# Report by the OMC subgroup
# on
# State indemnity and shared liability agreements


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# State indemnity survey
# 2009-2010

The OMC sub-group on "State indemnity and shared liability agreements" sent out questionnaires concerning state indemnity schemes to ***30 countries***, EU Member States and non-members as well. We tried to compile the incoming answers in order to provide a useful short summary of the incoming answers.

The following countries were queried:

Austria (AT), Belgium (BE), Bulgaria (BG), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (GR), Hungary (HU), Ireland (IE), Iceland (IS), Italy (IT), Lithuania (LT), Luxembourg (LU), Latvia (LV), Malta (MT), The Netherlands (NL), Norway (NO): scheme for incoming loans („incom.") / scheme for outgoing loans („outg."), Poland (PL), Portugal (PT), Romania (RO), Slovakia (SK), Slovenia (SI), Spain (ES), Sweden (SE), Switzerland (CH), United Kingdom (UK).

***22 countries*** have already established a state indemnity scheme:

| State indemnity scheme | ***No*** state indemnity scheme |
|---|---|
| AT, BG, CZ, DK, FI, FR, DE, HU, IE, IT, LT, LU, MT, NL, NO, PL, RO, ES, SI, SK, SE,UK | BE, CY, EE, GR, IS, LV, PT, CH |

## States with indemnity scheme

### I. Regulation

***20 countries*** have a legislation in force concerning state indemnity. What kind of source of law contains state indemnity scheme – e.g. act, regulation, decree, decision – varies from country to country.

In ***Norway***, there are two different state indemnity schemes: one of them is for incoming loans, run by the Ministry of Culture and Church Affairs, the other is for outgoing loans and is operated by the Ministry of Foreign Affairs.

In ***Malta,*** there is no law or regulation stipulating state indemnity procedures. Malta's indemnity scheme has been used only on an *ad hoc* basis.

***Luxembourg*** hasn't adopted any kind of legislation, however state indemnity is an existing scheme.

| State indemnity ***with*** regulation | State indemnity ***without*** regulation |
|---|---|
| AT, BG, CZ, DK, FI, FR, DE, HU, IE, IT, LT, NL, NO, PL, RO, ES, SE, SI, SK, UK | MT, LU |

Although in ***Slovenia***, the Cultural Heritage Protection Act contains provisions concerning state indemnity, this scheme has never been applied in practice so far. The only information available is the following (hence, Slovenia is not mentioned in other parts of the text with the exception of the additional information):

- the Slovenian scheme covers both incoming and outgoing loans,
- State funded museums may become beneficiary of the state indemnity, and
- the State may guarantee compensation for damage only up to 80 % of the value of the damage.

## II. Coverage

### 1. Works covered

Most of the state indemnity schemes cover *incoming loans*, works of art borrowed from a foreign or national institution or private lender.

However, the ***Bulgarian*** scheme and the state indemnity provided by the ***Norwegian Ministry of Foreign Affairs*** refer exclusively to *outgoing loans* in order to promote national cultural heritage abroad.

State indemnity in ***Finland, Luxembourg*** and ***Slovenia*** may cover *incoming loans* as well as *outgoing loans*.

Although indemnity schemes aim to cover primarily incoming loans for temporary exhibitions, several countries provide indemnity also for *long-term loans*, which means for works of art lent for a longer period than the general term of a temporary exhibition with the aim of exhibiting these works. In case of ***Sweden*** it's decided case by case whether a long-term loan may benefit from state indemnity. This is only possible if the work of art on loan is a very important piece and represents a particularly high value.

It's not typical that a government grants indemnity to cover works of art from its *national collections* as well, but 8 schemes can provide this coverage.

| Country | Incoming loans | Outgoing loans | Long-term loans | National collections |
|---|---|---|---|---|
| AT | X | | | |
| BG | | X | X | X |
| CZ | X | | X | |

| | | | | |
|---|---|---|---|---|
| DK | X | | | X |
| FI | X | X | X | X |
| FR | X | | | |
| DE | X | | | |
| HU | X | | | |
| IE | X | | | |
| IT | X | | | X |
| LT | X | | | |
| LU | X | X | X | X |
| MT | X | | | |
| NL | X | | X | * |
| NO (income.) | X | | | |
| NO (outg.) | | X | | X |
| PL | X | | X | |
| RO | X | | X | |
| SK | X | | X | |
| SI | X | X | | |
| ES | X | | X | ** |
| SE | X | | X | |
| UK | X | | X | |

* Works belonging to ***Dutch*** public collections cannot be covered, objects from Dutch private collections may be covered.

** National collections in ***Spain*** are covered if they are exhibited in a state museum or in the Thyssen-Bornemisza Museum, which is a private foundation occupying a State–owned building.

In case of *transitory or touring loans* (when an exhibition is presented at several venues) it is very important to determine the scope (period and risks covered) of the indemnities of different states' in order to make sure there aren't any gaps or overlaps between the coverages.

## 2. Period included (scope of state indemnity)

In most cases, works of art are covered *from nail to nail,* which means from the moment when the work is taken off the wall at the lender's premises until the moment when it is returned to its original place. However, several indemnity schemes exclude certain intervals i.e. crating or transportation.

| ***Nail to nail*** | Certain periods ***excluded*** |
|---|---|
| AT, BG, CZ, DK, FI, FR, DE, HU, IE, LU, MT, NL, NO (outg.), ES, SE, UK | IT, LT, NO (incom.), PL, RO, SK |

In the ***Norwegian*** state indemnity text concerning ***outgoing*** loans, works are covered only during transport in the cases where the exhibition's host museum has its own insurance scheme covering the exhibition period, or the host country has a national indemnity scheme providing such cover.

In ***Italy, Lithuania, Romania*** and ***Slovakia***, the scope of state indemnity is limited to the national territory. In case of the Italian state indemnity, in order to avoid the double opening of the crates, the parties can agree that state indemnity starts at the moment of delivery to the borrower's premises.

The ***Norwegian*** state indemnity text concerning ***incoming*** loans does not make reference to „nail-to-nail" coverage and stipulates that works are covered for damage and loss during their exhibition and storage. The indemnity can, however, on demand of the lender, be extended to cover part of or the entire transportation, which is generally the case.

The ***Polish*** scheme does not define the scope of indemnity. In practice, intervals of transport, crating and installation are excluded from the coverage.

## 3. Risks excluded

Many indemnity schemes provide a so-called „all risks" coverage, whilst others exclude some risks.

| Some risks excluded | ***No*** risks excluded |
|---|---|
| AT, CZ, DK, FR, HU, IE, IT, MT, NL, NO, ES, SK, SE, UK | BG, DE, FI, LT, LU, NL, PL, RO |

The ***Dutch*** Indemnity Scheme is based on a combination of a commercial insurance and a state guarantee. The conditions of the commercial insurance apply to the state indemnity, that's why the Netherlands figure in both cases above.

Every risk that is not excluded has to be considered as included. However, the damage resulting from normal wear and tear is usually excluded in all state indemnity schemes even if not mentioned *expressis verbis*.

Risks that are most frequently excluded are acts of terrorism and war or hostilities. The chart below indicates also some other types of exclusions as well. Where needed, a short description is given on countries.

| ***Risks excluded*** | | | |
|---|---|---|---|
| Country | Terrorism | Acts of war (armed conflicts) | Other risks |
| AT | X | X | see: below |
| CZ | | X | nuclear threats, item's aging, borrower's negligence |

| | | | |
|---|---|---|---|
| DK | | X | nuclear threats, any damage resulting from previous restorations |
| FR | | X | see: below |
| HU | | | see: below |
| IE | | | acts of negligence on the part of the borrower |
| IT | | X | see: below |
| MT | X | X | nuclear threats |
| NL | depends on the conditions of the commercial insurance | | |
| NO | | X | |
| PL | | X | nuclear threats |
| ES | | | see: below |
| SK | X | X | acts of negligence during the exhibition and transportation; extraordinary incidents |
| SE | | X | natural disasters |
| UK | | X | see: below |

The ***Austrian*** indemnity does not cover the following risks:

- all types of armed conflict – civil wars, revolutions, revolts, riots, insurrections, uprisings, strikes, lock-outs or any military or official action related to such incidents;
- terrorist acts
- nuclear disaster
- wear and tear or deterioration of works, and damage resulting from improper use
- malicious intent and negligence on the part of the lender
- any damage that has occurred irrespective of the exhibition
- any damage covered by a private insurance contract
- any damage arising as a result of inexpert restoration work
- any damage arising as a result of improper cleaning and care of the objects
- any damage which would have occurred even if the exhibition had not been held.

A distinguishing feature of the ***French*** system is to link a commercial insurance company to state indemnity under a single insurance policy (see: Dutch scheme). The chosen insurance policy therefore determines what risks will be excluded. In general, they are as follows:

- foreign or civil war
- previous damage to a work of art, inherent vice
- the risk of radioactivity and damage resulting from radiation
- confiscation, forced receivership, seizure or destruction by order of any government

Exclusions of the ***Hungarian*** scheme:

- any wilful conduct or negligence on the part of the beneficiary or its employees or representatives,
- normal wear and tear stemming from the characteristics of the exhibited article,
- restoration works approved by the beneficiary.

The ***Italian*** state indemnity doesn't cover the damages directly and indirectly caused by:

- war, invasions, act of war from foreign enemies, hostility (with or without declaration of war), civil wars, rebellions, revolutions, insurrections, military or usurped power,
- ionic radiations or radioactive contamination developed from nuclear combustible or from nuclear slag derived from phenomenon of transformations of the nucleus of atom or from

radioactive, toxic, explosive properties or from other dangerous features of nuclear equipment.

- normal utilization or gradual deterioration; moth, vermin or harmful animals; intrinsic defect,
- damages caused by defective or insufficient packing, except revenge towards the responsible persons,
- damages noticed during the inventory.

In ***Poland***, the exclusions are not mentioned in the state indemnity legislation, but the general Polish law on insurances excludes coverage of risks of war and nuclear threats.

Are exclusions from the ***Spanish*** scheme:

- damage resulting from wear and tear,
- misdeeds on the part of the owner, nuclear accidents and
- seizure of a work of art by a third party.

Unless the lending institution provides reciprocal arrangements and is a member of an approved professional body (such as the American Association of Museums or the equivalent European museums organisations) the ***UK***'s scheme does not cover any damage or loss in the following cases:

- war, hostilities or war-like operations but excluding acts of terrorism, riot, civil commotion, piracy and hijacking
- the negligence or other wrongful act of the owner, his servants or agent
- the condition (including inherent vice or a pre-existing flaw) of the object at the time of its loan, or
- restoration or conservation work undertaken to the object by the borrower, his servants or agents with the agreement of the owner; and
- a third party claiming to be entitled to the object.

## 4. Waiver of subrogation clause

Waiver of subrogation means a clause waiving claims – in the event of damage to a work – against the organisers, curators, museum officials, official representatives of the lender, transport companies, transit companies and packaging companies, except in the case of malice, deceit or gross negligence.

| Possibility of waiver of subrogation clause | ***No*** waiver of subrogation |
|---|---|
| DK, FI, FR, IT, MT, NL, NO (incom.), ES | AT, BG, CZ, DE, FI, HU, IE, LT, LU, NL, NO (outg.), PL, RO, SE, SK, UK |

The ***Dutch*** Indemnity Scheme is based on a combination of a commercial insurance and a state guarantee. The conditions of the commercial insurance apply to the state indemnity, that's why the Netherlands figure in both cases above.

The ***Finnish*** Indemnity Scheme includes a subrogation clause. However the right of recourse can be waived in whole or in part by a decision of the Government.

## III. Eligibility criteria

### 1. Beneficiaries (who can apply for state indemnity?)

In half of the examined countries (see: chart), *various kinds of cultural institutions* can apply for state indemnity: national museums, other publicly funded museums and private institutions as well. (In many countries, archives and libraries may also be subject to this scheme, but this document focuses mainly on museological institutions.)

In Germany, Hungary, Ireland, Lithuania, Malta, Poland and Spain, *private museums are excluded* from this possibility.

Austria, the Czech Republic and France reserve this opportunity *only for national museums*.

| Only national museums | National museums and other publicly funded museums | National museums, other publicly funded museums and private museums ***(all)*** |
|---|---|---|
| AT, CZ, FR | DE, HU, IE, IT, LT, MT, PL, ES, SK | BG, DK, FI, LU, NL, NO, RO, SE, UK |

In ***France***, state indemnity was set up exclusively for national public institutions organising exhibitions. The Réunion des musées nationaux and the Georges Pompidou National Centre for Art and Culture have been the only beneficiaries. Since 2009, the musée du Louvre is able to appeal to it. The Réunion des musées nationaux is allowed to apply for non-national museums.

In ***Ireland***, only certain selected institutions can request state indemnity. These are either national institutions or independent institutions that are financed entirely by the central government: National Museum of Ireland, National Library of Ireland, National Gallery of Ireland, Chester Beatty Library, Crawford Municipal Art Gallery, Irish Museum of Modern Art Company, Hugh Lane Gallery of Modern Art, Royal Irish Academy, Hunt Museum, Limerick.

According to the ***Spanish*** scheme, museums (libraries and archives) managed exclusively by the Ministry of Culture are eligible for state indemnity. Other beneficiaries of the state indemnity are: Crown Heritage, Fundación Colección Thyssen-Bornemisza and Government agencies for Spanish cultural action abroad and cultural commemorations, as long as the exhibitions are held in institutions depending on the State General Administration.

In the ***Romanian*** scheme, a foreign cultural institution has to ask for the Romanian state indemnity, provided that its national legislation (theoretically) allows the possibility of granting a state indemnity covering a potential Romanian loan.

In the ***United Kingdom***, all public museums, galleries (and libraries) which are accredited – including local university museums – are automatically eligible, as is the National Trust. Other institutions, such as independent museums, must have their application approved subject to the provision of satisfactory constitutional documents and audited accounts.

## 2. Selection criteria, security conditions

In most indemnity schemes, a basic selection criterion – in order to obtain state indemnity – is generally defined by the countries as it follows: The purpose of the loan has to be for public benefit *(UK)*, or has to contribute to public understanding or appreciation of art and culture *(IE)*, the scientific interest of the exhibition is important *(IT)*, and works of art have to be of high cultural and artistic value *(DK, FR, SE)*. Apart from these examples, several other countries formulated the same criteria.

From a technical point of view, meeting the proper security conditions is a general requirement. In most cases, the international good practices of security measures is required. Strict security conditions are examined in general by the Ministry of Culture or a special committee.

## 3. Financial limit per exhibition

Some of the countries determine minimum or maximum financial limits (per project) as a condition of granting state indemnity. In countries where there is a “possible maximum aggregate value of indemnities”, this amount naturally limits the maximum financial limit per project, however, there cases are not mentioned here.

| Minimum and/or maximum financial limit | ***No*** financial limit per exhibition |
|---|---|
| AT, DK, FR, IE, LT, NO, PL, ES, SK, SE | BG, CZ*, DE, FI, HU, IT, LU, MT, NL, RO, UK** |

*In the ***Czech Republic***, the minimum limit of 100 000 CZK (appr. 4000 EUR) is set per single object, there is no financial limit per exhibition.

**In the ***United Kingdom***, similarly to the Czech Republic, no financial limit per project has been set, but no single objects worth less than £301 (appr. EUR 344) can be indemnified.

Most of the indemnity schemes determine a minimum financial limit per exhibition, under which value, indemnity cannot be granted. Only few countries set a maximum limit.

| Country | ***Minimum*** limit (per exhibition) | ***Maximum*** limit (per exhibition) |
|---|---|---|
| AT | * | EUR 100 000 000 |
| DK | EUR 1 350 000 (DKK 10 million) | |

| | | |
|---|---|---|
| FR | EUR 46 000 000<br>*(in practice: EUR 250 000 000)* | |
| IE | EUR 1 270 000 | |
| LT | EUR 300 000 | |
| NO (incom.) | EUR 560 000<br>(NOK 5 000 000) | |
| NO (outg.) | EUR 337 000<br>(NOK 3 000 000) | |
| PL | EUR 500 000 | |
| ES | | EUR 210 000 000 |
| SK | EUR 40 000 | EUR 10 000 000** |
| SE | Single exhibition: EUR 1 850 (SEK 20 000)<br>Touring loans: EUR 18 500 (SEK 200 000) | |

*In ***Austria***, no minimum financial limit is stipulated by law, but the Ministry of Finance defines a minimum per object: EUR 2500 and another per lender: EUR 5000.

In ***France***, the total insured value of works not belonging to the State must be at least EUR 46 million. However, in practice, the total value of the exhibition should not be less than EUR 250 million for state indemnity to be a viable option (see: *own risk*).

In ***Spain***, as an exception, the maximum limit of EUR 210 000 000 can be increased by agreement of the Council of Ministers. The indemnity granted for the collection of the Baroness Carmen Thyssen-Bornemisza has a specific limit, established in EUR 540 910 000.

**In ***Slovakia***, a maximum financial limit of EUR 10 000 000 is set *per one applicant.*

## IV. The way the system works

### 1. Special appropriation in the state budget

Only ***4 countries*** have a special appropriation in the state budget for indemnity purposes. Others bear upon different reserve funds, or the decision of the Ministry of Finance (in generally) on a case by case basis.

| ***Yes*** | ***No*** |
|---|---|
| ES, HU, PL, NO | AT, BG, CZ, DE, DK, FI, FR, DE, IE, IT, LT, LU, MT, NL, RO, SE, UK |

In ***Finland***, there is no special appropriation for state indemnity in the state budget; however the state budget includes an expenditure item for unexpected expenses that can be used also for indemnity.

The ***German*** system is also similar, a certain amount applies to several different sorts of indemnity.

The ***Spanish*** state budget has a special appropriation for the state indemnity with the symbolic sum of EUR 1000. If necessary, this appropriation could be increased up to the required amount.

In ***Hungary***, the State has to set apart a certain amount of liquid money (real money) each day. This amount is counted according to the requests accepted.

In ***Poland***, appropriation is estimated each year in the State Budget Decree according to estimations from museums. For 2008 it was 24 000 000 PLN (appr. EUR 5 815 000) for one museum which used this form of insurance.

In the ***Norwegian*** scheme for ***incoming loans***, special appropriation is NOK 4 billion (appr. EUR 450 million). In case of ***outgoing loans***, the sum allocated for this purpose varies from year to year, in 2009, it is NOK 2,8 billion (appr. EUR 315 million).

## 2. To whom is state indemnity granted ?

| To the ***lender*** | To the ***borrower*** |
|---|---|
| AT, BG, DK, FI, HU, IT, LU, MT, NO, PL, RO, ES, UK | CZ, FI, FR, DE, IE, LT, NL, SK, SE |

In ***Bulgaria*** and ***Finland***, the state indemnity is granted to the Bulgarian/Finnish organizer that can be the lender or the borrower.

## 3. Formal declaration

Some state indemnity schemes require an official acceptance of the indemnity from the part of the lender.

| **Yes** | **No** |
|---|---|
| CZ, FI, FR, HU, IE, IT, MT, NO (incom.), PL, RO, ES, | AT, BG, DK, DE, LT, LU, NL, NO (outg.), SK, SE, UK |

*Specificities:*

In the ***Czech Republic***, although the indemnity is granted to the borrower, the lender has to formally accept the use of the state indemnity.

In ***Ireland***, it's not the lender, but the organiser who has to make a formal declaration.

In ***Finland,*** the Finnish organizer has to ensure that the other party (lender or borrower) accepts the use of the state indemnity.

According to the scheme of ***Malta***, the declaration on accepting the state indemnity is part of the loan agreement.

In ***Romania***, the lender not only has to accept the indemnity, but has to make a formal demand implying the acceptance.

## 4. Alternative solution if state indemnity is not accepted

*This question is treated in a more detailed form in a separate analysis.*

Some of the countries can offer the lender or the borrower an alternative solution for coverage instead of 100% state indemnity, if this latter is not accepted by the lending or borrowing institution. Usually, a combination of state indemnity and commercial insurance is proposed. In some cases *(ex. FR, NL)*, state indemnity scheme exists only in combination with commercial insurance.

| Alternative solution (***combination*** of state indemnity and commercial insurance) | ***No*** alternative (***combination***) solution ***or only commercial insurance*** accepted instead of state indemnity |
|---|---|
| AT, CZ, ES, FI, FR, HU, IT, NL, PL, RO, UK | BG, DK, DE, IE, LT, LU,MT, NO, SE |

## 5. Institutions involved

In most of the countries, state indemnity applications are submitted to the ***Ministry of Culture*** (or any kind of ministry responsible for cultural affairs) and the ***Ministry of Finance***. Generally, applications are examined by both ministries, and at the end of the process, one of them issues a certificate of guarantee. In ***Malta***, a further organ takes part in the procedure: state indemnity will be handled by the organising public institution (e.g. Heritage Malta - the National State Agency for Museums and Historical Sites) under the coordination of its responsible Ministry in consultation with the Ministry of Finance and with the final permission of the ***Office of the Prime Minister***. The ***Swedish*** state indemnity scheme is governed by the Swedish Arts Council in collaboration with the Legal, Financial and Administrative Services Agency.

In some states, namely in ***Denmark, France, Lithuania, Norway (incoming loans) and Finland***, a special „advisory panel", or a kind a „government committee", or „state indemnity board" is set up for evaluating the application. Generally, these committees consist of members appointed for a period of 3-5 years, and they are responsible for approving the required conditions and advising on the acceptability of the application.

## 6. Own risk or limitation of liability

Some state indemnity schemes offer 100% coverage, while in others the liability is shared by the State and the museum. In the latter case, the museum must cover the first losses *("own risk" or "deductible")* either by paying an insurance premium or by bearing the cost of damage using their own funds.

| Limitation of liability / own risk | ***No*** limitation of liability / own risk |
|---|---|
| AT, DK, FI, FR, LT, NL, NO, ES, SE, UK | BG, CZ, DE, HU, IE, IT, LU, MT, PL, RO |

State indemnity schemes operating with a limitation of liability can be very different. In some states, the museum is liable for paying the own risk only if a damage occurs, whereas other schemes oblige museums to cover the first risk by a commercial insurance, in which case the premium has to be paid even in the absence of any damage.

In ***Austria***, the guarantor is not liable for insignificant loss. Insignificant loss is defined at three levels, where insignificant loss is 10 % of the value of the object on loan. (At the highest level, insignificant loss, which means also the amount of own risk cannot exceed EUR 20 000 per object and EUR 50 000 per exhibition.)

In the ***Danish*** indemnity scheme, the amount of own risk has been set at three levels in the range between DKK 100 000 (appr. EUR 13 500) and DKK 300 000 (appr. EUR 40 500), depending on the insured value of the works.
Danish national museums are required to pay for the cost of damage out of their own funds up to the cost of the own risk, because they are not permitted to turn to private insurance companies, however, private museums choose between bearing the cost of possible cases of damage themselves and taking out a policy with an insurance company.

In ***Finland***, the amount of own risk has been set at five levels between EUR 20 000 and 200 000 varying according to the total insurance value of the works. Museums can choose if they take a commercial insurance or not. In latter case the museums should cover the first costs out of their own funds.

In ***France***, the amount of the own risk is determined on a case by case basis and depends on the highest value insured and the total capital of the exhibition. Below the threshold, the museum has to cover the works by a commercial insurance, above this threshold, the state is liable to pay the indemnity in case of damage. Actually, this minimum threshold is set at EUR 46 million, the maximum at EUR 100 million.

The ***Lithuanian*** state indemnity scheme stipulates that the borrowing institution is responsible for paying 1 % of the value of the objects out of its own founds in the event of damage, destruction or loss.

In the ***Netherlands***, the first 30 % of the damage will be paid by the state, and the rest is covered by a commercial insurance. However, on top of the 30 %, institutions are liable for the payment of first losses out of their own funds depending on the total value of the loans (6 levels) up to a maximum limit of EUR 45 000 per exhibition.

In ***Norway,*** in case of ***incoming loans***, the museum has to pay the first risk of its own funds up to an amount set each year in the state budget. For ***outgoing loans***, first risk is shared by the lender and the borrower: the lender covers the risks associated with transportation and storage at an amount corresponding to 1‰ of the value of the works and up to a maximum of NOK 100 000 (appr. EUR 112 500), while the borrower covers the risks related to the exhibition at an amount corresponding to 1‰ of the value of the works and up to a maximum of NOK 100 000 (appr. EUR 112 500).

According to the ***Spanish*** indemnity scheme, the amount of own risk has to be covered by a commercial insurance. Four levels of deductible are defined. The lowest liability is at appr. EUR 12 020 and the highest at EUR 60 101.

***Sweden***'s national museums are not permitted to be insured by private insurance companies (only under exceptional circumstances), thus they must bear the first losses out of their own funds. There are eleven levels of own risk between SEK 20 000 (appr. EUR 1 850) and SEK 120 000 (appr. EUR 11 100).

In the ***United Kingdom***, national museums have a minimum liability of £5 000 (appr. EUR 5 600) per financial year. This is also applicable to non-national museums under a particular status, which are able to choose between a minimum liability arrangement and that described below. Non-national museums must meet the cost of any loss of an insured loan up to a limit of: £300 (appr. EUR 335) where an object is valued at less than £4000 (appr. EUR 4500); and £300 (appr. EUR 335) plus 1% of the object's total value where that value is £4000 (appr. EUR 4500) and above. The borrower is free to either pay the own risk from its own funds or to purchase commercial insurance.

## 7. Maximum aggregate value of indemnities

In ***11 states*** out of 22, no maximum limit has been determined to the amount insurable by state indemnity.

| Maximum aggregate limit | ***No*** maximum aggregate limit |
|---|---|
| AT, DK, FI, DE, HU, IE, NL, NO, ES | BG, CZ, FR, IT, LT, LU, MT, PL, RO, SE, UK* |

State indemnity schemes can define the maximum aggregate amount covered by indemnity in two different ways: Some of the states establish a limit that cannot be exceeded during the given year; whereas other countries fix a maximum amount for all concurrent liabilities at any one time.

| Country | Maximum amount ***per year*** | Maximum amount ***at any one time*** |
|---|---|---|
| AT | | EUR 1 000 000 000 |
| DK | | ~ EUR 805 764 000<br>(DKK 6 000 000 000) |
| FI | | EUR 1 000 000 000 |
| HU | | ~ EUR 1 037 000 000<br>(HUF 300 000 000 000) |
| IE | | EUR 190 000 000 |
| NL | | EUR 300 000 000 |
| NO<br>(incom.) | ~ EUR 450 000 000<br>(NOK 4 000 000 000) | |
| NO<br>(outg.) | ~ EUR 315 000 000<br>(NOK 2 800 000 000) | |
| ES | EUR 1 680 000 000 (can be increased up to EUR 2 500 000 000) | |

*Complementary information given by the countries:*

In ***Denmark***, if the amount covered by the indemnity scheme for a single exhibition is more than DKK 4 billion (appr. EUR 537 176 000), the relevant board of the Ministry of Finance must be informed.

In the ***Netherlands***, the limit of EUR 300 000 000 has been raised to 450.000.000 and 500.000.000 occasionally due to exceptional circumstances.

The maximum amount covered by the ***Spanish*** indemnity is 1,680 million euro per year. If the Council of Ministers approves an increase in the specific limit of 210 million euro, the maximum amount would be increased up to 2.500 million euro.

* The situation in the ***United Kingdom*** is more complex:
- The overall amount for England is £2 billion (appr. 2,2 billion euro) for non-national institutions.
- The figures for Scotland (£70 million; appr. 78 300 000 euro) and Wales (£35 million; appr. 39 150 000 euro) are much lower, since they have fewer loans and exhibitions.
- For national institutions, there is a different procedure. At the beginning of the financial year, each national institution advises the Secretary of State of its forecast for usage. This figure cannot be exceeded without Parliamentary approval.

However, in practice, the agreed levels are no strict maximums which cannot be exceeded by the approval of the Parliament, that’s why UK is classified to the right column.

## 8. Costs of indemnity

There are altogether ***three countries***, where a certain amount (fee) has to be paid for the granting of state indemnity: Finland, France and Sweden.

| Free of charge | Cost of indemnity |
|---|---|
| AT, BG, CZ, DE, DK, HU, IE, IT, LT, LU, MT, NL, NO, PL, RO, ES, SK, UK | FI, FR, SE |

In ***Finland***, state indemnity has a fixed fee of EUR 225 that has to be paid in case of each exhibition.

A ***French*** organising institution benefiting from the state indemnity pays a fixed fee of EUR 30,500 to the Treasury for each project.

In ***Sweden***, the cost of state indemnity includes: a fixed amount of SEK 3,000 (appr. EUR 278), which has to be paid to the Swedish Arts Council in advance and a sum equal to 0.05‰ of the overall value of the exhibition. This sum should be between SEK 1,000 (appr. EUR 93) and SEK 100,000 (appr. EUR 9 250). This fee is mainly spent on the work of the security officer.

## V. Compensation mechanism

A common rule of the different indemnity schemes is that when a damage or loss occurs, the owner of the work, the relevant institutions (Ministry of Culture and Ministry of Finance) – and in case of mixed system the broker or insurance company – have to be ***informed immediately***. The borrower must not attempt any restoration or conservation work without the lender's consent.

The damage is ***assessed*** either by a special committee of experts, or mutually by the lender and the borrower or a representative of the involved ministry. In case of damage, the ***compensation*** consists of the cost of the reasonable repairs and any depreciation in value, but cannot exceed the agreed value. In the event of loss or irreparable damage, the compensation will be determined according to the agreed value.

According to the information provided by the states, only some of the countries' indemnity schemes determine a strict ***timeframe for the payment of the compensation***. Several schemes simply do not contain any provision on the deadline.

The compensation is usually paid by the government directly to the lender, however in some cases *(ex. SK, SE)*, the payment is made to the borrower who received the guarantee and not to the lender.

| Country | ***Assessment*** of damage | Can the assessment of damage be ***debated?*** | ***Timeframe*** for the payment of compensation |
|---|---|---|---|
| AT | federal authorities together with the lender | internationally acknowledged expert appointed mutually the lender and the borrower | 6 weeks |
| BG | representative of the lender | depends on the wording of the contract | according to preliminary negotiation |
| CZ | it is agreed by the Lender, the Borrower and the Czech Ministry of Culture in form of an agreement | it is agreed by the Lender, the Borrower and the Czech Ministry of Culture in form of an agreement | 6 months |
| DE | lender and borrower together | independent expert | 6 weeks |
| DK | lender in consultation with the borrower and state indemnity board | a common appointed expert | as soon as the amount can be stated |
| FI | borrower together with the lender and the Ministry of Culture | yes, by experts, the borrower, and the lender | *not specified* |
| FR | committee of experts | yes, by the experts and the representative of the owner together | *not specified* |
| HU | lender and borrower together | independent, internationally recognised expert | 15 days |
| IE | Department of Arts, Sport Tourism | *not specified* | *not specified* |
| IT | the territorial Superintendancy | by a specific committee | 60 days |
| LT | committee of experts together with a representative of the lender | *not specified* | *not specified* |
| LU | lender and borrower together | by the two parties | *not specified* |
| MT | Heritage Malta in consultation with the lender, the Superintendance and the Ministry of Finance | *not specified* | *not specified* |
| NL | Netherlands Institute for Cultural Heritage and damage expert of the insurance company | *not specified* | 28 days |
| NO (incom.) | lender and borrower together | *not specified* | as soon as possible |
| NO (outg.) | lender, borrower and Ministry of Foreign Affairs | *not specified* | *not specified* |
| PL | conservators at the borrowing museum in cooperation with the Police and The Centre of Protection of Public Collections | *not specified* | „immediately” |
| RO | decided in compliance with the Ministry of Finance’s requirements | yes | *not specified* |

| | | | |
|---|---|---|---|
| ES | borrower together with the lender and the Ministry of Culture | *not specified* | *not specified* |
| SK | an expert selected by the lender and the borrower | *not specified* | 6 months |
| SE | borrower (organising museum) | it is accepted automatically | no timeframe |
| UK | borrower | the lender can ask a special conservator or restorer | „as quickly as possible” |

## VI. Experiences and general remarks

### 1. Grounds for refusing state indemnity

Most of the museums answered that they usually don’t refuse state indemnities. Even if the coverage is incomplete, they ask for an additional commercial insurance rather than refusing state indemnity. However, in general, refusals are made on the following grounds:

- unsatisfactory legal regulations (e.g. when the scope of the coverage provided is not clearly identifiable),
- existence of certain exclusions,
- disagreement over valuation,
- when cultural value is not substantial or the exhibition is of commercial purpose,
- reciprocity is often taken into account.

### 2. Problems and limitations of the schemes

The following problems were mentioned by the countries:

“The ***Austrian*** scheme defines too many exclusions.”

“In case of ***Bulgaria***, the mechanism and criteria for state indemnity are not described in details. State indemnity requires receiving application 18–24 months in advance, however, information and applications usually come later and it is not possible to plan. Another limitation is that state indemnity can’t cover exhibits borrowed from other countries.”

“Concerning the ***Czech*** system, the fact that the application must be sent to the Czech Ministry of Culture ten months before the opening of the exhibition at the latest can be a problem. A further difficulty is that the Lender is required to sign many documents: the Lender´s statutory declaration saying that the Lender is the owner of the loaned item, that the loaned item is not commercially insured "nail to nail" for the risks covered by the Czech state indemnity for the exhibition period and that the Lender agrees with insuring the loaned item by the Czech state indemnity.”

“In ***Denmark***, the state indemnity board is sometimes reluctant to insure contemporary art – especially in cases, where methods of restorations beforehand are considered out of reach in case of damage.”

“In ***France***, the time necessary to make a proposal prior to the exhibition’s first venue is too long (about 6 months).”

“***Hungarian*** legal texts are difficult to understand and lenders are required to sign too many papers. It causes distrust, even if the conditions of the scheme are otherwise flexible.”

“In ***Ireland*** the inflationary pressures on art works in recent years may lead to a review of the maximum limit.”

“In ***Italy***, the length of the procedure poses a problem.”

“A limitation of the ***Lithuanian*** system is that it does not cover the works from nail to nail, only on Lithuanian territory.”

“In ***Malta*** no indemnity scheme has been established, therefore, it has always been used on an ad hoc basis.”

“In the ***Netherlands***, the combination of a state indemnity and a commercial insurance is deviant and not easy to understand for foreigners. The Dutch museums experience the maximum of 30% coverage and the indemnity ceiling of € 300.000.000 at any one time as a limitation.”

“In ***Norway (incoming loans)***, the exclusion of the risk of acts of war is unfavourable. As per the scheme for ***outgoing loans***, the distinction between „terrorist acts” and „hostilities between independent countries” should be clarified.”

“***Polish*** state indemnity scheme’s limitations are the followings: works are not covered from nail to nail, procedures are too lengthy (one to two years) and the minimum value (required) of items is too high.”

***Romania*** mentioned the following limitations: “there is no minimum budget annually allocated for state indemnity within the budget of the Ministry of Culture, Religious Affairs and National Heritage; the amount is established by the Ministry of Finances, there is no specified procedure for evaluating the damages and for compensation and the indemnity is granted on a mutual basis.”

***Spain:*** “Even though the maximum insurable sum per project is increased each year, it is still too low in the opinion of museum professionals: it is essentially set at 210 million euro, whereas the value of an average project lies between 300 and 400 million euro. For large projects, organisers only apply for state indemnity for those works with the highest insurance value, since the maximum limit is reached easily.”

“It’s difficult to overlook and understand the scope, effect and coverage of the ***Swedish*** state indemnity scheme. Therefore, Sweden has started to work on an explanatory text.”

“In the ***UK***, a limitation is that exhibition partners cannot be entered as co-insured parties as would be the case with a private insurance policy.
National institutions that organise touring exhibitions within the United Kingdom may use state indemnity for the entire tour in order to cover the risks at other venues as long as they are responsible for the exhibition. (This rule does not apply to non-national institutions holding touring exhibitions: each non-national institution that hosts the exhibition must submit a separate application for state indemnity.)”

**According to the abovementioned remarks, the following problems and reasons to the non-application of state indemnity can be observed.**

The reasons for not applying national indemnity schemes can originate in the inner problems of the scheme, or can depend on external factors that are actually independent from the quality of the regulation.

**Intrinsic obstacles can be:**

of **legal** nature, that is the regulations related to state indemnity may not meet the Lender's requirements or may present an obstacle for the Borrower, thus discouraging him from making use of the scheme available. More specifically, such obstacles include:

- wording of the regulation is too vague, definitions are too vague, borrower cannot give reassuring clarifications;
- existence of certain risk exclusions;
- limitations in terms of territory or duration of coverage;
- the administration of the system is too lengthy or too difficult, sometimes it puts too much burden on the lender, thus causes mistrust;
- application fee is too high;
- indemnity application threshold is too high, annual total indemnity ceiling is too low;
- Lender cannot appear as co-insured as would be the case with a private insurance policy.

**Extrinsic factors leading to the refusal of a state indemnity can be:**

of **financial** nature, i.e. due to an agreement between the Lender and insurance company/insurance broker. The Lender gets a profit share/bonification from the insurer that is a certain percentage of the premium paid by the Borrower. The Lender is thus financially motivated by the insurer to involve him in the loan.

From the legal point of view we do not consider the first element, the practice of sharing the profit between the parties contestable, as to transmit is business and to get a certain commission for it is a common practice, especially in the field of trade.
However, from the ethical point of view lending between museums should not be considered a commercial/economic activity and museums, as not-for-profit institutions, should not in principle look for financial interest when cooperating with other museums.

From the legal point of view the second element of 'insisting on own the insurer' is rather problematic, as it comes – in the vast majority of cases – into conflict with competition law.
***Reciprocity*** means that a lender does not accept the state indemnity offered by the borrower because in the past, due to its own indemnity scheme being refused in the past by the current Borrower then acting as Lender.

***Disagreement over valuation***
Commercial insurers tend to be more permissive about unreasonable insurance values than the State. However if the lender and the borrower can in no way agree, and the borrower still wants to exhibit the object the technical possibility is to buy a commercial insurance for the difference.

The lender and the borrower should always do their best to determine an ‘agreed’ value that is based either on the fair market value or a reduced value of the object. Although valuation is not subject of the present study, one suggested guideline offered by ’Lending to Europe’ is to accept a reduction of up to 40% of the current market value, but not less than the price paid by the lending institution when it acquired the object.

***Lack of translations*** from national languages to English at least, or to the lender’s language is an obstacle that museums can overcome quite easily, without necessarily spending too much money.

### 3. General remarks

Several countries mentioned that the creation of a ***„European indemnity scheme”*** (and reciprocity agreements between countries regarding the acceptance of state indemnities) would be desirable. It would be a good way to facilitate the international exchange of works, particularly with „new” EU Member States, it would be a good solution for touring exhibitions organised by many countries and would be useful also for those countries who don’t have indemnity schemes.

Too high ***minimum financial limits*** make the system difficult to use as well, because mostly contemporary works of art, whose insurance value is generally low, cannot benefit from this indemnity. Too low ***maximum limits***, and ***maximum insurable amounts*** are also problematic: low insurance premiums can usually be covered by most museums, while covering high insurance values mean a real difficulty.

## VII. Additional information

### 1. Website

***9 out of 22 countries*** indicated that a website was established including information concerning state indemnity. Considering this a useful additional element to our analysis, we herewith provide these websites.

| Country | Website |
|---|---|
| Finland | http://www.minedu.fi/OPM/Kulttuuri/Museot_ja_kulttuuriperintoe/taidenayttelyiden_valtiontakuu/?lang=en |
| Hungary | http://www.okm.gov.hu/kultura/kiallitasi-garancia/kiallitasi-garancia |
| Netherlands | www.icn.nl |
| Norway (incom.) | http://www.abm-utvikling.no/museum/revisjon-av-regelverk-for-statlig-forsikring.html |
| Norway (outg.) | www.Regjeringen.no/nb/dep/ud/tema/Norgesfremme-g-kultursamarbeid/statsgaranti |
| Romania | www.cultura.ro; http://www.cultura.ro/Documents.aspx?ID=184 |
| Slovenia | http://www.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min_eng/legislation/CHPA.pdf |

| | |
|---|---|
| Spain | http://www.mcu.es/patrimonio/CE/GarantiaEstado/Definicion.html |
| Sweden | http://www.kulturradet.se/SV/bidrag/bildochformkonst/utstallningsgarantier/ |
| United Kingdom | www.mla.gov.uk/what/cultural/objects/government_indemnity |

## 2. Translation of legislation

***13 out of 22 countries*** gave a positive answer to the question whether there is an English translation of their national legislation (in case of the United Kingdom and Ireland, the original text is in English of course). Several countries (10) also provided a website that contains the English text (translation). Some states translated their relevant laws to other languages as well.

| Country | ***English*** translation (website if available) | ***Other*** languages |
|---|---|---|
| Bulgaria | www.ciela.net or www.apis.bg/en/ | |
| Czech Republic | YES (no website) | |
| Denmark | YES (no website provided) | |
| Finland | http://www.minedu.fi/OPM/Kulttuuri/Museot_ja_kulttuuriperintoe/taidenayttelyiden_valtiontakuu/?lang=en | French, Greek, Russian, Spanish, Swedish |
| Hungary | http://www.okm.gov.hu/letolt/kultura/kozgyujt/government_decree110_2006_v_5_090904.pdf | French, German, Italian, Russian |
| Ireland | http://www.irishstatutebook.ie/1997/en/act/pub/0011/index.html | |
| Lithuania | YES (no website provided) | Polish |
| Netherlands | www.icn.nl/en/ | |
| Norway (incom.) | http://www.abm-utvikling.no/museum/sikring/government_indemninty.pdf | |
| Norway (outg.) | www.Regjeringen.no/nb/dep/ud/tema/Norgesfremme-g-kultursamarbeid/statsgaranti | |
| Romania | http://www.cultura.ro/Documents.aspx?ID=184 | |
| Slovenia | http://www.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min_eng/legislation/CHPA.pdf | |
| Spain | YES (no website provided) | French |
| Sweden | http://www.kulturradet.se/Documents/Bidrag/bidragsinformation/utstallningsgar_state_ex_guarantee_ord.pdf | |
| United Kingdom | http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=national+Heritage&Year=1980&searchE | |

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|---|---|---|
| | nacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1899442&ActiveTextDocId=1899464&filesize=14541 | |

## 3. Contact person

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| BG | Name: Ekaterina Djumalieva<br>Title: Head of Department<br>Organisation: Ministry of Culture, Cultural Heritage Directorate, Museum's Activity and Fine Arts Department<br>Address: 17, Al. Stamboliisky Blvd., Sofia 1040, Bulgaria<br>Tel: +359 2 94 00 885<br>E-mail: k.djumalieva@mc.government.bg |
| CZ | Name: Magda Němcová<br>Title: Registrar<br>Organisation: National Gallery in Prague<br>Address: Staroměstské nám. 12, CZ -110 15 Praha 1<br>Tel : +420 222 316 783, 00 420 224 301 218<br>E-mail : nemcova@ngprague.cz |
| FI | Name: Tiina Eerikäinen<br>Title: Councellor for Cultural Affairs<br>Organisation: Ministry of Education<br>Address: P.O. Box 29, FI-00023 Government, Finland<br>Tel : +358 9 1607 7483<br>E-mail : tiina.eerikainen@minedu.fi |
| HU | Name: Henrietta Galambos<br>Title: Head of Legal and Registrars Department<br>Organisation: Museum of Fine Arts, Budapest |

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|---|---|
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| ES | Name: Jesús Fumanal<br>Title:<br>Organisation: Ministry of Culture<br>Address: Plaza del Rey 1, 28071 Madrid, Spain<br>Tel: +34 91 7017040<br>E-mail: jesus.fumanal@mcu.es |
| SK | Name: Branislav Rezník<br>Title: Deputy general director<br>Organisation: Slovak National Museum<br>Address: Vajanského nábrežie 2, 814 06 Bratislava, Slovakia<br>Tel: +421 2 20491236<br>E-mail: branislav.reznik@snm.sk |
| SE | Name: Erik Åström<br>Title: Senior Advisor<br>Organisation: Swedish Arts Council<br>Address: PO Box 27215, 102 53 Stockholm, Sweden<br>Tel: +46 8 519 264 40<br>E-mail: erik.astrom@kulturradet.se |
| UK | Name 1: Sean Ferran<br>Title: Government Indemnity Scheme Manager<br>Organisation: Museums, Libraries and Archives Council (MLA)<br>Address: Wellcome Wolfson Building, 165 Queen's Gate, London, SW7 5HD<br>Tel: +44 (0)20 7273 1420<br>E-mail: Sean.Farran@mla.gov.uk |

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|---|---|
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# Part 2

# States without indemnity scheme

## States without indemnity scheme

The situation concerning state indemnity scheme has also been examined in countries, where currently no such scheme exists, in order to see what the main obstacles and the realities of establishing a scheme are, as well as examine possible alternative solutions to cut insurance costs.

In ***Cyprus***, the great majority of loans are outgoing, however in the case of incoming loans, when the government of Cyprus is the organiser of the exhibition, insurance costs are borne by the government.

Other countries, namely Belgium (BE), Estonia (EE), Greece (GR), Iceland (IS), Latvia (LV), Portugal (PT) and Switzerland (CH), provided the following information:

### 1. Alternative solution

All of the queried countries reported that they can resign themselves to alternative solutions (instead of state indemnity) in order to cut high insurance costs.

***Belgium*** mentioned as an alternative solution the possibility of shared liability (non-insurance) in case of loan of artworks between Belgium and a different country.

In ***Estonia*** there are a lot of cases when sponsors cover the insurance costs. In cases when there are no sponsors, then usually the state (Ministry of Culture) covers part of the insurance costs. Third possible alternative solution in Estonia is collaboration with Finland and using of Finnish state indemnity. Estonia and Finland have close cultural contacts and they exchange a lot of exhibitions (especially during the last 5 years), so there have been several cases in which Finnish State Indemnity covered also exhibitions of Finnish collections in Estonia.

***Greek, Latvian and Portuguese*** exhibition organisers usually turn to sponsors in order to reduce insurance costs. However, in ***Portugal***, only the Institute of Museums and Conservation (IMC) has benefited from such a sponsorship, in which case it covered only the insurance of movable cultural heritage pertaining to IMC museum collections displayed in exhibitions organised by IMC and held within the national boundaries.

***Iceland***'s answer to the question whether they have any alternative solution instead of commercial insurance was negative, nevertheless, it was mentioned that the Ministry of Finance was discussing the possibility of providing museums with access to special state aid and that in some rare cases, the Icelandic State assumed responsibility to cover the possible losses for some exhibitions.

In ***Switzerland***, in the near future, the Federal Administration will be able to pay state aids to Swiss museums in order to cut the high costs for the insurance of works of arts on loan.

## 2. Possibility of establishing a scheme

The fact that the abovementioned states don't have a state indemnity scheme doesn't mean that the possibility of establishing one has not been discussed. All of the countries stressed that this problem had already arisen and some countries are on the way to develop a national state indemnity system.

In ***Belgium***, a study was carried out in 2008 on the possibilities of the introduction of a state indemnity system for temporary loans in ***Flanders***. The study should result (end 2010) in a draft proposal of a law (decree) introducing an indemnity scheme in Flanders. The proposed system is a mixed system whereby commercial insurance-companies would cover the first risks of the loan(s) up to a certain threshold; the Flemish government would then guarantee the residual risks (risks of serious damage and total loss). The federal authorities of Belgium and the French Community will also consider whether or not such a scheme might be useful for the museums they are competent for.

Within the ***Greek*** Ministry of Culture, in January 2007, a Work Group was set up with the duty of examining the possibility of establishing a state indemnity scheme. The Group started drafting relevant legislation according to which state indemnity would cover short term loans to all State Archaeological Museums, the National Gallery and selected major private museums subsidized by the state. The activities of this Work Group were however suspended later in the same year. In April 2009, a new Work Group consisting of museum, legal and economic experts was set up with the same mandate.

***Portugal*** underlined that this possibility has been presented to the IMC, and that the work produced within the group of experts on Collections Mobility (comparative studies about the national systems, pointing out of best practices and recommendations) is a good base for presenting a proposal to the Portuguese Ministry of Culture. Of course, the necessary human resources have to be mobilised for the sake of this project. ***Estonia*** also considered the results of the working group important.

In ***Iceland,*** at the request of the museums, the Ministry of Culture and Education and the Ministry of Finance discussed the possibility of establishing state indemnity legislation (this would have been similar to that of other Scandinavian countries), but – according to Iceland's opinion - due to the economic situation of the country, there is *currently no work being done* on this field.

## 3. Main obstacles

There can be several reasons in a country why a state indemnity scheme cannot be introduced. According to the concerned countries, the main obstacles to the establishment and implementation of such a scheme are the followings.

| Rather ***political*** obstacles | Rather ***financial*** obstacles | Other |
|---|---|---|
| BE, GR, PT | EE, GR, IS, LV | BE, CH |

In ***Belgium***, the main obstacles seem to be: to convince the parliament and government that the residual risks they are asked to cover are in reality quite theoretical; the technicalities of a government functioning as an insurance company (lack of know-how) and the possibility of market distortion.

In ***Portugal***, this question hasn't been deemed a priority, but of course, the introduction of such a scheme depends on the political will of the government.

In ***Greece***, the lack of continuity of policy due to ministerial reshuffles is complemented by technical problems related to earmarking money in the annual state budget without necessarily spending it.

In ***Estonia***, the economical and financial situation and insufficient legislation seem to hinder the realisation of such a scheme.

In ***Iceland***, the Ministry of Finance considers the state budget unable to support the impact the introduction of such a system would possibly have on public funds.

***Latvia*** mentioned the unsafe financial situation as the main problem, as the government cannot take the liberty to commit itself to such huge potential risks, even if they are occasional.

The ***Swiss*** government believes that a state should only interfere in the private sector, if the market does not work properly. That is not the case for private insurances where competition is fierce.

## 4. Acceptance of other countries' state indemnity

***All the countries*** providing information generally accept state indemnities offered by other states. ***Belgium*** specified that of course acceptance depends on the museum's trust, on reciprocity and on the quality of the scheme as well. Sometimes, additional commercial insurance is required.

***Switzerland*** added that state museums often accept foreign state indemnities, but private museums rather insist on commercial art insurance.

## 5. Website

Greece and Portugal have a website concerning loans policy or legislation on museum loans. In Latvia there is no specific site related to this topic, but similar issues are available online, e.g. questions related to national holdings of museums.

| Country | Website concerning loans policy |
|---|---|
| Greece | http://www.yppo.gr/files/g_1950.pdf |
| Portugal | http://www.imc-ip.pt and http://www.imc-ip.pt/pt-PT/recursos/publicacoes/edicoes_online/pub_online_museologia/ContentDetail.aspx |

| Country | Website concerning similar issues |
|---|---|
| Latvia | http://www.mvp.gov.lv/content/view/6/7/lang,lv/ |

## 6. Contact person

| Country | Contact person |
|---|---|
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| IS | Name: Eirikur Thorlaksson<br>Title:<br>Organisation:<br>Address:<br>Tel :<br>E-mail : eirikur.thorlaksson@mrn.stjr.is |

| | |
|---|---|
| LV | Name: Anita Jirgensone<br>Title: Senior Desk Officer<br>Organisation: Ministry of Culture of the Republic of Latvia, Division of Museums and Visual Art<br>Address: Antonijas 9, Riga, LV-1010<br>Tel: +371 67330302<br>E-mail: Anita.Jirgensone@km.gov.lv |
| PT | Name: Maria Amélia Fernandes<br>Title: Director of the Department of Movable Heritage<br>Organisation: Institute of Museums and Conservation<br>Address: Palácio Nacional da Ajuda, Ala Sul, Piso 4, 1349 – 021 Lisboa<br>Telephone: +351 21 365 08 39<br>Email: ameliafernandes@imc-ip.pt |

# Part 3

# Comparative chart

| | Regulation | Works covered | Nail to nail | Risks excluded | Waiver of subrogation | Beneficiaries | Limit | Own Risk/ limitation of liability | Maximum aggregate value | To whom is state indemnity granted? | Formal declaration (acceptance) from the lender needed? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Austria** | YES | incoming loans | YES | • all types of armed conflict – civil wars, revolutions, revolts, riots, insurrections, uprisings, strikes, lock-outs or any military or official action related to such incidents;<br>• terrorist acts<br>• nuclear disaster<br>• wear and tear or deterioration of works, and damage resulting from improper use<br>• malicious intent and negligence on the part of the lender<br>• any damage that has occurred irrespective of the exhibition<br>• any damage covered by a private insurance contract<br>• any damage arising as a result of inexpert restoration work<br>• any damage arising as a result of improper cleaning and care of the objects<br>• any damage which would have occurred even if the exhibition had not been held | NO | only national museums | minimum limit: not stipulated by law, but defined by the Min. of Fin.: EUR 2500/object and EUR 5000/lender<br><br>maximum limit: 100 million EUR/project | YES (no liability for insignificant loss) | 1 billion EUR at any one time | to the lender | NO |
| **Bulgaria** | YES | outgoing loans<br>long-term loans<br>national collections | YES | NO | NO | all (Min. of Cult., national, regional, municipal and private museums) | NO | NO | NO | to the lender (outgoing loan!) | NO |
| **Czech Republic** | YES | incoming loans<br>long-term loans | YES | • acts of war<br>• nuclear threats<br>• result of the loaned item's aging<br>• borrower's negligence | NO | only national institutions | minimum limit: 100.000 CZK (appr. EUR 4000) /object | NO | NO | to the borrower | YES |
| **Denmark** | YES | incoming loans<br>national collections | YES | • acts of war<br>• nuclear accidents<br>• any damage resulting from previous restorations | YES | all | minimum limit: DKK 10 million (appr. EUR 1.350.000) /project | YES (three levels) | DKK 6 billion at any one time (appr. EUR 805.764.000) | to the lender | NO |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Finland** | YES | incoming loans<br>outgoing loans<br>long-term loans<br>national collections | YES | NO | YES/NO (decision) | all (national public corporation<br>national foundation with public-interest status) | NO | YES (varies according to the total insurance value) | 1 billion EUR at any time | to the Finnish organiser (lender or borrower) | YES |
| **France** | YES | incoming loans (works belonging French and foreign public and private collections) | YES | • foreign or civil war<br>• previous damage to a work of art, inherent vice<br>• the risk of radioactivity and damage resulting from radiation<br>• confiscation, forced receivership, seizure or destruction by order of any government | YES | national museums | minimum limit 46 million EUR (in practice: 250 million EUR) /project | YES | NO | to the borrower | YES |
| **Germany** | YES | incoming loans | YES | NO | NO | national museums and publicly funded museums (private museums are excluded) | NO | NO | YES (adopted in the budget) | to the borrower | NO |
| **Hungary** | YES | incoming loans | YES | • any wilful conduct or negligence on the part of the beneficiary or its employees or representatives,<br>• normal wear and tear stemming from the characteristics of the exhibited article,<br>• restoration works approved by the beneficiary | NO | national museums and publicly funded museums (private museums are excluded) | NO | NO | EUR 1037 Million at any one time | to the lender | YES |
| **Ireland** | YES | incoming loans (national collections are covered by separate state indemnity) | YES | • acts of negligence on the part of the borrower | NO | strict list of 9 national or publicly funded institutions (private museums are excluded) | minimum limit EUR 1 270 000 /project | NO | 190 million EUR at any one time | to the borrower | YES |
| **Italy** | YES | incoming loans<br>national collections | NO (coverage only on the territory of Italy in case of foreign artefacts) | • war, invasions, act of war from foreign enemies, hostility (with or without declaration of war), civil wars, rebellions, revolutions, insurrections, military or usurped power,<br>• ionic radiations or radioactive contamination developed from nuclear combustible or from nuclear slag derived from phenomenon of transformations of the nucleus of atom or from radioactive, toxic, explosive properties or from other dangerous features of nuclear equipment.<br>• normal utilization or gradual deterioration; moth, vermin or harmful animals; intrinsic | YES | national museums and publicly funded museums (private museums are excluded) | NO | NO | NO | to the lender | YES |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | defect,<br>• damages caused by defective or insufficient packing, except revenge towards the responsible persons,<br>• damages noticed during the inventory | | | | | | | |
| **Lithuania** | YES | incoming loans | NO (coverage only on the territory of Lithuania) | NO | NO | national museums and publicly funded museums (private museums are excluded) | minimum limit EUR 300 000 /project | YES (1% of the value of the object) | NO | to the borrower | NO |
| **Luxemburg** | NO | incoming loans<br>outgoing loans<br>long-term loans<br>national collections | YES | NO | NO | all | NO | NO | NO | to the lender | NO |
| **Malta** | NO | incoming loans | YES | • terrorism<br>• acts of war<br>• nuclear threats | YES | national museums and publicly funded museums (private museums are excluded) | NO | NO | NO | to the lender | YES |
| **The Nether-lands** | YES | incoming loans<br>long-term loans | YES | The Dutch Indemnity Scheme is based on a combination of a commercial insurance and a state guarantee. The conditions of the commercial insurance apply to the state indemnity. | The Dutch Indemnity Scheme is based on a combination of a commercial insurance and a state guarantee. The conditions of the commercial insurance apply to the state indemnity. | all | NO | YES (varies according to the total insurance value; over 30 %; max.: EUR 45 000) | EUR 300 million at any one time | to the borrower | NO |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Norway (incoming)** | YES | incoming loans | NO (not automatically, but can be extended to nail to nail coverage) | • acts of war | YES | all | minimum limit: NOK 5 million (appr. EUR 560 000) /project | YES (amount set each year in the state budget) | NOK 4 milliard per year (appr. EUR 450.000.000) | to the lender | YES |
| **Norway (outgoing)** | YES | outgoing loans national collections | YES | • acts of war | NO | all | minimum limit: NOK 3 million (appr. EUR 337 000) /project | YES (*lender*: 1‰ of the value or max. NOK 100.000 (EUR 112.500) for risks related to transportation and storage; *borrower:* 1‰ or max. 100.000.NOK for risks related to the exhibition) | NOK 2,8 billion (appr. EUR 315 million) in 2009 | to the lender | NO |
| **Poland** | YES | incoming loans long-term loans | NO (e.g. transport, crating, installation excluded) | • acts of war<br>• nuclear threats<br>(the exclusions are not mentioned in the state indemnity legislation, but the general Polish law on insurance excludes coverage of these risks) | NO | national museums and publicly funded museums (private museums are excluded) | minimim limit: EUR 500 000 /project | NO | NO | to the lender | YES |
| **Romania** | YES | incoming loans long-term loans | NO (coverage only on the territory of Romania | NO | NO | all foreign demanders (where state indemnity scheme exists) | NO | NO | NO | to the lender | YES |
| **Slovakia** | YES | incoming loans long-term loans | NO (coverage only on the territory of Slovakia) | • acts of war<br>• terrorism<br>• extraordinary incidents<br>• acts of negligence during the exhibition and transportation | NO | national museums and publicly funded museums (private museums are excluded) | minimum limit EUR 40 000 /project; maximum limit: EUR 10 000 000 /applicant | ? | ? | to the borrower | NO |
| **Slovenia** | YES | incoming loans outgoing loans | ? | ? | ? | national museums and publicly funded museums (private museums are excluded) | ? | YES | ? | ? | ? |

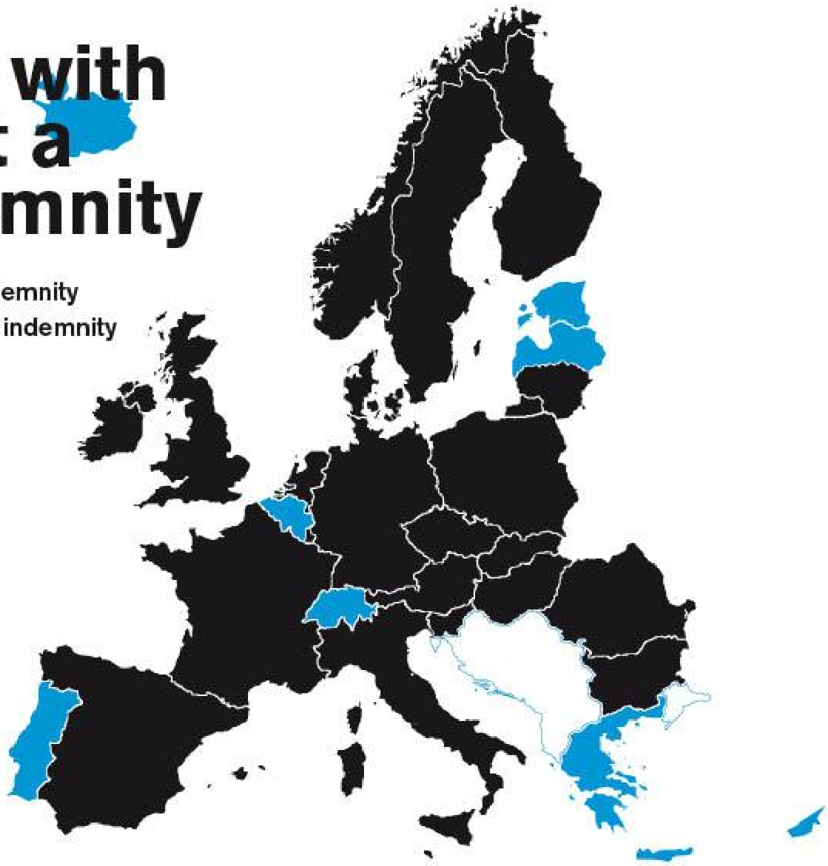
| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Spain** | YES | incoming loans<br>long-term loans<br>national collections (if they are exhibited in state museums or state building) | YES | • damage resulting from wear and tear,<br>• misdeeds on the part of the owner, nuclear accidents and<br>• the seizure of a work of art by a third party | YES | national museums and publicly funded museums (private museums are excluded) | maximum limit: EUR 210 million /project (can be incerased by the Coucil of Ministers) | YES (varies according to the total insurance value) | EUR 1 680 million per year (can be incerased up to EUR 2 500 million) | to the lender | YES |
| **Sweden** | YES | incoming loans<br>long-term loans | YES | • acts of war<br>• natural disasters | NO | all | minimum limit: SEK 20.000 (EUR 1.850) for a single exhibition and SEK 200.000 (EUR 18.500) for touring exhibitions | YES (11 levels) | NO | to the borrower | NO |
| **United Kingdom** | YES | incoming loans<br>long-term loans | YES | • war, hostilities or war-like operations but excluding acts of terrorism, riot, civil commotion, piracy and hijacking<br>• the negligence or other wrongful act of the owner, his servants or agent<br>• the condition (including inherent vice or a pre-existing flaw) of the object at the time of its loan, or<br>• restoration or conservation work undertaken to the object by the borrower, his servants or agents with the agreement of the owner; and<br>• a third party claiming to be entitled to the object. | NO | all | NO (but no object worth less than GBP 301 (EUR 344) can be indemnified) | YES (varies in case of national and non-national museums) | NO (agreed levels can be exceeded) | to the lender | NO |

# Part 4

# Statistics & charts

# Countries with or without a state indemnity

Countries with a state indemnity
Countries without a state indemnity



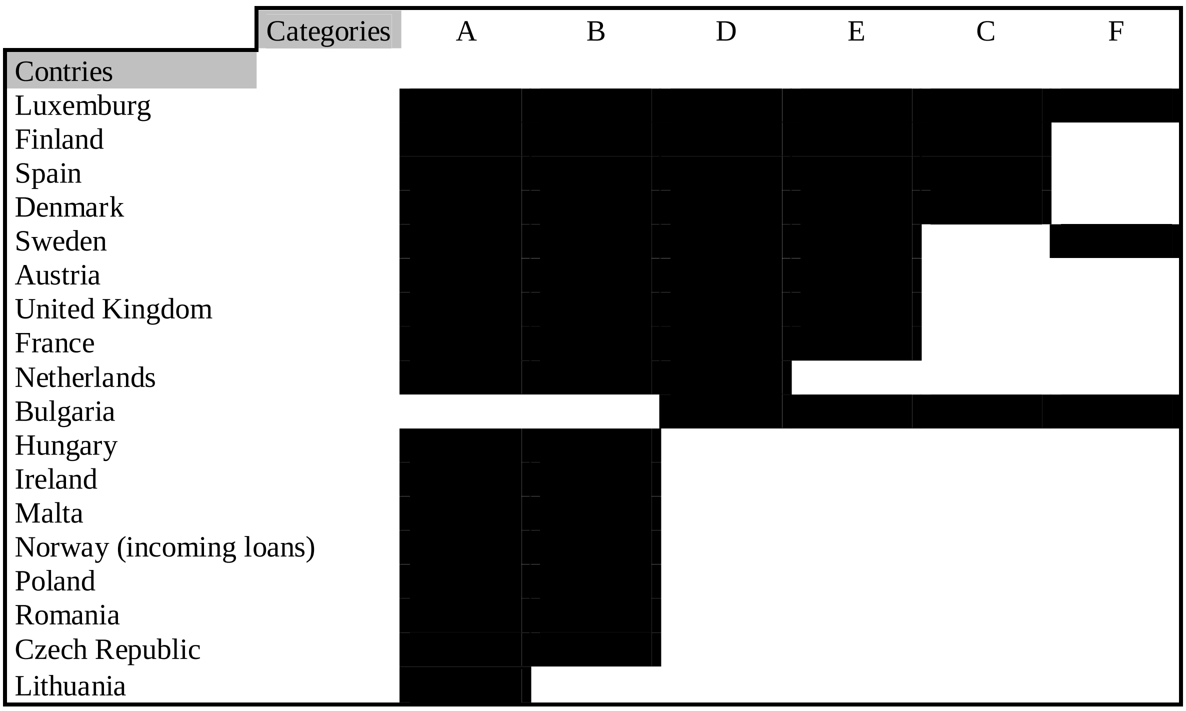
Statistics

**Hypothetical case**
We asked the representatives of the EU member states to reflect on a hypothetical museum exhibition we designed in order to be able to compare the indemnity schemes of the different countries.

***Case:***
*National museum X in your country applies for an indemnity grant for a 3 months exhibition. The exhibition consists of:*

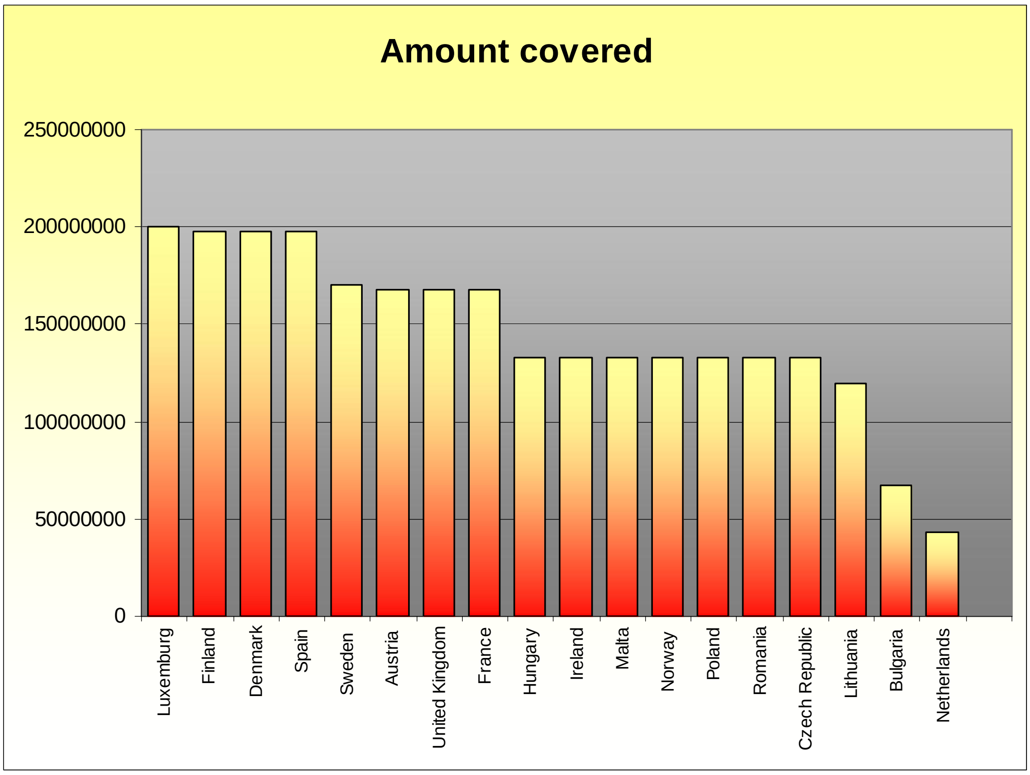
| Category | Museum objects/ loans | Insurance value of the objects |
|---|---|---|
| | | |
| A | 40 loans form foreign museums | € 120.000.000 |
| B | 5 loans from foreign private owners | € 13.000.000 |
| C | 10 loans from national museums | € 30.000.000 |
| D | 20 loans from other museums | € 25.000.000 |
| E | 5 loans form private owners | € 10.000.000 |
| F | 2 objects from own museum | € 2.000.000 |
| | | |
| | Total | € 200.000.000 |

***Questions 1***
*Which object categories would be covered by your indemnity scheme (A. to F.)?*
***18 respondents***



***Questions 2***
*What would be the amount covered in this particular case (A. to F.)?*
***18 respondents***

| countries | amount covered |
|---|---|
| Luxemburg | € 200.000.000 |
| Finland | € 198.000.000 |
| Denmark | € 198.000.000 |
| Spain | € 198.000.000 |
| Sweden | € 170.000.000 |
| Austria | € 168.000.000 |
| United Kingdom | € 168.000.000 |
| France | € 168.000.000 |
| Hungary | € 133.000.000 |
| Ireland | € 133.000.000 |
| Malta | € 133.000.000 |
| Norway | € 133.000.000 |
| Poland | € 133.000.000 |
| Romania | € 133.000.000 |
| Czech Republic | € 133.000.000 |
| Lithuania | € 120.000.000 |
| Bulgaria | € 67.000.000 |
| Netherlands | € 42.900.000 |



*Accepted indemnity requests*

| year / contries | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | total | average | details |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Austria | | | | ≈ 30 | ≈ 30 | ≈ 30 | ≈ 30 | ≈ 30 | 150 | ≈ 30 | counted per exhibition |
| Bulgaria | | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 8 | 1 | |
| Denmark | 5 | 6 | 5 | 7 | 6 | 9 | 4 | 4 | 46 | 6 | counted per exhibition |
| Finland | 12 | 12 | 27 | 25 | 18 | 18 | 13 | 18 | 143 | 18 | counted per exhibition |
| France | | 2 | 5 | 1 | 3 | 3 | 3 | 2 | 19 | 3 | counted per exhibition |
| Hungary | | 2 | 2 | 4 | 1 | 9 | 7 | 9 | 34 | 5 | counted per exhibition |
| Ireland | 5 | 3 | 4 | 4 | 11 | 8 | 7 | 7 | 49 | 6 | |
| Italy | | | | | | | 1 | 1 | 2 | 1 | |
| Lithuania | | | 1 | 1 | 1 | 1 | 1 | | 5 | 1 | |
| Luxemburg | | | | | | 2 | 1 | 1 | 4 | 1 | counted per lender |
| Malta | | | | | 1 | | 2 | | 3 | 2 | |
| Netherlands | | | 3 | | 4 | 14 | 11 | 9 | 41 | 8 | counted per exhibition |
| Norway | | | 3 | | 4 | | 6 | 4 | 17 | 4 | |
| Poland | | | 1 | 1 | | | 1 | | 3 | 1 | |
| Romania | | | | 1 | 1 | | | | 2 | 1 | |
| Spain | 9 | 10 | 10 | 15 | 17 | 14 | 21 | 13 | 109 | 14 | counted per exhibition |
| Sweden | | | 42 | 47 | 40 | 49 | 34 | 41 | 253 | 42 | counted per exhibition |
| United Kingdom | 127 | 157 | 120 | | | 840 | | 868 | 2.112/(4.286)* | 422 | counted per exhibition |
| Total | | | | | | | | | 3.000/(5.174)* | | |

* The UK reported 4.286 applications over the last 5 years

## *Damage reports*

Based on statistics received from:

| | |
|---|---|
| Romania | France |
| Ireland | Denmark |
| Luxemburg | Lithuania |
| The Netherlands | Czech Republic |
| Austria | Poland |
| Spain | Malta |
| United Kingdom | Norway |
| Sweden | Hungary |
| Finland | |

| *Number of applications accepted during the period 2003 - 2008* | *Number of official reported damages* | *Amount of compensation paid (exchange rate March 2010)* |
|---|---|---|
| | | |
| 5.174 | 7 | € 79.981,- |
| | | |

Some reference numbers, based on statistics received from:

Hungary
The Netherlands
Austria
Finland
United Kingdom

| Country | Average amount per indemnity issued during the period 2003 - 2008 |
|---|---|
| | |
| Hungary | € 47.000.000.- |
| Netherlands | € 45.000.000,- |
| Austria | € 40.000.000,- |
| Finland | € 12.400.320 |
| United Kingdom | € 6.700.000,- |

# Part 5

# Report on the combination of state indemnity and commercial insurance

**Report on the combination of state indemnity and commercial insurance**

In line with its Action Plan (item 4), the sub-Work Group on “State Indemnity and Shared Liability Schemes” set out to gather, analyse and present comparatively information on the combination of state indemnity and commercial insurance.

Background information already gathered in the context of a previous, more general survey of state indemnity schemes, suggested that different models of such combination exist either when the museum’s own risk is applied or as a response to the Lender’s refusal to accept the state indemnity offered. The responses we got to the general questions made us recognise that it would be worthwhile to write a separate study for the first time on this issue, which has become an individual category during the last couple of years.

In order to collect precise, comprehensive and comparable information, a **questionnaire** dealing specifically with this matter was drafted and sent out to national experts in November 2009. Our main goals were to define different types of combination, identify the reasons behind offering such schemes and gather detailed information about how such schemes work in practice (e.g. how liability is shared between the state and the private insurance company, how often countries opt for such a combination).

**The answers from 21 countries which answered the questionnaire are compiled below.** Information about ***France*** is drawn, whenever possible, from the general state indemnity survey. ***Slovenia*** and ***Slovakia*** have recently introduced state indemnity schemes, which, however, have not been tested in practice yet. Therefore, information about these two countries is based solely on what is stipulated in indemnity legislation and is inevitably partial. **9 countries** (BG, DK, DE, IE, LT, LU, MT, NO, SE) make no use of combination of state indemnity and commercial insurance, as examined in the scope of this survey.

| Country | 100% State Indemnity | Commercial insurance in combination with state indemnity (as a standard or occasional practice) | Combination NOT applicable |
|---|---|---|---|
| AT | | X | |
| BG | X | | X |
| CZ | X | X | |
| DK | X | | X |
| ES | | X | |
| FI | X | X | |
| FR | | X | |
| DE | X | | X |
| HU | X | X | |
| IE | X | | X |
| IT | X | X | |

| | | | |
|---|---|---|---|
| LT | X | | X |
| LU | X | | X |
| MT | X | | X |
| NL | | X | |
| NO | X | | X |
| PL | X | X | |
| RO | X | X | |
| SE | X | | X |
| SI | | X | |
| SK | X | X | |
| UK | X | X | |

## 1. Types of combination

Three different types/cases of possible combination were identified according to the **nature of complementarity** between state indemnity and commercial insurance:

**A: Complementarity in terms of "own risk":**
This category covers cases when the borrower bears the first risk/own risk, and the state indemnity covers the risks above this (financial) limit. In this case, it is possible that the borrower buys a commercial insurance for the coverage of this *first risk*.
This category covers also cases when the state indemnity covers the first risk and the borrower bears the additional risk above this first-risk-limit. In this case, it is possible that the borrower buys a commercial insurance for the coverage of this *additional risk*.

**B: Complementarity in terms of the scope of coverage (i.e. duration, risks):**
Situations are classified to this category, when commercial insurance covers the risks excluded by state indemnity scheme, or when certain intervals are covered by state indemnity, while others are covered by commercial insurance.

**C. Other "special" complementarity:**
Any kind of combination can go to this category, which is different from categories a) and b) e.g. system of "fronting" or "cross-guarantee".

It becomes evident from the above that A and B are about limitation of responsibility, whereas C is an administrative solution that does not reduce the responsibility in any ways. Moreover, the A type combination is a typical situation which may occur due to the financial limits set by the state indemnity law. In other words, the functioning of the system presumes a complementary responsibility borne by the insurer (or the indemnity beneficiary). Combination of type B is about limitation of risks or territory/duration (i.e. when state indemnity is provided within national territory). In this case, supplementary coverage is not really a necessity, but rather an atypical solution created by the limitations of the national legal system.

| Country | A: Combination occurred in the context of "own risk" financial limit set by state indemnity | B: Commercial insurance covers risks or certain intervals excluded by state indemnity | C: Other forms of complementarity (fronting/cross-guarantee) |
|---|---|---|---|
| AT | X | X | |
| CZ | | X | |
| ES | X | X | |
| FR | X | | |
| FI | X | | |
| HU | | X | X |
| IT | | X | |
| NL | X | | |
| PL | | X | |
| RO | | X | |
| SI | X | X | |
| SK | X | X | |
| UK | | X | |

In **3** countries, namely ***France, Finland, the Netherlands*** the combination of state indemnity and commercial insurance is connected solely with the use of "own risk" borne by the indemnity beneficiary, the latter buying a commercial insurance to cover it.

***Austria*** and ***Spain*** which make use of the same system (i.e. own risk), added that, in certain cases, commercial insurance is used to cover the risks not included in the indemnity.
Countries in which the "own risk" is not applied (i.e. with state indemnity schemes offering 100% coverage), like ***Czech Republic, Hungary, Italy, Poland*** and ***Romania***, a combined solution is offered when the Lender asks for the coverage of risks ***(CZ, HU)*** or intervals ***(IT, PL, RO)*** that are excluded from the scope of the indemnity scheme.

In the ***UK***, as a rule, the Government and the bodies it funds do not purchase commercial insurance, therefore they bear their own risks. Commercial insurance might be only considered in the most exceptional circumstances, for example, when an exhibition is in jeopardy due to loans being withheld. In order for national institutions to purchase commercial insurance, the purchase must meet value for money criteria and they should refer to UK Government Accounting and their individual Financial Memorandum or Funding Agreement as appropriate. Moreover, legal advice may be required to ensure that in the event of a claim the terms proposed for any payment are clear to insurers, owner and Borrower and also to ensure there is no duplication of cover.

In ***Hungary***, in particular, combination also occurs in the context of "fronting" or "exhibition cross-guarantee". The idea is that in the case of an eventual damage, the broker will ensure the fast, direct and immediate compensation of the Lender by the insurer. The insurer then turns to the Hungarian State to repay the amount of money to the insurer that compensated the Lender. Throughout the process the Lender is exclusively in contact with the broker – who creates a sort of *front* before the State – concerning the administration and the settlement of damage. The Hungarian State is thus not visible for the Lender since the scheme works behind commercial insurance. A premium is paid to the broker acting as intermediate between the state and the Lender, which is much lower than the general average insurance premium.

*It should be noted that 4 countries, **Austria, Finland, Ireland and Hungary**, reported cases where a Borrower already benefiting from state indemnity for part of the loans in an exhibition opted to purchase additional commercial insurance for the remaining loans in the same exhibition. These were cases where the total value of works for which indemnity was applied exceeded the maximum amount per exhibition **(Finland)** or the maximum aggregate value of indemnities at any one time had already been reached **(Ireland, Hungary)**. In such cases, loans were assigned to two lists, one with loans covered exclusively by state indemnity, the other with loans covered exclusively by commercial insurance. Such "combinations" were considered to be outside the scope of this study which rather sought to examine how state indemnity and commercial insurance work together when applied on the same object(s).*

## 2. Reasons for offering a combined system

Category A:
As a rule, countries which have set an "own risk" to be borne by the Borrower, have done so in order to emphasize the primary overall responsibility of the museum and to eliminate small claims **(*FI, UK*)**.

In the ***Netherlands***, where the state indemnity is limited to a financial ceiling of € 300.000.000 in total at any moment, due to the combined system more museums may apply for indemnity for exhibitions in the same period.

Category B:
The combined system is generally not encouraged but rather offered as a "last resort" solution to the Lender's refusal to accept 100% state indemnity or when an exhibition is in jeopardy due to loans being withheld. The purpose of supplementary commercial insurance is to cover standard risk exclusions of state indemnity (e.g. war, nuclear threat, normal wear and tear, negligence on the part of the Lender/Borrower) or certain intervals of the loan period.

***Czech Republic*** and ***Hungary*** stress that the combination is used in exceptional cases and only if the Lender insists on covering indemnity risk exclusions, particularly negligence on the part of the Borrower.

The ***UK*** stresses that a combined system is not an option offered by the state but only used in the most exceptional circumstances (e.g. where "top-up" insurance is necessary to secure important loan(s) from owner(s) whose valuation is not acceptable to the Borrower of the Secretary of State).

In ***Italy*** and ***Romania*** state indemnity covers loans only when in national territory, other intervals being covered by supplementary insurance. In ***Poland*** commercial insurance is used to cover transport and installation as the indemnity scheme covers loans only during the exhibition.

Category C:
***Hungary:*** The reason behind establishing a "fronting" system in 2006 was Lenders' distrust to the efficiency of the state indemnity compensation mechanism. This solution is also offered as a "last resort" if 100% state indemnity coverage is refused.

## 3. Regulations or guidelines

| Relevant regulations are contained in state indemnity legislation or guidelines | No official regulations or guidelines are available |
|---|---|
| AT, ES, FI, FR, **HU (C)**, NL, SI, SK, UK | CZ, IT, PL, RO, **HU (B)** |

As a rule, countries which have introduced some kind of liability to be borne by the indemnity beneficiary – and potentially covered by commercial insurance – have included in relevant regulations the amount of such liability, the latter varying according to the value of the objects on loan.
There is explicit mention of the combination of state indemnity and commercial insurance in the state indemnity law or relevant guidelines of 3 countries, namely the Netherlands, the UK and Hungary (only as far as the „fronting"/"exhibition cross-guarantee" system is concerned).

More specifically:
In the ***Dutch*** regulations it is stated that an application for state indemnity must be accompanied by at least one proposal by a private insurance company; such a proposal should provide an insight into the discount on the premium to be achieved with indemnity.

In the ***UK*** the purchase of commercial insurance in addition to state indemnity is discussed in the GIS Guidelines in connection with the circumstances and the conditions under which such combination may be applied, the source of funds to pay premiums and the apportionment of liability.

In ***Hungary***, „fronting" or „exhibition cross-guarantee", although not a standard practice but rather a last resort solution, has the status of an official state policy; it is therefore stipulated in the same sources as the „classical" state indemnity, whereby the details pertaining to the compensation procedure in cases of such combination are determined.

In countries where combination of type B applies, no official regulations or guidelines exist. This rather suggests that the state does not encourage by law to extend the coverage.

## 4. Selection of insurance company/broker

In the majority of countries, when commercial insurance is combined with state indemnity, any commercial insurance company can be used.

In the ***UK,*** the Secretary of State must be consulted before commercial insurance to run alongside indemnity is purchased. The choice of company/broker rests with the borrowing institution.

***Hungary (C)***, when "fronting/exhibition cross-guarantee" is applied, and the ***Czech Republic*** make use of a specific broker or group of brokers. In very few cases (***CZ, RO***), and depending on the amount to be insured, a public procurement must be launched for the selection of the broker.

## 5. Complementarity in terms of risk coverage

| How does risk policy work in a combined system? | |
|---|---|
| **Same risks are covered** | **Different risks are covered** |
| ES, FI, FR, NL, **HU(C)**, IT | AT, CZ, **HU (B)**, UK |

In ***Finland***, and in most cases in ***Spain***, loans are placed under the state indemnity policy.

In ***France, the Netherlands*** and in the ***Hungarian*** "fronting/exhibition cross-guarantee", loans are also placed under a single risk policy, but this is the one of the insurance company.

In ***Italy***, commercial insurance covers loans for intervals excluded from the state indemnity but for the same risks as the indemnity.
In cases where combination is used to cover risks excluded by the state indemnity scheme, the same loans are covered for different risks by two different policies (i.e. state indemnity and commercial insurance company).

***Romania:*** it depends on the situation at hand. The combined system is not established as such, it only results from the limits (Romanian territory coverage) posed by the state indemnity legislation.

## 6. Complementarity of compensation in case of damage

***Austria:*** Compensation is shared according to risks covered by each policy and the associated damage. Commercial insurance covers risks not covered by state indemnity, plus first risk loss.

***Czech Republic:*** Compensation is shared according to risks covered by each policy and the associated damage. Commercial insurance can cover only risks not covered by state indemnity.

***Spain, Finland:*** Commercial insurance provides compensation for first losses, the remainder is paid by the state.

***France:*** Commercial insurance provides compensation up to the own risk limit (ranging from 46 to 100 m. EUR), the remainder is paid by the state.

***Hungary (B)*****:** Compensation is shared according to kind of damage and the risks covered by each policy.
***Hungary (C):*** Commercial insurance covers all damages. It provides compensation directly to Lender. Then the state compensates the insurance company.

***Italy, Romania:*** Liability is shared according to the periods covered by each policy. Commercial insurance covers different intervals from state indemnity.

***Netherlands:*** The state covers the first risk (30% of the total value initially insured by a commercial insurance) and the commercial insurance bears the additional risk above this first-risk-limit.

***Poland:*** Not clear; there has not been a case of damage to serve as an example.

***United Kingdom:*** The state pays up to an amount not exceeding the value specified in the relevant indemnity certificate and the commercial insurer pays the remaining amount of loss. However, while in the position in the event of total loss should be clear, the position on contribution and/or apportionment in the event of damage or depreciation may not be clear and the MLA would need to advise parties, having seen the relevant documentation.

| **Commercial insurance pays for "own risk". State Indemnity pays for the rest above "own risk" limit** | **State pays for "first risk". Commercial insurance pays for the rest above "first risk" limit** | **Each policy pays damage according to associated risks/intervals covered** | **Commercial Insurance compensates Lender and is in turn compensated by the State** |
|---|---|---|---|
| **AT**, FI, FR, ES | NL | **AT,** CZ, **HU (B)**, IT, RO | **HU (C)** |

Concerning damage deriving from the **exclusions** of an insurance or a state indemnity there are two solutions:

1. In the loan agreement the Lender can insist on the Borrower covering all damages. In this case the Borrower either buys a complementary insurance coverage, if exists, or bears the eventual damage.
2. The Lender may say that reasonable risk assessment does not require to cover these risks. Thus, in case of damage, the Lender bears his own damage.

## 7. Combined system offered due to Lender's refusal of 100% state indemnity: statistics (2003-2008)

***Hungary (B):*** 25% of Lenders accepting state indemnity ask for supplementary commercial insurance to cover risk exclusions.

***Hungary (C)****:* 3 cases within the period 2003-2008

***Italy:*** 1 exhibition in 2008.

***Austria, Romania, Czech Republic, Poland, UK:*** data not available

***Finland, France, Netherlands, Spain*****:** Not applicable

# Part 6

# Report on shared liability agreements and museums

**Report section shared liability schemes and museums**

Introduction
Large sums of money are spent on insuring museum exhibits in the EU.[1] Most of this money goes to the insurance premiums for temporary loans as lots of the museums do not insure their own collections. Lent objects are well insured against damage, theft, loss or depreciation. That is particularly true of loans from abroad.

In most cases it is the larger regional and national museums that put on exhibitions with loans from abroad or lend objects for exhibitions abroad. This group of museums organises hundreds of exhibitions in the EU every year. The number of incidents involving foreign loans is very limited. The compensations paid out by the insurance companies for damages occurred during exhibitions seem to be not very elevated as well.[2] That is mainly because those museums have high professional standards when it comes to security and protection of the objects on display.

Thanks to the high professional standards met by these museums, loans are very seldom damaged or 'lost'. As insurance premiums are high, we should ask ourselves whether an all-risks, nail-to-nail insurance is always necessary. Would the cost of insurance premiums not be better spent by the museums on making further security improvements or raising loan standards? Is not an attitude focusing on *prevention* more expectable from a museum rather than concentrating on *reparation* by paying high insurance premiums?

During the last years various museum experts have been reflecting on this question, considering possible alternatives to the all risks-nail-to-nail insurance of loans. As possible alternatives shared liability agreements were suggested as part of the solution. The key concepts of such agreements are explained below.

*Shared liability is an agreement between two partners with the objective of sharing liability as far as possible in respect of specific risks involved in loan transactions. The Borrower and the Lender have agreed on the fact that the Borrower has a certain freedom in deciding whether he wants to insure its share of the liability or not. This implies a reciprocal relationship between the Lender and the Borrower which is based on trust. These museums consider one another as equal partners which use comparable standards with regard to the organisation of exhibitions. The two parties are also in agreement that museum objects by definition are irreplaceable and are no part of economic trading (extra commercium).*

There are two typologies of shared liability:

**Self-insurance**
An agreement between institutions that are financed from the same budget and usually have the same legal constitution, for example state/ /regional/municipal museums directly under a state/regional/municipal provider or state/regional/municipal government. In these cases the state/ region/ municipality itself bears the risk of loss and depreciation caused by damage. No

[1] Research indicates that insurance costs contribute to approximately 15 per cent of the budget of major art exhibitions which use foreign loans. This figure is based on research carried out in the Netherlands. It relates to the costs which a provider of a loan object has to pay in premiums for commercial insurance. No account has been taken in this of a no-claim bonus, the prospect of which is held out by many insurers if no damage or loss is claimed after the end of the exhibition.
[2] These statements are based on the statistics of indemnified exhibitions and objects over the last five years. The statistics can be found in Part 4 of this report.

insurance is needed for objects on loan to other museums depending from the same state/ region/ municipality.
*Self-insurance does not apply when a 100% state indemnity coverage for national loans has been given.*

***Non-insurance***
*Describes the same situation, but here the institutions are funded from different budgets and might have different legal constitutions. Non-insurance means that there is no cover if an object is lost (irreparable damage, theft etc.) while at the location of the borrower. Compensation for depreciation is usually also excluded in this arrangement. Non-insurance does not mean, however that the borrower has no liability at all. On the contrary, the borrower is liable for repairable damage and usually has to take an all in insurance for the transport of the works.*

*In the case of cross border lending and borrowing practices, it is important to realise that only a non-insurance system has to be taken into consideration. Self-insurance is not applicable in these cases because museums from different countries are by definition financed from different sources.*

In many Member States, self-insurance already operates between (national) museums in the interests of cost-efficiency. In most cases only the travelling of objects between state owned museums is insured. However, few countries have any experience with shared liability agreements on an international level. As soon as museum objects are to be taken across borders, the lender in general requires to insure them again.

The question is whether a shared liability agreement is a worthwhile option that would simplify the international mobility of collections and whether it might be possible for more Member States to adopt it. In order to obtain more information, in March and December 2009 the 'OMC sub-group on state indemnity and shared liability agreements' conducted a survey amongst representatives of the EU Member States and some other European countries. The results of the surveys are set out together with the original questions and analysed below.

### *1. Do you have any experience with a shared liability scheme within your country?*

| *Countries with shared liability experience* | *Countries with no shared liability experience* | *Unclear* |
|---|---|---|
| AT, BE, CZ, FR, GR, HU, IS, IE, IT, LV, LT, NL, PL, PT, ES, CH, EE, SK | BG, DK, FI, LU, MT, NO, RO, SI, SE, UK, DE (federal level) | CY |

In several EU member states a self-insurance practice is used for state owned collections. In various cases only the travelling of objects between state owned museums is insured.

For countries with a substantial indemnity coverage for national loans, a shared liability practice is not applicable. This goes for ***Finland***, ***Denmark***, ***Luxemburg***, and ***Bulgaria***.

Shared liability practice insofar as loans outside the ***United Kingdom*** would not be possible**.** This is because of the responsibilities placed on the trustees of our museums and galleries.

No answers were received form ***Cyprus***.

2. ***Do you have any experience with shared liability scheme between your country and a particular foreign country? If yes, please describe briefly.***

Only ***The Netherlands***, ***Belgium*** and ***Poland*** gave an affirmative answer to this question. Especially the case of the "Rijksmuseum aan de Schelde (Rijksmuseum on the Scheldt) is worth mentioning here. Because of the major renovation that the Rijksmuseum of Amsterdam is undergoing since 2003 the Rijksmuseum launched the idea of housing groups of works in various local museums in the Netherlands. The Royal Museum for Fine Arts, Antwerp was invited by the Rijksmuseum to join this project and to temporarily house a collection of works from the Rijksmuseum 'on the banks of the River Scheldt'. From October 9th 2004 until December 31st 2007 no less than 33 sixteenth and seventeenth-century paintings from the Rijksmuseum of Amsterdam were on show in the galleries of the Royal Museum for Fine Arts. The exhibition was entitled “Rijksmuseum on the Scheldt: masterpieces from the treasure-house of the Netherlands”. Both museums agreed not to insure the loans during their stay at the premises of the KMSKA, only the transport of the works had to be insured.

The shared liability schemes of the Netherlands and Belgium (Flanders) contain the following main points:

- The Borrower is responsible for misplacing an object entirely (going missing, theft, total loss) only during its transportation to and from the Lender (all risks insurance is therefore obligatory for transport operations between the museums in the Flemish agreement).
- The Borrower is at all times responsible for any damage to an object which can be repaired (to a maximum of 500,000 euro per object in the Flemish agreement).
- No compensation for loss of market value due to damage to the object.
- No compensation in the case of loss caused by theft, disappearance or complete destruction of the object. It goes without saying that the Borrower is obliged to make all reasonable efforts to preserve the object and, if it goes missing or is stolen, to recover it.

***Poland*** responded by mentioning one exhibition from a private collection from Germany (Salvador Dali) which was realised by the National Museum in Warsaw with a shared liability arrangement (only transport was insured).

3. ***What is the general policy on insuring museum collections in your country? (multiple answers possible)***
   *Question answered by respondents from 23 countries*

| | |
|---|---|
| National museums usually do not/are not obliged to insure their 'own' collections on their premises | 91% |
| Regional museums usually do not/are not obliged to insure their 'own' collections on their premises | 78% |
| Municipal museums usually do not/are not obliged to insure their 'own' collections on their premises | 70% |

In the 2005 report *Lending to Europe*, it was stated that 'in many European countries, works held in the collections of major museums are not insured because the state is the owner of these objects and does not insure its own property'. The survey confirms that observation. These objects have been taken out of the economic trade and placed in a museum (*extra commercium*). This raises the question why these objects should be insured when on loan in another museum (abroad) if that museum has an equivalent level of collection care as the lending museum.

Why take out insurance on objects lent abroad if they are not insured when they remain on home ground?

From the point of view of international collection mobility, it seems that there are especially good possibilities to waive insurance in the case international collections mobility between larger regional and national museums. This might be particularly true when the museums have the same professional standards and there is a sound basis for trust.

For municipal collections respondents answer that it is difficult for local authorities to explain to the local citizens that museum objects are not insured and will not be compensated for in case of loss. This has to do with the little distance between the citizens and the local politicians.

4. ***When shared liability operates in your country, do museums have the (legal, statutory) authority to waive the insurance obligation for the borrower? (multiple answers possible)***
   *Question answered by respondents from 19 countries*

| | |
|---|---|
| Yes, in the case of self-insurance | 37% |
| Yes, in the case of non-insurance | 42% |
| No, in the case of self insurance | 37% |
| No, in the case of non insurance | 32% |

There seems to be limited legal and/or statutory scope for museums to decide independently to waive insurance in loan arrangements with foreign partners. That does not simplify the process when museums would like to start using shared liability practices. Few respondents say that the museum legislation should be amended to allow shared liability agreements.

5. ***Do museums agree beforehand on a separate protocol or contract which determines liability in cases of reparable damage when they have a shared liability arrangement? (multiple answers possible)***
   *Question answered by respondents from 18 countries*

| | |
|---|---|
| Yes, in the case of self-insurance | 61% |
| Yes, in the case of non-insurance | 56% |
| No, in the case of self-insurance | 11% |
| No, in the case of non-insurance | 11% |

In most cases, shared liability arrangements are included in the already existing loan agreement. Separate shared liability protocols are rare.

6. ***Who has to pay for damage in the case of shared liability? (multiple answers possible)***
   *Question answered by respondents from 15 countries*

| | |
|---|---|
| Lender | 7% |
| Borrower | 93% |
| Unclear | 7% |

To the respondents, it is clear that, when an object subject to a shared liability agreement is damaged, the borrower has to pay for the damage to be repaired.

### 7. *Do you think that a borrower is more conscious of its responsibilities when it is required to insure borrowed objects than when insurance is not taken out?*

*Question answered by respondents from 20 countries*

| | |
|---|---|
| Yes | 50% |
| No | 10% |
| There is no difference in professional attitude | 40% |

It is clear that many museum experts within the EU have the feeling that if borrowers take out insurance it makes them more conscious of their responsibility for the borrowed object than if they do not. That might explain why shared liability is only gaining acceptance very gradually. Probably the museum sector has to become more confident of its own professionalism before the non-insurance alternative can be introduced. However, that confidence can only develop if museum objects are exchanged within the sector and we see the reassuring statistics on damages during these exchanges. Only then will it be seen how professionally that is done and how much care is taken in the process.

### 8. *What is the general feeling on the (wider) use of shared liability in your country?*

*Question answered by respondents form 17 countries*

- “Introducing shared liability would require changes to some laws but it would obviously reduce costs for museums”
- “Insurance companies might have a strong interest in preserving the insurance obligation”
- “Non-insurance will be reviewed in 2010 in order to have clearly used by all museums”
- In order to get rid of the personal responsibility of the decision on shared liability, the tendency is rather ‘over-insuring’ and being sometimes unnecessary careful […] instead of making a proper and realistic risk analysis
- “For the moment it’s cautiousness”
- “Not in favour, because of trustees' responsibility”
- “Shared liability helps to protect museum collections”
- “State does not encourage non-insurance”
- “the existing model contract on shared liability […] seems to have a positive effect as an inspiration to other museum collaborations”
- In the new museum law that is establishing by now it is planned to formulate also a regulation on non-insurance and self insurance practice
- “Insurance between museums is not advisable. It is more prudent to spend [the money for insurance premiums] for improving climate control and security”
- “System has already been operating for a long time”
- “This scheme is generally applied between public museums and it is generally found beneficial […]”
- “In favour, with a protocol between lender and borrower”
- “Insurance in every case would be extremely inconvenient”

# Part 7

# State aid

## State Aid

The founding treaties qualify state aid as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities.
A company which receives state aid obtains an advantage over its competitors. Therefore, the Article 107 of the Treaty on the Functioning of the European Union (TFEU) generally prohibits state aid.
However, in some circumstances, government intervention is necessary for a well-functioning and equitable economy. Consequently, the Treaty leaves room for a number of policy objectives for which state aid can be considered compatible.

**Because of its particular nature, before a state indemnity scheme enters into force, the European Commission's Directorate-General for Competition has to examine whether a given indemnity scheme constitutes State aid compatible with the internal market under the culture derogation of Article 107 (3) (d) of the TFEU.**

(i) The Commission examines first, whether the measure can be characterised as State aid within the meaning of Article 107 (1) TFEU (ex Article 87 TEC), according to which:

**Article 107**
**1.** Save as otherwise provided in this Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

*In order to be classified as State aid the measure must fulfil the following cumulative conditions:*
*1, the measure must be granted through State resources;*
*2, it has to confer an economic advantage to undertakings;*
*3, this advantage must be selective and distort or threaten to distort competition; and*
*4, the measure must affect Intra-Community trade.*

(ii) Then the Commission examines whether the specific state indemnity scheme can be considered as compatible with the internal market.
**2.** (…)
3. The following may be considered to be compatible with the common market:
(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment (…);
(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
**(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;**
(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

(iii) According to **Article 108** (3) of the TFEU (ex Article 88 TEC) the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. (…) The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision. **However the Commission shall be informed before a state indemnity scheme enters into force, if not, it is considered that the State has unlawfully implemented the indemnity scheme in breach of Article 108 (3) of the Treaty.**

**According to the group's knowledge up till now the European Commission's Directorate-General for Competition assessed in the case of every single state indemnity scheme that was examined[3], that it constituted State aid in the meaning of Article 107 (1) TFEU and that it was therefore necessary to assess its compatibility under the provisions of Article 107 (3) of the Treaty.**

In the recent cases the Commission has decided on the basis of the assessment that was executed, not to raise any objection to the measure at issue, considering that indemnity schemes constitute **state aid compatible with internal market** under the culture derogation of Article 107 (3) (d) of the Treaty on the Functioning of the EU.

[3] Case numbers (European Commission, DG Competition): Czech Republic: NN43/2007; Austria: NN50/2007 and N661/2009; Hungary: NN27/2009.

# Part 8

# Conclusions and recommendations

# Conclusions and recommendations

## 1. CONCLUSIONS AND RECOMMENDATIONS ON STATE INDEMNITY AND SHARED LIABILITY FOR THE **EUROPEAN COMMISSION**

| Conclusions | Recommendations |
|---|---|
| 1) The information collected by the OMC group on the national state indemnity schemes is subject to changes in the future. | ✓ A future study on mobility of collections should keep the collected information and the reports made by the present working group updated and make this information available online. |
| 2) The subject of valuation of a works of art is closely linked to insurance/state indemnity matters. | ✓ A future study on mobility of collections should further investigate the subject of valuation of works of art in the context of insurance/state indemnity. |
| 3) Drawing up a list of standard forms related to insurance/ state indemnity/ shared liability would be useful for those who work with state indemnity day by day. | ✓ A future study on mobility of collections should draw up an inventory of useful standard forms related to insurance/ state indemnity/ shared liability. |
| 4) In case of travelling exhibitions the sharing of costs and liability among the different venues is more complex than a usual loan situation. | ✓ A future study on mobility of collections should investigate the question of travelling exhibitions. |
| 5) Museums are yet unfamiliar with the system of shared liability. Knowledge about the idea of shared liability, 'best practices' and promotion of this ideas are needed to convince the museums of the benefits shared liability agreements offer. | ✓ A future study on mobility of collections should compile and promote best practices on shared liability. |
| 6) Waiver of subrogation clauses differ in the existing indemnity schemes. They have an effect on the acceptance of the state indemnity schemes as well as the risks to be borne by the states that grants the guarantee. | ✓ A future study should make a comparative and profound analysis on the existing waiver of subrogation clauses and on the effects of these clauses to the risk prevention attitude on all the actors in the state indemnity chain. |
| 7) The possibility of a sort of indemnity scheme on EU level comes up from time to time. The examination of this question however is beyond the limits of the present and even a future study on mobility of collections. | ✓ The Commission and the Member States should consider to examine the possibilities of a European indemnity scheme or a possible European re-insurance system. |

## 2. CONCLUSIONS AND RECOMMENDATIONS ON STATE INDEMNITY AND SHARED LIABILITY TO THE **MEMBER STATES**

| **Conclusions** | **Recommendations** |
|---|---|
| 1) In some of the examined countries the system of state indemnity exists, but *without any formal regulation*. The uncertainty deriving from this situation may lead to the refusal of the proposed indemnity. | ✓ Member States should consider adopting a law to give a formal legal basis to their state indemnity system. |
| 2) 8 out of 30 examined European countries *have not elaborated a state indemnity scheme*. Their museums face high insurance costs when setting up an international exhibition. | ✓ Member States that do not have state indemnity legislation in force should consider the introduction of such a system. In order to do so, they are encouraged to study the existing systems in the EU. |
| 3) In a considerable number of countries *long-term loans* are not covered by state indemnity, despite them being an important tool for encouraging the mobility of collections. | ✓ Member States are invited to extend the scope of the state indemnity coverage to incoming long-term loans. |
| 4) Several countries (appr. 25 %) exclude certain *periods* of increased risk from the scope of indemnity (e.g. transportation) or provide state indemnity only for the period when the loans are on their national *territory*. | ✓ Member States should avoid excluding certain periods from the scope of the state indemnity. They should instead provide nail to nail coverage. |
| 5) In three Member States, soliciting state indemnity implies that an *administrative fee* has to be paid, whilst in other countries it is free of charge. | ✓ Member States that operate administrative fees for soliciting state indemnity should insure that this income is turned for the better functioning of the scheme (e.g. prevention of damage or salary of a security expert). |
| 6) In many countries the *procedure of the compensation* in case of damage is not written out in detail. Yet for lenders it is of the utmost importance to be fully informed on how the procedure of damage assessment works, with special regard to the timeframe for the payment in case of an eventual compensation. | ✓ Member States should specify in detail the procedure of compensation in case of damage in order to enhance the trust of the lenders and the transparency of the system. |
| 7) In many countries, useful *information* on the state indemnity scheme is available on a | ✓ Member States should provide online a clear and comprehensive description of |

| | |
|---|---|
| website with English translation. This is very helpful for lenders who are considering accepting the borrower country's state indemnity. | their state indemnity scheme and the relevant legislation in English. |
| 8) Each actor in the indemnity chain must be encouraged to reduce the sources of risk to a minimum while the object is under their control. | ✓ The State should set up high security and environmental standards and seek assurances that these conditions are met before granting an indemnity.<br>✓ It is advisable to have a national inspection regime and accreditation of museums and galleries so that they can qualify for such state indemnity.<br>✓ Up to a certain threshold the Borrower should bear the own risk/first risk in an indemnity scheme.<br>✓ Waiver of subrogation should neither be granted nor purchased to the benefit of the Lender and the Shipper. |
| 9) In several Member States, the introduction of a shared liability system is hampered by legal and/or statutory restrictions. | ✓ Member Stats (and Museums) need to consider whether these restrictive legal (statutory) regulations should be maintained. |
| 10) | ✓ Member States should take into account that according to the statistics (inserted in this study) the risks of the state indemnity schemes are very low. During the last 5 years there were only 7 reported damage claims for a total amount of approx. euro 80.000,- . |

## 3. CONCLUSIONS AND RECOMMENDATIONS ON STATE INDEMNITY AND SHARED LIABILITY TO THE MUSEUMS

| **Conclusions** | **Recommendations** |
|---|---|
| 1) 8 out of 20 countries (40%) with an indemnity scheme in place, may resort to using commercial insurance in combination with state indemnity in order to cover risks or periods not covered by state indemnity. As a rule, this practice is not encouraged by Member States, unless a risk assessment concludes that an extra commercial insurance is needed, or in order to avoid loans being withheld. | ✓ Museums as Lenders should make every effort to accept 100% state indemnity when offered by Borrowers.<br>✓ Supplementary insurance coverage should only be asked for and provided if a risk assessment suggests so. The Lender should opt for the insurance offered by the Borrower provided that the cost of the premium for comparable coverage is equal to or lower than Lender's commercial insurance.<br><br>✓ Museums as Borrowers should provide the Lender with clear descriptions, on how state indemnity and commercial insurance are combined and how they complement one another. |
| 2) In most cases, the reasons leading to the purchase of *supplementary insurance* to run alongside state indemnity relate to<br>a. certain risk exclusions,<br>b. the lack of "nail-to-nail" coverage<br>c. disagreement on the valuation of loans. | ✓ Museums as Lenders should not seek for supplementary commercial insurance coverage for improbable risks such as war risk in Europe.<br>✓ Museums should agree on the value ('agreed value') which is based either on the fair market value or on a 'reduced value' of the object. The group refers to the application of the guideline offered by 'Lending to Europe' that is to accept a reduction of up to 40% of the current market value, but not less than the price paid by the lending institution when it acquired the object bearing in mind that the objects are irreplaceable. |
| 3) *Agreements between museums and preferential insurance companies* can seriously hamper the application of state indemnity schemes. | ✓ Museums as Lenders should avoid concluding agreements with insurance companies/insurance brokers on sharing the profit related to the premium paid by a partner institution. |
| 4) *Lack of reciprocity* is often reason for | ✓ Museums as Lenders should judge |

| | |
|---|---|
| refusing state indemnity. This means that a Lender does not accept the state indemnity offered by the Borrower because in the past its own indemnity scheme was refused by the current Borrower then acting as Lender. | objectively the advantages and the weak points of the indemnity scheme offered. This evaluation should be the sole reason for accepting or refusing the indemnity scheme. |
| 5) A shared liability scheme for international mobility of loans obviously reduces insurance costs for museums. | ✓ Museums should consider shared liability as an additional option to cut exhibition costs and establish a long term mutual collaboration with partner museums.<br>Museums should consider applying shared liability as an apt way to deal with long term loans. |
| 6) Most national and regional museum collections are not insured in their own premises. | ✓ Museums could take these collections as a starting point to introduce 'shared liability' agreements. |
| 7) Museums are yet unfamiliar with the system of shared liability. Knowledge about the idea of shared liability, 'best practices' and promotion of this ideas are needed to convince the museums of the benefits shared liability agreements offer. | ✓ Museums that already operate shared liability agreements within their national territory should seek to extend their shared liability agreements to the partner museums within the EU. |