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Submission of the International Association of Professional Numismatists for Consultation on Imports of Cultural Goods into the EU

April 21, 2021

I am writing on behalf of the International Association of Professional Numismatists (IAPN) to provide comments on the rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods. The IAPN is a nonprofit organization of the leading international numismatic firms founded in 1951. It was formed in the aftermath of WW II to help reestablish relationships amongst professional numismatists that had been badly frayed during years of conflict. The objectives of IAPN are the development of a healthy and prosperous numismatic trade conducted according to the highest standards of business ethics and commercial practice, the encouragement of scientific research and the propagation of numismatics, and the creation of lasting and friendly relations amongst professional numismatists around the world. IAPN members promise “[t]o guarantee that good title accompanies all items sold, and never knowingly to deal in any item stolen from a public or private collection or reasonably suspected to be the direct product of an illicit excavation, and to conduct business in accordance with the laws of the countries in which they do business.” The IAPN has over 100 member firms around the world in 23 countries, including 38 in the EU and 24 in the US. More about the IAPN may be found on the internet at <http://www.iapn-coins.org> (last visited April 14, 2021).

I. Background into the Collecting and Trade of Historical coins

Coins are and have been items of commerce since antiquity. So, it is difficult for modern nation states to justifiably claim them as their “cultural property.” Ancient coins have been seriously collected at least since the Renaissance. Other than pottery shards, ancient coins are probably the most common ancient artifact. There are probably millions extant or billions if you count Chinese cash coins as well. Modern coins, especially coins made of precious metals, are also popular with collectors. Modern coins are usually defined as those made after 1500 when minting machinery was first introduced to cope with the vast amounts of silver and gold introduced into the market, particularly from the Americas.

Coin collecting was originally “the hobby of kings,” but it has become popular with the middle class since the 19th Century. In the past 30 years, coin collecting has become increasingly popular in emerging economies in Eastern Europe, the Middle East and Asia, especially China. There are many people who collect ancient coins in the EU, particularly Germany, the U.K., Italy, and France. There are also many collectors in the United States and Canada.

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Collecting fosters interest in other cultures and promotes people to people contacts amongst collectors and dealers from different countries. European and American ancient coin collectors tend to focus their collecting interests on Greek, Roman, Byzantine and modern post 1500 silver and gold coins, particularly of their own countries. Chinese coin collectors tend to focus their collecting interests on Chinese coins. Collectors in the Middle East tend to focus their collecting interests on Islamic coins.

There are approximately 5,000 firms that deal in coins in the United States. The vast majority are small businesses or sole proprietorships. Probably two-thirds of dealers pursue their business part time as an adjunct to their hobby. Christie's and Sotheby's no longer hold regular sales of coins. Still, there are several other auction houses that hold sales of historical coins along with other collectables. Some are large with hundreds of employees and annual sales of \$100,000,000.¹ Most numismatic auction houses, however, are small businesses with no more than ten employees and annual sales in the \$5,000,000 to \$30,000,000 range.

Most dealers sell coins valued from € 20 to a few hundred Euros each. Comparatively few coins are worth over €10,000. These are mostly Roman gold coins, Greek silver coins, and certain rare American and foreign coins in excellent states of preservation. That said, collectors and especially dealers often purchase multiple coins at once, particularly at auction. Moreover, given the large numbers of collectors and coins available for sale, the total value of the market has been estimated at \$3 billion.²

The highly regulated EU is probably America's largest trading partner when it comes to historical coins. There are large numbers of historical coins shipped to and from the US and the EU. For example, we estimate that US auction houses alone export approximately 20,000-50,000 coins with a value of approximately \$20-50 million to the EU on an annual basis. These figures do not include the vast numbers of direct sales of mostly lower value (€ 20- € 250) coins from smaller dealers or the large numbers of gold coins (struck from the 19th century to the present) sent to the EU in bulk by gold traders.

Comparatively few collectors' coins maintain their provenance information. While some of these may be recent finds, the reason most coins do not have provenance information attached to them is quite innocent: It was not thought important until a few years ago, particularly for low value specimens. In fact, provenance information was only typically retained with high value Greek coins or for coins from famous collections.

¹ Jeff Garrett, "Coin Collecting: How Large is the Rare Coin Market?" Coin Week (Dec. 13, 2013) (available at <https://coinweek.com/education/coin-collecting-large-rare-coin-market/>) (last visited August 6, 2020).

² *Id.*

II. Specific Issues Raised in the Consultation

A. Draft Implementing Legislations

1. CHAPTER III: DETAILED ARRANGEMENTS FOR AN EXEMPTION FROM DOCUMENTARY REQUIREMENTS

a. *Article 6: General principles*

Section 2 correctly notes that provision must be made for import certificates of consignments of several cultural goods. This provision should be modified to clarify that consignments of coins may run into the hundreds or thousands of similar, if not identical, coins. Provision should also be made for describing such consignments with sufficient detail to identify them, but not so much as to make the application unreasonably difficult to prepare or process.

b. *Article 8: List of supporting documents to prove licit provenance in an import license application.*

It is improper to assume that collectors' coins do not have export documentation or other provenance information because they are the products of recent looting or theft. Rather, coins lack documentation for the simple reason none was required until recently. For decades, collectors' coins circulated in the international numismatic market without any documentation whatsoever being required – so none exists. Almost no coins have any permit or evidence showing when they were exported from source countries, and indeed many were first exported from their country of origin as currency, not collectibles. Post-World War II, source countries started adopting laws forbidding export of all antiquities or antiques without government permission. Even then, however, because cultural bureaucracies lacked the will or capacity to issue permits, the requirement was often ignored in practice with the full knowledge and tacit approval of government authorities. Moreover, other countries that went through the trouble of creating a functional export control system (like Israel) typically issued export permits for large numbers of coins at one time that did not specifically identify them with any particularity. Instead, export permits were issued for groups of coins, i.e., for a group of 500 Roman coins. Thus, even if an export certificate were issued and retained, it would be of no use to prove that a specific coin was legally exported.

Technological realities also explain the related issue of why so few ancient coins have detailed provenances or collection histories. At a recent event sponsored by the American Bar Association's International Law Section's Art & Cultural Heritage Law Committee, an expert on coin provenance issues explained that before the advent of digital photography in the 1990's, there were comparatively few coins that were recorded in a fashion that could readily identify them today. See <https://culturalpropertyobserver.blogspot.com/2020/06/coin-auctioneer-with-archaeological.html> (last visited April 14, 2021). More valuable coins (or casts) were photographed for auction catalogues starting in the early 20th century, but such auctions were and continue to be a relatively small part of the market. Instead, particularly before the advent of the Internet, most coins were purchased at coin fairs and in coin stores with an invoice, but one

which did not picture the coin. Moreover, because provenances were not that important, they were often not included in auction catalogues, except for coins from famous collections. Finally, before the advent of modern facial recognition technology, it was very time consuming to search for old auction provenances by reviewing old catalogues, and even with that technology, it remains an expensive effort to try to recreate the old provenances of ancient coins.

Thus, it is unrealistic to assume that coin dealers or collectors importing coins from the US or other market countries into the EU will be able to prove that a coin they seek to import was “legally exported” to secure an EU import permit. At most, US and other market country sellers can be expected to verify that the coin in their possession was legally on the market.

Under the circumstances, the EU should make special allowances for coins and other minor artifacts exported from the US and other market countries like the Australia, Canada, Japan, New Zealand, Singapore, Switzerland, and the United Kingdom. All these “market countries” have long established communities of avid coin collectors, are signatories to the 1970 UNESCO Convention, and maintain strong and vigilant law enforcement authorities.³ **The risk that imports into the EU from these countries are of recently looted coins is quite small. On the other hand, draconian EU import controls designed for far more valuable and scarce objects being applied to coins (particularly common ones with low associated values) will do nothing but discourage legitimate trade and perhaps even encourage smuggling.**

Accordingly, IAPN requests that EU regulators hold that the sole “country of interest”⁴ for all ancient and modern collectors’ coins exported from the US, Australia, Canada, Japan, New Zealand, Singapore, Switzerland, and the United Kingdom be considered these countries rather than the countries where these coins may have been made hundreds, or even thousands, years ago. Such a determination would also be consistent with Germany’s treatment of most ancient coins as “coins in trade” rather than archaeological

³ For example, the US has placed import restrictions on a wide range of cultural goods, including coins from MENA countries where it is alleged that looting supports terrorism. See <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions> (last visited April 14, 2021). Additionally, the U.S. Congress has made “antiquities dealers” subject to the anti-money laundering regulations under the Bank Secrecy Act. 2021 NDAA, Section 6110, <https://www.govinfo.gov/content/pkg/BILLS-116hr6395enr/pdf/BILLS-116hr6395enr.pdf> (last visited April 14, 2021).

⁴ Article One of the draft rules defines the term “country of interest” as “the third country where the cultural good to be imported was created or discovered or the last country where the cultural good was located for a period of more than five years for purposes other than temporary use, transit, re-export or transshipment, in accordance with Articles 4(4) and 5(2) of Regulation (EU) 2019/880” (emphasis added).

objects⁵ as well as the recent decision of the US authorities to create a new customs code for ancient coins in trade.⁶

This, of course, would not preclude EU authorities from still investigating any suspicious shipments. Instead, such a decision would only lessen “red tape” for all concerned so that the authorities could better focus their limited resources on smuggled cultural goods.

2. CHAPTER IV: DETAILED ARRANGEMENTS FOR THE IMPORTER STATEMENT

a. Article 11: General principles

Section 2 correctly allows more than one coin to be covered under the same importer statement. We support this provision and note that consignments of coins can sometimes be large with thousands of coins. As stated above, provision should also be made for describing such consignments with sufficient detail to identify them, but not so much as to make the application unreasonably difficult to prepare or process.

b. Article 12: List of supporting documents to prove licit provenance that should be in the possession of the declarant.

Section 2 references a requirement for photographs. IAPN suggests as a practical matter that provision be made for the use of photographs of multiple coins for use with low value coins of like type.

Thank you for your consideration of the comments of the small businesses of the numismatic trade.

⁵ German Bundesfinanzhof of the VII. Senate, Legal Dispute of Main Customs Office with Stephan Sonntage, 70182 Stuttgart on account of export permit, Hearing of Dec. 11, 2012, available at <https://www.bundesfinanzhof.de/de/entscheidung/entscheidungen-online/detail/STRE201310048/> (last visited April 14, 2021) (noting that coins from antiquity are generally not treated as archaeological objects).

⁶ Effective July 1, 2020, the US International Trade Commission has recognized the concept of “ancient coins in trade” through the creation of a new harmonized tariff code subheading for “Coins made prior to the 14th century and not known to be the direct products of excavations, finds or archaeological sites.” As a result of this change, the new HTS code number 9705.00.00.01 should be used for all coins prior to 14th century. where there is no evidence of them coming from a hoard or excavation. See https://www.hts-code.com/code/hts_result?code=9705.00.00 (last visited April 14, 2021).