

Nuisances compensation for small undertakings

Since the 6th State reform, the 3 Regions have become competent to compensate self-employed workers, who suffer from public works nuisances¹. That said, the previous federal rule has been repealed by the 3 Regions².

Obviously, the conditions for granting as well as the amount of the compensation will rely on the undertaking's geographical position.

1. The Flemish Region

Regarding the Flemish region, the decree law related to « *the granting of a nuisances compensation to small businesses seriously affected by public works* » has been promulgated on July 15th, 2016 and came into effect on July 1st, 2017³. A Flemish Government decree has provided more details about the implementation of this compensation⁴.

This decree law allows 2 nuisances compensations for small businesses affected by public works. The first one is the compensation A and can be granted if the undertaking suffers from "serious nuisances". The seconde one, compensation B, may be individual or supplementary on the additional condition that the undertaking has closed down during the public works.

The nuisances compensation A is 2000€ and can be granted once a year and once per nuisance period per company. The nuisances compensation B is valued at 80€ per closing day (instead of 70€ in the previous federal rule) and can only be granted as of the 22nd closing day for a maximum of 365 days.

However, these amounts can be reduced by the Government " according to the availability of the budgetary funds" .

Nonetheless, some requirements are mandatory :

- The undertaking has to have employed less than 10 employees;
- The undertaking has an establishment located in the Flemish region ;
- The undertaking has an eligible legal form, meaning that the undertaking is a natural person, (trader or self-employed), a commercial company with legal personality, a civil company with commercial form or a foreign undertaking with an equivalent status ;

¹ Art. 6, § 1er, VI, al. 1er, 8°, Special Law on Institutional reforms 08.08.1980, *B.M.* 15.08.1980, https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1980080801&la=F

² The Act of 3 December 2005 introducing a compensatory allowance for loss of income in favour of self-employed persons who are victims of nuisance caused by work carried out in the public domain, *B.M.* 02/02/2006, p. 5894,

http://www.ejustice.just.fgov.be/mopdf/2006/02/02_2.pdf#Page

³ The Law Decree of 15 July 2016 granting a nuisances compensation to small businesses seriously affected by public works in the Flemish Region, *B.M.* 06/09/2016, p. 59699,

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2016071528&table_name=wet

⁴ The Law Decree of 12 May 2017 implementing the law decree of 15 July 2016 on the granting of a nuisances compensation to small businesses seriously affected by public works in the Flemish Region, *B.M.* 20/06/2017, p.66380,

http://www.ejustice.just.fgov.be/mopdf/2017/06/20_2.pdf#Page256

- The undertaking must be active. In other words, an undertaking in dissolution, cessation or bankruptcy process are not covered by the compensation ;
- The undertaking is not a state-owned company ;
- In order to receive the compensation A, the undertaking has to suffer from serious nuisance caused by public works. This condition requires 4 elements :
 - the road/traffic lane is entirely or partially closed,
 - the public works have been scheduled in concrete terms,
 - the public works has lasted for 30 consecutive days,
 - the undertaking has to be situated in the public works area.
 - Additional requirement for the compensation B : the establishment has to be entirely closed for at least 21 days in a row.
- Some « eligible activities » have to be mainly carried out within the establishment. These activities are those who « *aimed at the direct products sale or the services provision to end-consumers requiring personal and direct contact with customers, and for which it is difficult to perform them elsewhere* ».

The entire process is performed online, the undertakings have to register their personal data on GIPOD (Generiek Informatieplatform Openbaar Domein) and VKBO (Verrijkte Kruispuntbank voor Ondernemingen) platforms. The undertakings that fully meet the requirements will be selected by the Agentschap Innoveren en Ondernemen in order to receive their compensation A and/or B.

2. The Walloon Region

As regards the Walloon region, the decree law related to « *a compensatory allowance in case of works on the public highway* » has been promulgated on May 2nd, 2019 and came into effect on September 1st, 2019⁵. A Walloon Government decree has provided more details about the implementation of this compensation⁶.

This decree law allows a compensation of 100€ per day, multiplied by the number of days during which the undertaking's activity is hampered by public works, with a maximum of 60 days per construction site, so a limit of 6000€.

However, these amounts can be reduced by the Government “ *according to the availability of the budgetary funds*”.

Nonetheless, some requirements are mandatory :

- The undertaking has to have employed less than 10 employees ;

⁵ The Law Decree of 2 Mei 2019 introducing a compensatory allowance in case of works on the public highway in the Walloon Region, *B.M* 03/09/2019, p. 84036, http://www.ejustice.just.fgov.be/mopdf/2019/09/03_1.pdf#Page134

⁶ Walloon Government’s Law Decree of 18 July 2019 implementing the decree of 2 May 2019 introducing a compensatory allowance in case of works on the public highway in the Walloon Region, *B.M.* 03/09/2019, p.84043, https://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&caller=summary&pub_date=19-09-03&numac=2019203970

- The undertaking's activities need a contact with clients (trader, self-employed, catering industry, etc) which is overarching for businesses' activities and can not be performed elsewhere.
- The public works hinder the undertaking's operating site for at least 20 days in a row. The public works are deemed to "hinder" an activity when :
 - either the operating site's pedestrian access is highly damaged,
 - or the specific parking spaces on or nearby the operating site, are not accessible ;
- The undertaking must not be in a bankruptcy, dissolution or in a liquidation process.

The entire process is performed online, the undertakings have to give personal data and support their application by illustrating with photographs on the WALLINCO application⁷. Throughout the whole obstruction period, the undertakings have to, for a period of 5 consecutive days, take at least 3 photographs on different dates.

Finally, the compensation will be weighed according to the period which encompasses the first photograph, being the beginning of the obstruction, and the last photograph, being the end of the public works.

3. The Brussels-Capital region

As regards Brussels-Capital region, the Brussels-Capital Government decree related to « *the flat-rate compensation for undertakings impacted by a construction site on a public road* » has been promulgated on February 14th, 2019 and came into effect on March 25th, 2019⁸.

This government decree allows a flat-rate compensation, granted once, according to the number of fulltime employees in the undertaking. It will be an amount of 2000€ for a business with less than 2 fulltime employees, 2350€ for a business with at least 2 and less than 5 fulltime employees and 2700€ for a business including at least 5 and less than 10 fulltime employees.

Nonetheless, some requirements are mandatory :

- The undertaking has to have employed less than 10 employees ;
- The undertaking is located within or adjacent to a level 2 obstruction period, i.e. a worksite that has interrupted automobile or public transport traffic in at least one direction for a period of 29 consecutive days⁹ ;
- The undertaking must not be financed more than 50% by public funds or 75% in the event that the undertaking is enrolled in the Register for Legal Entities (BCE) since at least 4 years.

⁷ Walloon Public Service, « Benefit from compensation as a trader affected by works on the public highway », consulted on April 9th, 2021 : <https://www.wallonie.be/fr/demarches/beneficiaire-dindemnites-compensatoires-en-tant-que-commercant-lese-par-des-travaux-sur-la-voie>

⁸ The Government of Brussels-Capital Region's Law Decree of 14 February 2019 implementing a flat-rate compensation for undertakings impacted by a construction site on a public road, *B.M.*. 26/02/2019, p. 19427, http://www.ejustice.just.fgov.be/mopdf/2019/02/26_1.pdf#Page727

⁹ Art 85 §2, Ordinance-Law of 3 Mei 2018 related to construction sites on public roads, *B.M.* 18/05/2018 , p. 41472, https://www.ejustice.just.fgov.be/mopdf/2018/05/18_2.pdf#Page45

- The undertaking's activities are listed in the Government decree's 1st annexe in connection with the compensation of businesses located on the edge of a construction site¹⁰.

The entire process is performed online, the undertakings must fill in a standard form on the "Bruxelles Economie Emploi" (BEE) site which is managed by the Brussels Regional Public Service. If the request is complete, the decision to give compensation will be notified within 60 days. If the form is not filled in correctly or completely, the beneficiary has 30 days to complete his application form. Once the applying has been approved, the BEE informs the beneficiary that the flat-rate compensation has been granted.

If you recognize your situation in this article, do not hesitate to make a request for a compensatory indemnity by following each region's specific procedure !

For further questions regarding this article, feel free to contact us at : info@studio-legale.be or by phone on 03 216 70 70.

¹⁰ Government of the Brussels-Capital region's Law Decree of 14 February 2019 2019 implementing a flat-rate compensation for undertakings impacted by a construction site on a public road, *B.M.*. 26/02/2019, p. 19431-19433, http://www.ejustice.just.fgov.be/mopdf/2019/02/26_1.pdf#Page727