

State liability - Useful instrument or latent overburdening of public budgets?

9th Cologne Art Insurance Talk

Only the spoken word counts!

20 November 2020

Themes

- Definition of
- Brief history of state liability
- Anchoring in the budgets of the Federal Republic and the federal states
 - Volume
 - Who can make binding declarations?
- Art insurance market 2020
- Risk management?
- Solution approaches

State liability or state guarantee?

- State liability
 - Covers unlawful actions by state authorities
 - Covers breach of official duty according to §839 BGB
- State guarantee is recognised as a precautionary item in the federal and state budgets
 - For the assumption of obligations from state or federal Federal institutions vis-à-vis third parties (lenders) for exhibitions
 - No distinction is made between public and private lenders
 - For other liabilities with a low probability of occurrence

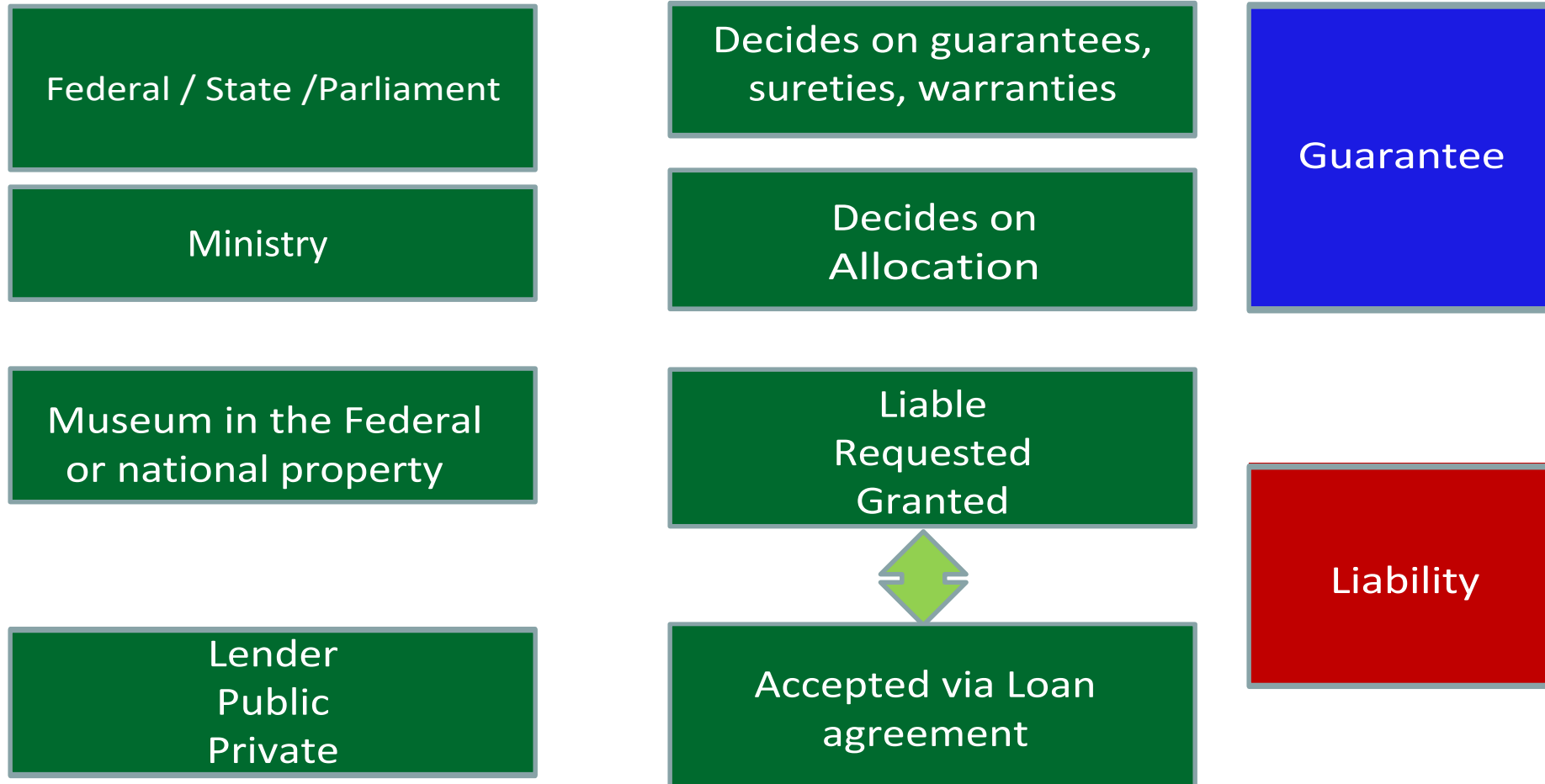
State liability for art exhibitions - History

- Art market not spectacular until around 1970
 - Mainly European - London and Paris at the centre
- Pop art creates new markets (contemporary art fairs from 1967)
- Insurance market until approx. 1990
 - Controlled by regulatory authorities, some regional monopolies
 - Tariff thinking - "Zocher-Schrage"
- State liability begins in the second half of the last century
 - Sweden 1974
 - USA 1975
 - Great Britain 1980
 - Germany 1992
 - France 1993

State liability - economic background

- 1980 - Insurance costs of large international exhibitions often 25% - 40% of the total costs!
 - Since 2015 between 1% - 4%
- Cultural exchange actively promoted by political institutions
- Cost reduction necessary to avoid increasing budgets
- Now in at least 17 countries in Europe
 - Austria, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Ireland, Lithuania, Netherlands, Norway, Poland, Spain, Sweden, United Kingdom
 - Luxembourg and Malta in individual cases

State guarantees - state liability at a glance



Guarantee declaration of the federal budget Title 3208

Sureties, guarantees and other warranties



Contingent liabilities that may only be assumed if it is highly unlikely that the federal government will be called upon.

Volume 2019:	800.000.000,00
Thereof	200,000,000.00 for domestic-related warranties
	600,000,000.00 for foreign-related warranties

Including, among other things, institutional recipients of federal grants for exhibitions - assumption of liability towards lenders Liability risks from the remaining works of the Gurlitt estate Liability risks from the scope of application of the Atomic Energy Act Credit insurance of the European Investment Bank, etc.

Guarantees in the Budget Act for borrowing of State museums 2019 / 2020



Baden-Württemberg
600,000,000.00 EUR



Brandenburg
25,000,000.00 EUR



Bavaria
No state liability



Bremen
26,000,000.00 EUR



Berlin
400,000,000.00 EUR

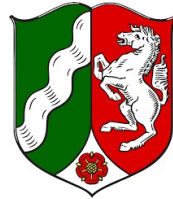


Hamburg
1,725,000,000.00 EUR

Guarantees in the Budget Act for borrowings from State museums 2019 / 2020



Hesse
300,000,000.00 EUR



North Rhine-Westphalia
820,000,000.00 EUR



Mecklenburg - VP
25,000,000.00 EUR



Rhineland-Palatinate
420,000,000.00 EUR



Lower Saxony
540,000,000.00 EUR



Saarland
30,000,000.00 EUR
(other purposes / not explicitly for
museums, exhibitions)
officially no state liability

Guarantees in the Budget Act for borrowing of State museums 2019 / 2020



Saxony
300,000,000.00 EUR



Thuringia
0.00 EUR



Saxony-Anhalt
550,000,000.00 EUR



Schleswig-Holstein
300,000,000.00 EUR

State liability - in practice

- Cover for damage during transport and exhibition
 - Principle of self-insurance - cover only for loans from third parties
 - Analogue insurance cover - but not identical
- Restrictions vary depending on the guarantor
 - HB - Museum deductible 25% max. EUR 41,000.00
 - BW e.g. general exclusion of gross negligence and intent
 - B only federal state with a defined procedure - for travelling exhibitions only the direct transport is insured
- For comparison: US state liability - detailed manual, binding
 - Cover between USD 10,000 and USD 100,000,000 - remainder insured

Lost contribution income potential in 2019 for the Insurance industry

- Fiction: the full liability of the countries would be insured
 - EUR 6,861,000,000.00 Addition of liabilities / guarantees
 - Average contribution rate per issue is 0.05%
 - EUR 3,430,500.00 Insurance premium
- If the guarantees are provided for permanent loans throughout the year, we are talking about a maximum of double the premium - that is less than 5 % of the sales volume in the art insurance sector in Germany

Premium volume - art insurance market 2020

- Global premium volume 2019 Fine Art approx. EUR 1.2 billion
 - approx. 78% from private collections; 12% trade; 10% museums, exhibitions
 - Increase of EUR 100 million in 10 years = 9% in 10 years
 - Germany posts a contribution of around EUR 140 million
- Art market volume grows by 62% to USD 64 billion between 2009 and 2019 (fluctuating between USD 68 and 56 billion from 2014)
 - Losses expected in 2020
- Art insurance 2020
 - Premium volume expected to fall by 10 - 15%
 - Difficult start for new market participants
 - Reinsurance costs rise

Public liability - risk management

- Risk management in museums still has room for development, e.g.
 - Packaging / dispatch
 - Means of transport
 - Education/training/skills of staff in handling the objects
 - Safety equipment (burglary protection/fire protection/air conditioning)
 - Continuous monitoring required
- Transparency?
- Claims settlement
 - Fixed procedure?
 - Who is an expert?
 - Where does the money come from?

State liability - advantages / disadvantages

- Favourable way to hedge the issuing risk for the public borrower/lender
 - Problematic across countries
- Claims processing in the hands of the borrower - experience?
- Private lenders rarely accept state liability
- Travelling exhibitions with more than one venue combined with different liabilities cause major problems
- The definition of cover is often vague
- Heavy burden for taxpaying citizens in the event of an incident (fire; earthquake; terrorist attack)

Open questions

- Standardisation of different liability models at national level?
- Equal treatment principle federal / state / municipal?
- Can insurance premium rates for exhibitions be reduced further?
 - Decrease of 80% in larger exhibitions compared to 1990
- Utilising the insurance industry's claims experience - but how?
- Joint insurers for public art exhibitions?

Why burden the national budget with a risk of EUR 200,000,000.00 when insurance is available for around EUR 100,000.00?



Thank you for your attention

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