

## ***Final report and recommendations of the OMC Group on Mobility of collections to the European Commission and Member States.***

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### ***Building trust in mobility in Europe***

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I would like to start talking about the relevance of mobility of collections; in fact, it is not an innovative issue for all of you and it has been a key one in European policy since early 2000. Since that date, debates have taken place in various conferences and seminars in several countries in Europe. Aspects in regard with management standards and models, increasing and encouraging mobility of collections, but also, mobility of professionals connected with trust and networking, have been covered during these years.

Let me introduce the work of the OMC working group in the European Policy; first of all, just two words to remind you the three objectives in the European agenda for culture (Culture programme 2007-2013):

1. Cultural diversity and intercultural dialogue
2. Culture as a catalyst for creativity
3. Culture as a key component in international relations.

This agenda was endorsed by the Council (in its resolution of November 2007) and by the European Council (in its conclusions of December 2007).

In order to implement these three objectives, new working methods and partnerships with various stakeholders were introduced, like the Open Method of Coordination (OMC) framework. 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
- 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.

## ***Objective working group, “Mobility of Collections”***

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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.

But we have to distinguish a double focus in our approach:

1. On the one hand we would like to encourage the desired forms of collections mobility (e.g. temporary exhibitions).
2. and on the other hand we think it is necessary to make firm recommendations in regard to the undesired forms of collections mobility (illicit trafficking of cultural goods).

## ***Process of work***

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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.

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. The work started in working groups that concentrated on loan administration and loan standards, state indemnity schemes, valuation, selfinsurance and non-insurance of cultural objects, immunity from seizure, loan fees and long term loans, building up trust / networking and digitisation.

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.

Thanks to the work done before, the Group was aware of the main aspects to be considered in regard on mobility of collections. In fact, most of the themes already discussed since 2005 are still considered.

In order to facilitate the work, the WG 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.

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

The Working Group had seven formal “plenary” meetings since November 2008 until May 2010; on the majority of occasions also held preliminary meetings of the sub groups.

Experts from 25 Member States participated in this working group and *hundreds* of professionals around Europe were involved in and contributed to our work

### ***Summary of key recommendations from all the groups***

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The recommendations were addressed to the Member States, to museums and to museum professionals and organizations.

I am going to present briefly the results achieved by this group; I will try to focus the interest in the recommendations addressed to Museums and professionals.

#### **1. STATE INDEMNITY SCHEMES**

The main objectives of the group are mainly to promote and diffuse the use of state indemnity schemes.

There were so many recommendations; we can emphasize on:

- Member States that do not have state indemnity legislation in force should consider the introduction of such a system.
- Use the nail to nail coverage.
- Provide online a clear and comprehensive description of their state indemnity scheme and translation in English.
- Accept 100% state indemnity.
- They also focus attention in shared liability as an option to cut exhibitions costs and establish a long term mutual collaboration with partner museums.
- Recommend the EC to promote a study of mobility of collections focus on the valuation of works of art; travelling exhibitions; inventory of useful standard forms; to compile and promote best practices...
- They also think that the EC and the Member States should consider the possibilities of a European identity scheme or a possible re-insurance system.

#### **2. IMMUNITY FROM SEIZURE**

Immunity from seizure refers to the legal guarantee that cultural objects on loan from another state will be protected against any form of seizure during the loan period.

The main *objectives* of the group are:

- 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
- The most important conclusion is that there is no single, best or preferred way to address immunity from seizure guarantees. In any case, the number of EU Member States enacting anti-seizure legislation for cultural objects is growing slowly but steadily.
- The main problem is that some times 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 (e.g. international agreements which include a return obligation: 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. Sometimes, due to provenance, in individual cases, immunity from seizure cannot be guaranteed to certain objects.
- 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.
- Concerning *Museums Association*, 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.
- On the other hand, museums should be aware of the fact that 'letters of comfort' have a less solid legal basis than immunity from seizure legislation.
- This subgroup also ask for the support of the EC; they should provide a platform for sharing and exchanging best practices on this Immunity from Seizure

### **3. 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.
- 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.

This subgroup proposed many recommendations addressed to reduce the illicit traffic; most of them are addressed to Member States:

- incorporate or adopt provisions of Codes of Ethics relevant to due diligence to be exercised by cultural heritage institutions/ collectors/ owners/dealers. They also propose the Commission to set up a specific group 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.
- Introduce a procedure of overseeing the acquisitions made by cultural institutions/collectors/owners/dealers. The central authorities responsible for the implementation of the Directive 93/7/EEC should also be informed.
- Member states are urged to disseminate to cultural heritage institutions the provisions of the 1970 UNESCO Convention concerning acquisitions, export authorisations and obligations of dealers (art. 6, 7, 10).
- To introduce an import and/or movement certificate of cultural goods in order to improve the traceability of cultural goods.
- Better understanding of the UNIDROIT conventions.
- Encourage the use of the databases for stolen objects before proceeding with the acquisition of an object.
- Cooperation to exchange information, knowledge and experiences in the prevention of theft.

In regard with museum and museum professionals:

- 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.

They also proposed some recommendations in regard with the interoperability of data bases; the subgroup proposes create a technical and financial means to establish a European Data base/platform focuses on the legal circulation of cultural goods.

Another important point of interest in regard with illicit traffic are the sales of cultural objects on internet. The recommendations are also connected with the need to practice always due diligence and to research details of provenience.

#### **4. 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

Briefly, the recommendations are focus in:

- Member States should disseminate information on long term lending and borrowing.
- Encourage the harmonisation of 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.
- Encourage the use of framework agreements and contract templates

The subgroup has also proposed a standard document.

#### **5. 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

In order to do so, there are some recommendations addressed to:

- European Commission: 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.
- 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.
- To museums and EC: 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.

### ***Recommendations for the future***

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- Continue OMC-group working method suggestion: set up 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
- Focus on indemnity, shared liability, valuation and illicit trafficking of cultural goods.

We were able to connect the work we did within the OMC working group with a project that was financially supported by the Commissions Cultural Programme. In this way we are able to spread the results more widely among our target groups: *the Collections Mobility 2.0, lending for Europe 21<sup>st</sup> century* ([www.lending-for-europe.eu](http://www.lending-for-europe.eu))

My personal feeling is that we very much enjoyed working together. It was an opportunity to know the different points of view in Europe in regard with collections mobility. The frequent meetings in Brussels created also a valuable network of experts who are still in contact to consult each other in museum matters outside the OMC meetings.

And one of the best results of this experience was to know that some of the outcomes of discussions within the OMC group were taken home by the representatives and immediately lead to policy adjustments on national level (e.g. state indemnity scheme).