



# **PRACTICAL GUIDE**

## **FRENCH ART MARKET REGULATIONS**

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# 2022




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## INTRODUCTION

The aim of this guide is to draw your attention to some specific rules that may apply to the sale in France of objets d'art, antiques, ethnographic art and curios, also known collectively as "cultural goods".

It does not discuss common law and commonly applicable international rules such as CITES and TRACFIN (a unit set up by the French Ministry of Economic Affairs to combat money laundering).

This guide is not designed to provide a substitute for a case-by-case legal analysis offered by a law or tax professional. If you have any specific questions or additional requests, we would thus ask you to speak to your usual adviser.

The guide looks at four main areas:

1. **The circulation of items**, their import and export.
2. **Specific markets** such as the sale of artefacts integrating materials from protected species, made from ivory or precious metals and the sale of "human remains" or weapons.
3. **Sales made in France** and the rules governing the sale of an item at a store in France.
4. **The checks that may be carried out in France** by administrative officers on your premises.



## THE CIRCULATION OF CULTURAL GOODS

### BY WAY OF AN INTRODUCTION, WHAT ARE “CULTURAL GOODS”?

International and national texts offer definitions of the term “cultural goods”.

Without entering into detail, it is important to bear in mind **the very broad definition** these texts give to the term “cultural goods”. Though the subject of some debate, cultural goods can include dinosaur fossils, mineral and plants, paintings and sculptures, photographs, books, engravings, collections and even the most modest of ethnographic objects.

⇒ *In view of this, we suggest you consider any object that can be sold by participants at **Parcours des Mondes** as “cultural goods”.*

### THE IMPORTING OF CULTURAL GOODS INTO FRANCE

Following the introduction of an act amending the French Heritage Code on 9 July 2016, the importing of cultural goods into France is no longer subject to the common imported goods procedure.

This legislation was introduced only very recently and caution should be exercised with regard to its interpretation and application. Aside from the complete bans detailed at the end of this section, there are some specific cases that can nonetheless be identified. These are summarised as follows:

1. As of 9 July 2016, anyone wishing to import cultural goods into France directly from a non-European Union (EU) country that is a signatory of the UNESCO Convention of 14 November 1970 **must present customs authorities with an export certificate or equivalent document issued by the country of origin, if the laws of the country of origin provide for such a certificate.**



2. If the cultural goods, originating from a non-EU country, were imported prior to the UNESCO Convention of 14 November 1970 **and proof of this can be provided**, the provisions of the act of 9 July 2016 do not, in theory, apply.
3. If the cultural goods were imported into France before 9 July 2016, the date on which the new regulations came into effect, **and proof of this can be provided**, there is no need to present customs with the export certificate of the country of origin, provided that common rules for the importing of goods have been observed.
4. In the event of cultural goods being imported into France **from an EU member country**, there is, in theory, no need to present customs with the export certificate of the country of origin.

It is important to emphasize that since December 28th 2020, EU Regulation #2019/880 of April 17th 2019 has prohibited the introduction into the EU customs territory of any third-party cultural goods illicitly removed from their country of creation or discovery.

This regulation also provides for a system of import licenses for the most endangered cultural goods, and of importer declarations for other categories of cultural goods.

The obligation to obtain an import license or to present an importer's declaration will apply when the centralized electronic system for the storage and exchange of information between EU authorities becomes operational, and no later than June 28th 2025.

The regulation does not apply to cultural goods that were either created or discovered within the EU customs territory, which are instead covered by directive 2014/60/EU.

- *Significant penalties will be imposed for any violations.*
  - *Cultural goods seized at customs may be placed with a national museum and held there or displayed to the public until such time as their rightful owner can be found.*
- ⇒ **We recommend caution on what is a sensitive issue that has only recently emerged. As an initial precautionary measure, we strongly recommend you create carefully compiled documents that allow imported objects to be traced.**





## THE EXPORT OF CULTURAL GOODS

In addition to the prohibitions set out at the end of this chapter, the exporting of cultural goods from France depends on whether they are deemed “national treasures” or not.

### NATIONAL TREASURES

Cultural goods deemed to be **“national treasures” may only leave France on a temporary basis, after which they must be returned.**

Though it is rare for cultural goods to be classed as national treasures, such status may be granted to any good of significant historical, artistic or archaeological interest to national heritage.

By way of example, over the last decade the manuscripts of André Breton, a Cycladic figurine, a Ming dynasty porcelain ewer, an album of photographs by Le Gray and a 1932 Alfa Romeo have all been classed as national treasures.

### OTHER CULTURAL GOODS

The **temporary or permanent** export outside France of cultural goods deemed to be of historical, artistic or archaeological interest **is subject to authorisation, depending on their age and value.**

Said approval **is not necessary for cultural goods imported into France on a temporary basis for less than two years.**

The cultural goods in question are listed in the French Heritage Code. By way of example, approval will be required for the following cultural goods, which have been chosen for their relevance to Parours des Mondes:

- A sculpture more than 50 years old and with a value of €100,000.
- An archaeological artefact more than 100 years old and with a value of €3,000.
- A fragment or element forming part of a building and more than 100 years old and with no value threshold.
- A photograph, singly or in a collection, more than 50 years old and with a value of €25,000.
- A book, singly or in a collection, more than 50 years old and with a value of €50,000.



- An original engraving, print, serigraph or lithograph, singly or in a collection, more than 50 years old and with a value of €20,000.
- A watercolour, gouache or pastel artwork more than 50 years old and with a value of €50,000.
- A collection of ethnographic interest with a value of more than €50,000 and with no antiquity threshold.
- More generally, any object of antiquity, not listed in the Heritage Code, more than 50 years old and worth €100,000.

*NB: Thresholds for cultural goods exported outside the EU are different. The thresholds set by national law are higher for ten categories of cultural goods. Thus, for export outside of the EU, an authorization may be required by European law even when it may not be required by national law.*

The authorisation request must be drafted by the owner of the cultural goods and forwarded to the French Ministry of Culture. Authorisation may take the form of:

- A temporary exit permit (*autorisation de sortie temporaire – AST*).
- A permanent export permit (*certificat d'exportation definitive*).

The permit is deemed to have been granted once four months have elapsed following the submission of a complete application.

The export certificate is automatically granted for goods lawfully imported into France for more than the last 50 years, subject to proof being provided.

#### **The four-month time limit may be suspended if:**

- **There are grounds to believe the goods are in the public domain.**
- **There are doubts as to the authenticity of the goods or the legality of their provenance or importation.**

**In such cases the burden of proof to the contrary lies with the applicant.** If such proof is not provided, the export permit application will not be accepted.



Applications may also be refused if the cultural goods are declared “national treasures”, which would trigger a specific procedure and halt the exit of the treasure in question (cf. the previous section).

If the goods are to be exported outside the European Union, the following additional procedures must be completed with the French Ministry of Culture:

- A request for a temporary or permanent export licence.
- A customs declaration (“ATA card”).

⇒ ***The various procedures to be followed and forms to fill can found at the following link:***

***<https://www.service-public.fr/particuliers/vosdroits/F1277>***

- *Significant penalties will be imposed for any violations (the exporting of these goods or any attempt to export them).*



## **CULTURAL GOODS TAKEN ILLEGALLY, ON THE BASIS OF A UNITED NATIONS RESOLUTION, FROM THEIR COUNTRY OF ORIGIN**

**It is forbidden to import, export, transfer, transport, possess, sell, buy and exchange cultural goods** of archaeological, artistic, historic or scientific interest **when, on the basis of a UN resolution, they have been removed unlawfully from their country of origin.**

**With regard to UN resolutions, this ban concerns the following:**

- **Iraqi cultural goods removed unlawfully from Iraq after 6 August 1990.**
  - **Syrian cultural goods removed unlawfully from Syria after 15 March 2011.**
  - *Significant penalties will be imposed for any violations and the goods will be confiscated.*
- ⇒ ***We recommend the utmost caution with regard to cultural goods originating from Syria and Iraq and indeed any goods from the Middle East. The most detailed and documented traceability must be produced for such objects in the event of checks being made.***



## **THE CIRCULATION OF CULTURAL GOODS DESTINED FOR RUSSIA FOLLOWING THE INVASION OF UKRAINE**

### **The circulation of cultural goods is being impacted by the European sanctions against Russia following the invasion of Ukraine.**

These sanctions provide for a ban on the sale, supply, transfer or export of luxury goods worth more than €300 to any natural or legal person, entity or organization in Russia or for use in that country.

This includes:

- Art, collectibles and antiques.
- Jewelry, gold and silver objects, textiles, clocks and watches.
- Musical instruments with a value of over €1,500.

The Ministry of Culture will thus suspend the issuance of export permits until further notice.

The aforementioned cultural goods will also be stopped by customs at borders, even if they are accompanied by a valid export permit.



## SPECIFIC MARKETS

### THE TRADE IN OBJECTS MADE FROM “HUMAN REMAINS”

The French Civil Code prohibits the trade of all or part of a human body, **even after death**, regardless of the date of death or the source of the body.

The trade of human remains such as skulls, mummies and bones is outlawed in France, regardless of whether they are deemed “cultural goods”, “holy items” or “artworks”.

**The strict interpretation of the law by French judges appears to go in that direction.**

- ⇒ *Provided that it is not a criminal offence detected by a customs or police officer, an interested party (a relative of the deceased, an embassy or association) may, on this basis, ask a court to order the return of the object made from the human remain, prohibit its sale and demand compensation for any damages suffered.*

**There is also a risk of prosecution, particularly in the event of “the corpse being defiled” or the defiling or desecration of tombs, graves and funerary monuments, regardless of the location or time at which this occurred.**

- ⇒ *We recommend caution with regard to some ethnological objects that may have their origin in the desecration of graves or result from the defiling of a corpse.*
- *Significant penalties will be imposed for any violations of this principle.*



## THE TRADE IN OBJECTS MADE FROM PROTECTED ANIMAL AND PLANT SPECIES

In addition to the regulations that implement the Washington Convention – commonly known as CITES – in the EU and which everyone is required to comply with to the letter, the French Customs Code sets out **regulations that are even stricter in this respect.**

**Anyone in possession of the specimens listed in the four appendices of the European CITES Regulations, for commercial purposes or otherwise, is required to prove their lawful origin.**

**French customs officials have the power to impound protected animal and plant species should the trader fail to prove their lawful origin during checks and to issue them with a fine.**

- *Significant penalties will be imposed for any violation of the CITES Regulations and/or of the French Customs Code.*

## THE TRADE IN ARTEFACTS MADE FROM ELEPHANT IVORY

New regulations affecting the trade of elephant ivory have been in force since January 19th 2022. These rules concern not only the trade of elephant ivory **within the EU** but the trade **with outside countries** as well.

These new regulations prohibit trade in raw ivory within the European Union. **Member states will no longer issue EU certificates authorizing the sale of elephant tusks.**

In very exceptional cases involving the repair, in the EU, of certain musical instruments or objects of great cultural, historical or artistic value, a European certificate may be issued, after a case review of the file, by the CITES service.

Previously issued European certificates will cease to be valid as of January 19th 2023.

Within the European Union, trade in worked ivory will only be authorized for:

- Musical instruments made before 1975 with a certificate issued by CITES
- Manufactured pieces dating to before 1947 accompanied by a certificate issued by the CITES service.



Trade in worked ivory imported into or exported out of the EU will only be allowed for:

- Musical instruments made prior to 1975 with a permit issued by CITES.
- Culturally, historically or artistically important objects dating to before 1947, destined for a museum, with a permit issued by CITES.

## SUMMARY TABLES

|  | Trade within the EU   | Commercial re-exports<br>outside of the EU                              | Commercial import<br>into the EU                                     |
|--|---|---|--|
| Raw ivory                              | <b>PROHIBITED (no more European certificates will be issued)</b><br><br>European certificates may be issued in exceptional cases for the restoration of musical instruments manufactured before 1975, or for the restoration of objects of cultural, historical or artistic importance dating to before 1947. Certificates issued are valid only for only one transaction between the buyer and the seller. | <b>PROHIBITED (no more CITES re-export certificates will be issued)</b> | <b>PROHIBITED (no more CITES import certificates will be issued)</b> |
| Worked ivory<br>acquired after<br>1975 | <b>PROHIBITED (no more European certificates will be issued)</b>  | <b>PROHIBITED (no more CITES re-export certificates will be issued)</b> | <b>PROHIBITED (no more CITES import certificates will be issued)</b> |





|  |  |   |   |
|--|--|---|---|
| Worked ivory acquired in the EU between 1947 and 1975 – “pre-Convention” | <b>PROHIBITED (no more European certificates will be issued)</b><br><br>European certificates will still be issued for musical instruments that contain ivory. | <b>PROHIBITED (no more CITES re-export certificates will be issued)</b><br><br>CITES re-export certificates will still be issued for musical instruments that contain ivory.  | <b>PROHIBITED (no more CITES import certificates will be issued)</b><br><br>CITES import certificates will still be issued for musical instruments that contain ivory.  |
| Worked ivory “pre- 1947” (antiques)                                      | <b>EUROPEAN CERTIFICATE REQUIRED</b>   | <b>PROHIBITED (no more CITES re-export certificates will be issued)</b><br><br>CITES re-export certificates will still be issued for “antique” pieces of great cultural, historical or artistic value sold to museums, or for musical instruments that contain ivory. | <b>PROHIBITED (no more CITES import certificates will be issued)</b><br><br>CITES import certificates will still be issued for “antique” pieces of great cultural, historical or artistic value sold to museums, or for musical instruments that contain ivory. |

- ⇒ The online registration and declaration platform can be found at the following link:  
<https://cites.application.developpement-durable.gouv.fr/accueilInternaute.do>
- ⇒ Please remember that **the online declaration must be updated following the sale** of the ivory item in question (invoice and contact details of the buyer in particular).
- Significant penalties will be imposed for any violations and ivory goods will be confiscated.



## TRADE IN ITEMS MADE OF PRECIOUS METALS

Items made of precious metals (gold, silver and platinum) offered for sale in France must, in principle, bear two hallmarks:

1. The “maker’s mark” or “manufacturer’s mark”), which identifies the workshop, jeweller or precious metal importer (where this is their regular occupation) and which has been registered with an office of guarantee for this purpose.
2. The **guarantee hallmark**, engraved mechanically or by laser, which indicates the purity of the metal, and which is **not compulsory if**:
  - **The weight of the precious metal is below 3g for gold or platinum and 30g for silver.**
  - **The item made of precious metals predates 1838.**
  - **The hallmark on the item made of precious metals has suffered deterioration.**

There are rules in the EU pertaining to the recognition of hallmarks and which permit the circulation of items made of precious metals provided that they comply with the regulations applicable in their countries of origin.

As regards the importing of items made of precious metals and originating from a non-EU country, said items must be made available to the customs authorities so that any requisite hallmarks may be stamped on them.

There are also a number of specific regulatory provisions regulating the trade of items made of precious metals, including rules on the displaying of the prices of these items, which must be clear, accurate, visible and legible for customers.

Furthermore, French law provides for a specific tax on the sale of precious metals that sellers who are resident for tax purposes in France are required to pay to the French tax authorities.



## THE TRADE IN WEAPONS

Edged weapons, clubs, maces, spears and arrows, particularly antiques and “collector’s” pieces may be categorised, in general terms, under French weapon regulations as “Category D” items, unless they are completely harmless or are replicas.

While the possession and sale of such weapons is permitted, **their carriage** (*the holding of a weapon that is ready for immediate use*) **and transport** (*the carrying upon one’s person of a weapon without it being ready for immediate use*) **are prohibited without legitimate grounds.**

“Transport”, by either a dealer or a collector, as part of an event such as Parours des Mondes, may be regarded as legitimate grounds.

- ⇒ *We recommend that these objects be packaged at all times when transported and that they are accompanied by a document stating that they are an antique collector’s item to be displayed “at an antiques fair” and also stating details such as the name, date and place.*
- ⇒ *We also recommend providing your customers with a document proving that the weapon was purchased “at an antiques fair” and also stating details such as the name, date and place and recommending that they transport it back to their home and nowhere else.*
- *Significant penalties will be imposed for the carriage and transporting of Category D weapons without legitimate cause.*



## THE SALE OF CULTURAL GOODS IN FRANCE

### THE FIGHT AGAINST MONEY LAUNDERING (TRACFIN)

Under regulations relating to the fight against money laundering and the financing of terrorism, antique and art dealers are required to be vigilant in going about their activities.

These obligations have resulted in the following legal constraints, among others:

- The appointment of someone to oversee this fight and someone in charge of declarations.
- The training of gallery staff on these issues.
- The exact identification of customers, be they natural persons or companies (copy of ID document or the company's certificate of incorporation or of their beneficial owner):
  - For sales to one-time customers for amounts above €10,000.
  - For sales to regular customers for any amount.

Art and antiques dealers are required to follow a vigilance procedure, with levels of vigilance ranging from "no suspicion of money laundering" to "strong suspicion".

The procedure may be "eased" in the absence of any suspicion (subject to reasons being given as to why there is an absence of suspicion) or may lead to the transaction being refused or even reported to the TRACFIN unit if there is a strong suspicion of laundering.

⇒ ***This is a complex issue and involves many restrictions. We would advise you, therefore, to follow the recommendations of your professional advisors or associations and to be rigorous in abiding by official directives.***

- *Please note that the mere act of "enabling" money laundering may constitute a crime for which significant penalties can be imposed.*



## THE POLICE BOOK

Antique dealers or brokers must keep a “police book” containing information enabling the traceability of all “household effects”, including ethnographic items, purchased or held for sale or exchange.

- *Significant penalties will be imposed for any violation.*
- ⇒ *While antique dealers who do not have habitual premises in France are not, a fortiori, required to meet this obligation, they are advised to provide a copy of any official police book from the country where they are based or any document enabling the objects for sale in France to be traced (e.g. receipts).*

## THE DISPLAYING OF PRICES

While the law states that prices must be displayed on each item for sale in stores in France, **in terms of artworks and antiquities the law does allow for a price list to be made available to customers upon request.**

In all cases, **however, all applicable taxes must be shown with the price.**

- *In the event of an inspection, the failure to display prices (e.g. the absence of a price list for antiques) may result in a fine being imposed for each violation detected.*



## THE FRENCH LANGUAGE

The use of **French is compulsory in all media and formats** (e.g. posters, advertisements, catalogues, certificates and invoices) used to present an item for sale in France.

Compliance with this regulation is checked by officials from the French Ministry of Economic Affairs, who may also check that prices are displayed.

*NB: some associations for the defence of the French language may choose to report any violations they see in stores and may even bring civil proceedings.*

- *A fine may be imposed for any violation.*

## PAYMENT IN CASH IN FRANCE

Payment in cash to traders, whether they are French or foreigners, is legal in France:

- **Up to a total of €1,000 for a customer residing in France.**
- **Up to a total of €15,000 for a customer resident for tax purposes outside France (for a personal expense).**

⇒ *We recommend that you ask for and retain proof that any foreign customer wishing to pay in cash is resident for tax purposes outside France.*

- *A fine may be imposed for any violation (both the seller and buyer are liable).*



## DRAWING UP AN INVOICE FOR A SALE IN FRANCE

With regard to the sale of an item, **the issue of an invoice is:**

- **Compulsory for professional customers (e.g. a fellow antique dealer or a customer who works in the trade).**
- *An administrative fine may be imposed for any failure to issue an invoice.*
- **And compulsory upon request from an individual customer.**

⇒ *To be on the safe side, we recommend you issue an invoice for every sale you make in France*

## VAT APPLICABLE TO SALES COMPLETED IN FRANCE

**In principle, VAT is payable in the territory where the sale of an item is completed.** As a result, an antiques dealer from outside France who completes an outright sale in France must pay VAT there to the relevant tax authorities.

There are two possible scenarios here:

1. You operate in an EU country: you are required to pay VAT to the French tax authorities following completion of the sale in France.
2. You operate outside of a non-EU country (including the United Kingdom as of January 1st 2021): you are required to import the items into France on a temporary basis and any VAT that would be due for the completion of their sale on French soil is prepaid by way of a guarantee during customs procedures.

These basic principles involve several specific provisions and exemptions. VAT exemptions are granted in some cases, for example, not least when the buyer is a public institution or museum, and procedures can be simplified depending on the amounts in question.

⇒ ***We strongly recommend you speak to your accounting and tax advisers and your regular forwarding agent about these complex issues.***



## CHECKS AND INSPECTIONS

### THE POWERS OF CERTAIN FRENCH ADMINISTRATIVE OFFICERS

Some administrative officers have the power to carry out checks and even searches, at any time within the time period set out in the legislation, of the premises occupied by antique dealers, including storehouses.

They commonly have investigative powers, in conducting routine and on-the-spot checks, for example, and the power to conduct searches under the supervision of a judge and as part of a criminal investigation.

The scope of their powers thus depends on the operational framework. Generally speaking, officers may detect a violation, request the provision of documents and even seize goods that may be counterfeit.

In all cases, an official report must be compiled.

The refusal to allow access to premises or abide by an officer's request may lead to them requesting the support of the police officers accompanying them (particularly in the case of criminal investigations) and **may result in you breaking the law, on account of you obstructing an officer**.

The same applies in the case of **customs officers, who enjoy wide-ranging investigative powers**, both in investigating violations on the spot (mainly through customs, heritage and environmental codes) and in conducting searches under the supervision of a judge (criminal investigations).

- *Significant penalties may be imposed for obstructing a customs officer or refusing to comply with their orders.*

Officers from the French Ministry of Competition Policy, Consumer Affairs and Fraud Control (CCRF) (display of prices, French language, etc) also enjoy wide-ranging powers to search and inspect.

- *Significant penalties may be imposed for obstructing a CCRF officer.*





In addition, some officers from the French Ministry of the Environment may report violations of regulations applying to protected species.

- ⇒ *In the event of an inspection, we recommend you do the following, **without prejudice to the advice you may receive from your regular advisors**:*
- *Ask the officers why they are conducting an inspection and who is in charge of it, while remaining courteous.*
  - *Contact your lawyer immediately to inform them of the situation.*
  - *Write a brief report on the inspection after it has been completed so that you have a record of it (as far as this is possible).*