

**Conclusions and recommendations**  
**by the OMC subgroup**  
**on**  
**State indemnity and shared liability agreements**

## Conclusions and recommendations

### CONCLUSIONS AND RECOMMENDATIONS ON STATE INDEMNITY

#### 1. Conclusions and recommendations to the Member States

Conclusions	Recommendations
In some of the examined countries the system of state indemnity exists, but <i>without any formal regulation</i> . 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.
8 out of the 30 examined European countries <i>have not elaborated a state indemnity scheme</i> . Their museums face high insurance costs when setting up an international exhibition.	✓ Member States that do not have state indemnity legislation (or practice) 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. For indepth information on a particular scheme, they are advised to turn to the national expert of the respective country (listed in the report).
In a considerable number of countries <i>long-term loans</i> 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.
Some countries (appr. 25 %) exclude certain <i>periods</i> 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 <i>territory</i> . In this case a significant part of the coverage is missing.	✓ Member States should avoid excluding certain periods from the scope of the state indemnity. They should instead provide nail to nail coverage so as to spare museums the cost of supplementary insurance.
Lots of States determine a <i>minimum financial limit</i> per exhibition, under which value, state indemnity cannot be solicited. If this threshold is too high, state indemnity will not proved to be a useful instrument for its museums.	✓ Member States where the minimum financial limit is high should consider lowering this threshold in order to promote the use of state indemnity by their museums.
Approximately half of the examined states introduced a <i>maximum value limit</i> for the	✓ Member States should define the maximum amount that is possible to be

<p>total of loans covered by their schemes. This threshold cannot be exceeded during the given year or at any given time. If this limit is too low, museums will not be able to make the best use of the system.</p>	<p>covered by state indemnity during a given year or at any given time.</p>
<p>In three Member States, soliciting state indemnity implies that an <i>administrative fee</i> has to be paid, whilst in other countries it is free of charge.</p>	<p>✓ Member States should consider abolishing or lowering administrative fees for soliciting state indemnity unless this income is turned to the better functioning of the scheme (e.g. prevention of damage or salary of a security expert).</p>
<p>In many countries the <i>procedure of the compensation mechanism</i> 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.</p>	<p>✓ Member States should specify in detail the procedure of compensation mechanism in case of damage in order to enhance the trust of the lenders and the transparency of the system.</p>
<p>In many countries, useful <i>information</i> on the national state indemnity scheme is available on a website with English translation. This is very helpful for lenders who are considering accepting the borrower country's state indemnity.</p>	<p>✓ Member States should create a website containing a clear and comprehensible description of their state indemnity scheme and an outline of the relevant legislation.</p>
<p>Instead of buying simply an insurance, each actor of the indemnity chain has to be motivated that the sources of risk are reduced to the minimum while the object is under their control.</p>	<p>✓ The State should set up high security and environmental standards and seek assurances that these conditions are met before granting an indemnity.          ✓ Until a certain threshold the Borrower should bear the own risk/first risk in an indemnity scheme.          ✓ Waiver of subrogation clause should neither be granted nor purchased to the benefit of the Lender and the Shipper.</p>

## 2. Conclusions and recommendations to the museums

<p><b>Conclusions</b></p>	<p><b>Recommendations</b></p>
<p>5 out of 20 countries (25%) with an indemnity scheme in place have introduced an own risk limit to be borne by the Borrowing museum.</p>	<p>✓ Museums should consider whether or not to cover these 'first risks' by commercial insurance. If they have a good track-record on (non) damages to works on loan, they should consider bearing these</p>

	first risks themselves.
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 is made to the contrary and in order to avoid loans being withheld.	<ul style="list-style-type: none"> <li>✓ Museums acting as Lenders should make every effort to accept 100% state indemnity when offered by Borrowers.</li> <li>✓ Supplementary insurance coverage should only be asked for and provided if a risk assessment suggests so. In this latter case, they should opt for the solution offered by the Borrower provided that the cost of the premium for comparable coverage is equal to or lower than their own commercial insurance.</li> <li>✓ Museums acting as Borrowers should be able to provide the Lender with clear descriptions, on how state indemnity and commercial insurance fit to each other and how they complement each other eventually. The Borrower should be able to see what they cover separately and what they cover together and under what conditions.</li> </ul>
In most cases, the reasons leading to the purchase of <i>supplementary insurance</i> to run alongside state indemnity relate to a. certain risk exclusions, b. the lack of “nail-to-nail” coverage and c. disagreement on the valuation of loans.	<ul style="list-style-type: none"> <li>✓ Museums as Lenders should not seek for supplementary commercial insurance coverage of risks that are not reasonable to be covered, these are especially but not limited to: <ul style="list-style-type: none"> <li>- normal wear or tear</li> <li>- war risk in Europe.</li> </ul> </li> <li>✓ Museums as Lenders or Borrowers should be willing to agree on a reasonable valuation in the event of an indemnity request.</li> </ul>
<i>Agreements between museums and preferential insurance companies</i> can seriously hamper the application of state indemnity schemes The financial gain for the Lending museum (lower premium for the insurance of its own collection/ loans) does not compensate for the extra costs the Borrowing museums have to bear due to such agreements.	<ul style="list-style-type: none"> <li>✓ Museums should avoid concluding agreements with insurance companies/insurance brokers on sharing the profit related to the premium paid by a partner institution.</li> <li>✓ The service provided by an insurer is like any other service that has to be subject to a public procurement procedure according to national and EU regulations. Museums should respect these legal boundaries.</li> </ul>
<i>The possible lack of reciprocity</i> means that a lender does not accept the state indemnity	<ul style="list-style-type: none"> <li>✓ Museums should consciously give up making automatically negative decisions</li> </ul>

<p>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.</p>	<p>due to past conflicts, instead of the judging objectively the advantages and the weak points offered by an indemnity scheme.</p>
<p><i>Disagreement over valuation</i> can also be a reason for the refusal of the offered state indemnity. Commercial insurers seem to be more permissive about unreasonable insurance values than the State. However if the lender and the borrower find themselves unable to compromise a solution is sometimes found in buying a commercial insurance for the difference.</p>	<p>✓ Museums should always do their best to agree on the value (‘agreed value’) which is based either on the fair market value or on a ‘reduced value’ of the object. Although valuation is not subject of the present study, the group suggests 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.</p>

## CONCLUSIONS AND RECOMMENDATIONS ON SHARED LIABILITY

<b>Conclusions</b>	<b>Recommendations</b>
	<p>✓ Museums should examine more differentiated insurance policies instead of the unquestioned nail-to- nail option.</p>
<p>A reduced liability scheme for international mobility of loans obviously reduces insurance costs for museums.</p>	<p>✓ Museums should consider shared liability as an additional option to cut exhibition costs and establish a long term mutual collaboration with museums abroad as well as within its own country.</p> <p>✓ Museums should base a shared liability practice on mutual trust and on long lasting relationships with partner museums.</p> <p>✓ Museums should consider applying shared liability as the most apt way to deal with long term loans.</p>
<p>Museums are yet unfamiliar with the system of shared liability. A great deal of explanation, as well as ‘best practices’ are needed to convince the museums of the benefits shared liability agreements offer.</p>	<p>✓ Lead Member States and museums could promote shared liability within Europe and set up specific ‘shared liability projects.</p> <p>✓ An international ‘shared liability’ protocol clearly defining the liability of each party in case of loss or damage</p>

	should be envisaged. This protocol could be drafted under the supervision of the future OMC working group on mobility of collections.
In several Member States, the introduction of a shared liability system is hampered by legal and/or statutory restrictions.	✓ Member States and museums need to consider whether these restrictive legal/statutory regulations should be maintained. If museums could autonomously waive the insurance obligation, that would encourage the introduction of the reduced liability system.
Most national and regional museum collections are not insured in their own premises.	✓ Member States and museums could take these collections as a starting point to develop 'shared liability' schemes.

#### CONCLUSIONS AND RECOMMENDATIONS FOR A FUTURE OMC WORKING GROUP

Conclusions	Recommendations
The information collected by the OMC group on the national state indemnity schemes is subject to changes in the future.	✓ The future OMC group on mobility of collections should keep the collected information and the reports made by the present working group updated and make this information available on a website for mobility of collections.
The question of valuation of a work of art, and the different systems of valuation is closely linked to insurance-state indemnity matters. Insurance value can be determined in many different ways.	✓ The future OMC group on mobility of collections should further investigate the question of valuation of works of art in the context of insurance-state indemnity.
Drawing up a list of standard forms related to insurance/ state indemnity/ non-insurance would be useful for those who work with state indemnity day by day.	✓ The future OMC group on mobility of collections should draw up an inventory of useful standard forms related to insurance/ state indemnity/ non-insurance. This inventory must be made accessible on a 'mobility of collections' website.
In case of travelling exhibitions the sharing of costs and liability among the different venues is more complex than a usual loan situation. This question has not yet been dealt with in	✓ The future OMC group on mobility of collections should investigate the question of travelling exhibitions.

<p>the frame of the OMC working group.</p>	
<p>‘Shared liability agreements are yet rare and experimental whereas cross-border loans are concerned. Explanation and ‘best practices’ are needed to convince the museums of the benefits shared liability agreements offer.</p>	<ul style="list-style-type: none"> <li>✓ Lead Member States and museums could promote reduced liability within Europe and set up specific ‘shared liability projects.</li> <li>✓ An international ‘shared liability’ protocol clearly defining the liability of each party in case of loss or damage should be envisaged. This protocol could be drafted under the supervision of the future OMC working group on mobility of collections.</li> </ul>
<p>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 OMC group on mobility of collections.</p>	<ul style="list-style-type: none"> <li>✓ The Commission and the Member States should examine the possibilities of a European indemnity scheme or a possible European re-insurance system.</li> </ul>