

Submission of Ana Gomes to the House of Commons International Trade Select Committee's inquiry into UK freeports

Introduction and Overview

1. I make this submission following the House of Commons International Trade Select Committee's commencement of an inquiry into the UK Government's freeport proposals.
2. I was a Member of the European Parliament from 2004 to 2019, and a member of its Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) that, in 2018, investigated freeports insofar as they impacted the European Union.
3. That investigation led to a [report](#) in 2019 which concluded that freeports were conducive to secrecy and likely to remain so.
4. In our final report, we included a [recommendation](#) that the European Commission "bring forward a proposal for the urgent phasing out of the system of freeports in the EU".
5. The report's recommendations were supported in a vote of the European Parliament by a large majority.
6. The EU's experience of freeports goes back many years and has been troubled, in my view, principally because of the way freeports have facilitated tax evasion and avoidance, and even money-laundering, corruption and organised crime.
7. The European Commission [reported](#) last year that they had been used to assist in narcotics traffic, the illegal ivory trade, people smuggling and terror financing. One example cited was the seizure by Swiss authorities of cultural relics looted from Syria, Libya and Yemen that were being stored in Geneva's freeports.
8. I understand the UK government's desire to bring economic regeneration to areas that need it. But I would caution Ministers and the Select Committee to be wary of the risks that freeports also pose, if not legislated for carefully. It is therefore with one of the Select Committee's terms of reference particularly in mind – "What negative impacts could freeports have – and how might these be mitigated?" – that I make this submission.

Negative impacts of freeports – the European experience

9. The European Parliament's [2019 report](#) was based on an analysis of relevant legislation, academic literature, annual and special reports by authorities, think-tanks and operators in the art business, articles in the media, interviews with experts at European level and at the OECD and a case study of the legal and supervisory framework at "Le Freeport", adjacent to the the airport of Luxembourg. I myself was amongst the party of MEPs that visited Le Freeport, and was negatively impressed with what we found.
10. Freeports are warehouses in free zones, which were – originally – intended as spaces to store merchandise in transit. They have since become popular for the storage of substitute assets - including art, precious stones, antique, gold and wine collections – often on a permanent basis. Art is increasingly becoming a mainstream asset in a balanced investment portfolio. Investors are generally high net worth individuals from all over the world, but banks, hedge funds and other major investors also tend to consider art a safe bet nowadays. It is not unusual for such investment art to be kept in vaults in free ports for decades.
11. Apart from secure storage, the attractions of freeports for the art business include the deferral of import duties and indirect taxes such as VAT or user tax, as well as a high degree of secrecy.
12. The best-known freeports catering for "investment art" are located in jurisdictions that are also tax havens or offshore financial centres with low public financial disclosure requirements, namely those in Geneva, Luxembourg, Singapore, Beijing, Monaco

- and Delaware. The first three of these have as their principal shareholder Yves Bouvier, a Swiss businessman of dubious repute. He faces various allegations, all of which he denies, of art fraud, tax evasion, and the media reported his involvement in the so-called “Bayern Munich underage sex scandal”.
13. Many works of art or precious objects are still sold from one offshore company to another somewhere in the world, sometimes even paid for in cash or in kind. This makes the art market opaque and exposed to money laundering and tax evasion risks.
 14. In most freeports or customs warehouses, almost anyone can bring in goods on behalf of someone else without disclosing the ultimate beneficial owner (UBO), which adds just another layer of secrecy for people who want to hide from (tax) authorities or creditors. Moreover, in most cases the registered value of the goods depends solely on self-declaration, which leaves significant room for over- or under-valuing.
 15. The Fifth EU Anti-Money Laundering Directive (DAC5), adopted in January this year (including by the UK) explicitly includes freeport operators and other actors in the art market, who have become “non-financial obliged entities” and are therefore subject to the same customer due diligence requirements, as for example real estate agents or notaries.
 16. These requirements have significant practical limitations, however, mainly because they depend largely upon self-reporting by art market participants.
 17. Since “fishing” in the UBO data held by non-financial obliged entities is not allowed – DAC5 concerns “access upon request” – direct tax authorities have to know who and what they are looking for before requiring access to UBO information. The effect of DAC5 in relation to tax evasion or money-laundering may therefore be limited to specific cases where there is prior suspicion.
 18. Furthermore, art is often bought and sold through dedicated offshore companies, so it is relatively easy for buyers and sellers to choose where a transaction would be most advantageous from a tax and/or secrecy perspective. Numerous jurisdictions still have not committed to identifying beneficial owners of offshore companies.
 19. Some of the tensions and contradictions thrown up by these circumstances were in evidence at Le Freeport Luxembourg, as I and other MEPs found in our visit, February 2018. Luxembourg had adopted the requirements of DAC5 early, seemingly as a response to international concern generated by the fraud allegations levelled at Mr Bouvier. I have heard that Le Freeport lost clients after it became obliged to carry out customer due diligence. Some existing clients refused to provide information concerning beneficial ownership of the goods and took their business elsewhere. It also became much more difficult for operators to bring new clients on board as a result of this clampdown on secrecy.
 20. Concerns remain about Mr Bouvier. He is the majority owner of the free ports in Luxembourg and Singapore, as well as the main private investor in the Geneva Freeport. He has an advisory role as a consultant for the freeport in Beijing. Moreover, through different companies he holds licenses to operate at these freeports and he is an art dealer. This concentration of a worldwide network of connected freeports and different roles could imply a risk of conflicting interests and insider trading.
 21. The fact that Mr Bouvier is entangled in an affair involving alleged fraud and insider trading may justify such considerations, although he denies wrongdoing and has not been convicted.

Recommendations

22. The concern is that freeports, which facilitate non-public transactions, add another layer of secrecy to the already murky international market for artworks and high-value objects - where high prices, inconsistent record-keeping, subjective valuations,

- questionable authenticity, anonymity and cross-border dealing create a fertile environment for laundering cash generated by other crimes.
23. I note that the UK government in its consultation document restates its determination to counter risks of tax evasion in fraud at UK freeports. I also note that it “does not... intend to designate Freeports for the purposes of High Value Storage”. It does not appear, however, that the government has yet offered any detail around how it intends to stop UK freeports becoming, de facto, centres of trading in artworks and other high-value objects.
 24. This is worrying, as the superficial attractions of enabling UK freeports to trade in artworks may be tempting, especially in a post-Brexit, post-Covid environment.
 25. Some market players in the EU may fear that, because of DAC5, the EU will lose some of its attraction as an art market, since clients and dealers like to remain under the radar and can easily move their business elsewhere (this may have already happened in Le Freeport in Luxembourg).
 26. A London or Heathrow freeport trading in artworks – combining access to global financial investors, proximity to a sophisticated art market with an enviable position as a “hub” between Europe, North America and Asia – would certainly enjoy significant competitive advantages, and attract business from other freeports.
 27. I would encourage the Select Committee, in its oversight role, to seek from the UK government additional assurances and details relating to its stated commitment not to enable “High Value Storage” at freeports.
 28. In particular, I urge the Committee to insist upon a “Bouvier rule” or equivalent, that (1) forbids the storage, buying and selling of artworks, valued above a certain level, in UK freeports, and (2) mandates public scrutiny of prospective shareholders or operators of UK freeports, in order to ensure that any such persons or organisations meet stringent “fit and proper” tests.