[CH] Government not in favour of introducing “droit de suite”

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The right to an interest in follow-on sales (“droit de suite”) granted to plastic artists entitles them to receive part of the sale price when art dealers sell their works on the secondary market. This right is embodied in the Berne Convention for the Protection of Literary and Artistic Works, as revised in Paris on 24 July 1971 (Article 14ter), and recognised in the legislation of 77 countries, mainly in Europe and southern and central America. It does not exist, however, in the USA or in China, two of the world’s principal art markets. The States signatory to the Berne Convention are free to decide whether or not to apply “droit de suite”, and to determine the method for doing so. In Switzerland, there have been a number of Parliamentary interventions calling for such a right to be introduced, but without success, and indeed the country decided not to introduce “droit de suite” when it revised its legislation on copyright (LDA) in 1992 and 2008.

On 5 December 2013, the Federal Council was called upon to propose measures to allow Swiss plastic artists to receive a percentage of the resale price when their works were sold by an art dealer. For its supporters, “droit de suite” pursues three main objectives: improving the individual economic situation of artists by allowing them to benefit from the proceeds of the resale of their works, supporting artists generally by allocating all or part of the revenue from “droit de suite” to a social or cultural fund in their favour, and providing artists with social recognition.

After an analysis of the methods and the conditions for “droit de suite” and a presentation of the international situation, the Federal Council looked into the expected economic consequences of introducing the entitlement. The Swiss art market is the sixth largest in the world: in 2014, sales realised a total sum of approximately EUR 816 million, i.e. 1.6% of the total turnover of the art market worldwide (EUR 51 billion). Works protected by copyright generated an estimated turnover of approximately EUR 680 million. The Federal Council calculated that the remuneration paid in Switzerland as a result of introducing “droit de suite” would amount to at least EUR 1.8 million. According to the Federal Council, fewer than 10% of Swiss artists and their beneficiaries would receive anything and indeed, since 80% of sales on the secondary market take place after the artists concerned have died, a substantial proportion of the revenue from “droit de suite” would not be paid to the actual artists, but to their beneficiaries. Lastly, it is probable that a considerable proportion of the revenue would be redistributed to

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artists living in another country, without comparable amounts from those countries being paid to artists resident in Switzerland.

The Federal Council's report also refers to possible consequences of introducing a "droit de suite". First, the entitlement could result in a fall in sale prices for works of art on the primary market, particularly works by lesser-known artists, since investors would have to give up part of their profit to remunerate the artists whose works were already being sold on the secondary market. Furthermore, the expense connected with sales of works subject to "droit de suite" might encourage vendors to shift sales to countries where transaction costs were lower.

In conclusion, the Federal Council feels that introducing "droit de suite" would not achieve the desired results. In particular, the entitlement would only be to the advantage of a very small number of artists. What is more, compared with the CHF 2.7 billion (circa EUR 2,4 billion) that the Swiss public authorities devote to the encouragement of culture each year, the revenue to be expected from "droit de suite" would be marginal and would not achieve any noticeable improvement in the economic situation of artists. Furthermore, it is not possible to forecast the impact of introducing the entitlement on the competitiveness of the art market or to determine to what extent it would lead to delocalisation to countries where it did not exist. Consequently, the Federal Council is of the opinion that "droit de suite" should not be introduced, although it will continue to observe experience and developments in other countries. Thus the Federal Council does not exclude the possibility of reassessing the situation at a later date.

Rapport du Conseil fédéral sur le droit de suite du 11 mai 2016

http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2016/2016-05-11.html

Federal Council report on 'droit de suite', 11 May 2016

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