Free movement of collections

The effects of a modified indemnity scheme on costs associated with short- and long-term loans of cultural property

Client: Ministry of Education, Culture and Science

Het Verzekeringsinstituut

Rotterdam, January 2004

SMi/NT/NV/AG11236

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Foreword

The Indemnity for Loans Subsidy Scheme was set up in the Netherlands to enable museums to apply for indemnity or compensation for temporary exhibitions in order to limit the costs of their organisation.

Since the Directorate of Cultural Heritage at the Ministry of Education, Culture and Science (abbreviated to OCW in Dutch) had been picking up signals from the museum community that the scheme was not as effective as it could be, it commissioned a study to determine how the scheme has functioned in recent years, how the Dutch scheme compares to similar schemes in other countries, and what improvements could be made. The study was conducted by ECORYS-NEI and the Erasmus University Insurance Institute, both of which organisations are based in the Dutch city of Rotterdam.

This document is a detailed summary of the report of the same name that was submitted to the State Secretary for Culture and Media in January 2004.

1 The background and questions addressed in the study

Cultural policy and museum responsibilities

The cultural policy pursued by the Dutch government is designed to guarantee the supply of culture and to make it visible and accessible to as wide an audience as possible. The museums involved have an important responsibility in this respect.

Although a significant number of collections of art and cultural objects and the buildings that house them are owned by the state, museums in the Netherlands are not government institutions. Since the statutory privatisation of the state museums on 24 June 1993, the Dutch government considers them to be 'cultural enterprises' responsible for the management and exhibition of their collections, on behalf and for the benefit of society. As part of the privatisation, it was necessary to further regulate the museums' management of the collections in an agreement. A model management agreement was therefore drawn up between the State of the Netherlands, on the one hand, and a privatised national museum, on the other.

The commercial operation of the collections requires museums *to increase access to and visibility of their collections*, not only by organising activities in their own buildings, but also by *improving the mobility of the collections and intensifying the movement of loans*. The goal was more widely interpreted for the purpose of this study, however. In a time of European integration, the exhibition of Dutch museum collections should not be limited to Dutch museums and, at the same time, it is important for Dutch museums to exhibit works of art and cultural artefacts from foreign collections. This broadening of the interpretation of the responsibilities is also in line with the aspirations regarding the promotion of an integrated European cultural policy that the Netherlands intends to implement when it takes over the chair of the European Union. Increased mobility of (parts of) national collections and intensification of movements of short- and long-term loans may function as important instruments in this matter. And finally, more attention should be paid to the accessibility of important works of art and cultural artefacts owned by private collectors.

Collection mobility by means of short- and long-term loans

The (inter) national movement of loans improves the visibility of the supply of Dutch and European culture in two ways, and consequently the knowledge and appreciation of national culture.

Firstly, the encouragement of loan movement makes it easier to organise major retrospective exhibitions, the cultural significance and commercial success of which would be less if certain objects were not included. These could comprise *temporary loans* as part of thematic exhibitions (subjects, time periods) or exhibitions dedicated to famous artists or other cultural exponents. Loans fill gaps and can be used to complete the intended retrospective. These kinds of exhibitions are usually large-scale but short-lived crowd pullers.

Secondly, the accessibility of Dutch and European cultural property could be improved by using more long-term or *(semi-) permanent loans*. Like other businesses, museums have to make choices. They have a stock of capital in the form of valuable collections that are usually built up over a long period of time. The collection of objects in storage is sometimes far larger than the works actually on show. Nevertheless, a museum collection can hardly ever be referred to as 'ideal'. On the one hand, the stock will often be seen as incomplete from the point of view of the goals current at the time, and on the other, many objects will not be suitable for the museum's planned collection because they are acquired in legacies from donors or benefactors.

A museum can try to improve the composition of the collection by pursuing a dynamic acquisition policy of buying and selling. But although the sale of objects from its own collection is an option, it often creates problems, such as emotional or legal aspects of legacies, for example. Long-term inter-museum exchanges of valuable artefacts often have more chance of success and are becoming more and more commonplace as a result. Misallocations arising from less than ideal collection composition do not necessarily have to lead to permanent storage of valuable artefacts and the need to buy and sell objects is reduced.

This improves the efficiency of commercial management, on the one hand, while a fuller supply of cultural objects meets existing cultural needs and the cultural policy geared to it, on the other (in economic terms, welfare increases).

Policy to improve collection mobility

More loans will lead to a greater risk of loss or damage of the loaned artefacts due to the extra risks associated with their transport and exhibition. Furthermore, the risks involved appear to be greater for short-term loans than for long-term ones. In the latter case, the transport risk is only run once. Assuming that the museum borrowing the objects meets the same security standards as the lender, there is no reason to believe in a systematic difference in the level of risk while the artefacts are at the borrowing museum to when the objects stay in the lending museum.

The greater the risk of damage to or loss of an object, and the higher the expected cost of the damage, the lower the chance of the object being lent out, and, if the object is lent out, the more expensive the insurance premium charged to the borrower to cover the liability risk to the lender.

In an attempt to prevent the costs to be paid by the borrowing museum from forming an obstacle to the loan system, a number of policy agreements have been made in the Netherlands.

The framework agreement

First of all, it is possible for the lender and borrower to sign a contract limiting the liability risk run by the borrower on an artefact that museum borrows. The idea behind this is that, as part of their duty to make cultural objects accessible to the public, museums conclude a loan agreement with other museums stating that artefacts can be lent

out to another museum for a long time or for a temporary exhibition without the borrower bearing the (full) risk of damage or loss during the loan period.
A similar form of *limitation* of the liability risk, which is intended to encourage collection mobility, is a scheme for inter-museum loans known as the *Framework agreement on loan movement*, which the Dutch national government has concluded with four municipalities on the basis of reciprocity. This scheme is based on the scheme regarding loans in the model management agreement referred to earlier (art. 5 and 8).

The inter-museum loan scheme differentiates between the dynamic risk of transport and the static risk of artefacts staying in the borrowing museum.
During *transport* from the lender to the borrower and vice versa, the borrower is fully liable from door to door if a work of art goes missing or is lost altogether, as well as for all material damage caused to an artefact, including all wear and tear, etc. as a result of normal use. The borrower is explicitly not liable for the loss of value of a work of art resulting from material damage.
During an artefact's *stay* in the care of the borrower, that museum is not liable for the object going missing or being lost altogether. The borrowing museum is, however, obliged to do everything in its power to keep the object and, if it does go missing, to retrieve it. In the case of material damage, the borrowing museum is again not liable for any loss of value of the work after restoration. It goes without saying that meeting the security standards set by the lending museum forms a *conditio sine qua non*.
The limitation or even exemption from the risk apportionment for the borrowing museum saves insurance costs and encourages collection mobility.

Agreements on the limitation of the liability risk are not likely to be concluded easily with private lenders and museums with small private collections, since the cultural possessions in that case primarily represent an asset value. Most of them will insist on full compensation for loss of or damage to their possessions arising from any actual loss or damage that occurs while artefacts are being transported to or kept at the borrowing museum. The obvious instrument to guarantee this compensation is to take out liability insurance.

The indemnity scheme
Another solution to the risk problem for borrowing museums is to reduce the costs associated with the risk apportionment. One result of this concept is the Indemnity for Loans Subsidy Scheme: by assuming the indemnity of the often foreign owners of works of art loaned out to museums on the basis of *first loss* as it were, the state reduces the costs incurred by the borrowing museum because only the remaining liability risk has to be covered by insurance.
By opting for the model in which the state bears the risk of *first loss* and not, for example, like the United Kingdom, where the state assumes 100% of the indemnity, the loaned artefacts still have to be insured. When indemnity is granted, the premium charged to the museum is substantially reduced.[1]
Museums in the Netherlands believe that due to the restrictions included in the Dutch scheme, such as a maximum indemnity of 5% of the insured value, the current indemnity

1 For the amount of reduction, please refer to the heading 'assessment results' in Chapter 2 of this summary.

scheme does not reduce costs sufficiently and fails to impress as a government guarantee or quality mark.[2]

The situation outlined above explains the following points of view circulating in the Dutch museum world:
- The liability risk associated with loans and the (high) premiums charged to the borrowing museum form an obstacle to collection mobility;
- The current indemnity scheme and framework agreement, which are designed to curb these costs, have not had sufficient effect;
- A better indemnity scheme would be advisable, and it would be a good idea to look at indemnity schemes in other countries, partly due to the desire to offer potential lenders a 'quality mark' and to persuade them to agree with the borrower's insurance arrangements.

The questions addressed in the study
With the above in mind, the Directorate of Cultural Heritage at the Ministry of OCW commissioned a study[3] of the Indemnity for Loans Subsidy Scheme in order to answer the following questions:
- How has the scheme, which was launched in 1989 to enable museums to apply for indemnity for exhibitions showing temporary loans, functioned so far?
- How does the Dutch scheme compare to indemnity schemes elsewhere?
- How can the indemnity scheme be improved so that it encourages more loans, leading to greater collection mobility as a result?

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2 For more information about the government quality mark, see note 8.

3 The study was conducted by ECORYS-NEI and the Insurance Institute of the Erasmus University (*Free movement for collections; the effects of a modified indemnity scheme on the costs associated with short- and long-term loans of cultural property*, Rotterdam, December 2003).

2 Assessment of the existing indemnity scheme

A few characteristics of the Dutch indemnity scheme
The following section comprises a number of provisions and characteristics of the indemnity scheme currently in force in the Netherlands.

1. *Aim.* To limit insurance costs and/or make it possible to hold temporary exhibitions of exceptional interest, i.e. exhibitions that (1) provide an important vision of periods, questions, people or products of cultural-historical significance, (2) are intended to invoke appreciation for such people or matters, and/or (3) show a major compilation of important artefacts that would otherwise be difficult or impossible for people in the Netherlands to see.

2. *Procedure and criteria for granting indemnity*
   - An application for an indemnity certificate must be accompanied by a *draft budget* for the exhibition. The budget will contain an item for estimated insurance costs that is partly based on the estimated value of the artefacts a museum intends to borrow. This estimate is then used as a basis for the request for at least [4] one *insurance quotation*. Each quotation should indicate what reduction percentages will apply for 3 to 4 different indemnity sums that may be granted. The quotation or quotations should be submitted together with the application;
   - A condition for granting indemnity is that it generates *substantial savings on the insurance costs*. In practice, the standard is a percentage of 35 to 40 per cent on the insurance policies covering loans;
   - Indemnity can only be granted if the exhibition meets the *content requirements*. To ensure that it does, it is inspected by the independent Netherlands Institute of Collections, which also sees to it that the exhibition meets the set security requirements;
   - After conducting a financial assessment of the application, which includes a check to establish whether indemnity would result in a *substantial saving*, the Directorate of Financial Markets at the Dutch Ministry of Finance decides an indemnity sum. The *amount of indemnity* is determined on the basis of a set of graduated rates with a certain percentage of the insured value, where the percentage falls as the insured value rises (see table 1 below). This set of rates is not included in the scheme. An additional condition is that the amount to be allocated must not lead to an overrun of the *budget ceiling* of EUR 227 million per annum;

[4] The original requirement was that at least three insurance quotations were to be submitted. Due to the reduction in the number of insurance companies active as providers in this sub-market, this requirement has since been mitigated to at least one quotation. The market power of the remaining players seems to have increased as a result, which could lead to higher costs for policy holders.

- Finally, the Minister for OCW officially approves or rejects the application and the proposed indemnity sum.

3. *Recipient of indemnity subsidy*. The indemnity is extended and, in the case of damage, paid out to the borrower, i.e. to the museum organising the exhibition.

4. *Settlement procedure in the case of damage*
   - The basis for the indemnity is the value of the artefact, as stated in the loan agreement between the borrower and the lender.
   - If an artefact is damaged, the indemnity comprises the costs of repair or restoration, increased where necessary by the loss of value after repair or restoration compared to the basic value referred to above.
   - In the event of a dispute regarding the value after repair or restoration, the damage is determined by an expert appointed by each of the parties. Prior to commencing their valuation, these experts appoint a third expert who, in the event no agreement can be reached by the other two, will determine a value between both appraised values.

Table 2.1 Diagram of graduated rates used to establish indemnity sums

Insured value of the loaned artefacts	Amount of indemnity
EUR 0 – 250 million	5% of the insured value
EUR 250 – 500 million	5% on the first EUR 250 million 3% on the remainder (insured value -/- EUR 250 million)
EUR 500-750 million	5% on the first EUR 250 million 3% on the second EUR 250 million 2% on the remainder (insured value -/- EUR 500 million)
EUR 750 million and above	5% on the first EUR 250 million 3% on the second EUR 250 million 2% on the third EUR 250 million 1% on the remainder (insured value -/- EUR 750 million)

Assessment results

The assessment consists of a series of interviews with representatives of museums that have or have not used the scheme, as well as with the insurance sector, the art trade and other experts. It also includes an analysis of the information concerning approved and rejected indemnity applications made available by the Ministries of OCW and Finance.

The scheme has been running since 1989. Initially, 100% indemnity was extended, provided that museums met the set requirements. In 1990, however, the scheme was changed to a system of *first loss*, with significantly lower indemnity percentages. Since then, indemnity has been requested for 39 exhibitions and the application was approved in 27 cases. The information in these applications has been analysed, leading to the following conclusions.

There has never been a case of damage in which compensation was paid under the subsidy scheme.

The insured value of the 27 exhibitions for which indemnity was granted averaged EUR 420 million. The average gross insurance premium[5] prior to the indemnity grants was EUR 320 thousand, the average indemnity sum granted EUR 14.6 million, and the indemnity grants resulted in an average premium reduction of 33%.

In the period from 1990 to the present, a total of less than EUR 400 million of indemnity has been granted for the 27 exhibitions, with a total insured value of over EUR 11 billion. The subsidy ceiling of EUR 227 million a year has never been reached.
The total amount of gross premiums for these exhibitions was EUR 8.6 million. The indemnity grants cut this figure by a third. The total organisation costs for exhibitions with indemnity grants budgeted by the museums came to EUR 22.1 million. The indemnity grants reduced the share of insurance costs in the total costs from 20 to 13 per cent [6].

Further analysis of the available information showed that the indemnity extended each year amounted to around 4% of the insured value of the exhibitions. In the period under review, there was no systematic change in the risk perception among insurance companies and the premium permillages gradually fell. Nevertheless, the premium reductions extended by the insurance companies on the basis of granted indemnity fell systematically, from approximately 45% in 1990 to less than 25% in 2002. Combined with factors such as the rise in value of artwork in general, this resulted in the granting of indemnity leading to fewer and fewer museums seeing a fall in the share of insurance costs[7] in the total budgets for exhibitions.

The results of the interviews showed that museums that have recently submitted an application for indemnity or considered doing so advocate an improvement and liberalisation of the scheme. In the first place, they find the Dutch scheme to be less than generous and inefficient in comparison to some schemes in other countries, where 100% indemnity is sometimes granted, so that museums no longer have to take out private insurance against the risk of damage. The level and increase in insurance costs in the total exhibition budget, as well as the fact that there has never been a case of loss or damage and an alleged lack of clarity surrounding the way in which insurance companies identify risk and set premiums begs the question of whether a more liberal indemnity policy would be more efficient than private insurance policies.

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5 The size of the premiums can be calculated as follows: for a 2-month exhibition, an insurance company charges approximately 0.16 ‰ for coverage of the risks while an artefact is on the borrower's premises, or about 0.5% on an annual basis. For the coverage of transport risks, the premiums vary from 0.1 ‰ to 0.4 ‰, depending on the transport method and origin and destination of the loans. The premium permillages fell during the observation period.

6 The percentages indicated here were calculated on the basis of exhibitions with indemnity for which both data on gross and net premiums and budget amounts was available (in this case 23 of the 27).

7 In the first half of the period studied, the share of the gross insurance costs, including the insured value, of exhibitions with indemnity amounted to 16.9% of the budget available for organising exhibitions. The extension of indemnity cut the premium to 10.5%. In the second half of the same period, however, the net premium costs rose by 5.7% to 16.2% of the organisation budget, so the benefit in regard to the original gross premium costs of 6.4% fell to 0.7%. This resulted in an apparent reduction in the effectiveness of the indemnity scheme. In the second half of the period, however, the gross premium sum rose to 23.9%, which means that at that time, the scheme actually implied a reduction of 7.7. %, calculated on the basis of 23 of the 27 exhibitions (see previous footnote).

All those who were interviewed consider the quality mark function[8] of the indemnity granted by the state to be of great importance, regardless of the indemnity percentage. They did say, however, that this kind of quality mark would be more convincing to potential lenders if the indemnity was extended directly to the lender, instead of to the museum borrowing the artefacts.

Furthermore, the study revealed that many museums experience the application procedure in the current indemnity scheme as highly laborious and urge that the scheme be simplified. Since the end of 2002, additional agreements have been made between the ministries of OCW and Finance, which make the subsidy scheme more transparent.

The results of the assessment support the second point of view held by the parties involved with regard to the existing indemnity scheme (see Chapter 1).

[8] The 'quality mark function' means that lenders have more confidence in the loan if the government assumes (part of) the liability for damage and loss. This may lead to their being willing to withdraw the requirement that the borrowing museum has to pay for its own (expensive) insurance or, because of the extended indemnity, return to the initial refusal to give up loans. For more information on this subject, please refer to the discussion of the Anglo-Saxon model.

3 Museum insurance on the private market

The existing insurance options

To get a good idea of the significance of the indemnity scheme in relation to the costs of insuring an exhibition for which an application for an indemnity certificate has been applied for, the report provides insight into the insurance options offered to museums by private insurance companies in the Netherlands.

The basic principle is that the national government does not insure its possessions, including its cultural property. Museum collections owned by provincial and municipal authorities are insured, however, but the value of these collections is so high and the risk of total loss of the entire collection is so small that they opt for insuring only part of the full value on a *first loss* basis. This means that the damage to the insured sum is compensated for in full.

The unique and inimitable character also implies that it is often impossible to find an effective way of establishing a value, so that in the event of loss or irreparable damage, an insurance policy cannot offer a solution. Furthermore, if there is no case of *total loss*, the large museums' restoration and repair capacity for normal maintenance can be used for full or partial damage repair at a marginal cost.

In this respect, the position of private museums with sizeable collections can be compared to their provincial and municipal counterparts.

Insurance for municipal museums is usually taken out collectively by the municipal council in question for the benefit of the municipal museums named in the policy and for the benefit of lenders and/or those either fully or partially liable in the case of damage. There is also an insurance policy for the benefit of a third party, in which the owner risk of the lender is also insured. This means that the lender is entitled to claim compensation from the insurance company or companies for damage to the loaned artwork.

The structure and extent of the coverage

Coverage in the most common policy on the private insurance market usually consists of two separate sections, each with an independently insured sum, i.e. coverage of the museum's own collection and (semi-) permanent loans from third parties[9] at the insured location, on the one hand, (hereafter referred to as *'the fixed coverage'*) and the coverage for incoming and outgoing loan movement[10] as part of temporary exhibitions or otherwise, anywhere in the world, including transport (hereafter referred to as *'the temporary or exhibition coverage'*), on the other.

[9] (Semi-)permanent means for an unspecified period of time or for a period of more than two years.

[10] Loan movement here means a period of no more than two years.

All damage to or loss of an insured item is covered, regardless of the cause, with the exception of a number of exclusions[11]. The insured items are covered during their stay at locations referred to in the insurance policy, as well as during transport between the locations referred to in the policy, from ‘nail to nail’.[12]

In mutual agreement, the value of an insured item under the policy is considered to be the value immediately prior to the occurrence of damage as if the damage has been assessed by an expert third party. In fact, this means that this valuation can only be called into question in the event of deception. The value can be demonstrated by means of the insured party’s registration of the insured items, the insured party’s latest statement with regard to incoming or outgoing loans or certificates issued as part of the insurance in question. In the case of damage and in the absence of a specification or value registration, an expert will determine the value immediately prior to the occurrence of that damage. In the event of damage, the amount of compensation is the difference between the value of the pre-appraisal and the value immediately after the occurrence of damage or, if the expert(s) consider the item to be repairable, the costs of those repairs. In the latter case, the loss of value after restoration work is also compensated for.

(Semi-) permanent loans
Items on (semi-) permanent loan are insured during transport to locations other than those stipulated in the policy, during their stay at those locations and during the return transport from nail to nail.

The (temporary) exhibition risk
The (temporary) exhibition risk including transport is covered. In comparison to the ‘fixed coverage’, this coverage is more liberal since exclusions 5 - 9 listed in footnote 11 do not apply.
Now that the exhibition risk is partly insured under the continuous policy, it is usually only necessary to take out supplementary coverage as part of the organisation of an exhibition for which an indemnity certificate has been applied for. The coverage for the supplementary insured amount usually matches that of the continuous policy.
Under the existing indemnity scheme, which is still officially in effect, it appears that the Ministry of Finance only takes the premium for the supplementary insurance into account when handling an application for an indemnity certificate.

The effect of the framework scheme on the policy conditions and/or premium fixing
As indicated above, the applicability of the framework agreement concerning the movement of loans concluded between the Dutch national government and a municipal authority leads to a limitation of the borrower’s liability risk vis-à-vis the lender with regard to damage to the work on loan. An exception both during transport and an artefact’s stay at the borrowing museum is the liability for loss of value after restoration,

[11] The exclusions comprise damage and/or loss caused by 1. inherent defect and vice; 2. acts of war; 3. nuclear reactions; 4. intent, deliberate recklessness, gross negligence; 5. vermin; 6. normal wear and tear, oxidation and other slow-working influences; 7. restoration, cleaning, repair or incorrect treatment; 8. loss, first discovered during periodical stocktaking; 9. government intervention, seizure, requisition or confiscation; 10. excrement and 11. slow-working effects of weather.

[12] From nail to nail means: from the moment a start is made on the actions performed with or on the insured item required for the journey until the moment the insured item arrives at the destination specified by the insured party.

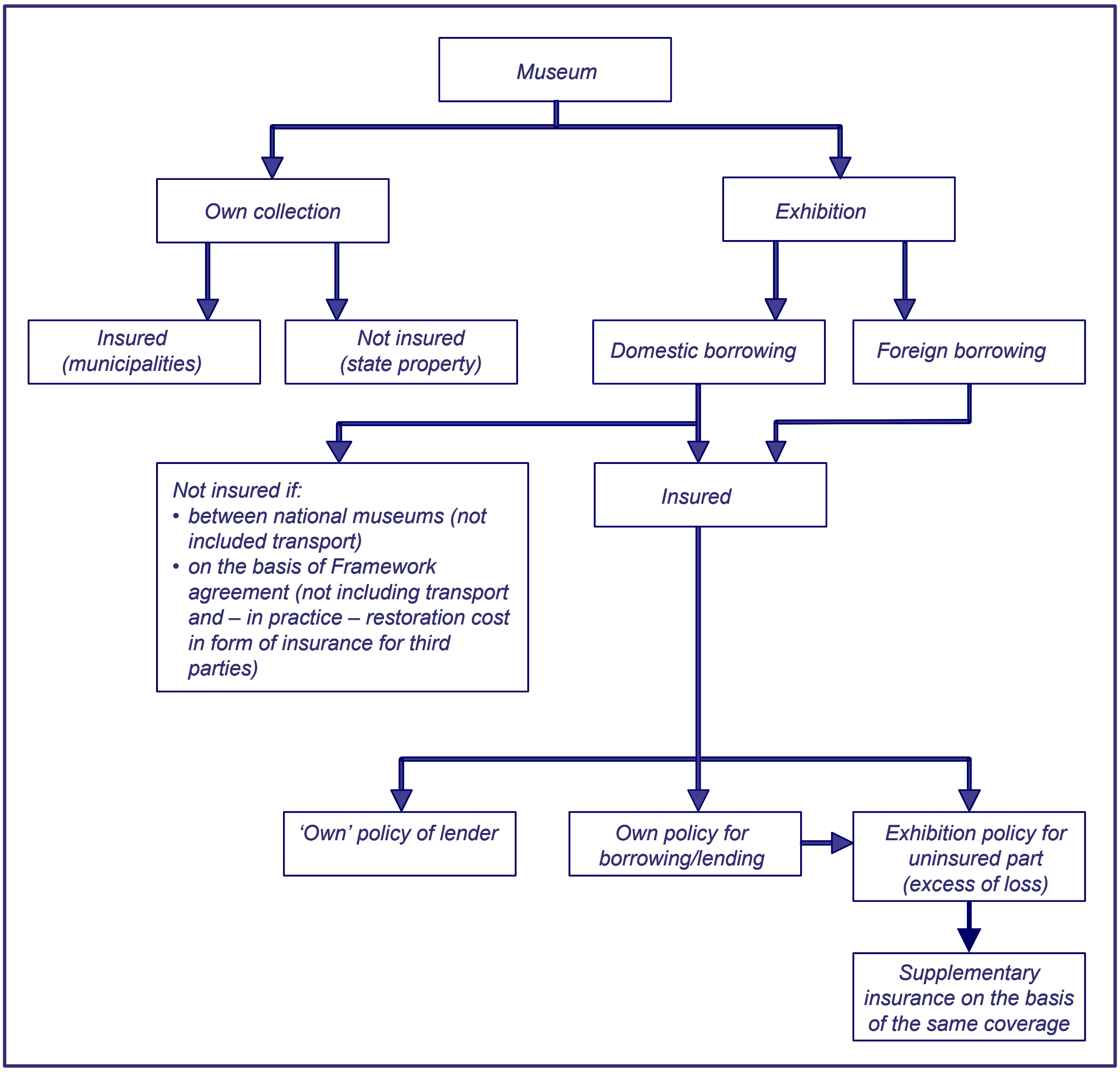
while the borrower is only liable for the restoration costs in the event of material damage to a borrowed item during its stay at the museum.
Although a museum is not obliged to insure an object it borrows under the framework agreement, practice has shown that municipal museums are particularly prone to do so. This is due to the fact that the borrower does run a certain amount of risk, and is consequently exposed to the risk of a claim from the lender. As far as transport is concerned, the risks involved are considerable. This has been made apparent in the above and in the comments in Chapter 1 under the heading Policy to improve collection mobility. In the policy conditions, the coverage has the same limitation of the liability risk for the borrower.[13] This means that the coverage is also limited for the owner risk of the lender, so the risk of lending artworks is not fully covered. The limitation of the coverage is also expressed in a reduction of the premium rate for both transport and the work's stay at the borrowing museum.

The above is shown in the following diagram of the current structure of museum insurance coverage on the private market. Note that indemnity is not included in the diagram because it is not a form of insurance coverage. Indemnity may affect the insurance coverage of exhibitions, i.e. in the right-hand side of the diagram.

The effect of the indemnity scheme on the policy conditions and/or premium fixing
In accordance with the general terms and conditions of the most common insurance policies, when the 'Dutch indemnity scheme' is applied, it does not cover the amount the museum can claim under the indemnity scheme. In the practical situation, there is a (tacit) agreement that the private insurance company will also cover the owner of a damaged work of art for the part of the damage that is covered by the national government in accordance with the indemnity certificate and that the government will repay that sum to the private insurance company in accordance with the indemnity scheme.

[13] In the event of damage or loss during transport, only total loss or the restoration and revendication costs are covered, while during the period in which a work of art stays on the borrower's premises, only the restoration and revendication costs are covered.

Figure 3.1 Diagram of current usual insurance coverage for museums on the private market



4 Comparison of indemnity schemes abroad

What the indemnity schemes selected as part of this comparison study have in common is the fact that they are all designed to encourage the cultural participation of and in their own country. The comparison study of the schemes in the various countries shows that there are a number of different ways to grant indemnity. The study looked at the various forms and the indemnity schemes in six countries were selected for the comparison of the essentials of the schemes (Canada, Denmark, Finland, France, the UK and the USA).

Analysis of the comparison of essential aspects produced the following conclusions:
1. In all of the countries except France, the indemnity granted by the national government covers the initial risk (*first loss*). This is the best system when it comes to generating savings on premium payments.
2. In the Anglo-Saxon countries and Denmark, the indemnity is granted to the owner of the artwork.
3. Only the United Kingdom uses a system of theoretically unlimited indemnity for the full value of the artwork in question, although the allocation of indemnity ends when the outstanding indemnities reach the overall financial ceiling.
4. All six schemes have an excess system to eliminate small claims. The borrowing museum is obliged to pay this to the owner of the borrowed artefacts.
5. Only the schemes in the United Kingdom and the United States cover long-term loans.

The system in the United Kingdom, in which the state acts as guarantor for all financial damage, renders insurance superfluous, which may lead to the following consequences:
- Damage is no longer the liability of insurance companies but of the government;
- Museums do not have to pay premiums for loans;
- A grant of indemnity results in a reduction of exhibition costs and may, therefore, encourage more loans and stimulate collection mobility;
- Government assumption of (part of) the liability for damage and loss may give lenders more confidence in lending their collections. It may also result in the lenders being prepared to withdraw the requirement that the museum borrowing the objects pay its own (expensive) insurance. It may even result in a lender going back on an initial refusal to lend the work. This positive effect of the indemnity scheme is known as the ‘quality mark’ function.

Several interviewees remarked that a modification of the Dutch Indemnity Scheme to make it more like the Anglo-Saxon system could improve the quality mark function of an extended indemnity quite considerably. Given the possible positive impact of improvement of the quality mark function, the report contains a number of proposals based on the Anglo-Saxon model.

5 Proposed new framework and indemnity scheme for exhibitions

Improvement of the quality mark function by an external indemnity grant in accordance with the Anglo-Saxon model

The general consensus is that by granting indemnity to the owner/curator of the artwork instead of to the borrower, as it happens in the Anglo-Saxon model, and then for the full value of the work (100%) but including a deduction for a small amount of excess to be paid by the borrowing museum, the willingness among owners of work to be lent will increase. The idea is that the willingness to lend art to other museums will increase across the board, because the quality mark function of the extended indemnity will gain considerable significance, while the general feeling is that the willingness of lenders in the event of a loan to no longer insist on their own insurance arrangements, which are sometimes 400% more expensive, will increase substantially.

But however attractive the Anglo-Saxon model is, 'financial' reality dictates that museums bear in mind that the supply of government funding is not infinite. There is also currently an absolute ceiling of EUR 227 million for all indemnities outstanding at any given moment. It would, therefore, be advisable to first study the (financial) viability of the introduction of the Anglo-Saxon model.
In the event of a cultural-political decision that the state will not grant full indemnity that remains its own liability, there are a number of alternatives that can keep the Anglo-Saxon model 'affordable' for the government.

The key aspect of this idea is to work with indemnity grants of 100% to 'outsiders' (owners of works to be lent out), while the associated risk, after establishing the net indemnity to be paid by the state, will be borne by the government and the (insurers of) museums. Working in such a way with a 'quality mark model' makes the most of extending full indemnity without the government having to bear full responsibility for the costs associated with the system. There are three alternatives:

Alternative 1: insurance of gross indemnity by the government at the expense of 'covered' museums

The solution offered by alternative 1 is a ' stop-loss' policy taken out by the state. This entails the following. The state extends full indemnity to 'outsiders' and determines an absolute limit for itself as described above. This ceiling is currently EUR 227 million. Up to that – newly established - limit, the state bears the risk of all extended indemnities. The insurance now covers the risk of any outstanding indemnities that may exceed the absolute ceiling in the Anglo-Saxon model on annual damage to loans that exceeds the limit ('stop-loss'). In other words, any damage that exceeds the absolute limit and has to be paid for by the state is covered by the insurance. The premium for this coverage is paid by the government, but these costs are then passed on to the museums to which indemnity is granted, in proportion to the amounts of indemnity granted to each museum.

Alternatives 2 and 3: remainder coverage on the basis of external private insurance
The solution in alternatives 2 and 3 comprise the establishment of a net indemnity in the underlying relationship between the government and the museum borrowing the work. The remaining amount not paid by the state is the liability of the museum itself, and the state will require security for its restitution. The borrowing museum can provide this security in the form of external private coverage for the entire remaining sum.

This can be on an individual basis (*alternative 2*), but that will not generate any premium savings. The premium rate only applies to the sum remaining and not to the full amount of the external indemnity, as is the case in the current Dutch system, but in fact, the insurance company is liable for the same net amount, again on the basis of excess of loss coverage.
The insurance taken out by the borrowing museum for the benefit of the lender(s) covers the full remaining sum of the extended external indemnity where the indemnity certificate issued to the lender stipulates that entitlement to payment in the event of damage is ceded to the state. To guarantee this coverage to the state, the insurance will have to comprise an arrangement, which prevents the coverage being withdrawn if the borrowing museum fails to pay its premium, a premium payment guarantee.[14]

It is also possible to insure this external private coverage on a collective basis (*alternative 3*). The initial proposal is the joint creation of a *captive* by a group of museums in the form of a mutual security company for the insurance of (long-term) loans (the Dutch Museum Insurance Company; *alternative 3a*), where the museums involved undertake to assume liability for a certain amount. The total sum at the start forms the maximum own risk, and the remainder in excess of this amount is re-insured on the external market. It is also possible for the state to take part in this system for the first layer, the net indemnity, with a fixed sum.
Another alternative is that the museums take out joint insurance externally in a 'cover agreement' (*alternative 3b*). It is also possible in both alternatives to provide a prior, concrete indication of the size of the sum with regard to the premium benefits to be achieved. This merits further discussion between the government and the museum community, on the one hand, and the art insurance companies, on the other.

Limiting the amount of risk apportioned to the borrowing museum
It goes without saying that the financial burden borne by the state and borrowing museums under an indemnity scheme is primarily determined by the liability risks run by a borrowing museum. The report contains a number of recommendations to reduce the risks and the costs associated with them.

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14 This could be geared to current practice and the use of a 'delcredere clause', in which the insurer charges the broker's current account for the premium owed and discharges the insured party from payment of the premium. The policy in question, in the system used by Aon Artscope, states that after the insured party (borrower) has been notified of its default on a number of occasions, the policy can be cancelled once the lender has been informed. The premium payment guarantee referred to above could be put into effect by telling the state of the default and giving it the opportunity to advance the premium payment on behalf of the borrowing museum.

As indicated above in Chapter 1 under the heading *'Policy to improve collection mobility'*, the scheme for the inter-museum movement of loans known as the Framework agreement on loan movement concluded between the Dutch state and four municipalities on the basis of reciprocity is one form of limitation of the liability risk intended to improve collection mobility. Under this scheme of inter-museum loan movement, the risk during a loan's stay at a borrowing museum of aspects such as loss or total loss and loss of value due to material damage is no longer borne by the borrowing museum. This risk limitation expresses itself in premium reductions.

Further improvement of the national collection mobility, for both short- and long-term cultural loans, resulting from savings on insurance costs could be achieved in the following three ways, ranked according to the consequences:

1. The national government concludes a framework agreement with more municipalities, as referred to above (under guarantee of the required security standards).
2. The national government and/or provincial and municipal authorities conclude similar loan agreements with museums that have no government collection on the basis of reciprocity.
3. The loan agreement *fully exempts* the borrowing museum on the basis of reciprocity from the risk of damage or total loss during the loan period.

It is also possible, as part of the framework agreement, for the municipal councils with which a framework agreement has been concluded to make agreements amongst themselves to limit the liability risk. This enables them to make 'horizontal' use of the possibilities of the framework agreement and improves collection mobility. It would be advisable for the councils in question to lay down the mutual agreements in an official document stating the extent of the limitation of the liability risk.

Improving European collection mobility

It also seems possible that these kinds of cultural loan agreements could improve international collection mobility within the EU. An initial step could be the conclusion of agreements between the member states regarding state-owned collections placed in the care of museums, on condition, of course, that the borrowing museum meets the same (security) standards as the lending museum.

6 Proposed new framework and indemnity scheme for long-term cultural loans

Limitation of the risk apportionment to the borrowing museum

Artwork is also borrowed for purposes other than (temporary) exhibitions, usually on an individual basis and for a long period of time. These kinds of loans can also contribute to collection mobility. In fact, the problem of risk apportionment here is the same as for loans made for (temporary) exhibitions. The framework agreement for movement of cultural loans concluded between the State of the Netherlands and four municipalities on the basis of reciprocity also applies to the long-term loans referred to here.

This means that the proposals put forward above concerning loans for (temporary) exhibitions intended to improve collection mobility within the Netherlands and the European Union also apply to the long-term loans referred to here.

Improving the quality mark function of the indemnity scheme and a reallocation of private insurance

As indicated above, the existing indemnity scheme does not apply to long-term loans that are not intended for use in an exhibition. The paper commissioning this study therefore included the question of whether and, if so, how this scheme could be modified to entitle long-term loans to indemnity. A number of fairly complicated factors merit particular attention in this matter.

The current scheme has a budget ceiling of EUR 227 million. The decision as to whether and, if so, how much of the available amount could also be used for long-term loans, as well as for the creation of a separate budget for these loans, is of a cultural-political nature.

A unique characteristic of long-term loans is that a (net) indemnity extended for the entire loan period will tax the available budget. This may cause the budget to ‘fill up’ when a limited number of long-term loans are made, an important aspect when determining the criteria for the award of indemnity. An answer could be to give priority to special works of art or works of art for which having them on loan could be the first step towards their purchase for the borrower’s own collection.

A similar application of the system proposed for the exhibition risk seems very possible, i.e. a grant of full indemnity to the lender. It is even highly conceivable that the derived net indemnity in the event of a long-term loan may result in higher premium reductions than for the exhibition risk, or short-term loans, since these usually involve a single incidental work and the (thin) chance of its being affected is insured. To keep the scheme in balance in the event of damage, the risk that the state runs in the reciprocal relationship

with the borrowing museum should not exceed the amount of the net indemnity it would have to pay.
What does the above mean for the insurance of the remaining interest? At the moment, national museums that tend not to insure their own collection insure long-term loans in a ‘declaration’ policy. Other museums do tend to insure their permanent collection, and this insurance covers long-term loans from third parties. It should be noted, however, that the permanent collection, which includes long-term loans from third parties, is usually not insured for the full value so that in the (unlikely) event of the entire collection being lost completely, it is unclear as to how far the available insured sum results in full compensation for the owner of the lost work. It is reasonable to expect the state to demand additional guarantees for individual insurance of the remaining interest (i.e. the amount that exceeds the net indemnity, or gross minus net). The continuity of the coverage and a premium payment guarantee is also of equal importance to the state in this situation.
In addition to insurance on an individual basis, alternative 1 (stop-loss) also appears to be an option for insuring the remaining interest. Whether the same applies to alternatives 3a and 3b merits further discussion between the government and the museum community, on the one hand, and the insurance companies, on the other.

In conclusion
Finally, the report indicates that in the event a decision is made to carry on working with the existing scheme, it would be advisable to simplify it. First of all, those requirements that have been laid down but are hardly ever met, evidently with the agreement of the parties involved, should be scrapped, while it would be a good idea to adapt the existing scheme, as long as the content does not suffer, to current practice as it is developed according to agreements made between the ministries of Finance and OCW. It would also be advisable to draft an application form that can serve as a guideline for the requirements set for the indemnity application.