

**EUROPEAN AGENDA
FOR CULTURE**

**WORK PLAN FOR CULTURE
2011-2014**

SEPTEMBER 2012



A REPORT

ON PRACTICAL WAYS
TO REDUCE
THE COST OF LENDING
AND BORROWING
OF CULTURAL OBJECTS
AMONG MEMBER STATES
OF THE EUROPEAN UNION

OPEN METHOD OF COORDINATION (OMC)
WORKING GROUP OF EU MEMBER STATES' EXPERTS
ON THE MOBILITY OF COLLECTIONS



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FOREWORD





FOREWORD

Once again, working together as the co-chairs of the Open Method of Coordination (OMC) Expert Working Group on Mobility of Collections, we wish to express our gratitude, on behalf of all the members of the Group, to the many experts and official representatives from the Member States for their expertise and valuable contributions made throughout the period we have worked together.

This is the follow-up to our first report issued in June 2010. We were therefore very pleased to be asked to continue our work and produce a final report and ‘toolkit’ of practical advice, to complete the work undertaken together to increase the mobility of collections and make lending/borrowing among all the Member States of the European Union easier.

We have deliberately kept this report short but readers should be aware that it represents the distillation of a great deal of detailed work that was undertaken in each of the sub-groups. All of the sub-groups have worked intensively to draw up questionnaires, circulate them to colleagues and experts in all of the Member States, and to analyse the information received before preparing so many helpful recommendations. The individual reports are annexed to this overall summary report and we eagerly recommend that you browse through them.

We enjoyed our work together and are especially grateful to those government representatives and museum experts from the various Member States who put in so much work in each of the groups – and all of it over and above their full time, day-to-day jobs. We are also grateful to the various experts who came and held presentations for us and would like to thank the European Commission for allowing us to arrange this.

We are very pleased with the outcome of this OMC group and once again we have very much enjoyed the process of co-operation and are especially pleased that new relationships have been forged and a number of Member States are continuing to work on the procedures that we have discussed (such as the introduction of a government indemnity scheme or the preparation of legislation to provide Immunity from seizure for cultural objects on temporary loan abroad).

However, **a word of warning:** the complexity of the topics considered by the different sub-groups varies and naturally therefore, the outcomes are different. For example, it is essential for the more complex key topics, such as the difficult issue of valuations; the analysis of transport problems; and the small number of available carriers for works of art, that, in order to produce further useful results, there should be further and more detailed consideration of these topics and a greater input of time and energy than we can manage on top of our normal working lives.

This is why we are recommending that the Council of the European Union (Cultural Affairs Committee – CAC) and the European Commission now pursue and develop, in the near future, their efforts in these areas – for example through a **standing committee of experts on the mobility of collections**. Much work remains to be done in order to facilitate real ‘quantum leaps’ in increasing the mobility of cultural objects. In addition, in some areas, action is required to prevent a loss of momentum and backward movement – for example in the area of state indemnity schemes, where a number of actors are now insisting on the provision of commercial insurance, in spite of fully satisfactory and comprehensive state indemnity schemes. We believe that there are some anti-competitive practices in this area and **urge the Commission to investigate them**.

We would like to once again extend our most grateful thanks to all of those who have contributed, in particular the chair persons and members of the four sub-groups, and to the European Commission for their continued support.

Hillary Bauer (UK) and Rosanna Binacchi (Italy)

Brussels, September 2012

1.1. Background



The Council Work Plan for Culture 2011-2014, setting out the implementation of the European Agenda for Culture, established a priority area on ‘Cultural heritage, including mobility of collections’. In this context, a working group of Member State experts was created (2011-12) to examine the **ways and means to simplify the process of lending and borrowing**. The present working group built upon the achievements of the previous working group established under the Council Work Plan for Culture 2008-2010. The former group had broader objectives than the latter because, in addition to the mobility of collections, it also dealt with other issues related to the activities of cultural institutions, such as the prevention of theft and illicit trafficking as well as the mobility of museum professionals.

The group researched ways to encourage further access to cultural heritage among Member States and the sharing collections that represent a common as well as a national history. The Lending to Europe report (2005) that started the Collections Mobility Dialogue describes this well:

Museums are a link between Europe’s heritage and the citizens of today and tomorrow. They have become lively laboratories which stimulate our sense and extend our perception of culture. Museums have an enormous potential to bring the riches of our cultural diversity to the fore, to bridge different cultures and to raise awareness of the common elements of our cultural heritage.

The Work Plan for Culture 2011-2014 reduced the scope of activities of the present group, with the aim of focusing the work of the group more specifically on the mobility of collections and producing practical results. In fact, according to the current Work Plan, ‘Experts will **identify good practices related to all relevant issues in the context of the mobility of collections**’. The target outputs envisaged in the Work Plan are the following:

- to produce a **toolkit** (including good practice guidelines, templates and ‘user guides’ on state indemnity provision);
- to produce a **good practice manual for national authorities on ‘other relevant issues’**.

This is how we tackled the task:

As in the previous OMC Group, two co-chairs were appointed (Hillary Bauer, UK and Rossana Binnacchi, Italy) and we then organised our work by setting up sub-groups to consider the overall task of finding ways to reduce the costs of borrowing and lending by addressing the separate topics of:

1. improving and expanding **indemnity schemes** and shared liability agreements at EU Member State level;
2. improving **valuation processes** for works of art and cultural goods and the systems/mechanisms of valuation for the purposes of indemnity (and shared liability);
3. simplifying and improving the process of **risk assessment** when lending and borrowing; and
4. making **transport** procedures more reliable and less expensive.

The Working Group had five formal plenary meetings on: 24 March 2011, 22 June 2011, 9 November 2011, 16 March 2012 and 6 June 2012. On the majority of occasions preliminary meetings of the sub-groups were also held on the preceding day – this proved to be an efficient way to collaborate.

Experts from 25 Member States participated in this OMC group and, as before, hundreds of professionals around Europe were involved in and contributed to our work. We received specific expert presentations at different meetings from the following invited experts:

- Cindy Zalm (former Chair of the Netherlands Registrars Group and Registrar of the Netherlands Historical Museum) gave a presentation on reducing the costs of shipping.
- William Brown (National Security Adviser, Arts Council, United Kingdom) gave a presentation on the safety and security of objects and venues in the context of provision of State indemnity.
- Kate Parsons (Chair of the UK Registrars) gave a presentation on issues related to state indemnity and shared liability.
- Stephen Dunn (Senior Exhibitions Registrar, National Gallery, London) gave a presentation on problems concerning the reluctance of lenders to use State indemnity schemes.
- Lucía Villarreal (Exhibitions Coordinator, Prado Museum, Madrid) gave a presentation on the experience of the Prado Museum with state indemnity schemes.
- Antonio Piscitelli (Senior Official, Directorate General for the Valorisation of the Cultural Heritage, Italy) gave a presentation on the procedure of application of state indemnity and associated issues.

In addition, pursuant to the Work Plan for Culture 2011-2014, the Commission commissioned a study on the valuation of works of art for lending and borrowing purposes, which is expected to be finalised later on this year.

As was the case in the previous OMC Group when we prepared our interim report, each of the working groups sent out detailed questionnaires to the responsible ministry officials and museums experts in the Member States and analysed the results. The discussions and recommendations below are the result of this work, set out both as our report and in the form of a ‘toolkit’ comprising all the practical and useful information we have gathered.

1.2. Key conclusions



The most important points that emerged from our work on how to promote lending and borrowing in Europe are outlined below.

Recommendations to the European Institutions:

- To consider establishing a standing committee of Member State experts on the mobility of collections in order to monitor the implementation of the recommendations of this report and the use of the toolkit and to find ways to keep the information up to date.
- To make sure that funding for future culture programmes properly takes due account of the museum dimension and allows for funding for better accessibility to shared European heritage through increased lending and borrowing.
- To investigate potentially anti-competitive practices among the limited number of fine art transporters with a view to reducing costs.
- To facilitate and encourage exchange programmes between museums for museum professionals similar to the Erasmus programme, in particular for registrars and other staff directly involved in loan management.

Recommendations to the Member States:

- To introduce a state indemnity scheme, supported by central government and underpinned by a strong regime of security inspections of all venues and processes involved in the lending and borrowing of cultural objects.
- To persuade all lenders and borrowers to make use of such a scheme and to prevent the anti-competitive behaviour practised by some commercial insurers, who misrepresent the security offered by state indemnity schemes by stating for example that governments do not pay up quickly on a genuine claim.
- To consider shared liability schemes between frequent lenders and borrowers when no state indemnity schemes are applicable.
- To introduce and apply risk assessment procedures which are well understood.
- To introduce and apply common standards and procedures of valuation with the overall aim of avoiding unnecessary inflation in values.
- To introduce and use as many standard and internationally accepted forms and documentation as possible – see the **Toolkit**.
- To support museums in establishing a national registrars' organisation to bring together all the staff in museums who are responsible for controlling incoming and outgoing loans with a view to considering shared problems and examples of best practice.

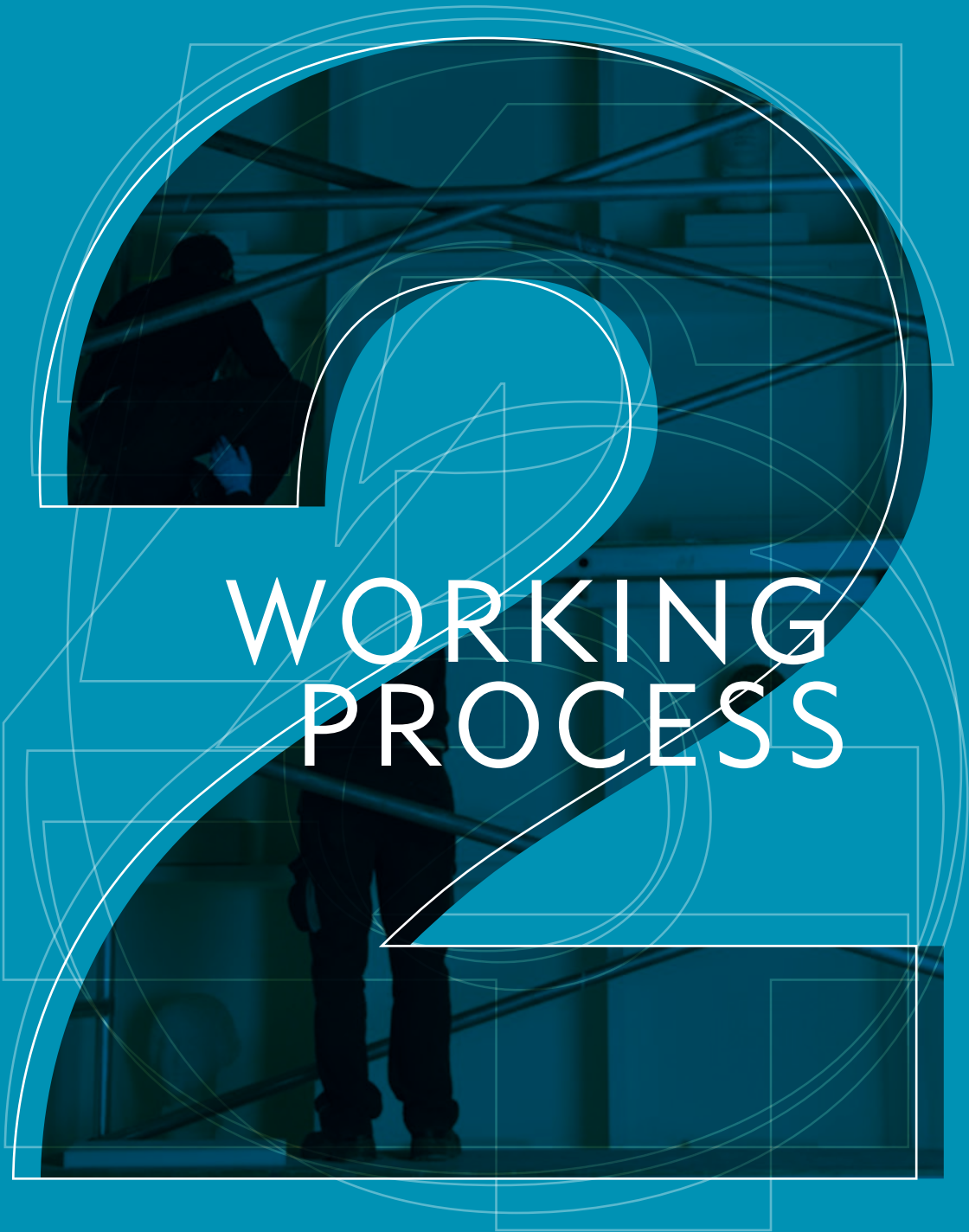
Recommendations to museum professionals:

- To keep up-to-date with new developments, actively participate in relevant networks and stay informed of new contact points for the latest information.
- To avoid contracts with companies that offer specific benefits that are not directly related to the actual service provided or that seriously disadvantage another player in the market.

Recommendations at all levels:

- To encourage museum professionals (as well as government officials) to establish and maintain personal contacts because personal trust is one of the main factors in the successful lending and borrowing of collections.
- To inform and train museum professionals through regular seminars and the distribution of relevant literature at a national level.
- To establish exchange/Erasmus programmes between museums for museum professionals directly involved in loan management.
- To appoint a contact person in the relevant museum to whom all museum professionals at national level in other Member States may address questions.
- To appoint a national museum organisation or individual museum to be responsible for organising practical training sessions for museum professionals at a national level.
- To incorporate the lending and borrowing process into university education programmes for future museum professionals (e.g. museology courses).

- For the future:
 - > national contact points should collect experiences and provide platforms to share practical knowledge and seek solutions at national level;
 - > national contact points should ensure that queries and areas of concern are raised at EU level.







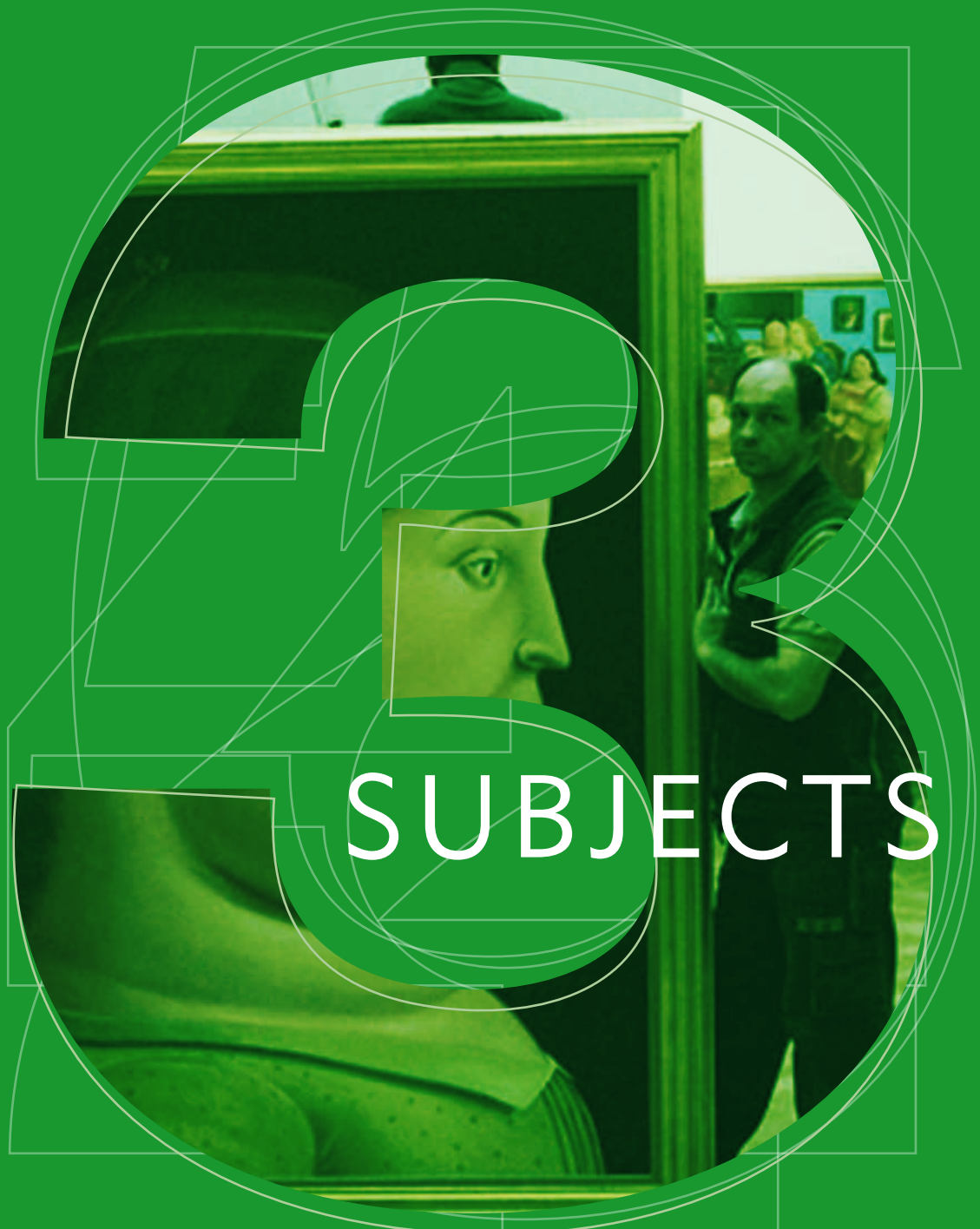
WORKING PROCESS

The separate issues in relation to the mobility of collections in Europe were highlighted in four sub-groups:

1. Indemnity schemes/shared liability
2. Valuation
3. Risk assessment
4. Transport

Each of these sub-groups studied how they could eliminate barriers to the mobility of collections that still persist in that specific area. The procedures that have been put forward are the results of the assessments of responses to the questionnaires from stakeholder groups, of interviews carried out with professionals in a specific field, and of contributions from experts.

In the plenary meetings, the sub-groups had the opportunity to inform one another of the outcomes of their investigations and any new developments, to discuss progress, and to take decisions. During the plenary meetings each sub-group was given the opportunity to share its conclusions with the rest of the Working Group and ask for input and insights from other Member States. Experts were invited to share their experience on each sub-group's topic and advise the Working Group on the barriers to mobility experienced in daily practice.



SUBJECTS





SUBJECTS

3.1. State indemnity



Introduction

State indemnity is a national system under which the government supports the organisation of major exhibitions by taking on (part of) the risk/liability from the organiser. It is an undertaking by the relevant authority in the borrowing state to compensate for harmful events that might occur during the loan period. This means that if a borrowed museum object is damaged or lost during the course of an exhibition, the state guarantees compensation for (part of) the damage or loss. **Indemnity is in fact the transfer of (part of) the liability/risk from the borrowing museum to the state.**

Because the borrower's risk is covered, the borrowing museum may proceed with the loan usually without the need to purchase expensive commercial insurance. Insurance costs represent a considerable expense – ranging from anywhere between 15 % and 40 % – of the overall exhibition budget paid, as a rule, by the borrowing institution to commercial insurance companies for whom this represents a low risk case given the high standards of protection accorded to cultural objects in major museums and galleries.

State indemnity relieves museums from the tremendous strain on their budgets imposed by insurance costs, while also lowering the actual risk to the borrowed object by ensuring the highest standard of care for the indemnified objects (and this is an essential component of any state indemnity scheme). It does not only aid museums financially but provides guarantees for the well-being of the object on loan, thus developing trust between lending and borrowing institutions and supporting continuing cultural exchanges.

According to a survey undertaken by the OMC subgroup on 'State indemnity and shared liability agreements' in 2009-10, 22 out of 30 European countries (Member and non Member States) surveyed have already established a state indemnity scheme. These countries are the following: Austria, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Romania, Spain, Slovenia, Slovakia, Sweden and the United Kingdom. With the exception of Malta and Luxembourg, which have not adopted relevant legislation but make use of such a scheme in practice, all other countries have legislation in force concerning state indemnity. It should also be noted that in Slovenia state indemnity, although established by law, has never been applied in practice.

Countries with or without a state indemnity

- Countries with state indemnity
- Countries without state indemnity



Map indicating geographical spread of state indemnity in Europe.

© the Netherlands Cultural Heritage Agency (RCE).

Objectives

One of the objectives of this report and its toolkit is to simplify the process of lending and borrowing by **supporting and clarifying the use of indemnity schemes**. Keywords in this undertaking are familiarity, openness and transparency. By calling attention to and gathering information from the indemnity schemes in all of the different Member States, we have aimed to remove ambiguities and prejudice due to a lack of knowledge of other systems. Trust is a key issue in this process and we want to foster it by creating similar principles and guidelines and through actual contact by telephone and e-mail with known operatives in other Member States, in order to achieve optimum cooperation.

By giving an organised overview in English of all of the regulations on state indemnity, we wanted, as our primary concern, to make the schemes understandable for all museum professionals in different countries interested in using them. In providing insights into the functioning of each other's schemes and demonstrating the low risks of a well-managed scheme, the barriers to invoking state indemnity should be removed. Reciprocity should then become the guiding principle in future conduct. Secondly we wanted to arrange the regulations in a practical way. We have done this by creating a layered system that is useful for finding existing documents and information. It offers links to specific information when needed, while keeping the document itself clear and compact.

By giving guidelines for the introduction of state indemnity schemes, we wanted to demonstrate the benefits of such a scheme and illustrate how to proceed with creating a state indemnity scheme. The statistics show how small the chance of claims occurring is and how low the costs for both museum and government are.

Methodology

To create the practical documents for the toolkit, the Sub-group on State Indemnity produced and distributed two questionnaires. They were both sent to the government bodies responsible for granting indemnity cover in each Member State offering a state indemnity scheme.

The first questionnaire was designed to create the **factsheets**. For this purpose the sub-group composed a list with questions that would provide as full an overview of each Member State's legislative framework and regulations as possible. To keep the factsheets conveniently arranged, the sub-group chose to subdivide them in two layers, in which the first contains unambiguous general answers and the second one links to national websites (preferably in English) with detailed information.

The second questionnaire was to collect the **statistics** that show that state indemnity actually reduces the costs of collection mobility, without major costs for the governments. Based on these statistics and experience the sub-group also produced **guidelines for countries that want to introduce a state indemnity scheme**.

Because much specific terminology is used in these documents the subgroup decided that it would be valuable to include a **Glossary of Terms** in the toolkit in at least four languages: English, French, German and Italian.

Recommendations

Recommendations to museum professionals:

- We recommend the formation of a network of registrars similar to the national registrar's groups that already exist in certain countries, but on a European level.

It's easier to come to an arrangement if there is mutual trust and understanding. That's why it's so important to get to know each other.

- We recommend that museum staff to acquaint themselves with existing national indemnity schemes, hopefully with the use of the toolkit.

*There is still a lack of familiarity with indemnity schemes. It is important to ensure that all **lenders** accept state indemnity.*

- The savings realised in museums derived from avoiding the costs of commercial insurance premiums should be invested in promoting state indemnity, for example through focusing on museum security.

More museums will use the state indemnity schemes, and more money will be saved.

- It is important for museums to follow best practice in the management and use of collections, and that is why we recommend the use of written procedures when it comes to lending and borrowing, to make sure that all the regulations and actions are clear to all museum workers when it comes to such issues as valuation, insurance, indemnity, risk assessment and so on.

SPECTRUM¹ might be a very helpful instrument for the procedures on collection management and is therefore useful for rules and regulations on issues like insurance and valuation. SPECTRUM is an open, and freely-available collections management standard, distributed by the Collections Trust in the UK and adopted by several other countries in the EU. SPECTRUM is actively developed and maintained through collaboration with museum professionals.

¹
<http://www.collectionslink.org.uk/programmes/spectrum>

Recommendations to the Member States:

- In order to improve and increase the mobility of collections, we recommend that Member States without an indemnity scheme consider adopting such a scheme as well as the best practice models that are shown through the statistics set out in the toolkit. Government bodies should actively invest in or support the developing of an effective state indemnity scheme.

A well run scheme is beneficial on various levels, and above all in terms of cost savings. More exhibitions with high cultural and artistic value with an increasing number of visitors will be made possible. And this will thus involve a wider audience, and increase the entrepreneurship of the museums as well as drive overall economic growth in the area.

- States should try to converge and standardise the indemnity schemes they operate, in order to **prevent** the refusal of cover under certain indemnity schemes on the grounds that they offer insufficient cover compared to others.
- In order to be fully effective and efficient, a state indemnity scheme should not require minimum financial thresholds to be met for cultural goods, nor should it impose an upper limit to the total value that can be guaranteed by the scheme at each given time. It is more important to focus on ensuring security issues take precedence at every stage in the process.

A total loss of all state indemnity covered works on loan for a specific exhibition is but a theoretical possibility. Operating an upper limit for the total value of all works covered by the scheme at any given time obliges the scheme operator to refuse state indemnity cover to exhibitions for the sole reason that the upper limit of the scheme is reached. By not operating a minimum threshold, opportunities are provided for less privileged museums to benefit from the state indemnity scheme, (given that raising these thresholds limits the benefits of the scheme far too often to the large national museums).

- States that do have an indemnity scheme should check if the existing scheme cannot be made more comprehensive by benchmarking against the best schemes available. We also recommend that all states consider how to make the scheme easier to use whilst always bearing in mind that the security of objects at all stages is the overriding requirement.
- States should promote the acceptance of the indemnity schemes of other states by their museums and in particular by the museums under their custody. The availability of an English translation of the different state indemnity schemes will make it easier for the lenders to accept the indemnity schemes offered. **The strongest possible efforts should be made to counteract the suggestion that state indemnity schemes are in any way inferior to commercial insurance cover.**
- State museums should not ask for cover for war, depreciation or negligence except in exceptional circumstances.

Recommendations to the European Institutions:

- In order to distribute the **toolkit**, we recommend the use of a platform on the internet that would make it easier to use links to certain websites and different aspects of the toolkit (such as the multilingual glossary etc). This should be easily accessible and made widely known amongst museum professionals.

Cooperation with an organisation such as NEMO would be beneficial for the distribution of the toolkit.

- To make the **glossary** as effective as possible, we recommend the further development of a 'Dictionary of Collections Mobility'. More terminologies should be added and it would be valuable to translate it into Russian and Spanish.

*The more **languages** used to translate all the terms in the Glossary, the more valuable and accessible the toolkit will be for all Member States. The different topics linked to collection mobility use a specific terminology and both museum professionals and government bodies should use and understand the same terminology.*

- Following the finalisation of our OMC report, a network of experts should be maintained, in order to keep the information in the toolkit up to date, seeking any available EU funding to support this.

*See the list of Cultural Contact Points at:
http://ec.europa.eu/culture/annexes-culture/doc1232_en.htm*

- It is important to stimulate mutual exchanges between experts from the insurance sector, transport, the museums and the administration to improve common awareness in the field. Consideration should be given to planning EU-wide meetings to discuss these issues.

If a network of experts is established and maintained it should organise conferences to facilitate these discussions and exchanges of knowledge.



3.2. Shared liability



Introduction

A ‘shared liability agreement’ is an agreement between museums and/or their founding bodies in which the lending museum (the ‘lender’) agrees to share the risks involved in the lending of an object from their collection with the borrowing institution (the ‘borrower’) where the object will be on show in a temporary exhibition or will be integrated in the display of the permanent collection. To be clear: a shared liability agreement is an agreement about liability, not about insurance. The agreement defines the respective liabilities of lender and borrower. The borrower is free to decide whether he wants to insure his share of the liability or not.

If the lending and the borrowing museum agree to share the liabilities related to objects given on loan, this can result in major budgetary savings for the borrower. In situations in which museums (intend to) give and receive loans to and from one another on a more or less frequent basis – in which case reciprocity is guaranteed – shared liability can result in important cost cuts for both museums.

It is up to the museums or their founding bodies to agree, in drafting their shared liability agreement, which risks the borrower will liable for (and which risks he needs to cover) and which risks the lender will accept to bear. If damage or loss occurs due to a risk for which the borrower accepted liability, the borrowing museum will have to finance the costs of restoration or compensate the loss. If the damage or loss occurs due to a risk for which the borrower is not liable, no compensation will be owed to the lending museum.

When drafting a shared liability agreement the parties should clearly indicate which museum assumes liability for which risk during the loan period and this ‘from nail to nail’ (starting from the moment of the packing of the object in the lending museum until the moment of the unpacking of the object after the return to the lender).

Objectives

As ‘shared liability’ is as yet a far less well-known way of cutting costs compared to state indemnity, the objectives of the ‘shared liability’ sub-group were to produce:

- guidelines on shared liability;
- and compile examples of existing shared liability agreements.

Such Guidelines as well as the examples of existing shared liability and how this has been managed can be found in the Toolkit.

Methodology

The guidelines on shared liability were drafted by a (small) working group that consisted of members more familiar with the concept of ‘shared liability’, as well as members for whom it was not a well-known concept. This resulted in detailed guidelines, focusing on comprehensibility and usefulness for readers to whom ‘shared liability’ is a rather novel concept.

Recommendations

Recommendations to museum professionals:

- In the absence of any applicable indemnity scheme, museums and their founding bodies should consider shared liability agreements with museums that, content-wise, have a similar profile, and can guarantee levels of collection security and exhibition conditions that are similar to formal art insurance.

This is especially the case for museums that consider one another to be a trusted research and/or exhibition partner or envisage long term structural cooperation with one another.

Shared liability in those cases might be a very apt solution for loans coming from abroad as well as for loans coming from lending museums situated in the same country as the borrowing museum.

*Far too often museums cause needlessly high costs for one another by demanding the loans are insured for their full market value, while major damage to the objects is very rare and total losses are almost non-existent. Furthermore, as most collection items are unique and cannot be replaced, insurance cover for the full value of a museum object gives a false sense of safety. **The first concern of a museum is to avoid any damage or loss and to keep the object in the best possible conditions.** It is better to invest in collection care and security instead of spending large sums of money on high insurance premiums.*

In a shared liability agreement the parties agree and set out clearly which museum is responsible (liable) for which risk during the loan period and this is 'from nail to nail' (starting from the moment of the packing of the object in the lending museum till the moment of the unpacking of the object after the return to the lender). By sharing the liability, exhibition costs can be reduced very substantially and thus museums can, partly or wholly, avoid the need for costly commercial insurance.

Until now shared liability agreements have been rare, although such an agreement can be a solution for the cooperation between museums based in different Member States, when no applicable indemnity scheme is in place or can be benefitted from.

- Risks should not be shared without careful consideration of the separate responsibilities. Before deciding on entering into a shared indemnity scheme, a thorough risk assessment procedure should be carried out, thus confirming that both museums operate comparable quality standards with regard to the organisation of exhibitions, climate conditions and security.

Shared liability agreements should not be entered into lightly. When considering such an agreement a thorough facility check should be carried out and if necessary action should be taken to improve the standards and procedures operated by the museums.

*Shared liability schemes confront directors and staff in a very clear way with the huge responsibilities they hold towards our common heritage. Whilst insurance policies sometimes cloud these responsibilities – and provide a false sense of comfort – in suggesting that all damage is perfectly repairable and that in case of loss an equivalent object can be purchased on the market (which is unlikely always to be the case), shared liability schemes (which are reciprocal) **oblige** the museum directors and staff to identify the sources of risk and conduct a thorough review of their conservation conditions, safety and security measures and procedures. These all provide an incentive to further improve the functioning of the institution.*

Museums should however be aware that comparable quality standards do not necessarily mean ‘identical standards’. The levels of security and environmental conditions should meet minimum standards required for the safekeeping of the objects. Specifying over-elaborate conditions, however, may be the safest route to failing to agree a shared liability agreement. It is up to the museums to achieve this delicate balance.

» Guidelines for museums on shared liability agreements can be found in the **toolkit**.

3.3. Valuations

Introduction

One of the major problems in collection mobility is the high costs of insurance premiums based on the high values of cultural objects. That is why it is important to understand how these values came to be established. In the final report² of the previous OMC working group on the mobility of collections in 2010, the recommendation was made that a future study on the mobility of collections should further investigate the subject of the valuation of works of art in the context of insurance and state indemnity. This recommendation was adopted by the OMC group of 2011/2012 and a subgroup on valuation was therefore set up.

The group agreed that valuation is a very difficult topic since there are no exact or scientific rules because valuation is ‘an art and not a science’; therefore it was proposed that the subject should have professional input. The sub-group was therefore grateful to the Commission for commissioning a short study on the valuation of cultural objects³, which was an important source of information and advice when developing the recommendations on valuations. This study still needs to be followed up by an examination of the problem in greater detail – especially the difference between financial valuation and market values – in order to offer practical help to those involved in trying to establish reasonable values, in particular for the purposes of indemnity or for shared liability or insurance for objects on loan. So far we have all agreed on the various problems in relation to valuation and in particular the wide variation in values given according to the purpose for which the valuation is made. We now await the further professional advice on how all those involved should cooperate to adopt common procedures, with the overall aim of keeping values as low as possible, in order to reduce the costs of borrowing and lending.

2

http://ec.europa.eu/culture/our-policy-development/doc.1571_en.htm

3

Dr Cornelia Dümcke and Freda Matassa,
*Report on the Valuation of Works of Art
for Lending and Borrowing Purposes,
2011-2012. Study commissioned by
the European Commission within
the European Expert Network on Culture.*

See: www.eenc.info



Objectives

The aims of the sub-group 'Valuation' were to:

- highlight the problems of establishing reasonable valuations for works of art and cultural objects;
- elaborate the issues;
- gain insight in the different processes of valuation;
- improve the general understanding valuation processes; and
- make recommendations for all participants with the aim of finding further means to lower the costs of lending and borrowing.

Methodology

The subgroup started with the preparation of a working document as a contribution to the comparative research on systems for the valuation of cultural objects to be executed by the European Commission's expert group. In this document it was first of all pointed out that the terminology should be clear since the study should be about 'financial' valuation and that it might be confused with 'cultural' valuation for example. Furthermore this document listed the different stakeholders and the different types of valuations. A few important questions were formulated to be addressed by the expert group.

The OMC also benefitted from the professional advice of Anastasia Tennant⁴, whose paper prepared for the UK Registrars' Group on the specific issue of types of valuations, is referred to in section 5.3 (p. 47-48).

The expert group sent out questionnaires and conducted several interviews and the expert study on valuation was delivered to the Commission in November 2011. It was then analysed by the sub-group and the Commission and a document was prepared as a contribution for further study. We welcome the Commission's decision to mandate the experts for a continuation of the study and their full report will be ready at the end of October 2012.

4

Anastasia Tennant – Policy adviser,
Acquisitions, Exports and Loans Unit,
Arts Council England.

Recommendations⁵

Recommendations to museum professionals:

- Create a policy for valuations that includes a transparent methodology for valuations and have one named person who checks and signs-off all valuations.

If a specific policy is created, it will be clear how and on what basis the values were prepared and valuations will be done in the same way every time, preferably under the overall supervision of the same person.

- Provide resources and information to be able to justify any valuation.

To name the sources used ensures that the process of valuation is transparent so that if anyone questions the value given, it is easier to let them know how the particular value was established and agreed.

- Train staff in methodology and procedure.

If everyone in the museum knows how valuations should be conducted, clarity will be achieved and everyone involved will know who is responsible for what decision. This ensures consistency in valuation procedures.

- Accept that insurance values do not have to keep pace with the market for art and cultural objects and where possible, accept an agreed value that is much lower than the market value.

The market for art can be whimsical and subject to considerable fluctuations and therefore it's not logical to use market values alone when agreeing valuations for insurance purposes.

- Question high values from lenders for loans in.

It is not necessary to always accept high values. To question them obliges the lender to give account of their suggested valuation. This will also provide greater transparency in the process of valuation used by others.

Recommendations to the Member States:

- Develop a policy which makes it possible for museums to work according to an agreed value that is lower than market value and more realistic, and enable museums to insure for less than market value.

If government policy backs up the possibility for museums to ignore the art market as the only guide for valuations and insurance it will be easier for museums to work accordingly.

- Create an information bank of back-up resources and expert advice for museums.

More expertise should be developed as this will help the museums in their process of valuation and it will also provide more transparency.

5

Some of the recommendations on valuation issues draw on the report by Dr Cornelia Dümcke and Freda Matassa, *Report on the Valuation of Works of Art for Lending and Borrowing Purposes*, 2011-2012 (see footnote 3).

- Create a state indemnity scheme if none exists and include a requirement for fair valuations. As part of this also oblige museums to present a justified methodology for individual values when they apply for state indemnity (e.g. for values over a certain fixed sum).

These issues should be addressed when creating a state indemnity scheme and to improve the existing schemes to make sure that the important issue of valuation is addressed.

- Require that any use of public money for commercial insurance is accompanied by a reasoned justification of value and the need for payment of commercial premiums.

In this way the person responsible for the valuation is accountable and the process of valuation will be more transparent.

- Agree that national collections will not ask for depreciation cover.

This will help to avoid unnecessary costs.

Recommendations to the European Institutions:

- The most important recommendation is that the European Commission should ensure that a further and more detailed study of the problems of valuation in relation to works of art and objects of cultural interest should be undertaken, with the specific overall aim of offering ways to reduce costs for Member States borrowing and lending such objects between them.

Note: the Commission has already ensured that this will happen and the final result of this study will follow towards the end of November 2012.

- Support ideas and develop a policy intended to reduce values of cultural objects and invite states to sign up to this policy.

To stay supportive of the idea of collection mobility, it will be necessary to keep the reduction of values on the agenda.

- Provide resources for information, expertise, databases etc.

With the aid of experts, the process of valuation will become more structured and databases will help with transparency and consistency.

- Commit to supporting the rights of cultural institutions over the free-market pressures of commercial insurance companies.

*It must become clear for insurance companies that the EU does not approve of their actions working against all the efforts to improve collection mobility **for example through suggesting that state indemnity provides inadequate cover for risks.***

- Facilitate non-insurance agreements between Member States.

A system of shared liability will help reduce costs, see for more information the section on shared liability.



3.4. Risk assessment



Introduction

The OMC expert group decided to investigate **risk assessment procedures** in the Member States because they are a crucial part of the indemnity process. Many governments, by granting indemnity cover, act as a guarantor for large sums of money without necessarily having the expertise to identify and manage all the specific risks involved. This is why transparent and comprehensive risk assessment procedures are highly desirable. The purpose of carrying out these assessments is to obtain all the relevant information available in order to make informed decisions in relation to applications for indemnity. It also helps to assure governments that all possible precautions are being considered by lenders and borrowers in an effort to limit the chance of damages or losses.

Risk assessment undertaken as part of the indemnity process is a complex procedure that, in most Member States, involves various steps and levels of responsibility. There are many different aspects that can be covered in an indemnity risk assessment such as: risk of fire; security on the premises; security in transit; management of climate in exhibition areas etc. There are also many different ways in which these assessments can be carried out. Furthermore, risk assessments are not only a valuable tool for granting state indemnity cover, they are also used among cultural institutions to assess potential borrowers in the context of collection mobility (loans), including loans undertaken on the basis of shared liability (see elsewhere in this report).

Definition

In the context of the state indemnity process, we refer to **risk assessment** as any means of identifying, evaluating and estimating the levels of risk involved in lending and borrowing cultural goods, in particular in relation to the following standards: safety and security during handling and transportation as well as during storage and the exhibition period, acceptable condition of cultural goods (conservation), optimal environmental parameters of storage and exhibition spaces, optimal environmental parameters during transport; geographical factors (e.g. risk of earthquake/tsunami); and the political situation (e.g. risk of terrorism or war) in the lender state and fire protection.

Objectives

The objectives of the Risk Assessment Sub-group were to formulate risk assessment guidelines in order to:

- > improve the indemnity application process and limit government exposure; and
- > encourage borrowing venues to review all risks in a similar manner, in order to increase mutual understanding and facilitate collection mobility.

Methodology

The Risk Assessment Sub-group produced and distributed two separate questionnaires. The first one was sent out to the government body in each Member State that grants indemnity cover (where applicable). This questionnaire focussed on how governments assess risks before guaranteeing indemnity cover. The second questionnaire was sent to cultural institutions in EU countries with an active loans programme. This questionnaire focused on how cultural institutions assess risks associated with outgoing loans.

Output

The Risk Assessment Subgroup's aim was to:

- formulate general risk assessment guidelines for ministries/government departments in relation to the indemnity application process;
- describe best-practice risk assessment models;
- formulate recommendations for cultural institutions to streamline the loan process; and
- formulate recommendations for the European Commission for further research in this area.

Recommendations

Recommendations to museum professionals:

- Develop a detailed risk assessment procedure as part of the institution's routine loan process.
- Use international standards and facility reports (see toolkit) in order to simplify the risk assessment process.
- Develop close relationships/build up trust between institutions. Forms and contracts alone can sometimes create a barrier to positive collaboration. Apart from the relevant documentation (point two above), site visits and informal conversations by phone and in person can be hugely beneficial in clarifying potential risks.
- Weigh up the public benefit of major exhibitions versus **very rare and unlikely risks** (such as war risk, major damage or total loss).
- Look closely into how loan forms relate to indemnity documentation and requirements and ensure that these documents are consistent and do not contradict each other. Make sure as a borrower that your loan form accurately describes the cover your government can provide. As a lender, **do not insist on specific insurance requirements for your own loans-out contract that your own indemnity cannot provide.**
- Apply the same principles for loans-in as for loans-out. In order to build an environment of mutual trust and professionalism it is important that institutions

should not make specific demands as a lender (e.g. terrorism cover, extremely tight environmental controls) that, as a borrower, the lender cannot or will not offer themselves. Consistency in relation to loans-in and loans-out can also help strengthen your negotiating position and reduce cost (i.e. if you do not charge a loan fee or insist on sending a courier for a loan-out, you have a greater chance that this will be reciprocated for a loan-in). This can require close communication between staff in different departments in the same institution (registrars and exhibition staff for example) as well as negotiation of specific clauses in any commercial insurance cover, based on a risk assessment process (see notes from insurance brokers in section 6.2 below). For example; how likely is it that war will break out in this particular country? Is there any real chance of an earthquake? If the provenance of the object is crystal clear, is immunity from seizure/third party claims cover needed? Do not insist on cover for such risks or provide for them if they will not materialise.

- If you are entering into a shared liability agreement based on your risk assessment process, ensure that you have the legal authority to do so and that you are familiar with the different levels of responsibility (see section 3.1 on shared liability).

Recommendations to the Member States:

- The granting of state indemnity cover should be based on risk analysis.
- The risk assessment should cover a wide range of topics including but not limited to:
 - > safety and security during handling and transportation;
 - > safety and security during storage & exhibition;
 - > condition of cultural goods (conservation);
 - > environmental parameters of the storage and exhibition spaces;
 - > environmental parameters during transport;
 - > fire protection.
- A transparent risk assessment procedure should be formulated, clearly setting out minimum requirements.
- All requirements should be fully met before granting state indemnity.
- The risk assessment process should be transparent and straightforward, avoiding unnecessary risks (for example, very rare or totally improbable risks). Lengthy and elaborate procedures take up too many resources and discourage institutions from using indemnity cover.
- Risk assessments should be carried out involving experts (or an independent expert panel which could include a security advisor, technical/scientific experts, conservator and registrars).
- Site visits should be part of the risk assessment process where possible.
- Risk assessments should be carried out for every indemnity application, although consideration should be given to overall approval for major and established cultural institutions that apply for cover on a regular basis. A more lenient and short assessment (or e.g. an annual assessment) can be carried out in these cases.

Recommendations to the European Institutions:

- Encourage cultural institutions in Europe to share loan related information with colleagues. This can be done through shared systems, websites and conferences on specific topics.
- Investigate the possibility of sharing information on geographical and politically instable areas (possibly through Departments of Foreign Affairs) to aid risk assessments concerning these particular areas.
- Research the feasibility of harmonising clauses in indemnity documents.
- Investigate the effect of the current economic crisis on indemnity risk assessments. How, for example, can we be certain that particular countries can actually pay out under indemnity schemes if a claim materialises?

3.5. Reducing the costs of transport

Introduction

The European continent has a very large number of museums. Therefore European citizens have access to a hugely rich cultural heritage. At present, there are more than 30 000 museums in Europe and more than 500 million people currently visit European museums each year. They include local inhabitants and domestic visitors as well as foreign tourists, many of whom also come from outside the EU. Studies have shown that the number of museum visitors attracted is closely linked to a lively exhibitions programme.

Temporary exhibitions provide strong public benefit by enabling this wide public to see works which are normally scattered throughout the world, both from museums and from private collections. Organising such temporary exhibitions **often** requires major funding. The works have to be transported by specialised carriers; architects or exhibition designers might be required to design the exhibition; and qualified surveillance and security staff must guard the works. Further costs may include advertising, the publication of a catalogue, the production of posters and in some cases commercial insurance premiums from art insurers.

Objectives

To develop proposals for reducing transport costs for the lending and borrowing of collections and objects.



Methodology

1. Meetings

The sub-group Transport held a total of four meetings attended by all members and two meetings attended by only a few members.

2. Online/E-mail

This work would not have been possible without the permanent exchange of e-mails.

3. Questionnaire

To find out which relevant issues needed to be dealt with, the sub-group Transport sent a questionnaire with the following questions to various stakeholders:

- a) how important is the issue of transport of cultural property for your institution?;
- b) which specific issues should be discussed concerning the transport of cultural property (e.g. tax, insurance etc)?;
- c) do you have problems when awarding contracts for the transport of cultural property? Please give specific examples (e.g. infringement proceedings when awarding contracts);
- d) do you have the impression that there are anti-competitive or ‘cartel’ agreements in the field of fine art transport? If so, please explain (without referring to the names of the companies involved);
- e) what can be done in the field of fine art transport in order to open the market and to reduce transport costs?;
- f) which players should play a bigger role in the future?;
- g) how would you organise the art transport market if you were free to develop a concept? Please give a best practice example from your area of responsibility; and
- h) what are the costs around the EU (and the best bargains achieved!)?

For answers and the result of the questionnaire, see section 5.4.

4. Interviews with experts

The sub-group held interviews on specific issues with the following experts:

- > **Cindy Zalm**, former Chair of the Netherlands Registrars Group and Registrar of the Netherlands Historical Museum, now working for Nurminem, a company specialising in art transport, based in Amsterdam;
- > **Kate Parsons**, Head of Collection Management, Tate Gallery and Chair of the UK Registrars Group;
- > **Hana Prochazkova**, European Commission, DG TAXUD;
- > **Helene Strohschneider**, European Commission, DG MOVE.

Questions put to Cindy Zalm:

1. The packaging of shipments containing cultural goods incurs high costs. The need to store them during the journey is frequently the decisive factor. How would you rate these storage requirements from the perspective of a fine art transport company? Do you think it is possible to cut costs without compromising on quality? Do you think introducing common standards in the packaging industry has the potential to reduce costs?
2. Concerning question 1, do you see any differences between small-/medium-sized museums and large museums?

3. It would certainly be possible to reduce costs if alternative selection and procurement procedures were adopted, for instance the introduction of annual contracts. Could one possible solution be that some museums would acquire packing cases for (partial) sharing and multiple-shift use? Do you think such alternatives would also be in the interests of transport companies?

**Questions put to Hana Prochazkova,
European Commission, DG TAXUD:**

The fact that goods have been included in the nomenclature of Regulation 731/2010 has serious financial implications for artists. They will be subject either to the reduced tax rate of 7% or the higher tax rate of 19%. According to what criteria does the Commission rate the goods? Does it include cultural goods? When precisely can it be assumed that materials are physically attached to other items and therefore represent art as defined in a number of rulings handed down by the European Court of Justice? Many artists (for instance, nail artists or lighting artists, sculptors, painters etc) certainly need materials that are very difficult to allocate. Has the Commission considered the consequences for the culture sector?

**Questions put to Helene Strohschneider,
European Commission, DG MOVE:**

Could you please explain the new provisions set out in EU Regulation 300/2008. The background is as follows: since April 2010, only consignors who have been approved by the authorities and whose details have been recorded in an EU database are deemed 'known consignors'. However, this includes on-site manufacturing as well as packaging, unless the individual shipments can be identified as airfreight up until the stage where they have been chosen to fulfil an order. This is not usually the case with cultural goods. This means museums incur extremely high costs and face high risks as they are, in principle, not the consignors. The problem is that publicly funded museums are obliged to put public contracts out to tender. If the contract is awarded to a company that has not been registered as a **regulated agent**, there is no alternative but to treat shipments as ordinary freight and to subject shipments to all the usual controls (opening the packaging etc.) We consider this to be an unacceptable risk.

For answers: see Annexes 5.4.

Recommendations

Recommendations to museum professionals:

- Cooperation should be enabled at various levels (between COM-MS-museum representatives in CEN).
- To ship in combination (*investigate the possibility of collecting loans in the shipper's warehouse*).
- To check the need for a safety/follow car.
- To check the need for an (on-board) courier – or lending without a courier.

- To check the need to acclimatise crates.
- Museums should pool their resources and create a shared stock of climate boxes (*These museum-owned boxes can be shared, provided that the exhibition planning is accurate and long-term*).
- To reuse other transport materials.
- To accept tenders.

Recognition of transport companies that have secured orders on the basis of public tendering procedures. First, 'norms' (precise specifications) for art transports must be included in all national procurement regulations (see Austria's Ö-Norm⁶) and must be recognised by all those concerned.

Recommendations to the Member States:

To adopt certification procedures for transport companies, based on common standards (CEN⁷).

There is an urgent need for integrating public funding agencies and museum representatives into CEN.

- With regard to **Staff**:
 - > To develop job specifications for technical and administrative staff in the transport companies.

Norms are frequently not specific enough (see AUT – Ö-Norm)

- > To develop training standards in particular for technical staff. Costs can be saved by having **qualified** staff, because fewer staff members are then needed. Having qualified staff also saves a lot of time and is thus less cost-intensive.
- > To create a **training course** Art Transporter/handler.
- > To encourage the introduction of a system of accreditation and recognition of demonstrable practical knowledge and skills related to professional experience in the transport of cultural goods.

There is a lot of know-how and expertise, acquired in the long-term by art handlers and people working on the installation of collections and temporary exhibitions and technicians working at cultural institutions or transport companies. This expertise cannot be currently certified, as an existing professional degree or certification which comprises packing, storing and handling of collections does not exist.

- **To accept 100 % state indemnity**

Museums as lenders should make every effort to accept indemnity when offered by borrowers.

6

See Annex 5.1.

7

CEN – European Committee for Standardization
(CEN, French: Comité Européen
de Normalisation) <http://www.cen.eu>

- To develop and use **standards** for:
 - > **Packing:**
CEN/TC C 346 WG 5 – EN: 15 946/2011
(CEN-Packing principles for Transport for conservation of cultural property).
 - > **Trucks:**
Technical features of trucks used for art transports (size, air conditioning)
Monitoring system for trucks/vehicles on where the artwork/cultural object is at any given time – tracking device.
 - > **Standardized receipts and forms** for the transport and insurance industry (see toolkit).

Recommendations to the European Institutions:

- With regard to **Customs, VAT**
 - > Before adopting European regulations, the competent ministries (Economics, Interior, Finance etc.) and museum representatives should involve the wider cultural sector at an early stage in order to be able to ensure cultural sustainability in accordance with Article 167 paragraph 4 of the TFEU⁸.
- To commission **a study** on costs of Transport of cultural goods:

We are not aware of any existing study at the European level into the cost of transporting cultural objects. A wide-ranging study would be very useful, based on clear and concrete questions.

8
TFEU – Treaty on the Functioning of the European Union.

ACKNOWLEDGEMENTS





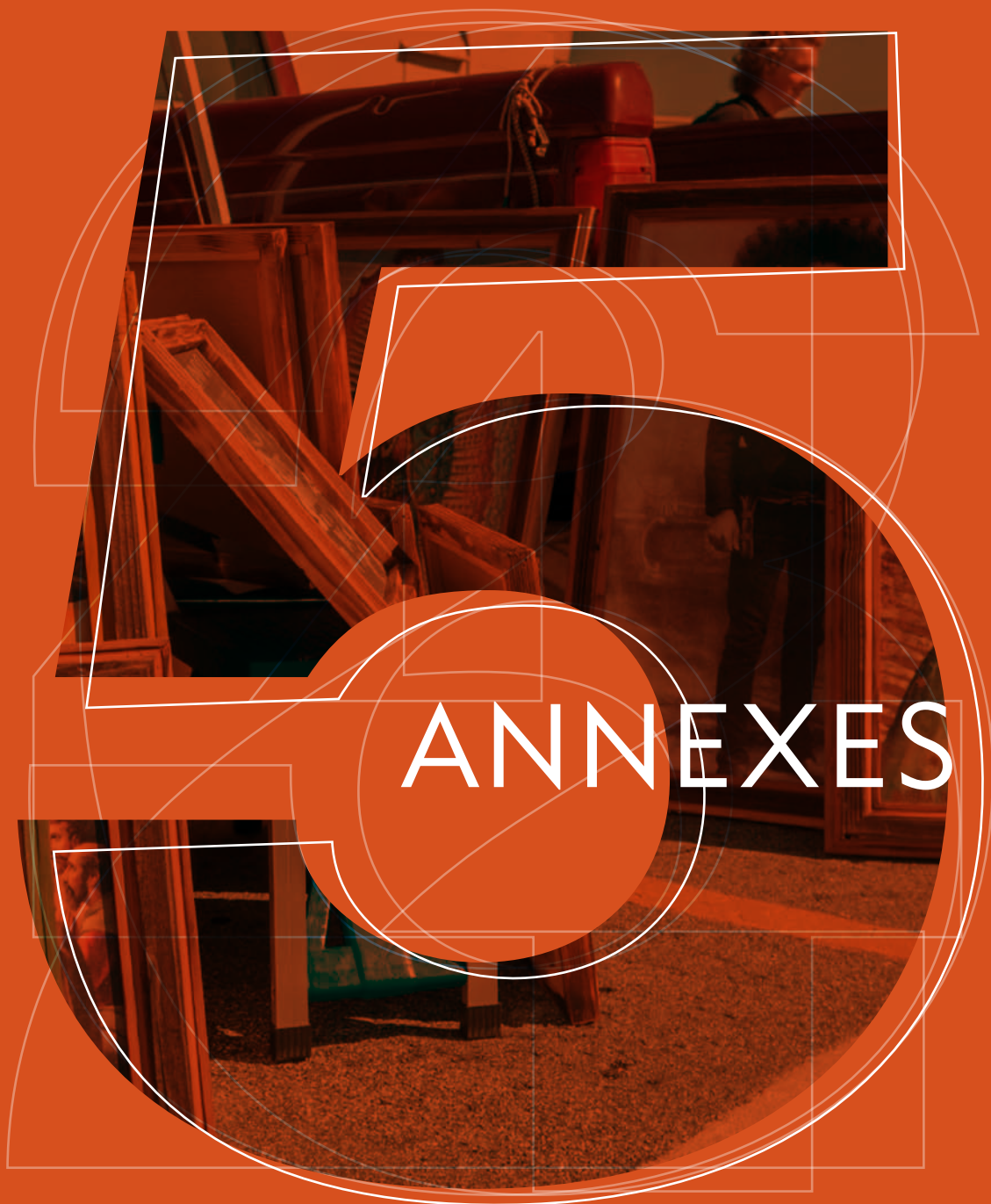


ACKNOWLEDGEMENTS

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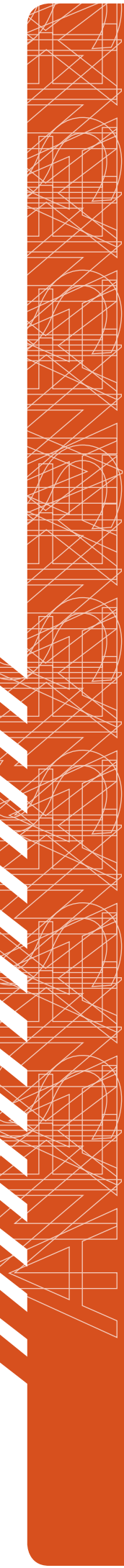
We would also like to extend our appreciation to the other officials from the European Commission who have attended meetings to give us their expert advice including Eugénia Aguiar and Hana Prochazkova (DG TAXUD), Grzegorz Gajewski (DG HOME), Angela Casasnovas y Sese (DG ENTR), Edith Guetta (DG EAC) and Helene Strohschneider (DG MOVE).

We are also grateful to Siebe Weide from the Network of European Museum Organisations (NEMO).



ANNEXES







ANNEXES

5.1. Bibliography/sitography, including websites



Standard Loan Agreement on NEMO website:
<http://www.ne-mo.org/index.php?id=110&STIL>

Collections Mobility section on NEMO website:
http://www.ne-mo.org/index.php?id=103&STIL=0&C_PID=&C_UID=1

Lending for Europe website:
<http://www.lending-for-europe.eu/>

Updated 'Loans section' Bizot Group guidelines:
http://ec.europa.eu/culture/documents/loans_guidelines_execsummary.pdf

ICOM guidelines for loan:
http://icom.museum/fileadmin/user_upload/pdf/Guidelines/Loans1974eng.pdf

Guidelines for Disaster Preparedness in Museums:
http://icom.museum/fileadmin/user_upload/pdf/Guidelines/guidelinesdisasters_eng.pdf

General survey of state indemnity:
http://www.lending-for-europe.eu/fileadmin/CM/public/documents/indemnity/EU_State_Indemnity_Schemes.pdf

CEN – Conservation of cultural property – Packing principles for transport EN 15946:2011:
<http://www.cen.eu/cen/Sectors/TechnicalCommitteesWorkshops/CENTechnicalCommittees/Pages/Standards.aspx?param=411453&title=Conservation%20of%20cultural%20property>

Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (Codified version):
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0116:en:NOT>

Regulation (EC) No 300/2008 of the European parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:097:0072:0084:EN:PDF>

EU Regulation 731/2010 – The classification of certain goods in the Combined Nomenclature:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:214:0002:0003:EN:PDF>

EN 14943:2005, *Transport services – Logistics – Glossary of terms.*

Courier Guidelines – Bizot Group, January 2009:
http://ec.europa.eu/culture/documents/courier_guidelines_execsummary.pdf

Austria ÖNorm D 1000/2006-12-01 – Transportation services – Requirements for fine arts removals.

Petterson S., Hagedorn-Saupe M., Jyrkkö T., Weij A. (ed.), *Encouraging Collections Mobility. A way forward for Museums in Europe*, Helsinki, Finnish National Gallery, 2010.

Van Woudenberg N., *State Immunity and Cultural Objects on Loan*, Leiden/Boston, 2012.

Matassa F., *Museum Collections Management: A Handbook*. London: Facet Publishing, 2011.

Links:

Network of European Museum Organisations (NEMO):
<http://www.ne-mo.org/>

Collections Trust:
<http://www.collectionstrust.org.uk/>

Lending for Europe:
<http://www.lending-for-europe.eu/>

International Council of Museum's standards and guidelines:
<http://icom.museum/professional-standards/standards-guidelines/>

ICOM's bibliographies:
<http://icom.museum/resources/bibliographies/>

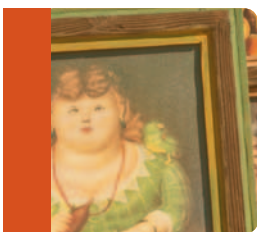
UK Registrars Group:
<http://www.ukregistrarsgroup.org/>

The Registrars Committee of the American Association of Museums (RC-AAM):
<http://www.rcaam.org/>

VIII European Registrars Conference:
<http://lanyrd.com/2012/viii-european-registrars-conference/>

International Convention of Exhibition and Fine Art Transporters (Icefat):
<http://www.icefat.org/>

5.2. Risk assessments & commercial insurers: results of interviews with brokers



The risk assessment group also wanted to compare the views of the public and private sector and asked several art insurance brokers whether they carry out a risk assessment before agreeing to put cover in place and what areas in particular they focus on. Please find replies from two brokers below.

UK broker:

‘The level of risk assessment varies depending on the client. When arranging insurance for loans for national institutions, we know that the risk assessment has generally been done and the organisation wouldn’t agree to lend a work to a venue which hadn’t adequately met the standards the security advisor imposes. Should there be any queries within the facilities report these would have been raised by the registrar when negotiating the loan. As a result the level of cover we arrange for loans from nationals to those approved museums is very broad with very few exclusions.

If we are asked to arrange insurance for an exhibition at a museum where a commercial gallery or private collector were lending a work and we haven’t worked with the museum before we would ask to see their facilities report and, if need be, ask them to complete a proposal form, which reflects most of the questions we need answered.

If we were asked to insure a risk in an earthquake zone this is taken into consideration and the rate increases to reflect the additional peril to be covered. Also the insurers need to look at the limits that they are underwriting in these zones, especially for example California and Tokyo, in order to establish if they have the necessary capacity to take on a new risk.

Terrorism cover is looked at on a case by case basis as this peril is underwritten by the political risks market who again have to check their aggregations in major cities and they very much dictate the rating for this, though certain countries have a government backed pool which the ‘all risks’ underwriters can tap into, such as Pool Re in the UK, France’s Gareat and the USA’s Tripra. Flooding is also a consideration and we refer to the Environment Agency for risk assessment within the UK.’

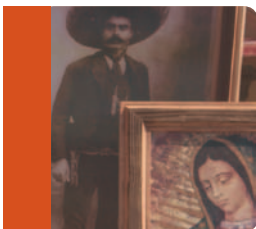
Italian broker:

'As an unwritten rule fine art insurers and brokers in Italy share information about the bad behaviour of transporters, exhibitions organiser, locations, other insurance players, etc. With very low rates in fine arts insurance, our job is to avoid, as much as we can, losses due to bad or low quality work by any of the players. A big claim would wipe away all the premiums the companies have earned over the years.

We always visit a new location and a new client. I would never assume a new client has certain standards without being sure that the location is safe, the procedure they use is professional, the organisation is serious and, the most important thing, that the transportation and handling are carried out by specialised organisations. 80 % of losses happen while the artworks are in transit or are being handled. It is very important to be sure that all stages of the process will be followed professionally. In our proposal form/check list we ask and want to know the names of all the transports firms involved in any part of the trip, not only the one that has the contract but all the names of the correspondents. Should they be unknown and not approved by us, we ask other companies if they have had experience with them and should the outcome be negative, we will carry out a due diligence assessment. If we are not sure about something we will not underwrite/propose insurance.

For every new location we ask for a facility report that we examine very closely. We are especially careful with an exhibition of small and/or fragile objects. We use a proposal form to check all risks.'

5.3. Valuations



Different levels and examples of some types of valuations

It is recognised that the valuation of works of art is not a precise science: it is a matter of skill and judgement.

Although a layman might theorise that an object can have only one value, experience shows otherwise. A figure put forward for insurance purposes would not necessarily be that given as an auction estimate, for the obvious reason that the first must be a single figure, while the second is likely to be a range within which the auction price is expected to fall. Frequently the need for a valuation is for the purpose of agreeing a value for tax purposes with Her Majesty's Revenue and Customs. Valuations may also be obtained for insurance, sale, family division, chattel rental and other purposes. Sometimes the interest of the owner requesting the valuation will be to obtain a high valuation; sometimes to obtain a low one. Sometimes the owner will not care whether the valuation is high or low.

Professional valuers may only give valuations which are in accordance with their honest opinion as to the value of the item in question. They cannot give a valuation for an item which is different from their true opinion as to the value of the item. This is because such a valuation would be false or dishonest and the act of doing so would amount to a criminal fraud, leaving both the valuer and owner of the object liable to prosecution. For example under the Theft Act 1968, the giving of a dishonest valuation could amount to obtaining a pecuniary advantage by deception from another person contrary to section 16 of that Act. The maximum penalty is a prison term of five years.

The fact that there may be arguments in favour of a false valuation to which a valuer has committed themselves does not mean that the valuation is not dishonest. A valuation is an honest one **only** if it reflects accurately the true view of the valuer. If it does not tell the truth about what the valuer thinks about the value of the item, then it is a dishonest valuation.

It is well established that there is a range of price, sometimes wide, which competent valuers would recognise as the price which property would fetch if sold on the open market and so it is usual for valuers to provide their opinion of the current value of an object by first giving that **range of values** which is **commonly known as current auction estimates**, the lowest value of the range being known as the low auction estimate and the highest as the high auction estimate with the median being known as the mid auction estimate. This range usually forms the basis of any other types of valuation of the object.

Insurance valuations

Auction houses and valuers tend to pitch these at one of three levels which they define as follows:

1. Insurance at high auction estimate

Here the owner would not have in mind replacing the item concerned. In other words this level of valuation envisages that the item valued is regarded merely as an **asset** for which only financial compensation would be sought in the event of total loss, the value being set simply at the top end of an auction estimate without the addition of the buyer's premium and VAT.

2. Insurance at double Low auction estimate

This relates to those instances where an owner might wish to replace any totally lost item by purchasing something **comparable** at auction. The insurance value here allows for the possibility of a hammer price just above a high auction estimate with the addition of the buyer's premium and VAT.

3. Insurance at double high auction estimate

This relates to those instances where an owner might wish to replace any totally lost item by purchasing something comparable at an appropriate London or New York retail outlet. It is hoped that in general values set at this level are enough to include the usual trade 'mark up' over auction prices but this is not guaranteed.

It is customary to revisit insurance valuations every three to five years and if the costs of a detailed physical inspection are too prohibitive the practice is to update the values by reference to the Art Market research indices. They are available for a fee on subscription. The Shares and Assets Valuation Team at HMRC has a subscription as does the Internal Revenue Service in the USA.

Current auction estimates/selection for sale

Such estimates often form the basis of all other valuations. They are also given where sales are in prospect. They give high and low estimates and not a single figure.

Willing buyer/willing seller and valuations for negotiated sales

Values here form a starting point in negotiations of purchase or sale (for instance in the case of a negotiated sale under the Acceptance in Lieu scheme or to a museum). Valuations of this kind are usually pitched at high auction estimate where the valuer puts forward a value on behalf of the selling owner and at low auction estimate when the valuer is acting for the purchaser.

Valuations for the UK's government indemnity scheme (GIS)

Other types of valuation include valuations for taxation purposes, whether upon death or otherwise, which are usually pitched at the low auction estimates, where tax is payable. For taxation purposes the legislation requires **open market values** and this is defined as: 'The price which the property might reasonably be expected to fetch if sold in the open market at that time [i.e. the relevant valuation date].' The equivalent definition in the US is 'Fair Market Value'.

The definition in the tax legislation is broadly similar to the definition of value for GIS purposes. For GIS purposes the value has to be in accordance with the principles set out in paragraphs 2.17 and 2.18 of the UK Guidelines for national institutions which state:

Valuation⁹:

2.17 *Before agreeing a valuation with an owner, the borrowing institution must bear in mind the importance of ensuring that the indemnity valuation is appropriate. For example, indemnity valuation should **represent a fair estimate of the value that the object to be indemnified might reach if sold on the open market at the time of the loan**, this estimate resulting in the specified value agreed for purposes of indemnity.*

2.18 *In scrutinising and assessing a proposed valuation, borrowers should bear in mind that the purpose of providing indemnification is that the party suffering loss **should not be out of pocket** as a result of that loss but neither should the loss provide him with an opportunity to profit thereby.*

The value for the purposes of GIS should be a fair estimate of the value, i.e. **the price which the property might reasonably be expected to fetch if sold in the open market on the date of valuation between a willing buyer and a willing seller** in an 'arm's-length' transaction wherein the parties had each acted knowledgeably, prudently, and without compulsion.

This is the definition used for Inheritance Tax, Estate Duty, Capital Gains Tax and Income Tax. It is generally accepted, therefore, that a fair open market value is the equivalent of a current mid-auction estimate.

For GIS purposes, therefore, we would expect the values, where there is no recent sale history of the item in question, to be pitched at either high auction estimate (i.e. Level 1 which would assume a sale/hammer price at mid-auction estimate and allows for the addition of the buyer's premium plus VAT) or, at most, at double the low auction estimate (i.e. Level 2 above) where replacement of a comparable item at auction is envisaged. This latter is particularly the case where the object loaned is owned by trustees who are required by the terms of their trust to replace objects and therefore owe a duty of care to their beneficiaries to ensure that the objects are covered for such an eventuality. If the item has sold recently then it is the full purchase price that we would anticipate forming the value not an inflation thereof representing e.g. a dealer's 'hope' value or anticipated trade mark-up, that can sometimes be three or even four times the premium, plus VAT inclusive auction purchase price. Retail replacement values which commonly include trade mark-ups are not acceptable for GIS. **It is crucial to the survival of the scheme therefore that values are reasonable and not inflated.**

⁹ <http://www.culture.gov.uk/images/publications/GISGUIDELINESWORDVERSION316March.pdf>

It is equally important that museums ensure they keep the value of items in their own collections up-to-date and that appropriate values are put forward for insurance purposes when these are loaned both within the UK and abroad.

Points for discussion:

1. Conceptual art

The question of insuring such art is increasingly of concern to those responsible for government indemnity. In particular where an item can be recreated by the artist and sometimes such a recreated work can demand a higher price than the original: what are we being asked to indemnify? We are aware that in the USA the Government Indemnity Program excludes any very fragile objects from coverage. The combination of mixed media involved, and the difficulty in assessing the condition from the outset, is simply too high a risk for their programme. It is their view that it is better to protect the Treasury from potential responsibility for the total value of highly fragile objects, than to require the borrower to pay the premium for commercial insurance.

Paper by Anastasia Tennant of Arts Council England for UK Registrars Meeting, April 2012. Edited also by Hillary Bauer UK.



5.4. Transport

Answers to the questionnaire: questions (a)-(c) – Results in template form:

1. How important is the issue of transport of cultural property for your institution?	Very important 54	Less important 3	Not important
2. Which specific issues should be discussed concerning the transport of cultural property (e.g. tax, insurance etc.)?	The following topics have emerged:		
	* Insurance	<ul style="list-style-type: none"> • High costs and liability issues 	<ul style="list-style-type: none"> • Exact scope • What kind of risks does it cover? • ‘Nail to nail’ insurance • Insurance waivers e.g. waiver of subrogation • International shared liability protocols in combination with transport insurance
	* Common standards	<ul style="list-style-type: none"> • Terminology, forms and conditions at packers and shippers • European packing standards – standardisation of packing methods and safety requirements • Certification system for transport agents and transport companies • Standards for vehicles • Consolidation and sharing of shipments and couriers in line with the Bizot guidelines 	
	* Transport companies	<ul style="list-style-type: none"> • E.g. reliability of the transport provider, well-trained staff/ inexperienced staff, • Monitoring system for trucks on where the cultural good is at any given time – tracking devices • Escort – high costs of security provider • Safety requirements • Commitment in case of insurance claim 	

	<ul style="list-style-type: none"> * Customs, VAT, export licences 	<ul style="list-style-type: none"> • Cross-border documentation – reducing it to the absolute minimum • Classification of cultural goods in the nomenclature under Regulation 731/2010 	
	<ul style="list-style-type: none"> * Law unification 	<ul style="list-style-type: none"> • Some countries have unexpected law requirements • Compliance with public procurement regulation 	
<p>3. Do you have problems when awarding contracts for the transport of cultural property?</p> <p>Please give specific examples (e.g. infringement proceedings when awarding contracts)</p>	<p>Yes: 5</p> <ul style="list-style-type: none"> • Not knowing all important details and transport issues when awarding contract • Art transport companies try to be cost-effective but offer lower quality services • It would be necessary to establish international standards to avoid possible misunderstandings when moving cultural goods 	<p>No: 52</p>	

Answers to the questionnaire: questions (d)-(h):

Re 1:

There are only a limited number of small-/medium-sized and large transport companies that specialise in fine art transportation. Consequently, many orders are placed with these few companies. As a result they have quite a dominant position on the market. Although this is far from ideal, it would be problematic to call this a cartel.

Re 2:

It must be said that the costs of art transportation are rising steadily and that many museums feel they are too high. There are diverse reasons for this. For example, in some Member States there are not enough transport companies that meet the requirements set by the relevant staff when it comes to the infrastructure of the vehicles and meeting certain quality standards regarding packaging materials, staff etc. Many museums are not willing to accept a transport company chosen on the basis of a public procurement procedure (tendering process). Some museums are not willing to accept state indemnity provision for incurred losses. Additional private insurance is often required, which can be quite costly. The following would help open up the market:

- * licensing procedures for transport companies based on common standards (some Member States have their own systems);
- * recognition of state indemnity provision at least for publicly funded museums;
- * recognition of transport companies selected on the basis of tendering procedures;
- * simplification of the very time-consuming administrative procedure in the field of EU regulations for the transport of travelling exhibitions (EU procurement legislation) – development of framework contracts.

Re 3:

The process needs to be institutionalised in order to continue the discussion that began in 2008 on the mobility of collections. A permanent working group should be set up, although participation should be voluntary. The dialogue with the CEN should at any rate be stepped up. The Working Group recommends incorporating NEMO and the Bizot Group to a greater extent. In addition, public funding bodies and representatives of the museums in the CEN need to be more involved. So far the group comprises mainly only the representatives of transport companies.

Re 4:

Contracts with companies that offered benefits on the site should be avoided!

Re 5:

An in-depth study is required in order to be able to determine the costs incurred for art transportation. The Sub-group Transport is not in a position to conduct a serious study on account of a lack of logistical and human resources. The Sub-group therefore suggests launching a research project in cooperation with museum facilities (e.g. the Institute for Museum Research in Berlin and NEMO) at European level or in cooperation with universities (PhD scholarships).

Cindy Zalm: developing European standards would no doubt help to reduce costs. The European Committee for Standardization is currently working on standardising packaging (CEN/TC 346 WG 5). However, a particularly important aspect before objects are even packaged is risk assessment. Ms Zalm suggested adapting requirements tailored to the specific risks of each upcoming transport of cultural objects and, among other things, using reusable transport boxes.

The following measures would serve to reduce costs:

- **Packing**
 - > Reusable transport materials; clarity on risk assessment before packing the object, i.e. optimizing packaging systems to suit transport routes.
- **Shipping**
 - > Examination of whether smaller vehicles could be used because they could cover longer distances.
 - > Observing the 21-hour rule for transports: most destinations in Europe can be reached within 21 hours; accommodation expenses could thus be saved.
 - > Monitoring system for trucks/vehicles on where the cultural good is at any given time – tracking device.

Kate Parsons pointed out that donors frequently sought additional insurance protection that goes beyond state indemnity provision, also in order to cover risks that are otherwise generally excluded. She suggested adding to the toolkit a number of harmonised (incl. linguistically) leaflets and forms on this issue and stepping up training and advanced training in the field.

Questions put to Hana Prochazkova, European Commission, DG TAXUD:

The fact that goods have been included in the nomenclature of Regulation 731/2010 has serious financial implications for artists. They will be subject either to the reduced tax rate of 7% or the higher tax rate of 19%. According to what criteria does the Commission rate the goods? Does it include cultural goods? When precisely can it be assumed that materials are physically attached to other items and therefore represent art as defined in a number of rulings handed down by the European Court of Justice? Many artists (for instance, nail artists or lighting artists, sculptors, painters etc.) certainly need materials that are very difficult to allocate. Has the Commission considered the consequences for the culture sector?

Answer:

In accordance with EU directives applicable since 2010, goods are to be classified at EU borders. The directives contain certain rules on the classification of artistic purposes and other goods. Problems arise again and again during classification at borders; the competent commission (that comprises representatives of all Member States) needs to consider general legal and actual aspects. This was occasioned by the commission's classification of a video installation (Hall of Whispers by Bill Viola) as a 'DVD player and projectors' and a light installation as 'lighting fixtures' (six alternating cool white/warm white fluorescent lights vertical and centred (1973) by Dan Flavin) on 11 August 2010. The commission stated that the technical goods had not lost their original function on account of the minor alterations made by the artist. The commission said that its classification was based solely on the specific features of a product and that it was difficult to provide precise definitions, especially since the classification was based on which field in the Combined Nomenclature (CN) best describes the product.

Questions put to Helene Strohschneider, DG MOVE

Could you please explain the new provisions set out in EU Regulation 300/2008? The background is as follows: since April 2010, only consignors who have been approved by the authorities and whose details have been recorded in an EU database are deemed 'known consignors'. However, this includes on-site manufacturing as well as packaging, unless the individual shipments can be identified as airfreight up until the stage where they have been chosen to fulfil an order. This is not usually the case with cultural goods. This means museums incur extremely high costs and face high risks as they are, in principle, not the consignors. The problem is that publicly funded museums are obliged to put public contracts out to tender. **If the contract is awarded to a company that has not been registered as a regulated agent, there is no alternative but to treat shipments as ordinary freight and to subject shipments to all the usual controls (opening the packaging etc.) We consider this to be an unacceptable risk.**

Answer:

In April 2010, only the procedure changed, not the conditions that a 'known consignor' has to fulfil to become part of a secure supply chain.

- In order for a company to be accepted as a 'known consignor' (the shipper of a consignment, for example a museum, an art dealer etc.) it must be registered with the Member State's authorities for aviation security and prove that it fulfils some basic requirements in respect of security (security awareness of staff, secure packaging, security contact person, etc). Once the registration has been completed the company is entered into the EU database for other companies to consult. Exceptionally and only until 2013 'known consignors' registered by a 'regulated agent' (typically a freight forwarder) before 2010 may continue to be part of the secure supply chain.
- Indeed if the 'known consignor' is an unknown shipper (for example, a museum or an art dealer not registered with the authorities) the consignment is in principle subject to physical screening by a 'regulated agent' (the freight forwarder, a transportation company, a screening facility at an airport, the air carrier etc. registered with the Member State's authorities for that purpose). I would be surprised if the usual freight forwarder for pieces of art is not a regulated agent, which many of the forwarders already are. They would be able to make proposals on how art, depending on its nature and consistence, can best be controlled and where. However, if neither the consignor nor the transport company is registered, than indeed a screening facility at the airport or at a special cargo site would have to open the packaging.



MEMBERS OF
THE OMC
WORKING GROUP





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This work would not have been possible without the dedication and strenuous efforts over many months of the Co-chairs of this OMC Group:

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