

# Decree instituting a guarantee on incoming loans for temporary exhibitions

## Chapter 1. Introductory provisions

**Article 1.** The present Decree governs a Community matter.

**Art. 2.** This decree shall be referred to as: the Indemnity Decree of 19 January 2022.

This decree regulates the granting of guarantees for the first risk of damage, total or partial loss of incoming loans for temporary exhibitions.

**Art. 3.** For the purposes of the present Decree, the following definitions shall apply:

1. cultural goods: the goods of significance for palaeontology archaeology, prehistory, history, cultural history, literature, arts or sciences;
2. organisation: the organiser or co-organiser of a temporary exhibition with incoming loans in accordance with the provisions of this decree;
3. exhibition: a temporary exhibition of cultural goods for an initial duration of up to one year;
4. guarantee: a guarantee granted by the Flemish Community for the first risk of damage, complete or partial loss of incoming loans for temporary exhibitions.

## Chapter 2. The guarantee

**Art. 4.** The following organisations can apply for a guarantee from the Flemish Community for incoming loans for exhibitions:

- 1° collection-managing cultural heritage organisations designated as cultural heritage institutions pursuant to Article 17 of the Cultural Heritage Decree of 23 December 2021;
- 2° collection-managing cultural heritage organisations with a quality label at the national level in application of Article 24 of the aforementioned decree;
- 3° university archives and university libraries with a quality label in application of Article 7 of the aforementioned decree.

**Art. 5.** An organisation is eligible for a guarantee if all of the following conditions are met:

- 1° the exhibition is organised in its own exhibition spaces by an organisation as mentioned in Article 4;
- 2° the exhibition contributes significantly to two of the following objectives:
  - a) Flanders' international appeal;
  - b) the enrichment of the cultural offerings in Flanders;
  - c) the accessibility of scientific research;

- d) the international interest in or significance of the topic or discipline addressed;
- 3° the total value of incoming loans is at least fifty million euros. the following loans are not included in the calculation of the total value:
- a) loans owned by heritage institutions or their organising authorities located in the Dutch language region of Belgium, with the exception of the collections of the federal institutions;
  - b) loans belonging to heritage institutions or their organising authorities located in the bilingual Brussels-Capital region which, on account of their activities, must be considered as belonging exclusively to the Flemish Community;
4. the organisation has a risk analysis for the incoming loans and for the premises where the exhibition is held. That risk analysis addresses the safety, security, climatic conditions and lighting regime applicable to the exhibition and to incoming loans. The organisation also indicates the steps it will take to follow up on the risk analysis performed. The Flemish Government determines the further requirements that the risk analysis must meet;
5. the organisation submits a binding proposal from one or more insurance companies to cover the residual risk of the loans guaranteed by the Flemish Community.

The Flemish Government may specify the objectives as referred to in the first sub-paragraph, 2°, and in assessing the objectives as referred to in the first sub-paragraph, 2°, shall seek the advice of the Council for the Preservation of Movable Cultural Heritage as referred to in Article 4 of the Decree of 24 January 2003 on the protection of movable cultural heritage of exceptional importance.

**Art. 6.** No guarantee will be given for the following loans:

- 1° loans exhibited outdoors;
- 2° loans owned by organisations listed in Article 4, or by their organising authority.

**Art. 7.** The granted guarantee covers the first risk up to 50% of the total value of the loans under that guarantee, reduced by an excess whose amount is determined by the Flemish Government.

If the grant of the guarantee to an applicant exceeds the maximum amount of the total guarantees granted, listed in Article 10, the guarantee shall be limited to the authorised limit. An insurance company insures the value of the loans exceeding that limit.

The granted guarantee only takes effect from the moment that the insurance taken out by the organisation to cover the residual risk of the loans under guarantee of the Flemish Community, with the exception of the excess, takes effect.

For the loans covered by the guarantee scheme, the organisation takes out insurance with an insurance company for the non-guaranteed portion, excluding the excess.

**Art. 8.** The guarantee covers all risks with the exclusion of the following risks:

- 1° terrorism;
- 2° war;
- 3° intentional or negligent acts or omissions by the lender or its agent;
- 4° inherent or persistent defect;
- 5° restoration or conservation work undertaken with the permission of the owner;
- 6° third party title claims.

By way of derogation from the first sub-paragraph, the excluded risks included in the insurance policies concluded with the insurance companies listed in Article 7 shall be excluded from the guarantee accordingly.

If a lender explicitly requests coverage of one or more of the excluded risks as referred to in the first or second sub-paragraph, the Flemish Government may decide, based on a reasoned request from the organisation, to extend the coverage of the guarantee to one or more of those risks.

**Art. 9.** The guarantee applies from nail to nail.

In the first sub-paragraph, "from nail to nail" means the period from the moment the loan is removed from the lender's permanent location until the moment the loan is placed back on the lender's permanent location.

The guarantee will begin no earlier than four months before the start of the exhibition and will expire no later than four months after the end of the exhibition. Upon reasoned request by the organiser, the Flemish Government may decide to grant or extend the guarantee for a longer period provided that the organiser can guarantee that the residual risk is covered by an insurance company. The guarantee is never granted retroactively.

Time intervals covered by another guarantee scheme or insurance for the same risks are excluded.

An extension of the guarantee by a renewal of the exhibition shall be requested at least two months prior to such renewal.

**Art. 10.** The total risk to which the Flemish Community is exposed as a result of the guarantees granted under this decree shall at no time exceed EUR 600,000,000.

The amount referred to in the first sub-paragraph is linked on 1 January each year to the price index calculated and designated for the application of Article 2, § 1, of the Royal Decree of 24 December 1993 in execution of the Law of 6 January 1989 to safeguard national competitiveness. The basis for indexation is the price index in effect on the date of publication of this Decree in the Belgian Official Gazette.

**Art. 11.** The decree of the general expenditure budget of the Flemish Community shall enter the total amount of guarantees that can be granted in the course of a financial year.

Guarantees totalling a maximum of EUR 1,200,000,000 are granted per financial year.

A guarantee shall be calculated at the amount specified in Article 10, subparagraph 1, for the term of the guarantee granted.

**Art. 12.** The application for a guarantee is submitted to the department designated by the Flemish Government no earlier than two years and no later than three months before the start of the exhibition.

The Flemish Government determines the information and documents which an application file must contain, the formal requirements which an application file must meet, and the manner in which an application file is to be submitted.

The Flemish Government decides on the granting of the guarantee in the order in which the applications are received.

The following modifications do not fall under the guarantee granted unless they have been previously accepted by the department designated by the Flemish Government:

- 1° changes to loans under guarantee;
- 2° changes in the term of the exhibition for which the guarantee was granted.

**Art. 13.** The organisation to which a guarantee is granted pays an accession fee. The Flemish Government determines the amount of this accession fee.

**Art. 14.** In the event of damage to loans covered by the guarantee, the organisation takes the necessary steps to limit further damage.

In case of loss or theft, the organisation immediately reports it to the police.

In case of damage, loss or theft, the organisation immediately informs the lender and the department designated by the Flemish Government.

The Flemish Community shall not waive its right of subrogation in the event of serious misconduct or gross error.

The department designated by the Flemish Government handles the claims for damages.

The Flemish Government may lay down more detailed rules to handle claims for compensation.

**Art. 15.** A condition statement of the loans is drawn up at the beginning and end of the loan for the purpose of determining, in the presence of the parties concerned, any damage caused during the guarantee period.

### Chapter 3. State aid, confidentiality and processing of personal data

**Art. 16.** For the purposes of this Article, "General Block Exemption Regulation" means Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

The guarantee is considered state aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union. The aid shall be granted within the limits and conditions specified in the General Block Exemption Regulation.

In accordance with the General Block Exemption Regulation, the following organisations are not eligible for the guarantee:

- 1° organisations in respect of which there is a recovery order outstanding due to a previous decision of the European Commission declaring the aid illegal and incompatible with the internal market;
- 2° organisations that are companies in difficulty as mentioned in Article 2(18) of the aforementioned regulation.

**Art. 17.** Any person who, in any capacity, is involved in the execution and application of this decree is obliged to maintain secrecy about the property situation of the incoming loans and about the storage place of the incoming loans before and after the exhibition for which the guarantee has been granted. He is obliged to maintain the complete confidentiality of any information that he becomes aware of or that is entrusted to him through the application of this decree, in any form.

Violations of the duty of secrecy mentioned in the first sub-paragraph shall be punished in accordance with Article 458 of the Criminal Code.

**Art. 18.** §1. For the purposes of this Article, General Data Protection Regulation means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

§2. The department designated by the Flemish Government shall act as the data controller, as referred to in Article 4(7) of the General Data Protection Regulation, for the processing of personal data within the framework of the implementation of this decree, more specifically when receiving, assessing and processing applications for guarantees, when implementing guarantees granted, and when handling claims.

The following categories of persons have access to the personal data processed:

1. the staff members of the department designated by the Flemish Government for the purposes of the first sub-paragraph;
2. the experts.

§3. The processing of personal data under this decree concerns the following categories of data subjects:

- 1° the lender and borrower, their staff and their appointees;
- 2° the experts;
- 3° the file handlers.

§4. The processing of personal data under this decree relates to the following categories of personal data:

- 1° identification data, national registration number or social security identification number and other identification data;
- 2° contact details;
- 3° employment data;
- 4° financial data;
- 5° data on knowledge and expertise.

§5. The department designated by the Flemish Government shall initially request personal data and other information from the authentic data sources referred to in Article 5 of the Decision of the Flemish Government of 15 May 2009 implementing Articles III.66, III.67 and III.68 of the Administrative Decree of 7 December 2018. If the data cannot be obtained there, the aforementioned department may obtain that data from the applicant.

The exchanges of personal data that take place with the intervention of the competent department integrators, mentioned in Article 3 of the Decree of 13 July 2012 on the establishment and organisation of a Flemish department integrator.

§6. The maximum retention periods for personal data retained on the basis of this decree in accordance with Article 5(1)(e) of the General Data Protection Regulation shall be laid down in management rules as stated in Article III.81, §2 of the Administrative Decree of 7 December 2018. In determining these retention periods, the cultural-historical value of the file shall be taken into account.

§7. The Flemish Government may lay down more detailed rules with respect to the categories of data subjects, the categories of personal data, the categories of persons who shall have access to the personal data, the security of such data, and the appropriate safeguards for the rights and freedoms of the data subjects.

#### Chapter 4. Entry into force

**Art. 19.** The Flemish Government shall determine the date of entry into force of this decree.