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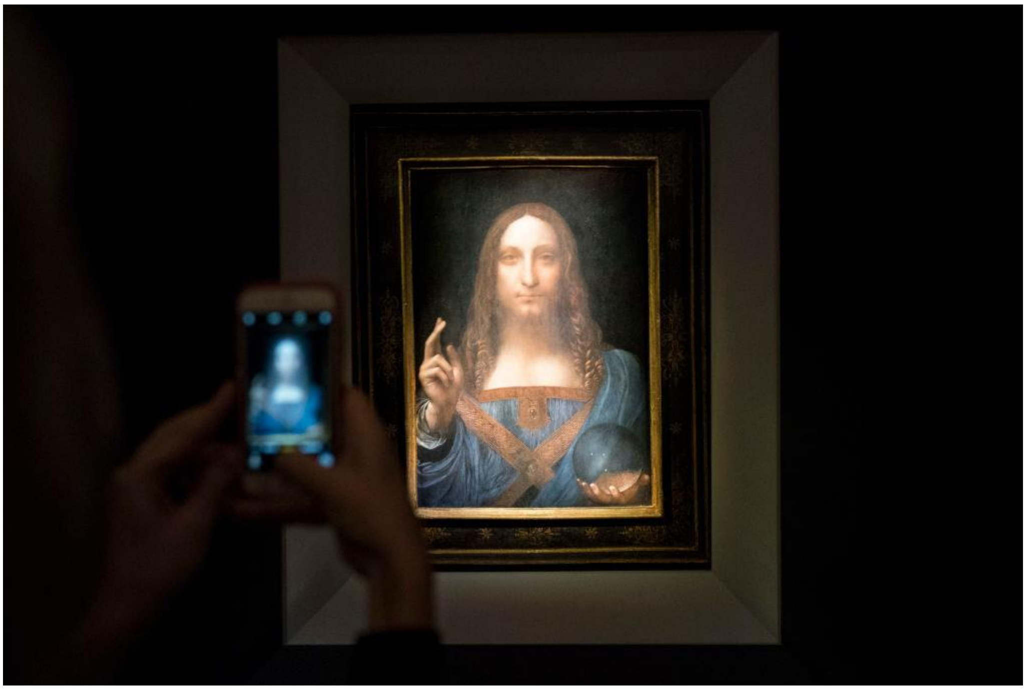
The Gray Market: Why Freeports Don’t Deserve Salvation From Stricter Regulations (and Other Insights)

Our columnist refuses to cry for European freeports and ponders the upside of David Zwirner's new alliance with Simon & Schuster.

Tim Schneider, February 4, 2019



A visitor takes a photo of Leondaro da Vinci's *Salvator Mundi*, previously sold by freeport mogul Yves Bouvier before selling for over $450 million at Christie's in November 2017. (Drew Angerer/Getty Images)

This week, stories about the downside and upside of a shifting client base....

FREEDOM AIN'T FREE

On Thursday, Anny Shaw reported in *The Art Newspaper* that high-ranking European politicians are circling the prospect of imposing stricter regulations on the continent's freeports. And although the end result may not amount to much more than political posturing, the conversation at least helps to brighten the ethical and economic boundary lines that should define our perspective on long-term tax-free storehouses.

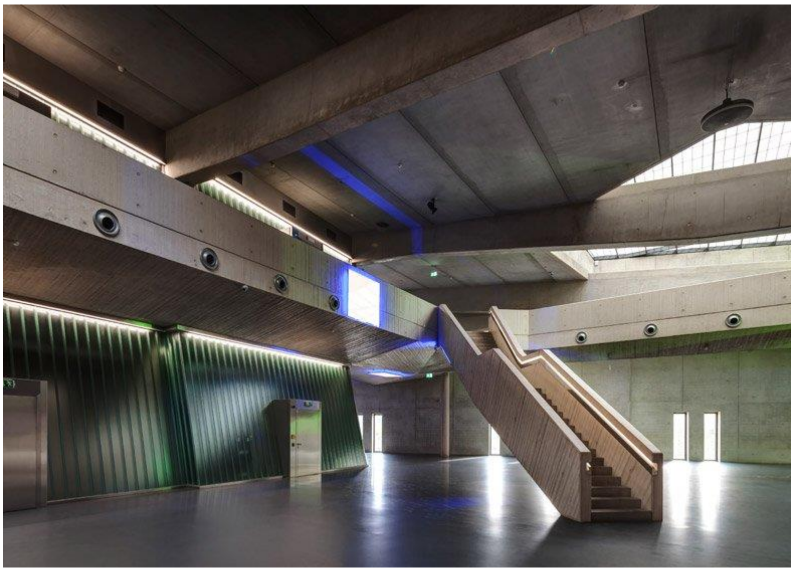
The interrogation spotlight swung toward the freeports thanks to Wolf Klinz, a German Member of the European Parliament who also serves on the EU's Tax3 Committee to crack down on tax crimes and other financial skulduggery. According to Shaw:

> *In a letter dated 8 January… Klinz called on Jean-Claude Juncker, the president of the European Commission, to close loopholes that potentially allow for financial crimes to be committed [at freeports].... Juncker replied to Klinz's letter by telling him he had passed on the German MEP's concerns to Pierre Moscovici, the European commissioner for economic and financial affairs.*

Klinz framed his request around Le Freeport Luxembourg, which opened during Juncker's time as the country's prime minister. In a Tax3-commissioned report released last October, this particular facility wore the black hat due to concerns about money laundering and tax malfeasance that persist despite Luxembourg's 2015 decision to fast forward domestic enforcement of EU legislation, set to go into effect more broadly next January, that will require freeports to identify the end client for all stored objects. In short, a review of the situation in Luxembourg suggests that the pending EU-wide laws may not have enough teeth.

The freeports are crying foul nevertheless. According to a licensed operator at Le Freeport Luxembourg last fall, the policy had already pushed 20 to 30 of its "long-standing clients" into the waiting arms of rival facilities in other jurisdictions "with more discretion"—read: fewer regulations—including Beijing and Singapore. The implied argument is that the EU law is already choking out Le Freeport, and the client losses suffered so far only presage a larger exodus that could force all European freeports into the grave.

My response? Sometimes you get what you deserve.



Interior of Le Freeport Luxembourg. Image courtesy of Atelier d’Architecture.

As Shaw relays, the Tax3 report reminded the world that freeports were never supposed to allow for long-term storage. They were strictly meant to be short-term waystations for goods *in transit.* The underlying principle was that owners or dealers shouldn’t be charged additional taxes before an object reached its destination country, which seems like fair play to me.

The problem, of course, is that opportunists recognized that freeports offered a loophole that would allow them to keep art and collectibles levy-free indefinitely while they went about flipping them for profit. Even without having seen official data (which would be nearly impossible to secure anyway), the anecdotal evidence suggests that this oversight, not the original business proposition, was the jet fuel that accelerated the construction of lavish international freeports around the world.

As a result, my tolerance for the freeport owners’ lamentations is zero. I just don’t accept the argument that we should avoid making it harder for people to do certain bad things in one place just because those same things will still be legal elsewhere. It would be like if early 19th century American legislators had said, “Well, since Oregon is still a lawless back country where anything goes, let’s hold off on saying people can’t kidnap each other here in Ohio. Don’t want to hurt the income streams of our homegrown miscreants.”

Le Freeport Luxembourg. Image courtesy of Le Freeport

I’m not naive. Rich, sneaky, and/or ill-intentioned people will almost always find ways to barrel-roll around paying their fair share, just as they always have. For my fellow-wonks, consider this *Bloomberg* piece on the high-value tax-avoidance schemes that entertainment stars like Bing Crosby and Groucho Marx pioneered in the 1930s, when the top marginal tax rate in the US was 91 percent. Subterfuge ain’t new.

So yes, implementing “know your client” restrictions on Le Freeport and its brethren in the EU won’t prevent art and collectibles traders from shorting their countrymen. Some of those clients will indeed just transfer their objects to another, more permissive freeport. Maybe so many will do it that EU freeports will have to downsize or disband.

If so, I won’t feel the least bit bad about it, and neither should European legislators. Personally, I think that if a business is only sustainable through a common-sense definition of white-collar crime, lawmakers should, you know, be okay with making that business fail. Call me old-fashioned, but in the words of Omar Little, a man got to have a code. And if freeports can’t live by this one, good riddance.