

Government of Flanders Order implementing the Indemnity Decree of 21 January 2022

Legal bases

This Order is based on:

- the Special Act of 8 August 1980 on institutional reform, Article 20, as amended by the Special Act of 16 July 1993;
- the Special Decree of 7 July 2006 on Flemish institutions, Articles 21 and 22;
- the Indemnity Decree of 21 January 2022, Article 5, first paragraph, 1°, 3°, 4° and 5°, and second paragraph, Article 7, first, second and third paragraphs, Article 8, third paragraph, Article 9, third and fifth paragraphs, Article 10, Article 11, Article 12, 13, 14, third, fifth and sixth paragraphs, Article 18, §2 and §5, first paragraph, and Article 19.

Formal requirements

The following formal requirements have been met:

- The Arts and Heritage Sector Council of the Council for Culture, Youth, Sport and Media gave its opinion on 25 March 2022.
- The Flemish Supervisory Commission for the Processing of Personal Data gave Opinion no. 2022/026 on 15 March 2022.
- The Flemish minister responsible for the budget gave his agreement on 19 May 2022.
- The Council of State gave Opinion no. 71.601/3 on 28 June 2022 in application of Article 84, §1, first paragraph, 2°, of the Laws on the Council of State, coordinated on 12 January 1973.

Initiators

This Order is proposed by the Flemish Minister for Foreign Affairs, Culture, Digitisation and Facility Management and the Flemish Minister for Finance & Budgeting, Housing and Immovable Heritage.

Upon deliberation,

THE GOVERNMENT OF FLANDERS DECIDES:

Chapter 1. Definitions

Article 1. For the purposes of this Order, the following definitions shall apply:

- 1° administration: the Department of Culture, Youth and Media, referred to in Article 24, §1 of the 3 June 2005 Government of Flanders Order on the organisation of the Flemish administration;
- 2° Minister: the Flemish minister responsible for culture;
- 3° organisation: the organisation referred to in Article 3, 2°, of the Indemnity Decree of 21 January 2022;
- 4° Flemish Fund for the Redemption of Charges: the Flemish Fund for the Redemption of Charges, referred to in Article 53 of the Decree of 21 December 1994 containing provisions to accompany the 1995 budget.

Chapter 2. Competent service, deductible and entry fee

Article 2. The administration is designated as the service, referred to in Article 12, first and fourth paragraphs, Article 14, third and fifth paragraphs, Article 18, §2 and §5, first paragraph, of the Indemnity Decree of 21 January 2022.

Article 3. The deductible, referred to in Article 7, first paragraph, of the Indemnity Decree of 21 January 2022, is 10,000 euros per exhibition. This deductible shall be borne by the organisation.

Article 4. The entry fee, referred to in Article 13 of the Indemnity Decree of 21 January 2022, is 0.05 per mille of the guaranteed amount.

The entry fee shall be paid by an organisation as referred to in Article 4 of the aforementioned Decree to the Flemish Fund for the Redemption of Charges, no later than thirty days prior to the start of the guarantee period.

Chapter 3. The application

Article 5. The application for granting a guarantee is submitted to the administration. The administration shall provide a model for this application and shall determine the method of submission.

An application shall be inadmissible if one of the following conditions is met:

- 1° the application is not from an organisation listed in Article 4 of the Indemnity Decree of 21 January 2022;
- 2° the application is not complete in accordance with the third paragraph;
- 3° the application is not submitted with the model referred to in the first paragraph.

A complete application shall include all of the following information:

- 1° the applicant's name, address and mailing address;
- 2° the title, location and duration of the exhibition;
- 3° a justification showing that the exhibition meets the condition referred to in Article 5, first paragraph, 2°, of the Indemnity Decree of 21 January 2022;

- 4° the value of the anticipated incoming loans, with the exception of the value of the loans referred to in Article 5, first paragraph, 3°, a) and b), of the aforementioned Decree;
- 5° a list of the identification and value of each loan submitted for a guarantee, along with the name and address of the lender or their appointee;
- 6° the risk analysis and the measures that the organisation will take to monitor this, referred to in Article 5, first paragraph, 4°, of the aforementioned Decree;
- 7° the binding proposal from one or more insurance companies, referred to in Article 5, first paragraph, 5°, of the aforementioned Decree.

If an application is inadmissible, the administration will notify the applicant no later than twenty days after the day it received the application.

Article 6. The risk analysis, referred in Article 5, first paragraph, 4°, of the Indemnity Decree of 21 January 2022, already contains the following elements:

- 1° an adequate analysis of the security, safety, climate conditions and lighting regime of the premises where the loans will be exhibited under guarantee;
- 2° an adequate analysis of risks specific to the loans under guarantee;
- 3° adequate measures taken and planned to mitigate the risks based on the analyses referred to in points 1° and 2°.

The administration will investigate whether the risk analysis and planned measures presented are adequate. The administration may use external experts for this investigation. The administration may propose to the Minister that, where appropriate, additional measures be imposed upon the organisation to reduce the risks.

Article 7. Organisations are careful not to request a guarantee for loans on which there is a third-party title claim.

Chapter 4. Providing advice

Article 8. The Council for the Conservation of Movable Cultural Heritage, referred to in Article 4 of the Decree of 24 January 2003 on the protection of movable cultural heritage of exceptional importance, will formulate its opinion on the application submitted no later than thirty days after the administration has laid the case before the Council. The Council will advise the Minister on the fulfilment of the condition mentioned in Article 5, paragraph 1, 2°, of the Indemnity Decree of 21 January 2022.

Article 9. The administration will advise the Minister on all of the following:

- 1° whether the conditions mentioned in Article 5, first paragraph, 1°, 3°, 4° and 5°, of the Indemnity Decree of 21 January 2022 have been met;
- 2° whether or not granting the guarantee requested will exceed the thresholds mentioned in Articles 10 and 11 of the aforementioned Decree.

Article 10. The values of the loans accepted for guarantee are those accepted by the insurance company. If the administration has any questions about the

declared values, the administration can discuss them with the borrower. If that consultation does not result in a consensus, the guarantee is limited to a cap set by the administration.

For the remaining value not covered by the guarantee in application of the first paragraph, the organisation shall, in accordance with Article 7, fourth paragraph, of the Indemnity Decree of 21 January 2022, take out additional insurance.

Chapter 5. The decision

Article 11. The Minister will decide upon the granting of a guarantee no later than ninety days from the day the administration received an admissible application.

The decision, mentioned in the first paragraph, will always be accompanied by a list of the loans for which the guarantee is granted.

In application of Article 8, third paragraph, of the Indemnity Decree of 21 January 2022, the Minister may, in the decision referred to in first paragraph, grant departures from the risks excluded from the guarantee referred to in Article 8, first paragraph, of the aforementioned Decree.

In application of Article 9, third paragraph, of the aforementioned decree, the Minister may, in the decision referred to in the first paragraph, grant the guarantees in whole or in part for a longer period.

Article 12. In deciding to grant the guarantee, the Minister may impose measures to mitigate the risks of damage.

The organisation will inform the administration of the implementation of the measures referred to in the first paragraph. The administration will verify that these measures have been adequately implemented.

Chapter 6. Guarantee adjustments

Article 13. The organisation to which a guarantee has been granted in accordance with Article 12, fourth paragraph, 1° of the Indemnity Decree of 21 January 2022 may, up to sixty days prior to the start of the exhibition, submit a request for amendments to the following elements:

- 1° the loans under guarantee;
- 2° the amount of the guarantee.

The administration will decide upon an application as referred to in the first paragraph.

The changes referred to in the first paragraph may never have the effect of exceeding the thresholds referred to in Articles 10 and 11 of the Indemnity Decree of 21 January 2022.

Each request for amendment shall be accompanied by an updated list of the identification and value of the loans as referred to in Article 5, third paragraph, 5°.

Article 14. §1. The organisation to which a guarantee has been granted in accordance with Article 12, fourth paragraph, 2° of the Indemnity Decree of 21 January 2022 may request an amendment to the running time of the exhibition for which the guarantee has been granted. Such an amendment shall be requested in accordance with Article 9, fifth paragraph, of the Indemnity Decree of 21 January 2022, at least two months prior to the date on which that amendment is to take effect.

The administration will decide upon an application as referred to in the first paragraph.

§2. In application of Article 9, third paragraph, of the Indemnity Decree of 21 January 2022, the Minister may decide, upon duly reasoned request, to extend the guarantee time.

§3. The changes referred to in the first and second paragraphs may never have the effect of exceeding the thresholds referred to in Articles 10 and 11 of the Indemnity Decree of 21 January 2022.

Article 15. The organisation will always provide the administration with insurance contracts covering the residual risk prior to the start of the guarantee period. Changes to insurance contracts after the start of the guarantee period are permitted only with the prior approval of the administration.

Chapter 7. The procedure in the event of damage, loss or theft

Article 16. If any damage, loss or theft occurs to a loan covered by the guarantee, in accordance with Article 14, third paragraph, of the Indemnity Decree of 21 January 2022, the organisation shall immediately report this to the administration and to the lender. If the damage is fully or partially covered by an insurance company, the organisation shall also notify that insurance company of this damage, loss or theft.

The organisation shall provide the administration with all the documents relating to the event and circumstances reported, and shall explain the cause of the event and circumstances.

The administration shall inform the lender of the information provided to it.

Article 17. In the event of theft or total loss, the lender will be compensated by the Government of Flanders for the value of the loan for the proportion under guarantee. The property title shall then pass, in proportion to the compensation paid, to the Flemish Community.

If lenders so desire, they may remain in possession of the damaged work that is the subject of a full refund of the guaranteed value.

If the loan is later found, then, if they so desire, ownership will pass back to the lender. In this case, the lender shall repay the compensation paid by the Flemish Community, minus the reduction in value and restoration costs determined at the time of recovery.

The restoration costs referred to in the third paragraph will be determined in accordance with the procedure referred to in Article 19.

The reduction in value mentioned in the third paragraph will be determined in one of the following ways:

- 1° by an expert appointed by the interested parties by mutual agreement;
- 2° in consensus by a panel of experts, one of whom shall be appointed by the administration, one by the lender and one, where appropriate, by the insurance company;
- 3° by a panel of three experts deciding by majority. This panel shall consist of the following members:
 - a) an expert appointed by the administration and, where appropriate, jointly with the insurance company;
 - b) an expert appointed by the lender;
 - c) an expert appointed by mutual agreement by the experts for both parties.

If the parties do not reach agreement to avail themselves of the options for identifying the reduction in value referred to in the fifth paragraph, 1° and 2°, or if the panel appointed in application of the fifth paragraph, 2°, does not reach a consensus, a panel of three experts as referred to in the fifth paragraph, 3°, shall be constituted at the request of the party raising the issue.

The compensation for the experts referred to in the fifth paragraph, as appointed by the administration, shall be borne by the organisation. The compensation for the experts appointed by mutual agreement, as well as the experts appointed by mutual agreement by the experts for both parties, shall be borne by the organisation.

Article 18. In the event of any damage, the administration and, where appropriate, the insurance company, in consultation with the lender, shall appoint a restorer who shall have the following tasks:

- 1° describing the damage incurred;
- 2° determining the possible restorative interventions;
- 3° estimating the cost of the restorative interventions.

The restorer will be remunerated by the Flemish Community for the tasks mentioned in the first paragraph.

The lender can always choose to appoint their own restorer. In such an event, the lender will reimburse that restorer for this task.

Article 19. Damages incurred by a reduction in value and restoration costs shall be determined in one of the following ways:

- 1° by an expert appointed by the interested parties by mutual agreement;

- 2° in consensus by a panel of experts, one of whom shall be appointed by the administration, one by the lender and one, where appropriate, by the insurance company;
- 3° by a panel of three experts consisting of the following members:
- a) an expert appointed by the administration and, where appropriate, jointly with the insurance company;
 - b) an expert appointed by the lender;
 - c) an expert appointed by mutual agreement by experts for both parties.

If the parties do not reach agreement to avail themselves of the options for identifying the reduction in value and restoration costs referred to in the first paragraph, 1° and 2°, or if the panel appointed in application of the first paragraph, 2°, does not reach a consensus, a panel of experts as referred to in the first paragraph, 3°, shall be constituted at the request of the party raising the issue.

The compensation for the experts referred to in the first paragraph, as appointed by the administration, shall be borne by the organisation. The compensation for the experts appointed by mutual agreement, as well as the experts appointed by mutual agreement by the experts for both parties, shall be borne by the organisation.

Article 20. The administration and the lender, and where appropriate, the insurance company, shall conclude a mutual agreement on the determination of the compensation to be paid out.

The compensation shall be paid out as soon as possible and no later than one year after the date of the mutual agreement referred to in the first paragraph.

Damages shall be paid in the currency specified by the lender in the loan agreement that the lender has entered into with the organisation.

Article 21. In Article 1, §2, of the Government of Flanders Order of 24 May 1995 establishing the rules concerning the operation and management of the Flemish Fund for the Redemption of Charges, last amended by the Government of Flanders Order of 30 October 2020, a point 6° shall be added as follows:

"6° By way of derogation from point 1°, any damages for which the Flemish Community is liable within the framework of the Indemnity Decree of 21 January 2022 shall be charged in full to the Fund."

Chapter 8. Amendment to the Government of Flanders Order of 25 July 2014 on the delegation of decision-making authorities to the members of the Government of Flanders

Article 22. In Article 12 of the Government of Flanders Order of 25 July 2014 on the delegation of decision-making authorities to the members of the Government of Flanders, as amended by the Government of Flanders Orders of 16 June 2017 and 22 December 2017, a fifth paragraph shall be added as follows:

"§5. The Flemish Minister responsible for Finance & Budgeting has delegation to recognise damages under the Indemnity Decree of 21 January 2022, not exceeding 500,000 euros, as a charge as referred to in Article 53, §2, second paragraph, 2°, of the Decree of 21 December 1994 containing provisions to accompany the 1995 budget."

Chapter 9. Final provisions

Article 23. The Indemnity Decree of 21 January 2022 shall enter into force on the date of the entry into force of this Decree.

Article 24. The Flemish Ministers for culture, and the Flemish Minister for budgetary policy, are, each for his or her part, responsible for the implementation of this Decree.

Brussels, ... (date).

The Minister-President of the Government of Flanders, Flemish Minister for Foreign Affairs, Culture, Digitisation and Facility Management,

Jan Jambon

The Flemish Minister for Finance & Budgeting, Housing and Immovable Heritage,

Matthias Diependaele