

Monika Roth

Money Laundering and the Art Market

Geldwäscherei im Kunsthandel – das ist ein seit langem immer wieder aufgegriffenes Thema. In der Diskussion darüber fällt auf, dass sehr oft als erstes die Frage gestellt wird, welche Fälle denn bekannt seien. Es gibt sie und sie sind in der einschlägigen Literatur dargestellt. Eine ernsthafte Diskussion muss indessen richtigerweise mit der Frage beginnen, ob und allenfalls weshalb sich der Kunstmarkt für Geldwäscherei eignet. Der Kunstmarkt ist geprägt von Eigenschaften und Eigenheiten, welche – nicht immer, aber oft – in Kombination miteinander eine Eignung für Geldwäscherei schaffen. 46 derartige Eigenschaften und Eignungen sind hier aufgelistet. Der Katalog zeigt auch die Grenzen staatlicher Regulierung.

Beitragsarten: Beiträge

Rechtsgebiete: Einziehung, Geldwäscherei, mangelnde Sorgfalt bei Finanzgeschäften und Melderecht, (Straf-)Bestimmungen des Geldwäschereigesetzes (GwG), Kriminelle Organisation; Kultur. Kunst

Zitiervorschlag: Monika Roth, Money Laundering and the Art Market, in: Jusletter 11. Januar 2016

Inhaltsübersicht

- I. Introduction in the art market: see no evil, hear no evil, speak no evil
- II. A very special kind of know your customer principles: no money – no honey
- III. Money laundering regulation – in a nutshell
- IV. Stages of money laundering
- V. Art as investment and trade based money laundering
- VI. Decisive factors and risks for money laundering in art
- VII. Conclusions

«I love the gallery, the arena of representation. It's a commercial world, and morality is based generally around economics, and that's taking place in the art gallery.» (Jeff Koons)

I. Introduction in the art market: see no evil, hear no evil, speak no evil

[Rz 1] One of the fundamental conflicts in the fight against money laundering is the fact that in the moment when there is a regulation or a crackdown on money laundering, you potentially reduce illicit activities or you push them further underground or to other sectors of the economy. This means that when governments take action against certain methods of money laundering, criminal activities tend to migrate to other methods¹ in order to avoid enforcement by the authorities.

[Rz 2] Money launderers also learn from their experiences. There is not less crime or corruption because of the anti-money laundering regulations; there are just other and alternative ways of clearing the monies.

[Rz 3] One of these sectors is the art market. This is in a general context of relevance, because like football it is of «great social, educational and cultural importance».² «Art shapes society and gives it its character»³ and it is not only heritage and history but it is «present day». «Art reflects who we are – as a society, as an individual, and as an institution. It can remind us of our collective heritage. Or hint at our future», asserts even UBS about the UBS ART Collection.⁴

[Rz 4] The art market has an ingrained culture of widespread anonymity and non-transparency, which in a positive connotation can be valued as discretion and privacy! This environment together with a disregard for conflicts of interest and mind-boggling prices for works of art and sometimes very murky provenance of the assets with which these works are paid, cast a shadow over this field. Corruption and the looting of budgets (misuse of public funds) are for some collections or buyers of art the source of their money and nobody cares or asks questions. Those who are corrupt and use public funds for their own business behave as if it is their money and auction houses and galleries support this by doing business with them.

¹ Financial Action Task Force, FATF: Trade based money laundering, p 1.

² DE SANCTIS, FAUSTO MARTIN: Money Laundering Through Art. A Criminal Justice Perspective, Cham/Heidelberg 2013, p 3; see ROTH, MONIKA: Wir betreten den Kunstmarkt. Geldwäscherei, Zollfreilager, Interessenkonflikte, Zürich/St. Gallen 2015, p 112.

³ DE SANCTIS: Money Laundering Through Art, p 49.

⁴ www.ubs.com/artcollection/about-us (Website last visited on 5 January 2016); see also SCHULTHEIS, FRANZ ET AL.: Kunst und Kapital, Begegnungen auf der Art Basel, Köln 2015, p 59.

[Rz 5] Until today the most dominant players such as international art fairs like the Art Basel⁵ and the big global auction houses do not show enough awareness to such challenges. They offer a major trading floor and therefore bear an important responsibility, which they neglect.

[Rz 6] They should and *could* do more and serve as an example. One cannot deny that they turn a blind eye to the facts and figures that foster money laundering in the art market. Up until today they have not developed enough awareness and therefore no systems to prevent corrupt politically exposed persons from spending their stolen assets at art fairs or auctions.⁶

[Rz 7] But they should, as core participants, be the real standard setters for international efforts to detect and combat misbehaviour in the art market. Otherwise they will ultimately damage their own reputation. A form of self-regulation that focusses on «know your customer principles», on conflicts of interest, and on market conduct rules would help to eliminate the underlying conditions that facilitate money laundering in the art market. Art Basel has an important bank as main sponsor: UBS. The bank does not seem to care about such questions – even the steady stream of harmful allegations directed at certain players in the art market has had no consequence.⁷

II. A very special kind of know your customer principles: no money – no honey

[Rz 8] It is very interesting and somehow disturbing that the Art Basel selects, through deep research, not only the galleries that have applied and are then invited to exhibit at this fair⁸, but they themselves identify the VIPs who are interesting enough to be invited to the First Choice Opening and get a VIP card. Money is most frequently the key subject. They scrutinize them mostly according to standards that in banks are known as «know your customer principles» and even ask third parties. But they do not inquire into the origin of funds because they simply do not care. Or, maybe because they made the experience that those who ask such questions jeopardize possible deals. It is a kind of «Realpolitik». And a kind of complicity.

[Rz 9] One of the directors of Art Basel described it in detail: «We do have a system when someone approaches us for a VIP card, we send them a form, depending on whether they are a museum curator, a private collector, or an art advisor, and we ask questions like which galleries are you working with closely, which artists are you collecting, which museum boards do you belong to, (...). And then we check those back with the galleries that they say they are working with, so you get a sense, is this someone who is working, is this a major collector, is this a minor collector, is this someone who bought one piece. So, you know, we do a lot of research, obviously the people who, you know, we have people on staff and on retainer whose job is to know which collectors are moving things».⁹ Art Basel reevaluates «every year everybody on that list in the same way that

⁵ A Fact: For the VIP Preview First choice at ART Basel 2015 on 16-6-2015 there were 100 Learjets on the airport of Basel-Mulhouse just for this event; (see *Neue Zürcher Zeitung*, June 21, 2015, p 66. For a critical view of the art market see the authors book: *Wir betreten den Kunstmarkt*, Zürich 2015. Especially for the Art Basel see: SCHULTHEIS ET AL.: *Kunst und Kapital*, Köln 2015.

⁶ See ROTH: *Wir betreten den Kunstmarkt*, p 15; *artnet News*, February 23, 2007.

⁷ See for instance the case Helly Nahmad, ROTH: *Wir betreten den Kunstmarkt*, p 94 f. The challenge is not recognized.

⁸ See SCHULTHEIS ET AL.: *Kunst und Kapital*, p 42 ff.

⁹ SCHULTHEIS ET AL.: *Kunst und Kapital*, p 104.

we reevaluate every year all the galleries in the fair».¹⁰ Divorces and financial crises or financial successes are named as issues that can influence the collecting and with that the evaluation for a VIP card.¹¹ Then if this is true for everybody one cannot understand how it is possible that the Helly Nahmad Gallery in 2015 still could be a gallery in the fair.¹² «Jailbird art dealer Helly Nahmad is back on the international art scene, following his conviction for his role in an illegal gambling ring worth \$100 million» wrote *artnet News*.¹³ In Switzerland the authorities opened a procedure against him that is going on. It is about money laundering and organised crime. In a court decision in Switzerland that was published one can also read that the criminal organisation was partly financed by his father.¹⁴

[Rz 10] It is a kind of regulation of the market that takes place. But, not with regard to the provenience of funds. Risks related to money laundering (and financing of terrorism) by buyers, vendors and art intermediaries are ignored as well as corruption or the looting of public funds by politically exposed persons. They all get away with it in the art market because they can. They do not have to face any scrutiny even if they are closely linked to countries where corruption is endemic. The reason: Galleries and auction houses want their money and they want art – to launder money in a high social status recognition. Art is a means to leverage social acceptance and to show what can be shown.

III. Money laundering regulation – in a nutshell

[Rz 11] The origin of the debate about money laundering the proceeds of crime, which means transforming them into legal assets, arose from the fight against organised crime and especially from the war against drugs. The war on drugs dominated in the 1980s the policy of legislation in many countries. It was the United States that started to fight back: In response to a growing epidemic cocaine use in America, President Ronald Reagan created a cabinet-level task force in 1982 to coordinate this war and fight against drug smuggling.¹⁵

[Rz 12] In certain countries it is even still the case that the fight against drugs dominates the agenda very much. As much as \$10 billions proceeds of drug cartels are laundered through Mexican banks every year.¹⁶ The drug cartels control in fact the country.¹⁷

[Rz 13] The most famous case of a drug dealer collecting art (but by large not the only one) was Pablo Escobar. In 1989, Pablo Escobar, one of the most notorious drug lords in history, was named by *Forbes* magazine as the seventh-wealthiest man in the world, with an estimated fortune of more

¹⁰ SCHULTHEIS ET AL.: *Kunst und Kapital*, p 105.

¹¹ See SCHULTHEIS ET AL.: *Kunst und Kapital*, p 105.

¹² See for that ADAM, GEORGINA: *Big Bucks. The Explosion of the Art Market in the 21st Century*, Surrey 2014, p 177 and ROTH: *Wir betreten den Kunstmarkt*, p 110 f.

¹³ 18 June, 2015.

¹⁴ See Judgement of 14 January 2014, Bundesstrafgericht Bellinzona, Dossier BB.2013.160, Lit. A. See also ADAM: *Big Bucks*, p 177 f.

¹⁵ See BOWDEN, MARK: *Killing Pablo. The inside story of the manhunt to bring down the most powerful criminal in history*, London 2012, p 56.

¹⁶ See *Financial Times*, 15 June 2015, p 7 (Clearing out).

¹⁷ See HERNANDEZ, ANABEL: *Narcoland. The Mexican Drug Lords and Their Godfathers*, London/New York 2014.

than \$2 billion.¹⁸ Escobar was connected to the murder of 30 judges and 400 police officers before he was finally shot and killed on a rooftop while attempting to evade Colombian police forces in 1993.

[Rz 14] The cocaine business has brought him billions of dollars. He owned fleets of boats and cars, properties throughout the world and also banks.¹⁹

[Rz 15] Though art was just one part of his larger cocaine empire, Escobar was known to have used priceless works by artists such as Salvador Dalí and Pablo Picasso to launder money.²⁰ He hired decorators to guide his taste in painting and sculpture.²¹ When he was on the run his family and his bankers tried to sell his assets including his art collection.²²

[Rz 16] There are many other criminal acts that can generate profits like embezzlement, computer fraud schemes or organized crime focussed on stealing luxury goods²³ – with the need to legitimize these monies, to launder them. «Unlike tax avoidance and capital flight, which usually involve the transfer of legitimately earned funds across borders, capital movements relating to money laundering – or trade-based money laundering – involve the proceeds of crime, which are more difficult to track».²⁴

[Rz 17] Money Laundering through works of art is a recent phenomenon dating to the last de-
cennium.²⁵ As the financial market was more and more regulated with regard to due diligence by financial intermediaries and know you customer principles with the goal to prevent money laundering there had to be new fields and possibilities.

[Rz 18] Money laundering needs a felony as underlying offense (according to article 305^{bis} Swiss Criminal Code; CC). In Swiss criminal law, felonies (according to article 10 (2) CC) are distinguished from misdemeanours (according to article 10 (3) CC). Misdemeanours are offences that carry a custodial sentence not exceeding three years or a monetary penalty. Entering into force on January 2016 qualified tax offenses shall also be considered as underlying offense for money laundering according to Swiss law.

[Rz 19] Cash is always a big issue. The penchant for cold cash is dominant not only in drug dealing, but also in other sectors of the criminal economy: e.g. arms trade, human trafficking, corruption. To keep the assets in cash does not per se indicate an illegal origin. For art traders it is not always easy to spot tell-tale signs for money laundering.

[Rz 20] «Anybody can walk into a gallery and spend half a million dollars and nobody is going to ask any questions», NOURIEL ROUBINI suggested.²⁶ Even if there are limitations for cash payments set by legislation it remains a fact that cash payments play an important role and cannot be really controlled. As an example let's come back to Mexico: The links between art and drugs in Mexico have become more apparent of late and cash payments are an important issue. The authorities

¹⁸ See BOWDEN: Killing Pablo, p 20 and p 54.

¹⁹ See BOWDEN: Killing Pablo, p 29 f.

²⁰ See BOWDEN: Killing Pablo, p 77.

²¹ See BOWDEN: Killing Pablo, p 35.

²² See BOWDEN: Killing Pablo, p 294.

²³ Three quarters of worldwide thefts of Ferrari cars happen at the Côte d Azur, see *l'Express Thema*, No 7 July-September 2015, le vrais pouvoir des mafias, p 161.

²⁴ FATF: Trade Based Money Laundering, p 3.

²⁵ See also DE SANCTIS: Money Laundering Through Art, p 2.

²⁶ *SWI swissinfo*, January 23, 2015; see *artnet News*, January 26, 2015.

are attempting to tackle the issue with a new set of laws, which requires businesses susceptible of being the target of money-laundering activities – such as casinos, pawnshops, jewellery stores, and art galleries – to limit the use of cash and share more information about their customers and their purchases with the government.²⁷

[Rz 21] But it is too simple to concentrate only on cash – there are much more sophisticated ways for laundering money. In general one can say: If and when you can hide the real beneficial owner: then it is easy as long as the real beneficial owner not has to be disclosed or cannot be found out. Via brass plate companies (shell companies) and the routing and rerouting of the monies one can easily launder money and avoid or destroy trails. It is not coincidental that for instance at HSBC one worked with a Bermuda Triangle: with this notion was described the fact that it worked when you founded three offshore companies in British Virgin Islands, Panama and the Bahamas and then there was no evidence of any trails.²⁸ It is about tax havens where all but the most basic company information is secret. Art is often owned, bought and sold through offshore entities.

[Rz 22] It is not only art: «More than a hundred billion pounds worth of real estate in England and Wales is owned by offshore companies» – there are voices that London's property market has become «a form of legalized international money laundering».²⁹

IV. Stages of money laundering

[Rz 23] In the classical perception there are three stages of money laundering, placement, layering and integration. These stages are not always separated; they can intertwine, so the pattern can be different.

1. Placement (conversion or concealment) is the first step, with which the assets are introduced (with a false explication about their origin if necessary) into circulation e.g. in banks or bureaux de change. Placement can also be realised in changing the cash into valuable like old cars or art. This purchase of assets with value with cash is a very classic money laundering method. The major purpose is to change the form of the proceeds from conspicuous bulk cash to some equally valuable but less conspicuous form. With regard to the art market there is one important advantage: as prices have no real basis and are often surrealistic this form of placement is very interesting.
2. Layering as the second stage has the goal to cover the origin of the asset as proceeds of crime in creating distance between the source and the asset. In the context of art this can be done by selling the piece of art itself or by creating a brass plate company (shell company), to hide the real beneficial owner of the assets.
3. Integration: Previously laundered money is invested in the economy and flows mainly through the banking system. The assets appear to be normal business earnings. As it is known that in this stage luxury objects as works of art play an important role. They can be used as investment that can be bought but they also serve as a reason or a phantasy for the origin of the monies.

²⁷ See *artnet News*, July 14, 2015.

²⁸ See FALCIANI, HERVÉ: *Séisme sur la planète finance. Au coeur du scandale HSBC*, Paris 2015, p 15.

²⁹ *The New Yorker*, June 1, 2015, p 23 (House of Secrets).

V. Art as investment and trade based money laundering

[Rz 24] «There are three main methods by which criminal organisations and terrorist financiers move money for the purpose of disguising its origins and integrating it into the formal economy. The first is through the use of the financial system; the second involves the physical movement of money (e.g. through the use of cash couriers); and the third is through the physical movement of goods through the trade system».³⁰

[Rz 25] The FATF-Paper on Best Practices on Trade based money laundering (2008) broadened the definition by stating, «TBML and terrorist financing (TBML/FT) refer to the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illegal origin or finance their activities.» Such broadening of the definition allows for illegal activities such as terrorist financing to be covered within the scope of TBML.

[Rz 26] Basic trade-based money laundering can be defined «as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origin».³¹

[Rz 27] In practice this can be achieved through misrepresentation of the price and/or of the quality or quantity of imports or export.³² The basic techniques include:³³

- over- and under-invoicing of goods and services
- multiple invoicing of goods and services
- over- and under-shipments of goods and services
- falsely described goods and services

[Rz 28] In practice strategies to launder money combine several techniques and often the abuse of both systems, the financial system and the international trade system.³⁴

[Rz 29] There are more kinds of modus operandi like

- barter trade
- use of shell and front companies
- trade with and through free trade zones³⁵
- fictitious galleries and sham transactions

[Rz 30] There are many reasons why art as an investment can be interesting and why the art market is attractive for money launderers. «In many ways the art market is custom-made for money laundering: it is unregulated, opaque (buyers and sellers are often listed as <private collection>) and many transactions are settled in cash or in kind».³⁶

³⁰ FINANCIAL ACTION TASK FORCE, Trade Based Money Laundering, p 1.

³¹ FINANCIAL ACTION TASK FORCE, Trade Based Money Laundering, p 3.

³² See FINANCIAL ACTION TASK FORCE, Trade Based Money Laundering, p 3.

³³ FINANCIAL ACTION TASK FORCE, Trade Based Money Laundering, p 4.

³⁴ See FINANCIAL ACTION TASK FORCE: Trade Based Money Laundering, p 7. The ASIA/PACIFIC GROUP ON MONEY LAUNDERING (APG) in 2012 published Typology Report on Trade Based Money Laundering (TBML). This Paper focused on TBML occurring in the course of international trade in goods. They come to the conclusion that TBML necessarily requires intermingling of the trade sector with the finance sector. (APG, p 10).

³⁵ See FATF Asia/ Pacific Group, Typology report, p 21.

³⁶ *The Economist*, November 23, 2013 (Über-warehouse for the ultra-rich).

[Rz 31] «FIU s in action» – 100 cases from the Egmont Group was published in 2000. According to the described categories of laundering typology art belongs to anonymous asset types like cash, consumer goods, jewellery, precious metals.³⁷

VI. Decisive factors and risks for money laundering in art

[Rz 32] The 46 factors that are in the list below are not always a risk *per se*. But the combination of these issues shows clearly that money laundering and many of the weaknesses of the art market are no strangers to each other. The reason for this is that a legal framework is not existing for most aspects.

1. As art values skyrocket and the insecurities in the financial markets are dominating art is a very important investment alternative. Art is an alternative asset class that attracts liquidity looking for investments: not only for the around 200 collectors that belong to the art-world elite. There is no doubt that this can be a legitimate choice and diversification.³⁸
2. What does a Picasso cost? What is the value of a Giacometti? That is a question a bank cannot answer. Therefore it is relatively simple to announce to a bank an incoming sum – the price of a work of art that has been sold – how the banker knew if this is a real transaction? There is no objective market price (like for oil for instance) and pieces of art by the same artist can have very different quality or they can be falsified or they may not exist at all. DE SANCTIS writes about «bogus invoices»: «As in real estate, art makes it possible to appraise an asset so as to facilitate laundering, through the resulting substantial increase in insurance (or the mortgage, in the case of real property). (...) Laundering through artworks is accomplished by incorrectly stating prices, quantity and quality, and by overseas transportation, all in an effort to convey some legitimacy to illegal money».³⁹
3. For banks it is not possible to make it plausible that transactions (payments for works of art) that took place are real and true (price etc.) or just a money laundering step.
4. The art market has an ingrained culture of widespread anonymity and non-transparency. Agreements of nondisclosure of names and prices are very common. Even collections, that do not exist, are invented and sustain examinations.⁴⁰ There are, if any, relatively few disclosure agreements.
5. As there are no rules the players make up their own rules as they go along to suit their own purposes so nearly everything is possible and without consequences.
6. The art market is very opaque and not transparent.
7. Art is portable and easily transported across borders. The appeal of a lucrative and easily movable asset is an obvious choice for money laundering.
8. Art can be «small in size, light in weight, free of odour and difficult to track».⁴¹

³⁷ EGMONT GROUP: FIU s in action – 100 cases from the Egmont Group, p 126.

³⁸ It is known that the Oligarch Family Rybolovlev has in the last decade amassed a collection of masterpieces thought to be worth \$2 Billions – for investment purposes and stored in tax free storage facilities in Geneva.

³⁹ De Sanctis: Money Laundering Through Art, p 62.

⁴⁰ See DE SANCTIS: Money Laundering Through Art, p 96; ROTH: Wir betreten den Kunstmarkt, p 104 ff. and p 178 f.

⁴¹ DE SANCTIS: Money Laundering Through Art, p 84.

9. For some people art is another place to put their cash, «a kind of portable wealth».⁴²
10. «Money launderers are primarily seeking to turn dirty cash into other assets as quickly as possible rather than turn a profit or investment prudently. They are happy to pay more than a fair price for goods and services. That distorts everything, from banking to real estate.»⁴³
The art market is especially exposed because there is no «correct» price and defined quality.
11. Art is an asset class.
12. Art market is an illiquid and inefficient market.
13. The business of art and the business of finance and banking are symbiotic.⁴⁴
14. Art is often owned by offshore entities.
15. Transactions can be difficult to trace and to verify.
16. «Prices may be established, manipulated and altered at any time».⁴⁵
17. Art prices are at the end of the day defined by a quality that is a «social construction».⁴⁶
18. «Shared standards of value are lacking».⁴⁷
19. «Human stipulation and declaration create and sustain the commercial value of art».⁴⁸
20. Branding is everything.⁴⁹
21. The identification of works of art is difficult.⁵⁰
22. Insider transactions and front running are accepted.⁵¹
23. High and irrational prices.⁵²
24. Especially Wash Sales are not forbidden. In the financial markets according to the Criminal Code, two types of behaviour are punishable as price manipulation if made with respect to securities traded at a Swiss exchange: First, disseminating misleading information with the intent to manipulate the price of listed securities (‹market rigging›). Second, conducting sham transactions, specifically ‹wash sales› and matched orders. The Criminal Code defines these transactions as executions of sales and purchases of securities that are directly or indirectly made on account of the same person or a number of persons who are associated for such a purpose (‹pool›).

⁴² HOLLINGSWORTH, MARK/LANSLEY, STEWART: *Londongrad. From Russia with cash. The inside story of the oligarchs*, London 2010, p 191.

⁴³ BURGIS, TOM: *The Looting Machine*, London 2015, p 75.

⁴⁴ SCHULTHEIS ET AL.: *Kunst und Kapital*, p 58 f.

⁴⁵ DE SANCTIS: *Money Laundering Through Art*, p 60; see ROTH: *Wir betreten den Kunstmarkt*, p 165 ff.

⁴⁶ VELTHUIS, OLAV: *Talking Prices. Symbolic Meanings of Prices on the Market for Contemporary Art*, Princeton 2007, p 113.

⁴⁷ VELTHUIS: *Talking Prices*, p 122.

⁴⁸ FINDLAY, MICHAEL: *The Value of Art. Money, Power, Beauty*, München/London/New York 2014, p 13.

⁴⁹ FINDLAY: *The value of art*, p 152 f., writes about a wonderful example in Indonesia: «I was taken by a client to see her collection in a suburb of Jakarta. Making polite conversation in the car, I asked her what she collected. ‹All famous names› (...). ‹You know, Sotheby s and Christie s, those names.› When I examined the paintings, I could see what she meant. Not all were first-rate, but each one proudly sported the ubiquitous sticker on the front or side of the frame with the printed name of the auction house and a handwritten lot number.»

⁵⁰ See Bericht über die nationale Beurteilung der Geldwäscherei- und Terrorismusfinanzierungsrisiken in der Schweiz, June 2015, p 115.

⁵¹ See ROTH: *Wir betreten den Kunstmarkt*, p 166 f. and p 182 ff.; GERLIS, MELANIE: *Art as an investment? A survey of comparative assets*, Burlington 2014, p 18 f.

⁵² See ROTH: *Wir betreten den Kunstmarkt*, p 95.

25. There is a high degree of specialization: only a small circle of people really know what is going on.⁵³ There is «no reliable information flow» in this market.⁵⁴
26. Conflicts of interest: auctioneers, dealers, speculators, collectors and art advisors play multiple roles.⁵⁵
27. The unlawful activity is endemic to the art market – theft, robbery and forgery.⁵⁶
28. Repeated and widespread tolerance of illegal activity in the art world⁵⁷ and the silence and discretion about doubtful activities.⁵⁸
29. There is no common understanding about a necessary basic framework of applicable professional standards and regulations (lack of self-regulation).
30. The art market has its fair share of fakes and forgeries and important areas such as authentication often end up in the realm a subjective opinion, on which even the best experts cannot agree.⁵⁹
31. Art is a heterogeneous good – each work is different from the other. This has a decisive effect on valuations and adds to the fact, that for a bank it is impossible to know if a work of art has really the value that has been communicated.
32. The art market is difficult to control.
33. Freeports and the lack of controls and of enforcement of regulations within these zones.
34. The existing regulation for freeports is not sufficient: information on beneficial ownership is not tracked.
35. Possibility of trade with art within freeports without transparence.
36. New and corrupt money is often naïve and overpays easily – so the art market looks generously away.
37. Tax fraud in the art market is very common.⁶⁰
38. Auctions can be manipulated very easily and auctions houses play themselves a doubtful role.⁶¹
39. High sums are involved.
40. Cash payments are widely used.
41. Through speculation high returns are possible.⁶²
42. Transactions can be done secretly.
43. The contractual parties can remain anonymous or virtual.⁶³

⁵³ See DE SANCTIS: Money Laundering Through Art, p 2; ROTH: Wir betreten den Kunstmarkt, p 110 f.

⁵⁴ GERLIS: Art as an investment?, p 41.

⁵⁵ See ROTH: Wir betreten den Kunstmarkt, p 163 ff. and p 169 ff. with a lot of examples.

⁵⁶ See DE SANCTIS: Money Laundering Through Art, p 3.

⁵⁷ See DE SANCTIS: Money Laundering Through Art, p 3.

⁵⁸ ROTH: Wir betreten den Kunstmarkt, p 103 ff.

⁵⁹ See GERLIS: Art as an investment?, p 19.

⁶⁰ See Bericht über die nationale Beurteilung der Geldwäscherei- und Terrorismusfinanzierungsrisiken in der Schweiz, June 2015, p 115.

⁶¹ («Chandelier bidding» for example; see Bericht über die nationale Beurteilung der Geldwäscherei- und Terrorismusfinanzierungsrisiken in der Schweiz, June 2015, p 115; ROTH: Wir betreten den Kunstmarkt, p 110 ff. and p 187.

⁶² See Bericht über die nationale Beurteilung der Geldwäscherei- und Terrorismusfinanzierungsrisiken in der Schweiz, June 2015, p 115.

⁶³ See Bericht über die nationale Beurteilung der Geldwäscherei- und Terrorismusfinanzierungsrisiken in der Schweiz, June 2015, p 115.

44. Works of art can be used for bartering in the black market and as a medium of exchange in criminal transactions.⁶⁴
45. Galleries as fronts for money laundering serve as connections between the licit and illicit worlds.
46. The sponsoring or financing of renovations of museums, castles etc., the donations to museums to buy art, to build new rooms – nobody ever asks where the money comes from (the answer: «from the bank» would not be the explanation). For money launderers it is the entrance to a higher social standing⁶⁵ and once there they are sure nobody will ever ask because they are accepted as decent people and can enjoy impunity. They infiltrate the high society.⁶⁶

VII. Conclusions

[Rz 33] The art market is very suitable for illegal activities and for money laundering in special. As shown above there are many aspects that facilitate the situation for money launderers. So the debate about money laundering in the art market and art as an investment can not take place in a way in which these issues are treated isolated. They are linked to each other and touch a lot of different characteristics of the art market. It is doubtful that all that could be regulated. So the «players» themselves are asked to ensure the quality of the market.

[Rz 34] A self-regulation is not in sight and these are efforts the really important big players must undertake to protect the integrity of the market. As long as they behave in the passive way as they do today they aggrandize the risk that they lose the trust of the public and regulation will be on the political agenda. But even then they will not be absolved of the responsibility for what they don't do – this unsettling fact will remain. At the end of the day it is about business. If art as an investment should prevail there must be rules and standards – it is not only about money laundering. As we all know: trust is the beginning of everything.

MONIKA ROTH, Prof. Dr. iur., Attorney-at-law, Professor of Compliance Management, Institute for Financial Services IFZ, Lucerne University of Applied Sciences and Arts (Switzerland).

⁶⁴ See ROTH: Wir betreten den Kunstmarkt, p 126.

⁶⁵ See ROTH: Wir betreten den Kunstmarkt, p 169.

⁶⁶ See HERNANDEZ: Narcoland, p 162, p 165 ff. and p 215 with the example of the drug dealing Beltran Leyva Clan in Mexico; or *artnet News* June 23, 2015 about Art Sales at a fundraising gala in St. Tropez, where Jho Low, a business man from Malaysia with a very doubtful reputation – for him, see ROTH: Wir betreten den Kunstmarkt, p 18 f. – donated a Roy Lichtenstein sculpture.