), after assessing the cultural relevance of the item for the national patrimony, will decide whether to release the export permission. The Export Office must physically examine the artwork for which an export licence is filed.

The Export Office has a timeframe of 40 days to conclude the proceeding upon the date of presentation of the artwork for a physical inspection but this is not a mandatory term (ie, no legal consequences would arise in case the term elapses without the MiBACT's releasing or denying an export licence).

If the MiBACT decides not to release the permission, it must inform the interested party with a preliminary notice of its intention not to release the licence and the party wishing to export the artwork is entitled to file a memorandum within ten days of the MiBACT's preliminary notice.

If the Export Office decides to issue an export licence, the interested party must take the artwork out of the country within the next five years, lest the licence becomes ineffective. If the Export Office denies the export licence, the interested party is entitled to file a petition to the General Director of the Ministry in charge of Fine Art and Archaeology within 30 days and the latter is empowered to reassess whether there are sufficient grounds to deny an export licence or whether an export licence should be granted because the export denial was affected by a violation of law or was not justified with regard to the protection of cultural heritage. If the General Director does not reply within 30 days of the date the petition is filed, the petition is presumed to be rejected (so-called tacit rejection).

If the petition is rejected, whether by express provision or tacitly, the interested party is entitled to challenge the rejection by filing a claim before the competent administrative regional tribunal (Tribunale Amministrativo Regionale – TAR). The decision of the TAR may be appealed before the State Council (Consiglio di Stato) within 60 days from the date of service of the TAR's decision.

As indicated above in the answer to question A.1, the export licence denial automatically triggers the declaration of cultural interest of the object whose exportation was denied.

Finally, if the State determines that an artwork for which an export licence was filed is particularly relevant for the national heritage, it is entitled to carry out a forced sale of such artwork.

The forced sale is for a consideration equivalent to the value declared by the owner at the time of the filing of the export licence. However, the private owner is entitled to withdraw from the export licence procedure until the moment the forced sale decree is notified by the State and, in such event, the State cannot force the owner of the object to sell it.

However, should the owner decide to withdraw from the export licence procedure, the State would preserve its right to declare the artwork of cultural relevance.

1.4 Are there any monetary thresholds (*de minimis*)?

Yes, Law No 124/2017 set a *de minimis* monetary threshold of €13,500 for cultural objects made by non-living authors and older than 70 years. If the aforementioned artworks are worth less than the monetary threshold, they do not need an export permit. The threshold does not apply to archaeological goods, incunabula (books printed pre-16th century), manuscripts and archives. The €13,500 threshold has, at the time of writing, not yet been applied.⁸

1.5 Does the circumstance, of the artist still being alive, or the time of creation of the artwork matter?

Yes. Works by living artists are not subject to heritage protection and can be freely exported on the basis of a unilateral declaration (*autocertificazione*) by the interested party addressed to one of the Export Offices of the Ministry detailing the work, the author and the year of creation. See question B.1 above.

2. Is the State obliged to buy out the artwork for which an export permission was denied?

The State is not obliged to buy an artwork in cases where the export licence is denied. While the State has no obligation to buy, it is entitled to carry out a forced sale, in cases where it believes that the artwork, for which an export licence is requested, is particularly relevant for the national heritage. See question B.1.3 above.

3. Are there any exceptions to these regulations, eg, temporary export for exhibitions, conservation or private reasons of the owner?

Pursuant to Article 66 of the CHC, temporary licences may be granted for artworks, whether or not they are classified as cultural property, in order to show them at exhibitions or other events of high cultural interest, provided that their integrity is preserved. The temporary licence shall not exceed the duration of 18 months.

Furthermore, according to Article 67 of the CHC, a temporary licence with respect to an artwork may also be granted in the following cases: (i) when the temporary export is in compliance with a cooperation agreement with a foreign museum for the exchange of artworks and for a maximum four-year term, renewable only once; and (ii) when the artwork requires analyses or conservation activities that may only be conducted abroad.

8 See n 2 above.

The circumstance that owners may move their domiciles to a foreign jurisdiction does not justify either a temporary or permanent export licence of the artworks they own.

C. Consequences of violation of export restrictions; restitution and repatriation of illegally exported cultural property

1. What are the legal consequences in case of breach of export restrictions?

Italian legislation provides both administrative and criminal sanctions in the case of a breach of export restrictions.

Pursuant to Article 165 of the CHC, anyone violating the provisions on international circulation of cultural heritage shall be subject to an administrative fine ranging from €77.50 up to €465.

Pursuant to Article 174 of the CHC, anyone illicitly exporting cultural property without an export licence is subject to a prison term of one to four years or to a criminal fine of €258 up to €5,165.

The violation of the criminal law provision determines the forfeiture of artwork, unless the latter belongs to a third party who is not involved in the alleged illegal exportation.

Furthermore, if the offender is a professional art dealer or someone generally involved in the art market, the wrongdoer shall be banned from exercising his professional activity.

On 24 October 2017, Italy signed the Council of Europe Convention on Offences relating to Cultural Property, the so-called Nicosia Convention, which aims at fighting illicit traffic of cultural property and their illicit import and export by introducing new and uniform criminal sanctions.

2. Give a description of the regulations and practices in your country relating to the restitution and repatriation of illegally exported cultural property

Italy has transposed into national law the Directive of the European Union No 2014/60 (Restitution Directive) of 19 December 2015, on the return of cultural objects unlawfully removed from the territory of a Member State, which only applies to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993 (Article 75 *et seq* of the CHC).

Italy also ratified the 1995 UNIDROIT Convention (see question A.6 above).

While Italy has been particularly active in pursuing repatriation of works illegally exported from the Italian territory, there is no significant Italian case law on repatriation to countries from which a work was illegally exported.

3. Under which conditions does your country assist foreign countries seeking repatriation of cultural property/artwork?

Pursuant to Article 77 of the CHC, EU Member States are entitled to a restitution claim aimed at repatriating a cultural property that was illegally exported from the territory of the requesting Member State.

The action must be brought before the court of the place where the good is located.

In addition to the general requirements set out in the Italian code of civil procedure for any civil claim, a restitution claim shall be supported by the following documents:

- a document describing the good and qualifying it as cultural property; and
- a declaration by the competent authority of the requesting state with regard to the illicit exportation from the national territory.

The statement of claims must be served on the possessor of the good and the Ministry of Cultural Heritage, in order to be recorded in the Ministry's restitution claims' registry.

Restitution claims are time-barred if they are initiated after three years of the day the requesting state had knowledge of the location of the illicitly exported good and the identity of the possessor. Restitution claims are subject to a statute of limitation of 30 years from date of the illicit exportation.

4. Does a buyer enjoy protection against restitution claims for violation of foreign export restrictions?

Pursuant to Article 79 of the CHC, the competent court may order that a fair and equitable compensation be paid to the bona fide possessor of an illegally exported good. The requesting state obliged to pay the aforesaid compensation may have recourse against the subject responsible for the illicit exportation.

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was ratified by Italy by Law No 213/1999 which is currently in force. When applicable, Law No 213/1999 obliges the possessor of a stolen cultural object to return it to its rightful owner, entitling the good faith acquirer to compensation (Article 4, paragraph 1). The buyer has to prove his or her good faith (Article 4, paragraph 2).

5. Which regulations exist for the protection of the purchaser against title claims?

According to Article 1153 of the Italian Civil Code, a good faith purchaser of a stolen property may become the legitimate owner of that property if the buyer has acquired possession of the property and the ownership was transferred in accordance with an adequate title (eg, sale, donation).

However, the aforementioned provision is derogated if a plaintiff brings a claim under the 1995 UNIDROIT Convention against the possessor of a stolen item. Under this Convention a plaintiff may prevail over a good faith buyer but is obliged to pay them a compensation.

Furthermore, according to the Italian Supreme Court uniform case law,⁹ the Italian State always prevails over title disputes against the private possessor of an alleged stolen work claimed by the State, regardless of whether such possessor acquired the work in good faith.

6. Does a lender from abroad enjoy protection against seizure of items on loan to local exhibitors if the good fails to have proper export licence?

There is no legislation on immunity from seizure.

⁹ Cass, 10 February 2006, No 2995, in *Juris Data Online-Cassazione Civile*; Cass, 7 April 1992, No 4260, in *Giur. Italy*, p 1242.

7. What regulations exist concerning the import of cultural property that may have been exported illegally from its country of origin or that is the subject of claims?

Export Offices can grant import certificates in relation to art objects with a foreign provenance (eg, artworks purchased abroad by an Italian private collector) with a validity of five years upon request (Article 72 of the CHC). Import certificates are issued within 40 days from the submission of the application, which must include documentation identifying the work and providing information on its provenance. The import certificate allows the owner of the artwork to re-export it during the five-year timeframe, which may be renewed prior to its expiry, without any need of an export licence. The Export Office of the country from where the artwork was illegally exported (ie, country of origin or the country in which it was sold) shall file a report to the police and seize the artwork.

Illegally exported artworks may be subject to a restitution claim against the current possessor of an artwork illegally exported. The claim may be brought by a state adhering to the 1995 UNIDROIT Convention from which territory the artwork was illegally exported. Member States could also bring a restitution claim against the current possessor of an artwork illegally exported from its territory pursuant to Article 77 of the CHC (implementing the Restitution Directive: see question C.2, above).

Furthermore, by the end of December 2020, the new European Regulation No 880/2019 on the introduction and import of cultural good, will be enforceable.

Regulation 880/2019 aims at introducing common import rules across Member States, in order to *‘ensure the effective protection against illicit trade in cultural goods and against their loss or destruction, the preservation of humanity’s cultural heritage and the prevention of terrorist financing and money laundering through the sale of pillaged cultural goods to buyers in the Union’*.

This Regulation shall not apply to cultural goods which were either created or discovered in the customs territory of the Union.

Article 2(1) of Regulation 880/2019 provides that “cultural goods” means any item which is of importance for archaeology, prehistory, history, literature, art or science’ as listed in the Annex to the Regulation. Part A of the Annex lists the 12 categories of cultural objects, whose import into the EU is strictly forbidden in cases of cultural objects ‘were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country’.¹⁰ Parts B and C list the categories of cultural goods, which require an import licence and a statement by the importer.

The content of each category is based on the definitions used in the 1970 UNESCO Convention and the 1995 UNIDROIT Convention are familiar with them.¹¹

The range of objects included in the Annex is extremely broad and includes archaeological finds, remains of historical monuments, works of art, liturgical icons, antiquarian books and manuscripts.

¹⁰ Art 3(1) of Regulation No 880/2019: ‘The introduction of cultural goods referred to in Part A of the Annex which were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country shall be prohibited’.

¹¹ Seventh recital of the Preamble of the Regulation No 880/2019 approved on 17 April 2019 by the European Parliament and the Council of Europe.

Furthermore, the Regulation introduced the following age and money thresholds:

- an age threshold of more than 250 years for certain archaeological finds and dismembered elements of artistic or historical monuments; and
- an age threshold of more than 200 years plus a minimum financial value of €18,000 or more per item, below which they can continue to be freely imported into the EU.

The only categories which are not covered by the additional criteria of the financial value are: ‘(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries on land or underwater; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered’.¹²

Accordingly, cultural property most likely to be affected by the Regulation includes property from civilisations in the Near East, including Turkey and Iran, Far East, the Americas, Africa and Australasia.

Under Article 3 and Part A of its Annex, the Regulation establishes that particular categories of cultural goods,¹³ that were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country, are prohibited from entering the EU.

Article 4 of the Regulation states that the import of cultural goods listed in Part B of its Annex shall require an import licence issued by the competent authority of each Member State.

This applies to:

- products of archaeological excavations (including regular and clandestine) or of archaeological discoveries on land or under water that are more than 250 years old; and
- elements of artistic or historical monuments or archaeological sites that have been destroyed that are more than 250 years old.

The issue or refusal of an import licence needs to take place within 90 days from receipt of the application. Pursuant to Article 4, paragraph 7 of the Regulation, the competent authority shall reject the application where:

- it has information or reasonable grounds to believe that the cultural goods were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country;

¹² PE-CONS 82/1/18 REV 1 final ANNEX 1 approved on 17 April 2019.

¹³ These are the twelve categories listed in the Part A of the PE-CONS 82/1/18 REV 1 final ANNEX 1 approved on 17 April 2019: ‘(a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries on land or underwater; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; (g) objects of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula; (i) old books, documents and publications of special interest (historical, artistic, scientific, literary, etc) singly or in collections; (j) postage, revenue and similar stamps, singly or in collections; (k) archives, including sound, photographic and cinematographic archives; (l) articles of furniture more than one hundred years old and old musical instruments’.

- evidence that the cultural goods in question have been exported from the country where they were created or discovered in accordance with the laws and regulations of that country is not provided;
- it has information or reasonable grounds to believe that the holder of the goods did not acquire them lawfully; or
- it has been informed that there are pending claims for the return of the cultural goods by the authorities of the country where they were created or discovered.

The categories of cultural goods listed in Part C of the Annex to the Regulation do not require an import licence but a statement from the importer (Article 5 of the Regulation, not yet applicable). The statement, which needs to be submitted through a specific electronic system, must include:

- a declaration signed by the holder of the goods stating that the cultural goods have been exported from the country where they were created or discovered in accordance with the laws and regulations of that country at the time they were taken out of its territory; and
- a standardised document describing the cultural goods in question in sufficient detail for them to be identified by the authorities and to perform risk analysis and targeted controls.

D. Due diligence obligations

1. What general due diligence is required from the seller/buyer of artwork if the artwork is intended to be exported?

According to Article 1337 of the Italian Civil Code the parties of a contract are required to conduct negotiations in good faith.

Pursuant to the aforementioned provision, the seller of an artwork should disclose to the buyer (especially if the buyer is domiciled abroad) that the exportation of the artwork requires a free circulation certificate and/or an export licence if the artwork was made by a non-living artist more than 50 years prior to the transaction.

Italian courts interpret the seller's obligation in a more rigorous way if the seller is an art market professional (eg, an auction house or a dealer: see Article 1176, paragraph 2 of the Civil Code).

If the artwork is declared of cultural interest, not only would the seller be required to disclose this circumstance to the buyer and inform them that the work cannot be permanently exported from the Italian territory, but it would also need to send a notice to the Italian Ministry in order to allow it to exercise its pre-emption right (see question A.1 above). Failure by the seller to notify the sale transaction to the state makes the sale null and void, vis-à-vis the state (Article 164 of the CHC). Furthermore, the same violation is punishable with a prison term of up to one year and a fine up to €77,469 (Article 173 of the CHC).

Buyers (especially buyers domiciled abroad) would normally need to check: (i) whether the relevant artwork was classified as cultural property (and in cases where the buyer states that

the work was not declared of cultural interest, request that a corresponding representation be made in the sale contract); and (ii) whether the object can freely circulate (if it was made by a living artist or less than 50 years prior to the transaction if the artist is no longer alive) or needs an export permit in order to be permanently exported from the Italian territory.

Normally, export permits are requested by the buyers, but if the sellers are intermediaries or professionals, they may offer the artwork for sale with an export permit in order to enhance the possibility to sell it and negotiate a higher sale price.

2. Are there any anti-money laundering regulations applicable in the art trade and at art auctions?

Art dealers and auction houses in Italy are subject to Legislative Decree No 231 of 21 November 2007, as subsequently amended, on anti-money laundering (AML Decree; Articles 10(2) (e), 4 and 5).

Pursuant to Article 41 of the AML Decree, art market intermediaries shall report any suspect transactions to the competent authority (Unità di Informazione Finanziaria) if they know, suspect or have reason to suspect that money laundering or activities supporting terrorism were carried out or are being carried out. They shall refrain from carrying out the transaction until they have filed the report. Failure to comply with the aforesaid obligation is sanctioned with a prison term of up to one year and a fine from €100 up to €1,000 against the person(s) responsible for the compliance with the AML Decree provisions.

Professional art dealers and auction houses shall not accept payments in cash exceeding €3,000 and the violation of this prohibition is sanctioned with a fine from one per cent up to 40 per cent of the cash payment transaction.

Furthermore, pursuant to Articles 648-*bis* and 648-*ter* of the Italian Criminal Code, money laundering is subject to the following sanctions: a prison term of four to twelve years, and a criminal fine up to a maximum of €25,000. According to Article 648 of the Criminal Code, in the case of conviction, the profit deriving from the crime shall be seized.

The Fifth Anti-Money Laundering Directive has been transposed into Italian national law by Legislative Decree No 125 of 4 October 2019, which amended both the Legislative Decree No 231 of 21 November 2007 (the AML Decree) and the Legislative Decrees Nos 90 and 92 of 25 May 2017.

According to the Fifth Anti-Money Laundering Directive, the following subjects are ‘other non-financial operators’ that are subject to AML obligations:

- persons who trade in antique goods, persons who trade in works of art or who act as intermediaries in the trade of works of art, even when such activity is carried out by art galleries or auction houses referred to in Article 115 of the Consolidated Law on Public Security (TULPS) when the value of the transaction (even if fractioned) or of any related transactions is equal to or greater than €10,000 (Article 3, 5(b), letter b of the AML Decree); and
- persons who keep, or trade in, works of art or who act as intermediaries in the trade of works of art, when such activity is carried out within freeports and the value of the

transaction (even if fractioned) or of any related transactions is equal to or greater than €10,000 (Article 3, paragraph 5(c) of the AML Decree).

In particular, they must carry out customer's due diligence, keep record of any documents, data and information necessary to prevent, identify or ascertain possible money-laundering activities – or financing terrorism and refrain from carrying out any transaction if they are not able to carry out the prior customer's due diligence.

Furthermore, the Ministry of Economy and Finance, based on a proposal by the Financial Security Committee, may exempt from reporting obligations established by the AML Decree¹⁴ persons engaged in a financial activity on an occasional or very limited basis where there is a low risk of money laundering or terrorism financing, and where such financial activity is not carried out as the main activity (Article 4, paragraph 3 of the AML Decree).

14 The AML Decree requires that art market professionals comply with the following obligations:

1. carry out adequate customer due diligence by identifying the customer and the beneficial owner (Art 17 *et seq*);
2. conduct ongoing monitoring of the business relationship, which encompasses scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the knowledge of the customer and the business and risk profile, including where necessary the source of the funds and ensuring that the documents, data or information held are kept up to date (Art 19);
3. store documents, data and information on possible money laundering activities (Art 31);
4. communicate the suspect transactions to the Financial Intelligence Unit at the Bank of Italy (Art 35); and
5. a prohibition to communicate to the interested client or third-party information on the communication of the suspect transaction (Art 39).