

Expert Group 'Mobility of Collections'

Subgroup 'Immunity from Seizure'

Conclusions and recommendations

The Expert Group understands “immunity from seizure” as the legal guarantee that cultural objects loan from another state will be protected against any form of seizure during the loan period¹. When the report refers to ‘seizure’, it needs to be emphasized that this term is used in an overall meaning. From the discussion within the subgroup it was clear from the beginning, that [immunity refers to] every process of attachment, execution, sequestration, requisition, foreclosure, replevin, detinue etc. *this sentence seems to be unfinished*

The results of the the Group’s enquiries (questionnaires sent to all representatives of Member States) showed that 6 out of 27 Member States (MS) have Immunity from Seizure legislation (Austria, Belgium, France, Germany, Netherlands, and UK) either as a separate regulation or as paragraphs in the Code of Civil Procedure. 2 MS (Lithuania and Romania) have regulations that are related to the subject; 2 MS have almost finalized its legislation (Finland, Italy), 7 MS are considering to enacting anti-seizure legislation at some point in the future (Czech Republic, Greece, Hungary, Latvia, Poland, Portugal, Slovenia). In all 17 out of 27 MS have implemented or are considering to implement anti-seizure regulation or related legislation. It was also observed that 14 MS (Cyprus, Estonia, Finland, Greece, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and previously UK) were able of issuing or still use letters of

¹ Definition based on the description of immunity from seizure in the Action Plan for the EU Promotion of Museum Collections' Mobility and Loan Standards, Helsinki 2006, to be found at: http://www.ne-mo.org/index.php?id=104&STIL=0&C_PID=&C_UID=7

comfort, as this form of guarantee has been a condition for loan (for example from Russia).

I. Conclusions and recommendations addressed to the Member States and EU Commission

Conclusions	recommendations
<p>1) The number of EU Members States enacting anti-seizure legislation for cultural objects is slowly but steadily growing. Over 60% of countries have decided to introduce or are considering to introduce Immunity from Seizure legislation for purposes of (or including) international art loans. Different States follow different approaches.</p>	<p>1A) There is no best or preferred way to address immunity from seizure. When considering immunity from seizure guarantees (including legislation), States should assess which approach would fit them best according to their different legal systems. They can be inspired by the different approaches followed by other States.</p> <p>1B) It is not recommended that the Commission, or an expert group falling under the auspices of the EC, should attempt to prepare model legislation, or to determine the content of immunity from seizure legislation.</p>
<p>2) There are a number of important international agreements which include a return obligation. The most important of these are the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the 1993 European Union Directive on the Return of Cultural Objects Illegally</p>	<p>2A) Because the issue of an Immunity from Seizure guarantee could be at odds with (other) obligations under international law, caution is advised, when providing immunity from seizure guarantees.</p> <p>2B) Adequate provenance research will be necessary to identify any possible conflicts with obligations under international law, and will reduce the chance of any harm.</p>

<p>Removed from the Territory of a Member State. They all have return obligations to third States of origin (ie, another State than the lending or borrowing State) within their provisions, whereby also seizure sometimes may be necessary to secure the return to such a third State. Most national immunity from seizure legislation has a clause, stating that international return obligations, or a court order of an international legal tribunal, prevail over the immunity from seizure guarantee as foreseen in the national legislation.</p>	<p>2C) Undertaking provenance research, and the implementation of due diligence guidelines may lead to the conclusion that ,in individual cases, immunity from seizure cannot be guaranteed for certain objects, especially if these are “tainted” in any way.</p>
<p>3A) There is a group of Member States having that have already introduced anti-seizure legislation.</p> <p>The main aim of the ‘Immunity from Seizure’ subgroup paper is to share and exchange information and best practices.</p> <p>3B) There is still a group of MS considering the immunity from seizure legislation in near future.</p>	<p>3A) The current sharing and exchanging of information and best practices should be sustained and continued, preferably in the form of a website maintained by the European Commission.</p> <p>3B) It is therefore recommended that the European Commission provides a platform for sharing and exchanging best practices.</p> <p>3C) It is considered of importance that this has to be sustained, possibly in the form of putting the information on a website (NEMO?) (CM 2.0 Project? <i>Lending for Europe</i>). It is also important that already existing information on relevant websites (e.g. NEMO, ICOM) is easily accessible for all museum professionals, ministries, the academic world and schools teaching museology.</p>

<p>4) Immunity from seizure legislation may not only be needed when loans are conducted between EU Member States, but in particular, when conducted between EU Member States and Third States.</p>	<p>4) The focus of the attention by EU Member States and/or European institutions and museums should not only be on international art loans and its consequences within the geographical boundaries of the European Union; it should be considered from a global perspective.</p>
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II. Conclusions and recommendations addressed to the **museums and museums' governmental bodies**

conclusions	recommendations
<p>5) The ICOM Code of Ethics codifies due diligence and provenance research as obligatory for museums.</p> <p>There are quite a number group of museums in EU conducting projects on provenance research.</p>	<p>5) When assessing whether immunity from seizure can be guaranteed, possible obligations under international law will need to be considered, as well as the need for very clear guidelines on due diligence and provenance research to be undertaken before loans are agreed.</p> <p>Museums in EU should follow the ICOM Code of Ethics and place their collections policies on their websites.</p>
<p>6) Other subgroups of the OMC Mobility of Collections work on best practices on state indemnities and shared liability agreements as well as long term loans standards.</p>	<p>6) Recommendations by other subgroups of the OMC Group on Mobility of Collection should be compared, and linkages and synergies should be identified.</p>
<p>7) There are 14 EU MS which used or still uses letters of comfort when they are asked for.</p>	<p>7) Museums should be aware of the fact that letters of comfort have a less solid legal basis than immunity from seizure</p>

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