

The State Guarantee for works of cultural interest

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Given that the key theme chosen for edition 17 of the magazine Consorseguros Digital is “insuring cultural properties,” on 24 October 2022 we ran an interview at the Ministry of Culture and Sport (*Ministerio de Cultura y Deporte, MCD*), which was arranged as an informal chat, whose aim was to gain a deeper insight into how the State Guarantee functions for works of cultural interest, where, according to the information given on the [MCD website](#), the former is defined thus:

The Guarantee operates as a system of government insurance that covers the risks facing works which are loaned out by other owners, be they Spanish or international (public or private in both cases), to galleries and museums, archives and libraries owned by the state and directly run by the Ministry of Culture and Sport. The Guarantee thus does not cover the works of Spanish museums and galleries, since in that case it would be the state itself which receives any compensation pay-out, but instead only loans received from other institutions.



Figure 1. Main front section of the Ministry of Culture and Sport.
Source: Own research.

The State Guarantee is a system of government insurance whereby the Spanish state assumes the commitment of insuring assets of interest which are temporarily loaned out to be exhibited to the public at organising institutions.

The State Guarantee covers these works against any potential destruction, loss, theft or damage they may suffer over the period from time the work is loaned out to when it is returned to its owner by means of a type of insurance known as a wall-to-wall policy, which covers risks from the time when the work is collected at source up until when it is given back at the place which the lender specifies, and therefore includes transport and the time it remains out on loan.

The cover which the State Guarantee system provides works in exactly the same way as an insurance policy drawn up by an insurance company and protects against all risk which may affect insured works.

The legislation which regulates the guarantee is initially [Law 16/1985 of 25 June on the Spanish Historical Heritage \(Additional Provision Nine\)](#), which took account of the public insurance solutions that existed in other European regulatory frameworks and was implemented six years later by [Royal Decree 1680/1991 of 15 November](#). This Royal Decree has not undergone any amendments since then and establishes that the annual limits for the Guarantee shall be laid down in the General State Budget passed into Law for each year. Generally speaking, the Royal Decree is a well-founded piece of legislation, although it has been noted that it might be a good idea to look into one or two areas of reform due to developments in the insurance world and the items loaned out among cultural institutions themselves; specifically the deductible limits established have remained somewhat low by current standards and on occasions there is very little precise definition in regard to coverage for certain perils, which has triggered a degree of disruption in connection with private insurers and prompted questions from certain lending institutions concerning coverage for particular risks not provided for in this regulation from 1991.



Figure 2. Picture of the interview in progress.
Source: Own research.

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does not cover the works of Spanish museums and galleries, since in that case it would be the state itself which receives any compensation pay-out, but instead only loans received from other institutions.

In this regard, the doubt arose as to whether the works of art of state-run museums and galleries were actually insured. The answer was that in Europe permanent, publicly-owned collections are generally not insured, unlike in the United States, where, probably due to cultural differences, the collections of galleries and museums are in fact insured. Taking out a private insurance policy would be an unnecessary expense for the government because if major damage occurs to a work of importance to the Historical Heritage, what the museum or gallery, archive or library will want is for its own restorers to carry out any repair work. This is what happened to a painting in the Real Academia de San Fernando (*Royal Academy of Fine Arts of San Fernando*) which became damaged and was restored by the Instituto del Patrimonio Cultural de España (*Spanish Cultural Heritage Institute*).

If works are loaned out abroad from Spain, the process depends which work is put out on loan and to whom. If it is loaned out to a foreign country which has an equivalent counterpart to the Spanish State Guarantee and the lending museum or gallery believes that such a guarantee provides adequate cover for any kind of risk which the work may face, an acceptance of the guarantee by the recipient country is signed. On the other hand, if it is thought that the foreign guarantee in question falls short in the risks it covers, a private policy is taken out.

By and large this guarantee system is fairly similar in all countries in the sense that it is government insurance which covers works owned by others and a **deductible** exists which is covered under a private policy. Even so, every country has its own particular characteristics according to its regulatory framework, and this becomes evident from the latest study of EU state guarantees which was carried out in a comparative analysis of 20 countries in 2012. Whereas the Spanish model is essentially comparable to its British counterpart (there are differences in what is covered, the deductible, the minimum limit per exhibition, etc.), in the Italian version the State Guarantee is solely used domestically, i.e. for loans as part of exhibitions within Italy and not for international lending.

With respect to the deductible, in Spain this is a percentage according to brackets with the following limits:

- The first €12,000 when the overall value of the works guaranteed by the state for the exhibition does not surpass €1,500,000.
- The first €21,000 when the overall value of the works guaranteed by the state for the exhibition ranges from over €1,500,000 up to €7,500,000.
- The first €36,000 when the overall value of the works guaranteed by the state for the exhibition ranges from over €7,500,000 up to €15,000,000.
- The first €60,000 when the overall value of the works guaranteed by the state for the exhibition surpasses €15,000,000.

Museums and galleries normally reference this last bracket because nowadays the values cited are somewhat low (as was previously mentioned), although it must be recognised that they do represent a major advantage for museums and galleries and the Guarantee as such has never had to be put to use, unlike the deductible.

The matter of **trust** is underscored as a pre-condition for using non-insurance. A while ago “Lending for Europe” was set up as a working group and it held a meeting in Madrid which was attended by over three hundred experts. At this they explored the concept of non-insurance among European museums and galleries in depth, as well as establishing a league of “super-museums” that would not use insurance among them, meaning that they would only insure transportation but not the time on loan at these. The curators concluded that, since the safekeeping and exhibition conditions are similar at the Prado, the Louvre, New York’s Metropolitan Museum of Art, etc., taking out insurance was a needless expense, even if this meant only the deductible, given that these countries have a State

Guarantee system and furthermore there is no significant risk while the works remain at these major museums and galleries; where the real risk lies is in transportation.

This idea did not come to fruition, although the concept of trust has developed over time and these days there are normally tacit agreements between countries whereby countries accept each other's State Guarantee. By way of an exception to this we can cite the cases of Germany and Switzerland, where both private and institutional lenders do not accept Spain's State Guarantee because they prefer to have private insurance, presumably for cultural reasons and due to their own guidelines.

As has been said, no incident has ever taken place that has meant having to bring the State Guarantee into action since its inception. The only harm to date was caused to two frames of paintings which arrived at the institution where they were to be exhibited in a damaged state (ordinarily any damage tends to occur during the handling or unpacking of works of art and it is most unlikely to be caused to the piece once it has been hung up). The frames were restored and only the deductible was activated.

And speaking of damage, we could not avoid bringing into the conversation the attacks which some works of art have suffered recently, such as those carried out, for example, by the Just Stop Oil platform. In the case of Goya's "Las Majas" in the Prado gallery, it would be the own Museum's restorers who would repair the possible damage caused to the frames, which are over a hundred years old, given that permanent collections are not insured, as we said earlier.

Returning to the matter of insurance, the question came up of whether there are problems when it comes to taking out insurance for the deductible or excess supplementary to the State Guarantee. This does not generally pose a problem, since most insurers are used to working with the various museums and galleries, although each one has their own peculiarities. Some of them engage in competitive bidding for taking out such excess insurance and also do so for taking out policies that do not accept the State Guarantee, while others utilise bidding to formalise one to three-year contracts where a single insurer would provide cover for all exhibitions held over this period, whether or not they have a State Guarantee.

Another point of interest that concerns the guarantee is **transparency** in granting it. Full transparency is ensured given that the relevant ministerial orders for each conferral are published in the Official State Gazette (BOE). In these no personal data on either the lenders is released (only that on institutions) or as regards the individual values of the works of art insured. And with respect to the competitive bidding and sign-ups which the museums and galleries carry out, both if they include the State Guarantee and if they involve private insurance, these are published on the Public Sector Contracts Platform.

The Ministry of Culture and Sport acts as manager for granting State Guarantees, yet insuring an exhibition involves much more than the Guarantee. Within an exhibition there are works that are covered by the State Guarantee additional to the deductible and there are also others where their lenders do not benefit from the guarantee and they are covered by a private insurance policy that may be Spanish or, if the lender so requests, from their own country. In this last case, it shall be the museum or gallery which decides if it wants the work for the exhibition and accepts these conditions.

With regard to this point an important factor emerged concerning the **exhibition organiser**. As has already been said, the State Guarantee was conceived for government-owned museums and galleries, archives and libraries directly run by the Ministry of Culture and Sport. Exceptions are nevertheless being made and, depending on who handles the organising, other institutions than those mentioned may qualify for the guarantee. For example, this would be the case if the organisational work fell within the remit of the [Acción Cultural Española \(AC/E\)](#) (*Spanish Cultural Action*), a state-run commercial enterprise that is given over to fomenting and promoting Spain's culture and heritage.

Aside from this, since 1988, when the guarantee began to operate, under the successive laws ratifying the annual budget the number of institutions which are permitted to benefit from being granted the State Guarantee has steadily risen, as has the sum made available for the State Guarantee.

By way of a digression, it is important to highlight the aspect of “government-owned museums and galleries, archives and libraries directly run by the Ministry of Culture and Sport” because not all state-owned institutions are directly managed by Central Government (AGE for the Spanish), but instead the running of most of them has been transferred to the regional autonomies (for example the Museo de Bellas Artes de Sevilla - *Museum of Fine Arts of Seville* - or the Museo de Jaén - *Museum of Jaén*). This means that they cannot benefit from the State Guarantee except where the organisation of any exhibition is under the auspices of a body such as Acción Cultural Española.

Turning our attention back to such bodies, the first time when one of these state-run bodies was included was under the 1998 Budget Act on the occasion of celebration of the centenaries of Charles V and Philip II. Others were in turn included, such as SEACEX (Sociedad Estatal para la Acción Cultural Exterior or *State-run Enterprise for Cultural Action Abroad*), Sociedad Estatal España Nuevo Milenio (*New Millennium Spain State-run Enterprise*) or the Sociedad Estatal de Conmemoraciones Culturales (*State-run Enterprise for Cultural Commemorations*), until they were finally placed under the umbrella of Acción Cultural Española¹.

This then means that all exhibitions which AC/E organises at Spanish state-owned institutions are eligible to be covered by the State Guarantee, with the concomitant that, were the AC/E to organise an exhibition abroad, it could not be covered under State Guarantee. The same would be the case if exhibitions were organised by public institutions that are not state-owned, such as those of regional autonomies or local councils, because, as mentioned before, the guarantee is based on trust and Central Government cannot be sure that the galleries which are going to host exhibitions satisfy the conditions required for coverage of all the risks to which a work of art is exposed.

Our interviewees alluded to specific examples to illustrate what the most expensive art-works insured under the State Guarantee have been. They first pointed out that there is a limit per work of 100 million euros on eligibility for the Guarantee and that the most highly valued work of art was Leonardo da Vinci's *Lady with an Ermine*, which came from Cracow and was part of an [exhibition](#) organised by National Heritage in 2011. There have also been large-scale exhibitions which were covered under the Guarantee, such as that organised by the [Reina Sofía Museum](#), in 2008 when a considerable portion of the collection from the Musée national Picasso-Paris was placed on show. To cover this exhibition an independently-funded grant of 2.5 billion euros was set up under the Budget Act in effect as of that date so as to avoid compromising the Guarantee for other institutions.



Figure 3. Lady with an Ermine.
Source: ©yunusi/123RF.COM

¹ Acción Cultural Española (AC/E) was created from the merger of three state-run enterprises devoted to promoting and disseminating Spanish culture both inside and outside Spain: Sociedad Estatal de Conmemoraciones Culturales (*State-run Enterprise for Cultural Commemorations*, SECC), Sociedad Estatal para la Acción Cultural Exterior (*State-run Enterprise for Cultural Action Abroad*, SEACEX) and Sociedad Estatal para Exposiciones Internacionales (*State-run Enterprise for International Exhibitions*, SEEI). The decision to merge the three enterprises was taken at the Cabinet meeting of 30 April 2010. The new enterprise was incorporated on 21 December 2010 within the context of the Rationalisation Plan for Public Sector Business Concerns, the main aim of which is to reduce state expenditure and streamline Government services.

Setting up independent funding from the general state coffers under the annual Budget Act is fairly standard practice, particularly when there are commemorations of notable events. More specifically, pursuant to Additional Provision 48 of [Law 22/2021 of 28 December, the annual State Budget Act for 2022](#) (which was that in force on the interview date), there are a total of three grant funds:

- The communal fund for all institutions under the exclusive competence of the Ministry of Culture and Sport and the government bodies attached to it: €2,250,000,000.
- The grant associated with providing coverage for the [Carmen Thyssen Collection](#)², which is housed at the Thyssen-Bornemisza national gallery: €1,703,796,510.
- The exceptional grant fund, which will be available to provide the State Guarantee for those exhibitions under the aegis of the “National Commission for the Commemoration of the 50th Anniversary of the Death of Pablo Picasso”. This event will be held at the aforementioned institutions, as well as at the Museo Picasso in Malaga, the Museo Picasso in Barcelona, the Barcelona Joan Miró Foundation, the Museo Guggenheim in Bilbao, the Casa Encendida in Madrid and the Museum of Fine Arts in A Coruña: €2,500,000,000.

This fact has an accounting-based explanation behind it. The State Guarantee sets aside a certain amount for each exhibition, which means that while this lasts the sum required to provide cover for the exhibition is withdrawn from the communal grant fund, so it might happen that the fund is left empty when it affords coverage for several exhibitions all held at the same time. This is why an independent grant fund is set up when there is due to be a major cultural commemoration, or one for an exceptional event, which entails works of art being exhibited that are very expensive to insure (which is what will happen in 2023 when the year of Picasso takes place), so that the institutions involved in celebrating such an event can draw on the grant fund to obtain the Guarantee without the general purse being affected. This is what occurred some years ago when it was decided that the Carmen Thyssen Collection should have an independent grant fund.

The legal concept of the State Guarantee actually traces its origins to 1988, when Baron Thyssen's collection arrived in Spain from Lugano (Switzerland). Initially the collection was a lodgement that was covered by the State Guarantee and then later it became state property.

Following explanation of these points, we went on to discuss the **system for valuing works of art**. The museums and galleries negotiate the terms of loans with the various lenders together with an insurance valuation, and once the list of all the relevant data is agreed on, the museum or gallery applies for a State Guarantee. This application is accompanied by several different reports.

- A report from the State Legal Service of the Ministry of Culture and Sport on the wording for the guarantee.
- A report from the Ministry of Culture and Sport's Budget Office which confirms whether there is a sufficient endowment left in the grant fund which we have been discussing earlier.
- A report from the Spanish Historical Heritage Assets Classification, Valuation and Export Board³, which, having reviewed the proposal from museums and galleries, states whether the guarantee has been granted or not.

² The Carmen Thyssen Collection is totally separate from that of Baron Heinrich Thyssen-Bornemisza, which is owned by the state and comprises around a thousand works of art which together make up the permanent collection at the Thyssen-Bornemisza national gallery.

³ The Historical Heritage Assets Classification, Valuation and Export Board is the consultative body of the Ministry of Culture, the functions of which include advising of the values of works that are going to be subject to coverage via the State Guarantee. This valuation is provided purely for the purposes of granting the Guarantee and is not an appraisal of the market price of the piece in question, but rather a valuation for insurance in the specific context of an exhibition.

In regard to the role of Spain in loaning out or hosting works, there is no set trend, since this is a factor that depends on events or commemorations that take place in any given year. There are times when a lot of art-works are loaned out, such as this year for example, in which a major [El Greco exhibition has just been inaugurated at the Budapest Museum of Fine Arts](#) (which runs from 28/10/2022 to 19/2/2023 and where most of the paintings come from Spain) and in which two other prominent exhibitions have taken place; one featuring the works of [Joaquín Sorolla at the Royal Palace of Milan](#) (from 25/2/2022 to 26/6/2022) and another those of [Goya, at the Beyeler Foundation in Basel](#) (from 10/10/2021 to 23/1/2022).

As for the artists themselves, the works of Miró are constantly on the move, and there tend to be exhibitions of these at any venue and any time of year. And with the 50th anniversary of Picasso's death, it is highly likely that a large quantity of works by him will be hosted in Spain. On the other hand, works by classical painters such as Velázquez are not typically loaned out because, aside from the fact that there are less of them, it would seem odd to go to the Prado and not find "The Ladies-in-waiting" (*Las Meninas*), although the painting "Philip IV in Fraga" (*Felipe IV en Fraga*) is due to arrive shortly, as will other of the more representative works of El Greco, Murillo and Goya as a result of the agreement reached between [the Prado Museum and the Frick Collection](#) whereby nine pieces from the American collection will be on display in Madrid next spring (all of them covered under the State Guarantee). And with respect to the classic artists, Goya, unlike Velázquez, is the painter whose work has been loaned out most, given that there are many of his pieces in public collections, such as the Beyeler Foundation exhibition that we have already discussed.

Conclusion

In conclusion, we should highlight the fact that the State Guarantee is an essential tool when it comes to putting on major exhibitions, since it represents a considerable saving for the finances of museums and galleries, archives and libraries. In fact, it is actually the case that many exhibitions could not be held were the legal concept of the Guarantee not to exist as a government insurance system. All this touring by leading exhibitions from major museums and galleries based in London, New York, Paris, Madrid has been made possible thanks to the fact that the works of art are covered under the Guarantee, which represents a much-cherished opportunity that has enabled exhibitions of highly-prized works of art to become mobile.