

**FINAL REPORT AND RECOMMENDATIONS TO THE
CULTURAL AFFAIRS COMMITTEE on improving the
means of increasing the
MOBILITY OF COLLECTIONS**



OMC Expert Working Group on the Mobility of Collections

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Foreword

The co-chairs, on behalf of all the members of the “Open Method of Coordination” Expert Working Group on Mobility of Collections wish to express their gratitude to the many experts and official representatives from the Member States for their precious contributions and invaluable expertise throughout the period we have worked together.

Although we have kept this report short, we would like to emphasise how much detailed work was undertaken in each of the sub groups which worked so hard to examine the up to date position in all the Member States and made so many helpful recommendations. We commend the individual reports (annexed to this) to your attention.

The outcome of this OMC group is very positive from many points of view. Experts from 25 Member States participated in this working group and we would like to record that we have very much enjoyed our co-operation and are especially pleased that a number of Member States are now working on the new developments that we have discussed (such as the introduction of a Government Indemnity Scheme or the preparation of legislation to provide Immunity from Seizure). Due to the different nature of the topics considered by the different sub group, the outcomes may seem uneven. For example, in the more complex key topics, such as the prevention of illicit traffic in cultural goods and state indemnity or shared liability agreements will require the input of more time and energy in order to produce further results. This is why we are recommending that the European Council (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 Mobility of collections. Much more remains to be done in order to facilitate increased mobility of cultural objects.

With our most grateful thanks to all those who have contributed, in particular the Chairs and members of the 5 sub-groups and to the Commission for their continued support.

1. INTRODUCTION (see also Conclusion, Section 5)

WHAT IS MOBILITY? – WHY IS IT IMPORTANT?



Museum collections and their use was raised as a key issue within the European Union in early 2000. Since then, debates have taken place in various conferences and seminars in Greece, the Netherlands, Finland, Germany and

Spain, to mention but a few. The overall themes of the conferences have covered promotion of cultural heritage, management standards and models, increasing and encouraging the mobility of collections, as well as trust and networking.

The central message has been very clear: all time and effort should be given to removing the barriers to co-operation between museums. The rich and multifaceted European collection resources in different museums throughout our 27 countries deserve and must be used for the benefit of the public. Therefore our OMC Expert Group has focussed on producing practical advice and guidance and on benchmarking good practices that are already being used.

The OMC Expert Working Group on the Mobility Collections Report covers a number of major themes that will help to increase the mobility of collections. These themes include: the value of cooperation and reciprocity; the need to reduce the costs of lending and borrowing; the need to explore new (non-traditional) modalities of mobility; and the importance of assessing the essential requirements for due diligence, particularly in researching the provenance of cultural objects. Also issues such as communication, raising awareness and education through sharing the heritage and collections have been highlighted.

More detailed recommendations are addressed to different target audiences such as Cultural Affairs Committee representatives; Member States, in particular officials working in ministries with responsibility for Culture; also Finance and Justice and Foreign affairs ministries; politicians; museum workers (especially Directors, heads of collections, curators, registrars and exhibitions staff) and professional networks including NEMO, ICOM; European Registrars Group, International Exhibitions Organisers group; and the Bizot Group of Museum Directors.

The OMC Group on Mobility Collections has based its work on the earlier reports, recommendations and action plans which have been updated with new information from Member States across these areas. The first key document, *Lending to Europe. Recommendations on Collection Mobility for European Museums* was published in 2005. Subject areas and recommendations drew out the general principles and museum expertise related to loans. Separate issues were highlighted, such as valuation, different options for insurances, indemnity, immunity from seizure, long term loans and loan fees, publication and copyright, digitisation and trust.

A year later, the *Action Plan for the EU Promotion of Museum Collections' Mobility and Loan Standards* saw daylight. The general objectives were listed, as well as the key areas that need extra care and attention. Implementing the *Action Plan* required gathering the basic information about collection practices in the Member States. The work started in working groups that concentrated on loan administration and loan standards, state indemnity schemes, valuation, self-insurance and non-insurance of cultural objects, immunity from seizure, loan fees and long term loans, building up trust / networking and digitisation. Inquiries were sent to the Member States and results analysed. These groups worked in 2006-2007 and produced a set of guidelines, recommendations, surveys, declarations, definitions and model agreements.

This formed a basis for the second phase of the present work on Collections Mobility that has been done within the framework of the OMC Expert Group.

1.2 OUR STARTING POINT: THE AGENDA FOR CULTURE

The 2007 Commission Communication on a "*European Agenda for Culture in a globalizing world*" launched a wider reflection on the role of culture as a key element of the European integration process, based on common values and a common heritage as well as on cultural diversity.

The three objectives of the Agenda were: the promotion of cultural diversity and intercultural dialogue; the promotion of culture as a catalyst for creativity in the framework of the Lisbon Strategy for growth and jobs; and the promotion of culture as a vital element in the Union's international relations.

In order to implement these objectives, the European Agenda for Culture introduced new cooperation methods - the "Open Method of Coordination" (OMC) - as a more structured system of cooperation between Member States and EU Institutions.

As part of this Open Method of Coordination, four groups of experts from Member States have been set up, addressing respectively: the links between culture and education; the mobility of artists and other cultural professionals; the potential of cultural and creative industries and museum activities and the **mobility of collections**.

These working groups are intended to feed into the political discussions at EU level and make concrete contributions through identifying, sharing and validating best practices, making recommendations for specific measures for their implementation, making proposals for cooperation initiatives between Member

States or at EC level and for elements of methodology to evaluate progress, as well as formulating policy recommendations

The main objective of our working group, “Mobility of Collections”, has been to analyse and study the various issues related to the activities of museums and to propose a set of measures aimed at creating better conditions to facilitate and promote the mobility (lending and borrowing, both short and long term) of collections between the European Union museums.

1.3 WORK PLAN FOR CULTURE 2008 - 2010

The Work Plan for Culture 2008-2010 was based on the resolution referred to above and outlines the specific ways of implementing the priority actions. The Member States have appointed government officials and experts to discuss the related issues, report their conclusions and submit recommendations.

For 2008-2010, the Council set out the following priority actions:

- improving the conditions for the mobility of artists and other professionals in the cultural field;
- promoting access to culture, in particular through the promotion of cultural heritage, multilingualism, digitisation, cultural tourism, synergies with education, especially art education, and increasing the **mobility of collections**.

2 WORKING PROCESS:

The OMC group agreed that its task should be to build on the work of the preceding presidencies within the framework of the Action Plan for the EU Promotion of Museum Collection Mobility and Loan Standards. We decided to consider, report and make recommendations (including in the form of describing best practices, making proposals for cooperation between Member States or at the EC-wide level and to evaluate progress), as appropriate, by:

- Exploring new concepts of collections mobility (such a long term loans, the exchange of professionals and shared liability);
- Studying how to eliminate barriers to the mobility of collections that still persist in relevant legal and administrative frameworks at national level (e.g. insurance matters, lack of immunity from seizure);
- Comparing national laws on museums or equivalent in order to promote access to culture;
- Exchanging best “due diligence” practices for the prevention of theft, return of stolen goods, prevention of illicit trafficking of objects and collections and

examining ways of improvement, including by applying the relevant Community law.

2.1 Working Methods and timetable

Two Chair persons were appointed: Hillary Bauer (United Kingdom) and Rosanna Binacchi (Italy).

The Working Group was divided into five subgroups, each of which addressed a different priority identified by Member States in relation to mobility of collections in Europe.

1. State indemnity and shared liability agreements;
2. Immunity from seizure;
3. Long-term loans;
4. Prevention of theft and illicit trafficking
5. Mobility of museum professionals / Exchange of expertise.

The Working Group had seven formal “plenary” meetings on: 12 November 2008, 5 February 2009, 19 June 2009, 25 November 2009, 21 January 2010, 17 March 2010, and 20 May 2010 and on the majority of occasions also held preliminary meetings of the sub groups.

Experts from 25 Member States participated in this working group; 5 sub groups were identified and *hundreds* of professionals around Europe were involved in and contributed to our work.



3. KEY THEMES

As we worked in the five SPECIFIC sub groups, the following key themes emerged as the framework for our analyses:

3.1 Exploring new concepts of collections mobility (such a long term loans, the exchange of professionals and shared liability)

3.2 Benchmarking examples of successful procedures and practices that facilitate and disseminate information we have gathered, e.g. through websites and keeping these up to date (sharing best practice)

3.3 Identifying and making use of synergies and connections **with other cultural sectors** within the future EU cultural strategy (through links to cultural and creative industries; developing culture as a tool in international mobility and encouraging the use of standard or model procedures and pro formas for the exchanges of cultural objects (such as standard loan form, condition reports and facilities reports).

3.4 Underlining the legal and ethical importance of implementing the requirements for **due diligence** (including researching the provenance and history of cultural assets, not least as a means to prevent illicit trafficking in cultural goods), always considering the paramount importance of the **highest possible standards** at all points in the process, in order to safeguard the security and conservation of objects on loan.

3.5 Promoting schemes that **reduce the costs** of mobility (indemnity schemes; avoiding the cost of commercial insurance; shared liability for loans; avoiding loan fees)

3.6 Consolidating relations; exploring the potential of mobility as social factor, as a driver of the economy, welfare, tourism, as a relevant tool for education; use of structural funds)

3.7 Analysing any sources of funds that can be used to promote increased mobility of professionals and the exchanges of expertise (e.g. lifelong learning programmes; the Leonardo programme and any others that could be applied for by museums in relation to research and the mobility of professionals).

3.8 Promoting the mobility of professionals and the exchange of expertise (importance of collaborating, sharing; building trust; shared understanding of lending/borrowing standards)

3.9 Acknowledging the importance of collections research and knowledge management in maintaining and improving the quality of mobility projects (exhibitions).

3.10 We concluded that the work should be continued through the establishment by the Commission of a standing group on collections mobility (see conclusions page 38).

And a measure of our success is that we have already raised awareness of collections mobility issues within the EU – e.g. 8 more countries are now

considering introducing immunity from seizure and 4 more countries have already introduced state indemnity schemes.

4. Key recommendations:

SUMMARY OF KEY RECOMMENDATIONS FROM ALL THE GROUPS

- a) Promoting due diligence in order to prevent illicit trafficking;
- b) Exploring possibilities of overcoming problems related to introducing immunity from seizure;
- c) Promoting the use of state indemnity schemes as a standard procedure;
- d) Promoting long term loans and associated activities;
- e) Promoting the mobility of professionals as an essential activity to the mobility of collections by creating shared trust and knowledge between museums
- f) Ensuring that the highest possible standards of security underpin all borrowing and lending activities.

RECOMMENDATIONS

These are presented according to the 5 separate sub groups in which we worked ; each recommendation is linked to one or more of our ten key themes above; recommendations have been addressed at three levels: the Member States, the Museum community and the European Commission.



A: STATE INDEMNITY SCHEMES

OBJECTIVES

The main objectives of the sub group's work were:

- to create a comparative summary on all existing state indemnity schemes to be available for all museum professionals and decision-makers
- to promote the development and use of state indemnity schemes by demonstrating the astonishingly low rate of risk in a well-managed scheme
- to promote the introduction and use of “shared liability” agreements in order to widen the range of alternatives to commercial insurance
- to analyse how state indemnity and commercial insurance can be combined
- and to highlight the most important topics which should be considered and analysed in greater detail in future.

RECOMMENDATIONS TO THE MEMBER STATES ON STATE INDEMNITY

RECOMMENDATION 1

Member States that do not have state indemnity legislation in force should consider the introduction of such a system. In order to do so, they are encouraged to study the existing systems in the EU. Member states should take into account that according to the statistics the risks of the state indemnity schemes are very low. During the last 5 years there were only 7 reported damages claims in all European Member States plus Iceland, Norway and Switzerland for a total amount of approx. euro 80.000

EXPLANATION:

8 out of 30 examined European countries *have not developed a state indemnity scheme*. Their museums therefore face high insurance costs when setting up an international exhibition. The provision of state indemnity, which need not be expensive in terms of payments made, would allow such costs instead to be applied to the necessary regime of inspection security measures which must underpin any provision of state indemnity.

RECOMMENDATION 2

**Member States should consider adopting a law to give a formal legal basis to their state indemnity system.
Member States should specify in detail the procedure of compensation in case of damage, in order to enhance the trust of the lenders and the transparency of the system.**

EXPLANATION:

In some of the countries examined, the system of state indemnity exists, but *without any formal regulation*. The uncertainty deriving from such a situation may lead to the refusal of the proposed indemnity by a lender.

In many countries the *procedure for the compensation mechanism* 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 will work, with special regard to the timeframe for the payment in case of any eventual compensation.

RECOMMENDATION 3

Member States should avoid excluding certain periods from the scope of the state indemnity. They should instead provide “nail to nail” coverage.

EXPLANATION:

Several countries (approximately 25 %) exclude certain periods of increased risk from the scope of indemnity (e.g. transportation) or provide state indemnity only for the period when the loans are on their national territory.

RECOMMENDATION 4

Member States should provide online a clear and comprehensive description of their state indemnity scheme and the relevant legislation in English.

EXPLANATION:

In many countries, useful information on the state indemnity scheme is available on a website with English translation. This is very helpful for lenders who are considering whether they will accept the borrower country's state indemnity.

RECOMMENDATION 5

Member States should set up high security and environmental standards and seek assurances that these conditions are met before granting an indemnity.

It is strongly recommended that MS should establish a national inspection regime and accreditation of museums and galleries in order that they may qualify for such state indemnity.

Up to a certain threshold the Borrower should bear the own risk/first risk in an indemnity scheme.

Waivers of subrogation¹ should neither be granted nor purchased from commercial insurers to the benefit of the Lender and the Shipper.

EXPLANATION:

Each person participating in the indemnity chain must be encouraged to reduce the sources of risk to a minimum while the object is under their control.

RECOMMENDATIONS TO THE MUSEUMS ON STATE INDEMNITY

RECOMMENDATION 6

Museums as Lenders should make every effort to accept 100% state indemnity when offered by Borrowers.

Supplementary insurance coverage should only be asked for and provided if a risk assessment suggests so. The Lender should opt for the insurance offered by the Borrower, provided that the cost of the premium for comparable coverage is equal to or lower than Lender's commercial insurance.

Museums as Borrowers should provide the Lender with clear descriptions, on how state indemnity and commercial insurance are combined and how they complement one another.

Museums as Lenders should not seek for supplementary commercial insurance coverage for improbable risks such as war risk in Europe.

EXPLANATION:

8 out of 20 countries (40%) with an indemnity scheme in place may resort to using commercial insurance in combination with state indemnity in order to cover risks or periods not covered by state indemnity. As a rule, this practice is not encouraged by Member States, unless a risk assessment concludes that an extra commercial insurance is needed, or in order to avoid loans being withheld.

RECOMMENDATION 7

Museums lending objects should judge objectively the advantages and the weak points of the indemnity scheme offered. This evaluation should be the sole reason for accepting or refusing the indemnity scheme.

Museums acting as Lenders always should avoid concluding agreements with insurance companies/insurance brokers on sharing the profit related to the premium paid by a partner institution.

¹ The definition of subrogation in this context is a principle that gives the State the right to take action against any person (for example, a party which might be liable for negligent or wilful damage) for damages in respect of a claim which has been settled.

EXPLANATION:

Lack of reciprocity is often the reason given for refusing state indemnity. This means that a Lender does not accept the state indemnity offered by the Borrower, for example because in the past its own indemnity scheme was refused by the current Borrower when they were acting as a Lender.

Agreements between museums and “preferred” insurance companies can also seriously hamper the application of state indemnity schemes. This practice should be outlawed.

RECOMMENDATIONS TO THE MEMBER STATES ON SHARED LIABILITY

Shared liability is an agreement between two museums with an objective of sharing potential liability as far as possible in respect of specific risks involved in loan transactions. The Borrower is free to decide whether they wish to insure their share of the liability or not. This means that insurance is generally **only** taken out for those parts of the loan chain which involve an increased risk (e.g. transportation). At the same time the Lender may agree with the Borrower that the latter is not obliged to insure works of art against *all possible* risks. Thus, it is possible for instance to dispense with insuring against, (for example) total loss, loss of value, or damage caused by acts of war or nuclear disasters.

If no indemnity scheme exists or there are important exclusions of certain risks within a specific scheme, a shared liability agreement may provide a solution.

Shared liability implies reciprocal relationship between the Lender and the Borrower which is based on trust. These museums consider one another as equal partners using comparable standards with regard to the organisation of exhibitions. The two parties are also in agreement that museum objects are irreplaceable and are no part of economic trading (“*extra commercium*”).

RECOMMENDATION 8

Member States (and Museums) need to consider whether restrictive legal (statutory) regulations that hamper the introduction of a shared liability agreement should be maintained.

EXPLANATION:

Some museums that are not state owned may be prevented under the duties of Trustees that manage the museum, or their legislation from lending without

indemnity at full value: this needs investigation with a view to permitting shared liability arrangements.

RECOMMENDATIONS TO THE MUSEUMS ON SHARED LIABILITY

RECOMMENDATION 9

Museums should consider shared liability as an additional option to cut exhibition costs and establish a long term mutual collaboration with partner museums.

Museums should consider applying shared liability as a suitable way of protecting long term loans.

Museums that do not insure their collections when in their own premises should consider agreeing shared liability agreements with other museums, in their own country as well as abroad, that can offer similar levels of collections care and preservation.

EXPLANATION:

A shared liability scheme for international mobility of loans is an obvious way to reduce insurance costs for museums. It is furthermore an important incentive for museums to develop long term partnerships with other museums on a basis of reciprocity, thus enriching their own collections and exhibitions, as well as the collections and exhibitions of their partner museums.

RECOMMENDATION 10

Museums that already operate shared liability agreements within their national territory should seek to extend their shared liability agreements to partner museums within the EU.

EXPLANATION:

Museums are yet unfamiliar with the system of shared liability. Knowledge about the idea of shared liability, 'best practices' and promotion of this ideas are needed to convince the museums which have no experience with shared liability agreements so far, of the benefits shared liability agreements offer.

RECOMMENDATIONS TO THE EU COMMISSION

RECOMMENDATION 11

A future study on mobility of collections should make the information and the reports made by the present working group available on line and keep this fully updated.

EXPLANATION:

During its work the sub group found out that it was often quite difficult to gather up-to-date information on this subject. It is very important that the information that was gathered is kept available. This updated information is needed to promote the use of and disseminate the knowledge on indemnity schemes and shared liability agreements.

RECOMMENDATION 12

A future study on mobility of collections should:

- **further investigate the subject of valuation of works of art in the context of insurance/state indemnity**
- **draw up an inventory of useful standard forms related to insurance/ state indemnity/ shared liability and prepare these where necessary**
- **investigate the question of travelling exhibitions**
- **compile and promote best practices on shared liability**
- **make a comparative and thorough analysis of the existing waiver of subrogation clauses and on the effects of these clauses on the risk prevention attitude on all the actors in the state indemnity chain.**

EXPLANATION:

The examination of these topics would be crucial for those who work with state indemnity day by day, in order to better identify the risks and responsibilities to be borne by the state that grants the guarantee, as well as the lender, the borrower and the shipper. Further studies in this matter would have a positive effect on the acceptance of the state indemnity schemes too.

RECOMMENDATION 13

The Commission and the Member States should consider the possibilities of a European indemnity scheme or a possible European re-insurance system.

EXPLANATION:

The possibility of an indemnity scheme at the EU level is raised from time to time. The examination of this question however is beyond the limits of the present OMC group study on the mobility of collections.



B: IMMUNITY FROM SEIZURE

The main objectives of the sub groups were:

- To collect, compare and summarize the present state of action and developments in legislation concerning Immunity from Seizure
- To stress the importance of relevant international treaty obligations and the related international and European background when considering the introduction of immunity from seizure legislation
- To list the existing regulations applied by museums in the EU
- To share and exchange information and best practices

RECOMMENDATION 14 - to the European Commission:

There is no single, best or preferred way to address immunity from seizure. When considering immunity from seizure guarantees (including legislation) Member States should assess which approach would fit them best according to their different legal systems. They can however find very helpful information in the different approaches already adopted by other Member States.

It is not recommended that the Commission, or an expert group falling under the auspices of the EC, should attempt to prepare model legislation, or to determine any standardized content of immunity from seizure legislation.

EXPLANATION:

When it comes to the provision of immunity from seizure for cultural objects, different States follow different approaches, which can also be combined:

- immunity from seizure legislation, specifically addressing cultural objects;
 - specifically addressing cultural objects that are the property of foreign States;
 - specifically addressing cultural objects belonging to foreign States and private individuals;
- general immunity from seizure legislation, not specifically addressing cultural objects, but focusing on property of foreign States, intended for official/public use;
- considering cultural objects that are the property of foreign States, temporarily on loan, immune from seizure on the basis of “*customary international law*”;
- the issue of immunity from seizure guarantees in the form of “letters of comfort”.

The number of EU Member States enacting anti-seizure legislation for cultural objects is growing slowly but steadily. Over 60% of our countries have decided to introduce or are considering introducing Immunity from Seizure legislation for purposes of (or including) international art loans although different States follow different approaches.

RECOMMENDATION 15 - to the Member States:

Because the granting of an Immunity from Seizure guarantee could be in conflict with other obligations under international law, caution is advisable, when providing such guarantees. Careful research into such obligations will be necessary to identify any possible conflicts with such obligations, in order to reduce the chance of any conflict; see also the recommendations concerning due diligence.

Undertaking provenance research and implementing due diligence guidelines in practice may lead to the conclusion that, in individual cases, immunity from seizure cannot be guaranteed to certain objects.

(See Theme 3.3)

EXPLANATION:

There are a number of important international agreements which include a return obligation. Most important ones are the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the 1993 European Union Directive on the Return of Cultural Objects Illegally Removed from the Territory of a Member State. They all include return obligations to third States of origin within their provision (that is another State than the lending or borrowing State), whereby also seizure may sometimes be necessary in order to secure the return to such a third State.

RECOMMENDATION 16 - to the Museums Associations:

When assessing whether immunity from seizure can be guaranteed, existing obligations under international law will need to be thoroughly considered. Also, guidelines on due diligence, as well as the ICOM Code of Ethics, should be followed by all museums in the EU, and provenance research needs to be undertaken before loans are agreed.

(See Theme 3.3)

EXPLANATION:

The ICOM Code of Ethics² codifies due diligence and provenance research as obligatory for museums. There are quite a number of museums in EU conducting projects on provenance research.

² <http://icom.museum/ethics.html>

RECOMMENDATION 17 - to the European Commission:

The current sharing and exchanging of best practices should be sustained and continued, preferably in the form of a website maintained by the European Commission. It is therefore recommended that the European Commission should provide a platform for sharing and exchanging best practices on this Immunity from Seizure

(See Theme 3.5)

EXPLANATION:

It is very important that information already existing on relevant websites (e.g. NEMO, ICOM or CM 2.0 Project) should be easily assessable for all museum professionals, ministries, the academic world and schools teaching museums studies.

RECOMMENDATION 18 - to the Member States and the European Commission:

The focus of the attention by EU Member States and/or European institutions and museums should not only be on international art loans and their consequences within the geographical boundaries of the European Union; it should be considered from a global perspective.

(See 3.9)

EXPLANATION:

In practice Immunity from seizure legislation is most frequently needed when loans are not only conducted between EU Member States, but also between EU Member States and other countries.

RECOMMENDATION 19 - to the Museums organisations:

Museums should be aware of the fact that 'letters of comfort' have a less solid legal basis than immunity from seizure legislation.

(See Theme 3.2, 3.3)

EXPLANATION:

There are 14 EU MS which used or still provide letters of comfort when they are asked for. As a rule, such a letter of comfort cannot be considered as 'hard law', contrary to immunity from seizure legislation. However, sometimes such a letter may be sufficient for the lender; in other cases concrete legislation may still be necessary.

C: LONG TERM LOANS

The main objectives of the sub group work were:

- to disseminate information concerning long term loans
- to encourage the harmonisation of lending and borrowing practices among collaborating institutions
- to encourage the use of framework agreements and contract templates
- to put loaned objects into proper historical and cultural context and strengthen the profile of existing collections

RECOMMENDATION 20 - to the Member States

Member States should disseminate information on long term lending and borrowing, appointing bodies of advocacy (i.e. museums associations) establishing different forums aimed at favouring lending and borrowing on the basis of reciprocity and at building trust among tentative partners.

EXPLANATION:

Several respondents to the enquiries about Long term loans (2007 and 2009) mentioned that the idea of collection mobility was still not very widely known in the EU Member States. Therefore, a body of advocacy which should work for a change in attitudes favourable to lending and borrowing should be appointed in every Member State; information on the mobility of collections should be distributed to all organization levels, from national ministries to all types of museums managing collections; national dialogues on the mobility of collections should be created by establishing different forums where the subject is debated and by giving the subject and the dialogue all possible publicity, and alternative methods for the recognition of museums for their lending activities to be considered by Member States. Many institutions mentioned that they would be ready to loan objects to other museums in Europe if there could be a reasonable expectation of a fair balance in providing and receiving objects on a long-term loan basis. In their opinion, **reciprocity** would build trust between all participating institutions and would thereby enable growth in the practice of lending between institutions.

RECOMMENDATION 21 - to the Member States

Member States should encourage the harmonisation of lending and borrowing practices among collaborating institutions and eliminate all obstacles for accepting state indemnities, as the alternative to commercial insurance against risk of loss or damage to an object.

EXPLANATION:

Several of the respondents were of the opinion that entering into complex loan agreements with requirements that varied from museum to museum made lending and borrowing difficult. Many museums felt that lending and borrowing practices needed to be harmonised. The biggest concern was the risk of loss or damage of the object on loan and the potentially high cost for insuring commercially against such risk.

Therefore, Member States should encourage institutions to work within shared framework agreements to lower barriers to long term loans practices, both in terms of costs and insurance concerns. To further lower the barriers for long-term lending and borrowing, some institutions structured the lending and borrowing between collaborating institutions with framework agreements. The minimum lending conditions agreed upon in such agreements relate for the most part to the distribution of risk of loss or damage. When commercial insurance coverage is to be used, museums should remove requirements for such coverage while objects are on the premises of the borrower. Museums should not ask each other to compensate for any decrease in the market value of an object, should this be damaged while on the premises of the borrower.

RECOMMENDATION 22 – to the Member States and Museum Community

Member States should encourage the use of framework agreements and contract templates.

EXPLANATION:

Entering into complex loan agreements with requirements that vary from museum to museum is experienced as a burden and barrier to long-term lending and borrowing. Therefore, use of the following “standard”, harmonised documents by museums across the European Union is recommended. They include a basic set of conditions that should be contained in any arrangement and optional supplementary terms under different subjects. The instruments can thus be used as the basis of any loan arrangement for lenders and borrowers to add to and amend, as their particular

situation requires. The documents, which can be found in Appendices to this report, feature the following instruments:

- Long-term loans – Definition
- Long-term Loans – Conditions
- Flemish Frame Agreement conditions limiting borrower's liability





D: PREVENTION OF THEFT AND ILLICIT TRAFFICKING / Due diligence - Interoperability of database - Internet sales -

The main objectives of the following recommendations are:

- To promote among museum professionals and institutions awareness of adopting provisions (as promoted by Codes of Ethics, relevant international Conventions) to exercise **due diligence**.
- To adopt the essential requirements of due diligence in researching the provenance of cultural objects, inter alia, as a means to deter the illicit trafficking of cultural goods.
- To exercise transparency in the policies of cultural heritage institutions by adopting common standards and procedures regarding acquisitions, loans, legacies, donations as well as acting responsibly and, if necessary, introducing new administrative or legal measures or sanctions.
- To guide the relevant authorities in taking the appropriate measures in order to find means to achieve the interoperability of relevant databases at the European level. The wide availability of digital records related to cultural goods is considered critical for increasing the traceability of cultural goods and a valuable tool in the efforts towards prevention of theft and illicit traffic.

Recommendations on DUE DILIGENCE

RECOMMENDATION 23 - to the Member States and the European Commission:

It is vital that Member States incorporate or adopt provisions of Codes of Ethics relevant to due diligence to be exercised by cultural heritage institutions/ collectors/ owners/dealers.

A specific group should be set up by the Commission to work on framing a Code of Ethics concerning acquisitions, lending and/or sales of cultural goods by professionals of cultural institutions/collectors/owners/ dealers/auction houses.

(See Theme 3.4.)

EXPLANATION:

Overall, more than half of the MS have provisions concerning acquisitions by museums (see Annex on the Study of Due Diligence, data on Questions 1-2). This is a good indication that the principle of due diligence practice is taken seriously into consideration within the EU. Evidence is less conclusive regarding acquisitions by libraries and archives. Notably, only five (5) MS have mentioned specifically their policies regarding libraries and archives. As for collectors only ten (10) MS have provisions for controlling acquisitions by them (see Annex on the Study of Due Diligence, data on Question 18).

Although this is a good indication, it is still not sufficient for the promotion of the “due diligence” practice by professionals/collectors/owners/dealers. Member States are encouraged to adopt relevant provisions.

RECOMMENDATION 24 - to the Member States and the European Commission:

Member States are asked to introduce a procedure for overseeing the acquisitions made by cultural institutions/collectors/owners/dealers. When an object is offered for sale, bequest or donation and is suspected or proved to be *tainted*, it is important to adopt a certain fixed procedure, as this will deter the illicit trafficking of cultural goods and contribute to the return of an object to its country of origin (EU MS or third country) in accordance with European and international legislation.

The central authorities responsible for the implementation of the Directive 93/7/EEC should also be informed

(See Theme 3.4.)

EXPLANATION:

Very few member states have a procedure for controlling the acquisitions made by cultural institutions/collectors/owners/dealers.

Generally speaking, there is no conclusive evidence on the acquisition procedures practised by cultural heritage institutions/collectors/owners/dealers. More effort must be made, by one or more competent authorities, to gather detailed information from each MS regarding the control of such acquisitions, as well as regarding the synergies that develop between them.

The implementation of a procedure appears to be most important when there is suspicion that an object promoted for sale, bequest or donation might be or is proved to be tainted. Only few MS seem to follow a very specific procedure which step-by-step could be as follows:

- safe deposit of the tainted object (the museum has to inform the competent central authority and to provide the requested documentation)
- research (if there is a suspicion, the acquisition is not permitted).
- Confiscation (police authority is informed and a confiscation follows).
- legal procedure
- restitution (necessary steps are undertaken in order to return the tainted object to the rightful owner)
- compensation of good faith purchaser.

RECOMMENDATION 25 - to the Member States:

Member states are urged to disseminate to cultural heritage institutions the provisions of the 1970 UNESCO Convention³ concerning acquisitions, export authorisations and obligations of dealers (art. 6, 7, 10).

³ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

Common standards should be developed by Member States concerning the necessary documentation before the acquisition of a cultural object by cultural heritage institutions/collectors/owners/dealers, for example based on those provided by the 1970 UNESCO Convention and by *Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material*' (DCMS, October 2005)⁴.

(See Theme 3.4.)

EXPLANATION:

The type of documentation and verifying procedures practised when acquiring an object varies considerably between MS. Apart from the MS that do not have any type of provisions, other M- operate different levels of control.

Eight MS have in force rigorous procedures with defined steps and specific requirements for such documentation namely:

- documentation of export from the country of origin/provenance,
- previous owner,
- donation,
- inheritance and bequest documentation,
- home and details of purchaser or dealer,
- purchase agreement,
- declaration made in front of a notary,
- photographic evidence,
- family correspondence,
- auction catalogues,
- excavation field notes', and/or
- an import certificate (so far requested only by two member states).

The 1970 UNESCO Convention and also the (UK) DCMS's guidelines *Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material* are very good practical guides for the documentation to be requested and the procedures to be followed by M-S on this matter.

⁴ http://www.culture.gov.uk/images/publications/Combating_Illicit_Trade05.pdf

RECOMMENDATION 26 - to the Member States

The sanctions imposed when a cultural heritage institution/ collector/owner/dealer has acquired a tainted object have an effect on deterring illicit traffickers from depriving a country of origin from its cultural heritage. This effect should be studied in relation to the different legal systems in each Member State.

(See Theme 3.4.)

EXPLANATION:

Specific sanctions may have an effect

i] on deterring cultural heritage institutions/collectors /owners/art dealers from obtaining dubious objects, and

ii] on preventing the illicit traffickers from depriving a country of origin of its cultural heritage, given that reducing demand for unprovenanced objects, will also reduce the supply and consequently achieve a decrease in illicit excavations and trafficking.

The most severe sanctions are applied in four (4) Member States while four (4) others, whilst they are not applying penal sanctions, they enforce potentially detrimental measures regarding the accreditation of the museums involved and by extent their funding (see Annex on the Study of Due Diligence, data on Question 13).

RECOMMENDATION 27 - to the Member States:

Transparency of the lending process must be promoted within EU cultural heritage institutions. Loan contracts should incorporate terms regarding the “due diligence” research by the lender into the provenance of the objects being borrowed. The complete lists of the artefacts on loan should be made public to contracting museum parties, so that each participant is well aware of the other artefacts which will be on temporary display.

(See Theme 3.4.)

EXPLANATION:

Few MS search the provenance of an object before accepting it on loan. This is an indication of a "laissez-faire" practice by museum/libraries and archives in EU regarding due diligence. Best practice is applied by three Member States.

As the loans are not only sent to EU MS but also to third countries, it appears that there is no standard practice in many MS to undertake detailed research about the institutions and the objects participating before agreeing a loan. Good practice is applied by five (5) Member States.

Five (5) MS apply best practice by withdrawing from participating in the exhibition as a mechanism of pressure upon the organising museum institutions to be more scrupulous with matters of provenance and history. This prevents the recognition of a dubious collection or object and by extension its illicit trafficking (see Annex on the Study of Due Diligence, data on Question 14-16).

RECOMMENDATION 28 - to the Member States and to the European Commission:

In order to improve the traceability of cultural goods, Member States should consider the introduction of an import and/or movement certificate of cultural goods.

(See Theme 3.4.)

EXPLANATION:

A small number of MS have a policy regarding imports from third countries and/or policies regarding movement of such goods within EU, which is an important instrument for deterring illicit trafficking of cultural goods, within and outside EU borders.

RECOMMENDATION 29 - to the Member States and to the European Commission:

Member States should develop a better understanding of the Unidroit Convention⁵ which provides an important legal framework for the protection of cultural goods, and in relation to the principle of due diligence.

(See Theme 3.4.)

EXPLANATION:

In some countries, the incorporation of the 1970 UNESCO Convention and of the Unidroit Convention into their national laws means that cooperation between national authorities has been intensified. In these, training for policemen, customs officers and museum security guards has been provided systematically, creating and increasing awareness of the public and decision makers has also been taken into consideration. However, in others any non-adherence by owners and dealers to provisions regarding due diligence practice in acquisitions of cultural goods makes them liable to certain sanctions.

Although many MS have still not ratified the Unidroit Convention, this should not necessarily be a deterrent against adopting the ethical framework of the Convention

⁵ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)
<http://www.unidroit.org/english/conventions/1995culturalproperty/main.htm>

as a guiding principle for the matter of acquisitions of cultural goods and thus the practice of due diligence.

RECOMMENDATION 30 - to the European Commission:

Member states are urged to encourage the use of all the available databases for stolen objects before proceeding with acquisition of an object. The Interpol database⁶ is particularly recommended as a reliable source of information and Member States should put special effort to correctly incorporate updated information.

(See Theme 3.4.)

EXPLANATION:

Databases for stolen cultural goods (particularly that maintained by Interpol) are very important tools for checking the provenance and history of cultural goods and thus deter the promoting of illicit trafficking.

RECOMMENDATION 31 - to the European Commission:

Cooperation between Member States is highly recommended regarding the exchange of information, knowledge and experiences in the prevention of theft and the fight against illicit trafficking of cultural goods. The Commission should explore the possibilities how this can be achieved within the existing structures and legal framework of the Member States and the EU.

EXPLANATION:

In the fight against illicit trafficking of cultural goods and art theft, cooperation and exchange of information are crucial. In the EU Member States several institutions and competent authorities are charged with prevention of art theft and unlawful import and export of cultural goods. In order to be more successful, to avoid risks in miscommunication, it is necessary to promote the exchange of information, knowledge and experiences and to explore the way this can be achieved within the existing structures and legal framework of the Member States and the EU.

Recommendations on the INTEROPERABILITY OF DATABASES

RECOMMENDATION 32 - to the Member States and the European Commission:

Create technical and financial means to establish a European Data Base/platform focused on the legal circulation of cultural goods as well as

⁶ <http://www.interpol.int/public/workofart/default.asp>

sustain the development of national DB related to the legal circulation of cultural goods (export licenses and other legal national certificates).

(See Theme 3.4.)

EXPLANATION:

The 2007 C.E. study (*Analysis of structures and mechanisms for disseminating the data which authorities require to ensure that the directive on cultural property is being enforced*) proposed a European DB/platform focused on the circulation of cultural goods. Such an instrument would sustain the efficiency of the European Regulations on the export of cultural goods and, in extension to that, secure the implementation of the Directive 93/7/CEE on the return of cultural goods;

The study performed acknowledged a poor development of DB related to the circulation of cultural goods at national level and no readily available instruments to support the monitoring of the legal circulation of cultural goods at European level. The development of an EU DB/platform focused on the circulation of cultural goods is a project that would rely heavily on the development of circulation of cultural goods DB at national level.

RECOMMENDATION 33 - to the European Commission:

Launch an expert study that would provide a thorough technical assessment of the existing databases at MS level and an evaluation of the feasibility of a mechanism that would ensure the existing databases are interoperable and can “talk to each other”. This activity should be conducted by IT specialists, in cooperation with relevant representatives of national authorities.

(See Theme 3.4.)

EXPLANATION:

While being viewed as a desirable strategic step towards an improved traceability of cultural goods, the problems raised by the interoperability of databases requires a technical approach.

The assesment of the technical compatibility of the various databases existing across the E.U. must be performed by IT specialists, in a more thorough manner. The technical information collected by the subgroup (see individual report) should serve as a starting point for a more in-depth research. In this respect, the collection of contact information of the databases administrators was intended to support a future approach of this.

Recommendations on the SALES OF CULTURAL OBJECTS ON THE INTERNET

RECOMMENDATION 34 - to the Member States

It is advisable for Member States to formulate a standardized procedure for

specific actions to be undertaken in relation to illicit trafficking of cultural goods via the internet and to organize training of personnel for this purpose.

(See Theme 3.4.)

EXPLANATION:

Most countries do not have a standardised process for tracking down cultural goods on the Internet that are products of illicit trade and only a small number of Member States have trained personnel dealing with such illicit trafficking on the internet.

RECOMMENDATION 35 - to the Member States

Member States are encouraged to (a) make contact with websites to inform them of the need to practice due diligence and (b) require internet sellers, auction houses and private collectors to submit a list of past and present auctions of cultural objects and retain such lists for an adequate period of time before and after the auction.

(See Theme 3.4.)

EXPLANATION:

Only a small proportion of Member States have an understanding with internet-based sites so as to make them aware of the need to exercise due diligence before acquiring objects for sale.

RECOMMENDATION 36 - to the Member States

Member States are encouraged to create a type of “passport” for cultural objects with details of its provenance, in order to conform with requirements to practice due diligence. In addition, Member States should try to increase efficiency of tracing or searching for missing objects with the development of advanced software for the purpose, to implement more systematic checks at customs and require copies of the export/or movement licences or certificates.

(See Theme 3.4.)

EXPLANATION:

Most countries have developed a standardised description of objects for the documentation of cultural objects for the purposes of identification but more information is required on the history of the objects' provenance. The majority of MS either have inefficient means to control illicit trafficking on the internet or have not devised any means to do so at all

RECOMMENDATION 37 - to the Member States

Member States are encouraged to inform public and private collectors in particular and thus cultivate awareness about the risks of purchasing illegally

acquired cultural goods via the internet and encourage them to ask for full documentation before making a purchase. It would be advisable to take such measures as to request the introduction or insertion of a “flag” or notification that contains the regulations on the protection of cultural property when a prospective buyer is trying to buy.

(See Theme 3.4.)

EXPLANATION:

Public awareness is cultivated by various means on the illicit trafficking of cultural goods in general, but only a small number of Member States have undertaken any action concerning the cultivation of awareness for the illicit trafficking of cultural goods on the internet⁷.

E: MOBILITY OF MUSEUMS PROFESSIONALS

The main objectives of the following recommendations are:

- to facilitate the mobility of museum professionals within the Member States that will ultimately lead to greater mobility of collections through the exchange of knowledge and expertise
- to promote best practice among museums
- to create networks of trust between countries
- to disseminate and share the results and experiences

RECOMMENDATION 38 – to the European Commission

The European Commission should consider creating a specific source of funding to facilitate and support the mobility of museum professionals, for example by creating a dedicated strand within the Life Long Learning Programme.

(See Themes 3.1, 3.7, 3.8 and 3.9)

EXPLANATION

From the replies to the questionnaire that the sub-group circulated to the Member States, it is clear that very many museums are actively engaged in an informal way in various forms of mobility of their staff for the purpose of sharing expertise and exhibitions; researching their collections; training staff; and networking. However, funding was indicated as the main barrier to increasing this activity. The European Commission could channel this activity into mobility projects that are directly related

⁷ See for example the UK's cultural property advice website: www.culturalpropertyadvice.gov.uk/

to the mobility of collections, by introducing some kind of formal programme of mobility of professionals that is tracked at European level.

The projects could be broken down into types such as ‘sharing of expertise’, ‘visits of senior experts’, ‘collaborations on exhibitions’ etc. As with other EU funding programmes, criteria such as quality, relevance, impact and dissemination of the results would be taken into consideration in the application process. Particular weight could be given to those applications that have an end result directly related to collection mobility, such as an exhibition; although it would be important to invest in those proposals that could, in time, encourage shared access to collections, such as through the engagement of an expert to assess a part of a collection. A key consideration is that the application process should be as easy to navigate and complete as possible.

RECOMMENDATION 39 – to the European Commission and to the Member States

If an EU managed programme of mobility were introduced, a managed platform (website) could be created where projects could be recorded, and experiences shared.

When a managed platform (website) is identified, Member States should disseminate their respective information regarding mobility programmes with European initiatives.

(See Themes 3.5 and 3.8)

EXPLANATION

This could be the website of CM 2.0⁸ or of NEMO⁹. What is important is that there should be one space where experiences of mobility and shared expertise are recorded. In order to maintain up-to-date information on this site, each Member State would take responsibility for supplying their national developments and experiences.

A supporting website for the funding outlined above would track the ongoing mobility projects, and summaries and experiences could be posted. Partners could even be sought through a supporting website. Moreover, facilitating access to information would promote the effective participation of smaller museums.

RECOMMENDATION 40 – to Museums and the European Commission

Museums should actively encourage their professional staff to participate in their relevant networks to promote the exchange of best practise and sharing of experience and knowledge.

⁸ www.lending-for-europe.eu

⁹ www.ne-mo.org

A list of professional networks should be maintained on an EU mobility website, with links between them, covering details of forthcoming meetings.

(See Themes 3.1, 3.2, 3.8 and 3.9)

EXPLANATION:

Existing professional networks for museums actively create forums for networking, sharing of expertise and exchange of best practice.

Museum professionals cannot work in isolation; rather they need to collaborate with colleagues both nationally and internationally, in order to develop their knowledge and skills and, moreover, to develop a shared understanding of best practice and standards for the management of the collections in their care. These interactions establish relationships of trust which in the long term lead directly to international collaborations and partnerships – and to mobility of collections.

5. CONCLUSIONS

Recommendations for the EU Commission

- **The OMC on collections mobility has achieved a good deal in the limited time available and without any dedicated resources outside our own capability but there is still a good deal more work to do to build on the foundations we have laid. Therefore the issue of collections mobility should be included in the future council work plan for culture 2010 to 2012.**
- **We began by looking at a broad range of issues all directly related to collections mobility; however, in moving forwards, we recommend that the Commission focus their future work on a narrower range of topics that, in order to achieve a practical outcome in terms of mobility, must be driven forward with an input at the EU wide level; issues cannot be handled by MS acting alone or in a group without expert support.**

There should be a standing “monitoring” committee/observatory set up within the next work plan to implement collections mobility focusing on its future work on a narrower, more specified range of topics. In order to achieve a practical outcome in terms of mobility, the future work must be driven forward with an input at the EU wide level; issues cannot be handled by MS acting alone or in a group without expert support.

- **Its programme of work should include :**
 - **Sharing experiences and best practices in collections mobility including, through the maintenance of an up to date website, covering all the aspects of mobility as discussed in this Report.**

- **Preparation of additional guidelines and harmonised documents to further facilitate the straightforward borrowing and lending of cultural goods**
- **Preparation of a new Code of Ethics/guidelines on due diligence procedures concerning acquisitions, lending and/or sales of cultural goods by professionals of cultural institutions/collectors/owners/ dealers/auction houses;**
- **Commissioning a relevant technical study to asses existing databases on cultural goods and mechanisms to ensure they are interoperable [can “talk to” each other]: such databases to include lists of classified national treasures and databases of stolen objects**
- **Further consideration of state indemnity schemes and the possibility of an EU-wide scheme as well as the specific issues of the valuation of objects; shared liability schemes; subrogation clauses; travelling exhibitions;**
- **Identifying relevant sources of funding within existing and future EU programmes to promote these specific strands of collections mobility**
- **Identifying and place on the proposed website standard and model forms and guidelines to simplify the process of lending and borrowing**



6. ANNEXES

- Final reports
- Conclusions and Recommendations
- Questionnaires
- OMC WG Mobility of Collections Experts Group
- Pictures
- Long Term Loans literature
- National and international ICOM Committees
(present at www.icom.museum)
- The Bizot group of Museums Directors guide lines
- JLS-TOR Study cultural goods illicit trafficking

Web site addresses

www.icom.museum

www.lending-for-europe

<http://www.interpol.int/public/workofart/default.asp>

Mobility of collections, professionals and artists:

Mobility Matters

<http://www.mobility-matters.eu/web/index.php>

On the move. The performing arts traveller's toolkit

<http://www.on-the-move.org/EN/index.lasso>

<http://www.practics.org/>

Courants programme

<http://www.mcm.asso.fr/site02/courants/programme/index.htm>

Lifelong Learning

Lifelong Learning programme

http://eacea.ec.europa.eu/llp/index_en.php

Lifelong Learning programme. National Agencies

http://ec.europa.eu/education/lifelong-learning-programme/doc1208_en.htm

Documentation of collections. Due diligence

BAM

<http://www.bam-portal.de>

CER.es

<http://www.mcu.es/museos/MC/CERES/index.html>

Cornucopia

<http://www.cornucopia.org.uk/>

Europeana

<http://www.europeana.eu/portal/>

Hispana

<http://hispana.mcu.es>

www.beniculturali.it

Michael

<http://www.michael-culture.org/en/home>

Patrimoine Numérique: catalogue des collections numérisées de France

<http://www.numerique.culture.fr/mpf/pub-fr/index.html>

<http://www.matriznet.imc-ip.pt>

European Agenda for Culture

http://ec.europa.eu/culture/our-policy-development/doc399_en.htm

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