***News Flash – 06 June 2022 – Lambrecht Law Office***

**Flemish Decree published on the indemnity for incoming loans of artworks for temporary exhibitions.**

The Flemish Parliament has recently adopted a decree[[1]](#footnote-1), establishing a government indemnity scheme for incoming loans of artworks for temporary exhibitions (the “**Indemnity Decree”**). The scheme provides for a guarantee from the Flemish Community in the event of damage or the total or partial loss of incoming loans for temporary exhibitions with international scope.

The scheme is intended to encourage the making of large exhibitions in Flanders. This is becoming increasingly difficult because of the high financial value of loans for these types of exhibitions and the increasing insurance costs.

Only certain cultural heritage collections and university archives and libraries (as referred to in Article 4 of the Indemnity Decree) will qualify for indemnity under the scheme.

However, certain conditions are to be met in order to apply for the guarantee:

* the exhibition must be organised within the own exhibition space of the applicant organisation;
* the exhibition must contribute a large extent to (at least) two of the following objectives: i) have an international influence on Flanders; ii) enrich the cultural heritage of Flanders; iii) promote scientific research; and iv) highlight the international importance or significance of its theme or subject;
* the total value of the incoming loans must be worth at least fifty million euros (excluding loans from Flemish institutions);
* the organisation must complete a risk analysis for the incoming loans and premises hosting the exhibition. The analysis must address the security, protection, climate and lighting conditions that will apply to the exhibition and incoming loans. The organisation must also indicate which measures it will take to implement the risk analysis;
* the organisation must submit a binding proposal from one or more insurance companies to cover the residual risk of the loans under Flemish guarantee.

However, no indemnity will be granted for exhibitions held outdoors nor for loans belonging to an organisation referred to in Article 4 of the IndemnityDecree.

The guarantee applies from nail to nail and will cover the first risk up to a maximum of fifty per cent of the total value of the loans covered by it, less the deductible, the amount which will be determined by the Flemish Government. The guarantee is dependent on the insurance taken out by the organisation covering the residual risk of the loans guaranteed by the Flemish Community. The guarantee starts at the earliest four months before the exhibition starts and expires at the latest four months after the exhibition is over, or for longer by reasonable request to the Flemish Government. The total annual budget that is granted by the Flemish Government is €1,200,000,000 provided that the total outstanding risk for the Flemish government may never exceed 600 million EUR at any time (subject to annual indexation).

An application for indemnity must be filed with the Flemish Government no later than three months before the exhibition commences (at the earliest two years before).

The Indemnity Decree includes instructions of what action needs to be undertaken in the event of damage or theft or loss, and requires a condition report to be drawn up at the start and at the end of each loan. It expressly provides that the Flemish government will not waive its subrogation right in case of gross negligence or wilful misconduct.

The guarantee is considered as State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union. The aid is granted within the limits and under the conditions referred to in the general block exemption regulation.[[2]](#footnote-2) In accordance with the regulation, certain organisations are not eligible for the guarantee including organisations subject to a recovery order and or a company in difficulty as referred to in Article 2, 18 of the aforementioned regulation.

In order to respect the interests of private lenders, officers handling indemnity requests and claims are bound by a confidentiality obligation with respect to the ownership status and the situation of incoming loans. A number of provisions within the Indemnity Decree set out the particulars for processing personal data in accordance with GDPR regulations.

No date has yet been set for the entry into force of the Indemnity Decree.

*This newsflash is offered by way of general information ; its content does not constitute and may not be considered as legal advice. For more information on the subject please contact us at* [*info@lambrechtlaw.be*](mailto:info@lambrechtlaw.be)*.*

1. Decreet van 21 januari 2022 tot invoering van een waarborg bij inkomende bruiklenen voor tijdelijke tentoonstellingen, *B.St.*, 10-03-2022 (in English: [*Flemish Decree of 21 January 2022 on the indemnity for incoming loans of artworks for temporary exhibitions*).](https://www.ejustice.just.fgov.be/eli/decreet/2022/01/21/2022040128/staatsblad) [↑](#footnote-ref-1)
2. [Article 107, Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union OJ C202/1 (TFEU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT)). [↑](#footnote-ref-2)