



ELS SILVRANTS-BARCLAY

Tools for the integral mediation of art commissions

DEPARTMENT OF
CULTURE, YOUTH & MEDIA



Flanders
State of the Art

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Introduction

It is extremely exciting whenever contemporary art enters the public space. The art meets new audiences here, working with multi-layered contexts and generating new meaning in the process. These meanings are never static but always plural and in flux; always prompting encounter and reflection, as well as conflict.

However, the principal behind an art commission is not at all hoping for conflict, quite the opposite. They expect the artwork to provide a service, or answer a question. They want the art to translate their ambitions, or make a connection or add something.

But art is not in search of a clear answer. In a sense, art refuses the service demanded of it. This is the conundrum of the art commission: it owes its existence to a commission from which it then tries to escape. The question the principal asks art is answered with another question. Art observes, examines and then sets its own agenda. The art commission shifts the gaze and takes the unexpected as its mission.¹

This view of the unexpected, however, is anything but non-committal. It is a look at the underexposed, underestimated, neglected and negligible. A look at stories, creatures and histories that are missing, forgotten or have yet to be written. A look that also becomes a prompt, asking why we do or don't find something valuable, beautiful or important. The unexpected therefore functions in an art commission as a recognition and acknowledgement of what is concealed in the question, context or place of the art commission, but somehow remains out of sight.

The artistic mediator turns this tension between this 'proprietary' agenda of the arts and the expectations of the principal into dialogue. In *On The Inconvenience of Other People*², cultural scholar Lauren Berlant argues for radically embracing discomfort and friction. The same applies for mediating art commissions: instead of eliminating different expectations and interests, the mediator holds up a mirror to them, to come to an in-depth and multi-faceted reflection on the meaning of the public 'place' where the art commission has been installed.

1 Jeroen Boomgaard. *Wild Park. Het Onverwachte als Opdracht*. Fonds BKVB, 2011.

2 Lauren Berlant. *On the Inconvenience of Other People*. Duke University Press, 2022.

In this public place, the art commission shares space with various other domains and users, thereby coming into contact with formal, legal and technical rules that do not apply in an exhibition setting. Artistic mediation therefore transcends the conventional role of the art curator, and demands not only artistic knowledge but also social, legal and production knowledge and skills inherent to working with art in the public space.

There is no 'ultimate' way to mediate an art commission; no ready-made 'fit-for-all' answers or solutions to get it 'right'. Each art commission is context-specific and therefore different, requiring a tailored approach. Nevertheless, a number of insights and tools can help in smoothly mediating an art commission. This publication is conceived as a toolbox that combines both substantive and practical insights and considerations which mediators, prospective mediators or other actors professionally involved in an art commission can use to build or further hone their own mediation practice.

In the first section \mapsto Section 1 of the publication, a number of key concepts provide insight into the various substantive dynamics that arise in the context of an art commission. The second section \mapsto Section 2 explores the various actors involved in the art commission, and clarifies the role of the mediator. The third section \mapsto Section 3 describes the description of the commission as a central directing tool, outlining the complete progression and various aspects of the art commission. The fourth and concluding section includes a road map with time frames and a checklist. There are various inserts throughout the publication \mapsto Series of inserts which succinctly explain a specific theme or issue.

This publication came about in the context of the master/miss-terclass for the mediation of art commissions developed by Els Silvrants-Barclay in 2021, with support from Maarten Soete. This was an assignment from the Department of Culture, Youth and Media, led by Katrien Laenen and Laureline Soubry, who also shared important insights. This annual master class is a dynamic, one-day workshop which will work with the insights and tools from this publication.

Section 1. Key concepts

The art commission

An art commission is a commission for an artist to create new work for a specific place in the public space. This commission assumes that there is a principal who is not familiar with (visual) art practice, or has no direct link to the professional arts field.

An art commission presupposes a creative process: when there is only a selection of existing works of art, it is not an art commission in that case but rather an art purchase.

Commission

As the word suggests, every art commission has been commissioned. This commission, initially formulated by the principal, can be a programme, question or expectation, linked to a site or destination, or a combination of these. An art commission is therefore very rarely *carte blanche*, but rather a question with specific constraints, instructions and expectations which the artist has to take on board.

Often, even before an artist is appointed, the principal has a picture in mind of the possible artistic interpretations of this initial commission. This may be conscious or unconscious, and extremely inflexible.

Working with artists in a commission context implies a constant balancing act or mediating between, on the one hand, artistic creation within the specific confines of a commission and, on the other hand, giving the necessary freedom so that the artist can maintain artistic autonomy at the same time.

The first, conditional step in an art commission is therefore to dismantle and broaden the commission: from an already imagined form in the principal's mind to a broad artistic or societal questioning within which the artist can act autonomously. \mapsto Analysis of the commission

The public space

The art commission is intended for public spaces outside the walls of a cultural institution. A space is public when there is a certain level of public accessibility. This accessibility can take various forms and degrees: a fully public municipal square, a partly accessible town hall or a healthcare facility with limited access. Some public spaces are not public or only accessible to authorised individuals, but we still regard them as public because there is some form of social ownership: for example, a water treatment plant or a prison.

The public space is not limited to the public *domain*, which only includes indoor and outdoor spaces owned by the government. We can also consider private spaces with a (partly) public character or a societal aspect – such as schools, churches, places of worship, residential areas or shopping complexes – as public spaces.

Openness

The fact that the public space is generally freely accessible does not mean that there are no codes and regulations there. The public status or *openness* of the public space is a dynamic and multi-layered aspect that is continually mediated. This openness is neither stable nor universal: it interacts differently with different bodies, is interpreted differently by different worldviews, and is therefore also *gendered* and culturally determined. Moreover, when the artwork enters the public space, this open character is the first thing it examines.

Outdoor and indoor spaces that transcend the private domain and have a public or social scope therefore fall under the broad territory of public space. This public space expresses a desire for openness, and this is the impetus for a complex and dynamic environment.

Permanence

In principle, an art commission results in a permanent work of art, which transcends a temporary exhibition character. However, the permanence of a work of art is a relative concept: in practice, the work often does have a limited lifespan. In some cases, this limited lifespan is even the conscious choice of the artist or a strategy inherent in the work created.

An art commission can also take an ephemeral form, such as a performance. This does not have to negatively affect the impact or sustainability of the work: a performance which is an annual collective ritual sometimes means more to a group of local residents than a sculpture on a pedestal.

Multiple principalship

In Flanders, the roots of the art commission lie in a Flemish decree
—→ Insert: Decree on Commissioned Art for art commissions in the context of public construction projects, also known informally as the ‘percentage decree’, which was revised in 2019. This explains why the Team Flemish Government Architect was the first to focus on developing a professional framework for what was then called art *integration*.

Public construction projects have long since ceased to be the only impetus for an art commission. Ever more diverse principals always have different motivations for working with an artist. For example, Commissioned Art comes into the picture from the perspective of city marketing and tourism, or as an impetus to work toward social cohesion or to enhance the quality of the public space. Artists themselves are also increasingly taking the initiative to work beyond the confines of cultural institutions, helping to act as the engine for new art commissions.

The broadening of an art integration in a construction project to an art commission in the public domain also complicates the status of the principal. Even if there is officially one principal, in practice there are often *multiple* principalships, meaning that different actors enter the domain of the principal. For example, an art commission in a neighbourhood project for which a local government is the principal, but where social organisations and residents also appropriate the commission.

Moreover, the local government is not a monolithic block either, but a constellation of different people, services and domains. Or take the example of a care institution where the management acts as the principal, but staff and patients also feel part of it. Furthermore, there is a similar tension as regards principalship between the architect and client in a more 'conventional' art integration. ↳ Insert: Architect

Transversal

When the artist enters the public space, he or she comes across different themes and domains – mobility, town planning, heritage, social affairs, culture, and so on – that interact transversally.

Each site or place in the public space consists of a combination of different tangible and intangible realities (context) that generate certain expectations or interpretations, but also impose more prosaic conditions such as administrative, town planning and technical rules, ownership structures or fire regulations.

Besides mediating between their own practice and the constraints of the commission, the artist therefore also needs to relate to the multilayered context of the site. The art commission is therefore not only commission-specific, but also context-specific.

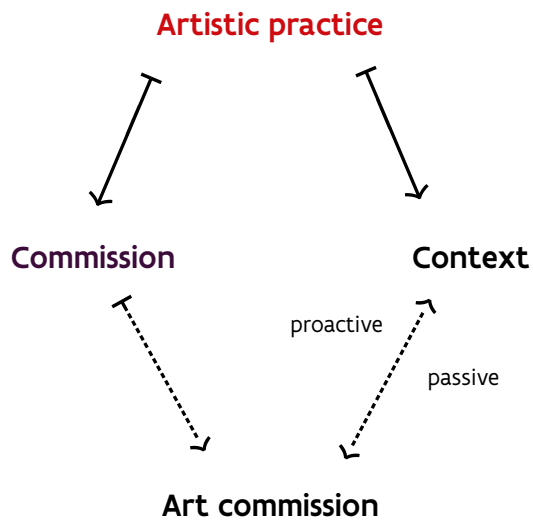


Diagram 1 From artistic practice to art commission

When the artist takes up a position on a site, this occurs both proactively and passively: proactively, because the artist always creates work largely from looking at the context and therefore makes a statement about it, and passively, because the meaning of the final work of art is always subject to the subjective gaze of the user or passerby of the place where it is located.

A work of art cannot therefore be reduced to the meanings given to it by the artist. On the other hand, a work of art embodies multiple meanings that arise when this work interacts with spectators, and they give it their own interpretations. In a sense, we can even say that the art only really comes into play when it gives rise to dialogue, interaction and reflection: this is the condition for its existence and the main driver. Meaning in art is therefore not a static, pre-programmed element, but something that must be able to emerge again and again.

Vulnerability

When a work of art is in a public place, it has the chance to enter into dialogue with an audience who may not be regular visitors to art institutions. However, this apparently easy accessibility does not guarantee that this audience necessarily embraces or understands the artwork. What is more, if the work of art enters the public domain and is not immediately understandable or usable, it becomes especially vulnerable.

Indeed, not only the public but also the principals and other stakeholders expect a lot from this 'public' art. The art has to satisfy the need of the commission, tell, move, make beautiful, inspire or connect in an increasingly complex society. The question is whether art can always meet these extremely high expectations.

Not all of the principal's questions and needs, or those of the public domain, are necessarily of interest to an artist. Some commissions are more likely to call for a designer, community worker or craftsman. \mapsto Passing on the art commission
An artist can empathise with or disguise himself in all of these roles, but still wants above all to dismantle, reformulate or broaden the stated questions, and place them in a broader artistic or social context.

Art is therefore rarely an answer to a question, a solution to a problem or the provision of a service. Art produces meanings, but often in unexpected ways. Art can broaden viewpoints, point out a blind spot, prompt reflection, or even radically refuse the service; in a playful, poetic, profound, provocative, formal or conceptual way. Art creates a place for 'something else'.

An art commission therefore needs to be fundamentally motivated from the desire to bring art into a space or place: as an end in itself, and not merely as a means to satisfy a need.

Community and commons

Art can bring people together in the public space, but does not necessarily do so. A work of art can also lead to a very personal encounter, an encounter that can mean something different for everyone. Art makes us think about what 'coming together' and 'collectivity' mean, rather than necessarily giving them form.

This interaction, and the reflection and debate that follows, helps build the community. Art can be a tool for developing critical consciousness. Art helps to look at and deal with the complex reality in a different way, which, moreover, does not mean that art cannot or should not be enjoyed at the same time.

Art in the public space also leads to new collective anchor points.'

\mapsto Insert: Diversity and decolonisation As local residents, passersby and users come into contact with a work of art, they increasingly view it as a special contribution to their environment. Gradually, the artwork becomes a landmark, a part of cultural memory. The artwork helps write the history of a place, a city, a community.

Slow time

An art commission takes time and very rarely produces immediate results. The tension between the artistic practice, the commission and the context inherent in an art commission requires a great deal of interaction and discussion, with constant exploration, translation and clarification. It is in that discussion that the artwork emerges, even before it takes a form or is handed over.

This process requires patience, time and integral mediation. It does not end with the formulating of a commission, nor with the appointing of an artist. Even after selecting a proposal, translation and discussion remain essential. The creation of new work is rarely a straight line: from proposal to implementation is a tortuous process that principals and stakeholders have to embark on. Producing art is thinking out loud again and again. What is more, the formal and procedural regulations —→ working framework Realisation & installation that are imposed on the art commission further slow down the process.'

This slow and mediated process presupposes the necessary resources, and this is often underestimated. The cost of a commissioned work of art is more than just the production and installation cost of the work, it also includes remuneration and compensation for the creation, interaction and mediation time that is crucial to its success.

Even after it is realised, the work of art has to be given time to land in its new place. Cutting a ribbon is only the start, not the end. Only then can the work of art get going.

In many cases, the work of art also ends up as part of a patrimony and/or a collection. It is therefore important to bring this collection perspective into the process early on. Not only does this encourage the parties to carefully reflect on the preservation and management of the final work, who is responsible for it and who bears any costs, —→ Aftercare & collection perspective but it also raises substantive questions about permanent improved access and communication, the position and meaning of the artwork in and through the collection. —→ Insert: Diversity & decolonisation This often comes (too) late in the process, with the result that important elements (and support) for aftercare can be overlooked. When this collection perspective is incorporated into the initial formulation of the commission, it can also offer a relevant (and sometimes essential) substantive horizon.

Integral mediation

Integral mediation considers the integral process that an art commission goes through, from the very beginning. The description of the commission \mapsto Description of the commission is a crucial tool in this regard, and from the outset tries to fully identify this process and draw out the necessary anchor points for it.

Integral mediation also translates not only between the principal and the artist. Integral mediation also takes into account the broad context of the art commission and involves other stakeholders and actors, for example. As an 'embedded outsider', the mediator does maintain a constant focus throughout the process on the artistic finality of the art commission.

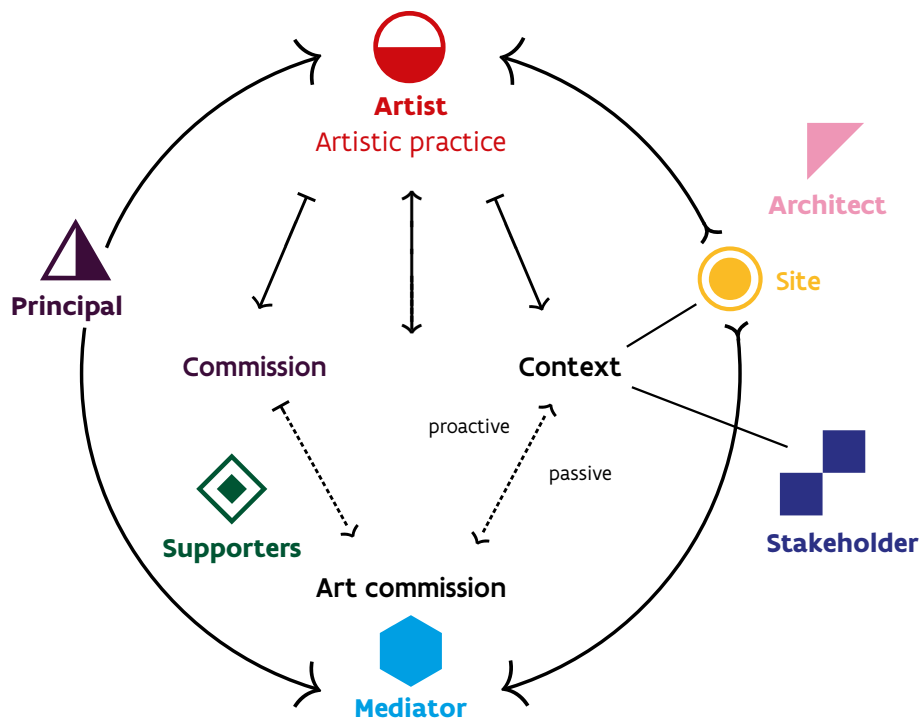


Diagram 2 Integral mediation of the art commission

This integral mediation is both a perspective, an expertise and a concrete task that someone takes on. However, this does not have to be the same person throughout the process: a combination or succession of different mediators (or different forms of mediation) are also possible. \mapsto From mediator to mediation Like the work of art, the ideal design of mediation is therefore always specific and tailored to the commission at hand.

Section 2. Actors

There are a lot of different actors involved in each art commission, often with different agendas and expectations. It is important to get an overview of these actors in good time, and therefore correctly anticipate who can be informed or involved at what time (see also below the mapping and organigram as part of the description of the commission). \mapsto Mapping & organigram



Artist



Mediator



Principal



Architect



Stakeholder



Supporter

Below we list different actors, split into four groups, each with a brief explanation and several points for consideration.

The (multiple) principal(s)

The principal is the body or person who takes the initiative to launch an art commission. We refer to multiple principalships when this principal consists of several individuals or agencies, which, moreover, is usually the case.

- The person who takes the initiative is not necessarily the person who executes the art commission on behalf of the principal (an alderman or head of division may take the initiative, and then it is the project leader who executes the art commission as principal);
- The person taking the initiative is often surrounded by other individuals who helped drive this initiative (e.g., the director of a care institution was inspired by the lecturer on artistic therapy, whereby this lecturer feels like a joint principal);
- The art commission is transversal in nature and touches various policy areas: mobility, public works, culture, town planning, social affairs, to name a few. Moreover, when the principal is a government, then both politicians and civil servants are involved within these domains. In this multi-faceted context, it is not evident to pinpoint, let alone centralise, the principalship, and the art commission is often subject to a great deal of internal consultation;
- When the principal is a private player, it is in principle a lot easier but still often requires interaction with public actors and regulations (building permits, safety standards, etc.);
- For art commissions in the context of public construction projects, executive agencies often come on board, such as facility services, autonomous municipal companies involved in urban development or even private developers in a public-private partnership;
- The architect is \longleftrightarrow Insert: Architect also close to the role of the principal of an art commission, despite the fact that the architect in the construction project is actually the contractor, as is the artist. This has to do with the fact that the architect is often one of the initiators of an art commission, and wants to align it with their own design, or the client-principal expects the architect to play a directing role. In practice, therefore, the architect often takes on the mixed role of principal, contractor and mediator, and sometimes he or she even encroaches on the artist's territory;
- The principal behind an art commission usually has little or no experience in working with contemporary artists.

The architect in the art commission

A lot has been said and written about the relationship and differences between art and architecture. In theory, it is simple: the arts are an autonomous domain, where the artist decides on his or her actions, and architecture is a service-providing domain, where the architect provides an answer to the spatial needs of a principal or users of a place.

In practice, however, this distinction is a lot less absolute: artists also have to work within the frameworks of curators, institutions and funders, while architectural practices also have their own signature and position with which they critically approach a commission. The relationship between autonomy and service provision is therefore a sliding scale rather than an absolute contradiction in both the arts and architecture, on which artistic and architectural practices occupy different positions, and these positions can vary from project to project.

The art commission is the project par excellence where the arts and architecture intersect, and autonomy and service are intertwined. First of all, because in the art commission – as the word suggests – the artist does not create something completely autonomously, but according to a specific question or brief, and therefore has to find a way to make this commission their own, rather like how an architect has to.

Moreover, the art commission presupposes artistic action on the architectural or urban scale of the public space, whereby the artist automatically enters the architect's field. This is an encounter that certain architects also seek out for themselves, using the art commission to dynamise their own spatial intervention.

Finally, specifically in Flanders, there is the decretal framework for art commissions —> Insert: Decree on Commissioned Art that obliges public (or publicly funded) building clients to commission artworks. There are now many more reasons for an art commission than a new public construction project, but the decree still generates a significant portion of art commissions in Flanders and Brussels.

A valuable encounter between the artist and the architect starts from the shared desire to add meaning to a space or place: space as a social environment, as a choreography of users and materials, with affective qualities and layered histories. On the other hand, when art only plays a decorative role, it just shares the space with the architecture and has no right of its own.

Art must therefore be able to enter into dialogue autonomously with architecture in order to be itself, which, moreover, does not mean that art and architecture cannot share the same space, or there cannot be a strong symbiosis. Just as the artist, in a sense, tries to escape from the principal's question, this artist also tries to escape the grip of architecture which they have to bear in mind.

More complex than distinguishing between meaningful art and decor in interaction with architecture is the sometimes ambiguous role of the architect in the art commission process. In fact, the architect often plays different roles whereby, moreover, they regularly enter the territory of other actors involved: the territory of the principal, the mediator, the stakeholder and even the artist.

When a client needs or wants to incorporate an art commission into the construction project, the architect is often the first sounding board. It is often even the architect who proposes artists, and this is something that is increasingly being requested in architectural competitions. When it is the architect who brings in the artist, the architect becomes a kind of shadow principal, with the artist as their subcontractor.

Within the broader (formal) framework of the art commission, however, the client remains the principal, and the architect is the contractor. This can create confusion and tension: it is therefore important for the artist to build the conversation and relationship not only with the architect, but also with the official principal. All the more so because experience shows that the architect is often involved at a high level at the start of the art commission process, but once the project is underway sometimes disappears from the scene, so that after a while the artist might have to rely on him or herself.

In practice, when the architect does stay involved, he or she often gradually takes on the role of mediator, helping to translate between the artist and the principal. The architect's mediation can add value to the art commission, and can also provide the artist with important support in the execution of their work. This often works out well, especially for architectural practices with long-standing interest and knowledge about the arts, and some have intensive and long-term working relationships with artists. But this method does not always go smoothly, because not all architects have the necessary understanding of the specific way artists work and/or about the course and design of an art commission, let alone specific experience with artistic mediation. In such cases, it is advisable to involve a mediator with artistic expertise.

When the architect does not take on the role of 'unofficial' principal or mediator, they at least act as an important stakeholder in the art commission. Indeed, the art commission will interact with and therefore impact the designed architecture: the architect therefore often demands a share or even a voice in the process. Dialogue between the artist and the architect is therefore logically crucial, and can be highly valuable and engaging, as well as charged or even emotional.

This is the case in particular when the architect has a very clear conception of what the art commission can or cannot be, and gives little space to the artist to work with 'his' or 'her' architecture: the architect takes over the artist's space. Here too, a mediator can provide a solution.

The architect is therefore not present in all art commissions, but still often. However, his or her role or position is not always clear. What that role or position might be varies from project to project, and architect to architect. It is often enough to clarify this role at the start of the art commission, and if necessary provide a framework that ensures that the interaction between artist and architect realises the inherent added value for both.

Stakeholders

Stakeholders are parties that are not actually selected by the principal, and therefore do not automatically get a seat at the table, but nevertheless feel involved and that they have stake. They demand a 'share' in the art commission.

- Local residents, local associations, businesses and civil society located near the art commission;
- Users and staff members of the place, business or institution for which an art commission is being elaborated: they are not part of the managerial or initiating framework of the art commission, but will regularly come into contact with the final work;
- If there is a new construction project, there is also the architect.
↳ *Insert: Architect* The architect of an existing building or existing urban design where an art commission is subsequently installed may also demand a share or vote;
- Local artists, art and (socio)-cultural associations, part-time art education, cultural institutions active in and around the site or region of the art commission often feel that they have a stake;
- Politicians and officials in the various policy areas that the art commission touches may not only be principals but rather stakeholders. Especially when public debate arises, politicians who are not directly involved tend to find their voice. Often this is not clear, which is why it is important to have the conversation about responsibilities and expectations from the description of the commission phase;
- These stakeholders have a place, but are not part of the more general and broader audience of the art commission. If the principal wants to reach specific target groups or sub-target groups with the art commission, these stakeholders do need to be included in this stakeholder mapping.

Stakeholders can provide relevant input for the substantive analysis.

↳ *Analysis of the commission* They are important for creating public support for the art commission, for which there is always criticism (it's too expensive, ugly, etc.) and, given the right approach, can be important ambassadors (rather than the first, most ardent critics). In a sense, they form the civil society around the art commission.

Principal(s) are sometimes reluctant to involve stakeholders in an art commission because this takes time and can lead to difficult discussions, but discussions are often the best guarantee of support for the art commission.

Supporters

Supporters are the persons or agencies who are responsible for the overarching and/or implementing actions of the art commission.

- Persons and/or services involved in the installation and sometimes production of the art commission: green services, facility service, etc.;
- Persons and/or services that arrange contracts and payments, including any sureties and procedures relating to public calls for tender;
- Persons and/or services involved in the communication relating to the art commission: press and communication service, tourism service, spokesman, etc.;
- Any subcontractors involved in executing the work;
- Persons and/or services that will have to be responsible for the maintenance and aftercare of the final artwork: cultural policy coordinators or curators, maintenance department, etc.

Working in the public space entails a lot of organisation: areas or streets sometimes need to be temporarily cordoned off, the art commission under construction needs to be secured, the art commission needs to be illuminated, transported, signposted or incorporated into a green or paved area.

The persons or authorities responsible for these overarching and/or implementing tasks are often involved too late, or their roles are envisaged too late. This can lead to (among other things, budgetary) discussions between the principal(s) and the artist, or create internal tension between different actors and services that are often beyond the artist's control.

The mediator(s)

The mediator is the person(s) who facilitates the dialogue and collaboration between the artist, principal(s), stakeholders and other actors, with a view to realising a high quality and broadly supported art commission in a given context.

- This mediator has a network and the necessary experience in the field of the professional arts, and art commissions in the public space in particular. This experience with art commissions may be more content-related, or more production-related. Owing to the required knowledge of the arts, we also refer to an *artistic* mediator;
- The mediator transcends the role of the traditional curator and is experienced in mediating artistic processes and/or the shared decision-making that comes with the art commission. In addition, he or she also has basic knowledge of the various legal and technical regulations related to public procurement ↳ Insert: Law on public procurement and/or for works in the public space. A curator can be brought in as an artistic expert for a given component (jury service, vision development) but does not replace the mediator in this regard;
- The mediator is usually, and ideally, an external person: someone who is not directly involved and therefore cannot be 'claimed' by either party, but can work from as neutral a position as possible. Nevertheless, that does not mean that someone who is part of the principal's organisation *cannot* by definition mediate: internal mediators (for example, from another department), provided additional guidance and framing is envisaged, for example, through an artistic sounding board group, can also play a critical role;
- In other words, the mediator is not only someone who brings in certain skills and knowledge that are missing from the organigram, they also have the necessary autonomy to support and guide the collaboration from a (relative) outsider's perspective;
- The mediator is therefore not merely a 'defender' of the artist, but rather the facilitator of a process;
- Since the mediator has to reconcile different parties and ambitions, he or she has to have the necessary social skills.

Most principals and actors involved in an art commission have little experience in the arts, but also for an artist it is not always straightforward to work with a principal outside the cultural circuit.

The mediator accounts for this and mediates between three perspectives: the *commission* (the perspective of the principal, who wants an answer to his question), the *artistic practice* (the perspective of the artist, the artistic relevance and the needs of the artistic creation process, with a view to the realisation of a work of art within an artistic practice) and the *context* (the perspective of the tangible and intangible realities of the place or context in which the art commission will be installed, which offers both constraints and opportunities, and needs to be anchored). The latter perspective includes the perspective of stakeholders who may come into contact with the art commission and want to have their say, and whom the mediator includes in the mediation process with a view to building support .

From artwork to artistic creation

An art commission is a commission for a new work of art, and therefore a creative process: an art commission should ideally be awarded based on a concept proposal, and is therefore very rarely a 'finished' work of art to order. This means that after the commission is awarded, the artist should be given the space to further explore the chosen concept and develop it into a final project, in dialogue with the principal, stakeholders and other actors.

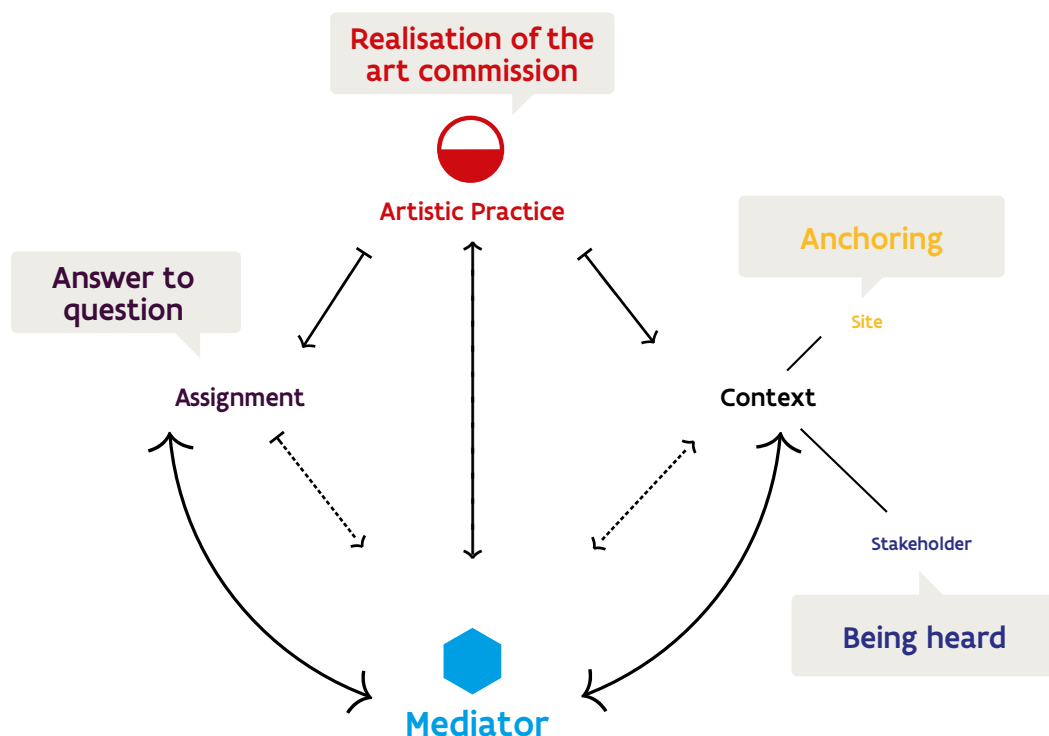


Diagram 3 Retake diagram 1. From artistic practice to art commission: desires and expectations

This process of thought and creation allows the artist to work context-specifically and in dialogue, and is therefore a crucial factor both for the artistic depth and quality, and the anchoring of the final artwork. Fully embracing the creative aspect of the art commission also gives the artist the opportunity to experiment and explore possible new avenues, which means that the art commission not only responds to a question, but can also contribute to the development of the artist's artistic practice and oeuvre.

The fact that the final artwork is very rarely an identical realisation of the approved concept presupposes that the complete process of the art commission needs to be fully supervised, where artistic mediation is necessary not only to select an artist, but also during the subsequent creative and production processes. Translation and clarification may also still be necessary for the communication and aftercare.

From curator to mediator

This integral mediation requires knowledge and expertise beyond the skills of the 'traditional' exhibition curator. An exhibition curator always makes artistic choices autonomously, while the mediator in an art commission *mediates* in making a *deliberate* choice for which he or she ultimately stands as the artistic guarantor.

Moreover, it doesn't end there: the mediator plays an important role in facilitating and enabling the essential creative process that follows this selection. All this assumes the necessary social skills: a large part of the mediator's work is negotiating, translating and facilitating discussion between the different parties involved, backed up by basic knowledge of the main legal and technical regulations in public procurement, construction projects or projects in the public space.

Working in the art domain in a shared decision-making process inevitably creates tension, and not every mediator deals with this in the same way, or plays the same role. Some mediators choose to stay close to the more autonomous role of the curator, finding that making the artistic choices themselves offers the best guarantee of a high-quality art commission. Other mediators explicitly choose shared decision-making because this builds crucial support for the art commission. Then other mediators eschew curatorship entirely and prefer an award process with an external artistic jury.

All of these different mediating roles and practices are useful and justifiable. Nevertheless, it is important that there is a match with the specificity of the art commission and the expectations of the principal. Some principal(s) do not want to be involved in a selection process at all, while others expressly do. Some art commissions allow for a more autonomous approach, while other more complex commissions push for more collective decision-making. Mediation, like the art commission itself, is therefore also a customised task each time.

This underscores the importance of choosing the right mediator for the right art commission. As there are various mediation practices, the principal can choose to invite a number of mediators to propose a vision and approach, and make an informed choice based on that. There then needs to be fair remuneration for each proposal.

From mediator to mediation

In such a wide range of tasks, to be performed over a rather extensive time frame, artistic mediation can be shaped in different ways: by the same mediator who goes through the whole process, or by several mediators who work together and/or come one after the other, combining different job profiles and tasks, each time bringing in specific skills according to the process. That is why it is more accurate to refer to mediation rather than 'the' mediator.

A typical arrangement is to have an external artistic advisor or expert who mediates the first phase of the art commission (drafting a description of the commission, vision development, mapping, selection and appointment of the artist) and then a production manager who, working with the principal (or the architect), jointly monitors the creation and execution. The external artistic expert may just as well mediate the entire creation as a fully-fledged mediator, or a second external mediator may facilitate the second implementation stage of the art commission.

Appointing the mediator

The mediator is therefore a crucial link in the art commission. Nevertheless, there are still many principals who initiate and realise an art commission without an artistic mediator, or at most seek limited artistic advice for the selection of an artist.

Various factors play a role in this regard. Limited experience in the arts means that some principals underestimate the complexity of an art commission, so they do not immediately appreciate the importance of a mediator. Moreover, the remuneration for a mediator should not come from the budget which principals of public construction projects are required to
—→ Insert: Decree on Commissioned Art devote to an art commission. The mediator remuneration is therefore a cost that the principal has to incur on top of the budget, for an art commission imposed on them in the often precarious budget-related context of a public construction project.

If the decision is still made to appoint a mediator and even opt for integral mediation, then in certain cases the Law on public contracts
—→ Insert: Law on public procurement may apply in 'awarding' this appointment. This may also be a factor that delays or eventually even rules out an appointment.

Section 3. Description of the commission

Purpose of the description of the commission

The description of the commission defines the commission or question that a principal wishes to put before an artist, and condenses it to a description of the integral process of the art commission: from the question and substantive analysis, through the selection of an artist, to the production, communication and aftercare of the final artwork. The description of the commission is therefore an overarching directing tool that analyses, structures and anticipates the full progression of the art commission.

This integral view does not mean that the description of the commission interprets or fleshes out all the different components and phases of the art commission from the outset. Certain aspects of the art commission only become apparent over time, or may need to be adjusted as the art commission evolves. Indeed, an art commission is a dynamic creative process, in which initial concepts and ideas are always in flux.

The description of the commission, on the other hand, has the task of identifying all the components of the art commission at an early stage, and creating the necessary awareness around it. In other words, the description of the commission provides all parties involved with a clear framework in the dynamic process of the art commission.

Ideally, this description of the commission should be separate from the legal agreements, specifications, selection and tender documents to be drawn up in the context of procurement procedures, for example, with a view to formally awarding the art commission to an artist. The description of the commission can, of course, serve as the basis for these formal documents. Working with separate documents means that they can retain their own form, language and emphases, without compromising the broad, process-based and artistic view of the description of the commission.

In the first instance, the principal draws up the description of the commission and includes in it the question, available budget and desired timing from his perspective on the art commission. In practice, the description of the commission is often limited to this, with or without a separate analysis of the commission by an artistic mediator or expert.

When the principal involves a mediator in the drafting of the description of the commission (i.e., rather than hiring him or her solely for artistic analysis), the mediator can help broaden the principal's perspective from the outset, to include the perspective of the artist and other stakeholders, while pointing out other substantive, practical or formal aspects of the art commission of which the principal is not (yet) aware, but which may be crucial to a smooth process and a viable outcome.

In this way, the mediator can build the description of the commission into an integral framework that identifies the entire progression and all the different aspects of the art commission. The mediator therefore realises the first important mediation: between the (projected) expectations of the principal and the (real) finality of the art commission.

Components of the description of the commission

Part 1. Commission

A description of the principal's commission or question, supplemented by the town planning, technical and prosaic regulations and expectations that the art commission must meet.

What is the reason for, purpose and intended location of the art commission? This first part of the description of the commission, in addition to a concise description of the question or commission, includes a listing of all the town planning, technical and other prosaic regulations and expectations that the art commission must meet or take into account:

- With regard to the intended location;
- With regard to the town planning-related intention;
- With regard to applicable safety regulations;
- With information about the construction planning (if any);
- Expectations in terms of maintenance and aftercare.

Part 2. Analysis of the commission

An artistic-substantive analysis and broad reflection on the principal's question.

The next part of the description of the commission includes a substantive analysis that makes the principal's question the focus of a broader social and/or artistic reflection: the analysis of the commission.

This analysis of the commission will be worked out by an artistic mediator, and may possibly be supplemented with discussions with various actors involved.

This analysis of the commission is always a deepening and broadening of the principal's initial question, making it the focus of a broader reflection. What does this question say about the world today? What underlying social realities and themes does the place, building or institution which the art commission has to relate to bear witness to, through its location, users, functions or histories? Who and what are – or once were – present? Who or what is missing, and why is this the case? What spatial qualities are there, and what are the spatial shortcomings or challenges? What artistic and substantive themes can this art commission link to? How does this relate to artistic research fields and broad art history? The starting points for this analysis of the commission can be highly diverse and multifaceted.

This substantive broadening creates space in which the artist can work autonomously, without losing the connection with the commission. Indeed, this broadening makes it possible to include social themes and questions that are latent in the commission, while avoiding the concrete interpretations that the principal has already (unconsciously) given to them. \mapsto Key concepts
The focus shifts from the implementation of a work of art (whether already specified or not) in the principal's mind, to the initiation of a broader conversation between the artist, the context and the various actors involved, in which the artist can fully use his own approach and practice.

This broadening also generates the openness to artist practices that the principal would not have immediately considered at first. This substantive vision development, in which the principal's question is related to broader themes, is therefore a crucial step in connecting the commission and artistic autonomy, and is therefore immediately an important condition for the art commission to exist.

Passing on the art commission

In exceptional cases, this substantive analysis leads to the conclusion that there is insufficient artistic basis to initiate an art commission with a professional artist. If the expectations are too specific, the broad social question is not covered enough, or the form of the intended work of art is already decided on, and there is therefore too little autonomous artistic space for the artist to take action him or herself. Indeed, an art commission cannot merely satisfy a need or implement a pre-existing idea, and must be motivated by the principal's wish to install an artwork in a given place. The principal therefore must be willing to step into a creative artistic process whose outcome is not yet entirely certain: to ask the artist a question to which they do not yet know the answer themselves.

When these conditions are not met, the mediator may therefore recommend in the analysis of the commission that the commission be passed on to previously used or executive parties (designers, architects, craftsmen, socio-cultural organisations, etc.) who are better positioned to address the principal's request for functionality and use. This is definitely not a less noble route, and does not make the question any less legitimate, but it cannot be the thrust of an art commission to a professional artist. If the Decree on Commissioned Art is applicable, however, this is not an option and working with a professional artist is obligatory. In such cases, a mediator can help reformulate and renegotiate the terms of an art commission.

Part 3. Mapping & organigram

A mapping of all the actors directly or indirectly involved in the art commission. This mapping results in an insightful organigram that clarifies the points of contact, duties and responsibilities, appoints any working groups and also defines the role of the mediator (or the intent of the mediation assignment).

The principal does not always have the reflex from the outset to identify or involve all actors \mapsto Actors who could potentially be involved or affected by the art commission: their initial purview is often limited to those directly involved, usually managerial staff.

A broad mapping of all stakeholders and involved parties allows for strategic thinking early in the art commission process about the question of how, when and who to inform and/or involve to ensure support and involvement. This avoids situations where certain parties only come into the picture when there is already a gap or resistance.

At the same time, this mapping encourages the principal(s) to involve the right partners with the right skills from the start, based on an integral vision of the art commission, to formulate feasible expectations together and on that basis also envisage a realistic budget and the necessary framework. This mapping exercise therefore not only anticipates possible tensions, but also identifies possible opportunities and possibilities.

As such, this mapping creates clarity as to who plays what role and has which responsibility as the art commission progresses, and on this basis, makes it possible to determine an organigram and work structure with clear points of contact and division of tasks.

Drafting this organigram may lead to a number of temporary working groups being set up: a sounding board or steering board may be a good way of involving stakeholders or (political) leaders, or to bring in artistic advisors, or can help to carry out specific, temporary (or not) aspects of the art commission (the selection of an artist, inauguration of the work). The decision can also be taken to plan structural consultation sessions (or not). Finally, this working structure also defines the role and purpose of the artistic mediation in the process.

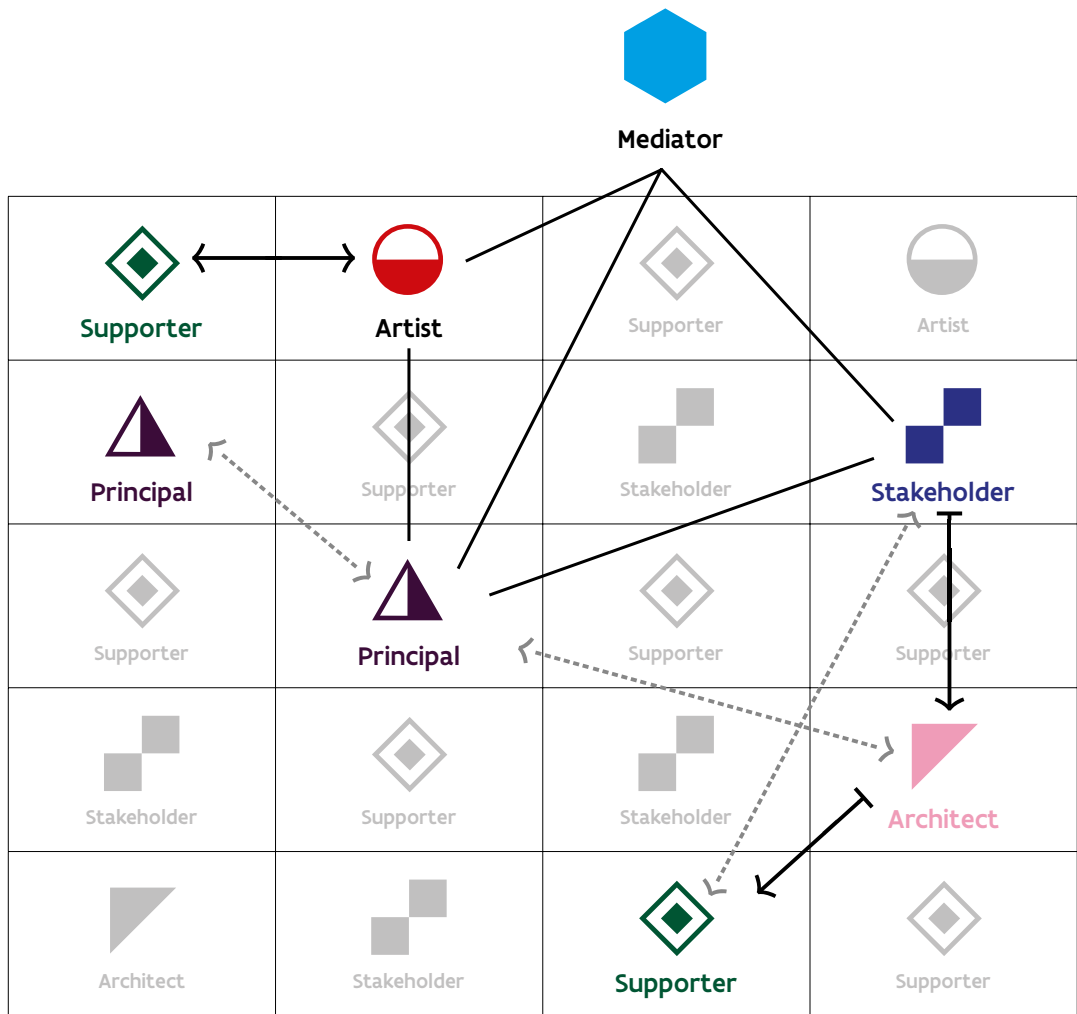


Diagram 4 From mapping to organigram

Part 4. Formal & financial framework

An overview of the art budget (divided into a production budget and the artist's remuneration) with information on payment and delivery deadlines, including agreements on VAT. If applicable, this section also includes information on the formal frameworks that apply (law on public contracts, surety, etc.).

Budget

This part of the description of the commission states what the envisaged art budget is, and breaks this down into separate cost items: the production costs (the budget to realise the artwork itself), the artist's remuneration and expense allowances (the artist's salary and allowances for travel and accommodation expenses). This section also explains how and through what structure and under what conditions the principal will disburse this budget, with which VAT regime and within what payment terms.

A number of costs fall outside the art budget: the mediator's remuneration and expenses, communication actions, signage and also the inauguration event have to be funded separately. If the principal has additional wishes for lighting or implantation, and this is not strictly necessary for the artwork, then in principle this is also on top of the art budget. Only when any participation is part of the artistic creation process can it be paid from the art budget, if not, additional resources must be found.

When the Decree on Commissioned Art in the context of public construction projects \rightarrow Insert: Decree on Commissioned Art is applicable, then the distribution of the art budget explained above, including the costs that fall outside it, is strictly applied. If the decree does not apply, then the distribution of the art budget can be negotiated, but the mediator must help ensure that the artist is given a feasible art budget and receives fair pay. \rightarrow Insert: Fair pay

In art budget	Sometimes in art budget	Never in art budget
<ul style="list-style-type: none"> - Production costs - Artist' remuneration (including cost for an artistic proposal) - Expense allowances 	<ul style="list-style-type: none"> - Implantation - Lighting - Participation 	<ul style="list-style-type: none"> - Mediator's remuneration and expenses - Communication - Inauguration - Signage - Aftercare

Diagram 5 Art budget in the Decree on commissioned art

It is important that the overall budget for the art commission reflects the principal's expectations, is realistic and does not have any blind spots, and takes into account the artist's socioeconomic reality. ↳ Insert: Fair pay This also presupposes a fair payment policy, with a feasible balance between advances and payments after completion of different phases. The description of the commission offers the mediator an opportunity to pin this down from the outset, before an artist is even appointed.

Public funding for art commissions still primarily goes via the Decree on Commissioned Art in the context of public construction projects in Flanders and Brussels. Other public funding sources are more limited in order of impact, are one-off, or are indirectly through other subsidy channels. There are therefore no structural subsidy channels for art commissions. Of course, private funding also plays a role.

Agreements

This part of the description of the commission explains with whom or which party, and under what conditions and within what time frames, agreements will need to be entered into.

The description of the commission can provide the basis for these various agreements, but it is best to keep them separate. ↳ Purpose of the description of the commission The legal frameworks (see next point) for these agreements can be rather stringent, and require a specific language and focus that does not always correspond to the broad and integral intent of the description of the commission. It is therefore better to work with separate documents that stay next to each other. They can refer to each other and, of course, despite their different purpose, should not contradict each other.

In drafting these agreements, the mediator can help translate and mediate where necessary so that they always serve the interests and expectations of the artist and the principal in equal measure.

Legal frameworks

Various legal frameworks and official procedures have an impact on the art commission. They govern both the fact of working in the public space and the use of public resources in the context of a public contract. This section of the description of the commission explains what legal frameworks apply to the art commission in question, and how they will be applied.

Fair pay and the socio-economic position of the artist

Every art commission is different: in terms of scale, workload, production, and therefore in terms of the artist's remuneration. That means it is not always straightforward to enforce fair pay and fair practice in art commissions. Below, we list a few principles that can help ensure that artists are properly remunerated. It is also important in this regard to take into account the socioeconomic situation of the artist.

- Getting money to create a new work is not remuneration for the artist. Fair pay means that on top of a workable production budget for realising the artwork, a separate salary is always envisaged for the artist. If there is a lot of travel and possible accommodation expenses, a third separate allowance should be envisaged for that too.
- This remuneration should be calculated based on a realistic estimate of the workload. It should also take into account invisible work such as attending meetings or giving lectures. A principal cannot simply assume that the artist will take this on for no extra reward. If the principal is unwilling or unable to provide additional compensation in this regard, the artist is entitled to limit this invisible work.
- A salary is not paid in royalties, small fees scheme for artists (AKV) or other expenses. Not only for insurance purposes, but also because the artist must be able to accumulate social rights and their labour should be compensated as such.
- There are no pay scales for artists, but the calculator on juistisjuist.be and CLA 329.01 can serve as a framework. Bear in mind that these are the absolute minimum amounts. Artists bear a lot of responsibility and so classifying them at the master and/or managerial level is justified.
- The principal must take into account the status and specific socioeconomic situation of artists. Artists often work with a precarious status, so there must be a willingness on the part of the principal to look for a collaboration that is also financially and formally feasible for the artist. Not all artists can simply send an invoice; many work via other organisations or alternative methods of remuneration (1bis, interim). This requires some flexibility on the part of the principal and the various services involved in the financial and administrative follow-up of the art commission.
- If the principal wants to pay in several instalments, it is crucial to point out that the artist cannot simply pay all the production costs in advance. For many artists, it is not financially feasible to be reimbursed only after the (shared) handover of the work. Advance payments can ensure there is a balance between the investments of the artist and the principal.

This legislative and procedural framework is extensive, complex, and regularly updated. It is therefore important to always look at the most recent legal frameworks. Not all frameworks and procedures apply to every art commission, or need to be applied the same way in each case. It therefore requires some consultation, research and study each time.

There are two 'major' legislative frameworks that often (but not always) govern art commissions: the Decree on Commissioned Art in the context of public construction projects, ↳ Insert: Decree on Commissioned Art and the federal law on public contracts. ↳ Insert: The federal law on public contracts

The decree on commissioned art is Flemish legislation and lays down the conditions for mandatory art commissions in Flemish public construction projects, while the federal law on public contracts describes the procedures via which the government must 'award' a contract. At times only the decree applies, at other times only the law on public contracts, and sometimes both. Two separate inserts describe these legal frameworks in more detail, explaining when they apply and how to apply them to an art commission.

In addition, there are various regulations specific to the building or site of the art commission. In particular, these are town planning regulations, regulations on fire safety, mobility or heritage, and so on.

If the principal is a local government, local procedures may also then apply, in particular in the context of (political) decision-making. It is not exceptional that a board of aldermen has to approve each subsequent phase of the art commission. Not only can this completely slow down the process, but in some cases even shut it down.

Finally, there is the legal framework of copyright. This framework is often overlooked for a long time, while copyright agreements are often made quite early in the process. ↳ Insert: Copyright in art commissions This is not only about the correct application of the use of images in accordance with copyright law, but also about agreements on copyright citations by all parties involved.

It is important that the mediator knows and understands at least part of these legal frameworks and procedures. They can have an unexpectedly significant impact on the progression, versatility and timing of the art commission.

Part 5: Working frameworks

An overview of implementing procedures and working frameworks that structure the art commission, tailored to the commission, indicating the division of tasks and timing. These are working frameworks for the award, realisation, communication and aftercare of the art commission.

This section of the description of the commission provides a number of prompts for various implementing procedures and working frameworks. These working frameworks do not have to be fully defined from the outset, but can be developed gradually as 'placeholders' as the art commission evolves. The idea is to already identify certain implementing tasks in the context of the description of the commission, so that these are in scope from the outset and can therefore be anticipated in good time.

Award procedure for the art commission

The award of the art commission to one or more artists is a crucial step in the process of the art commission. However, there is no 'exactly right' way to organise this artist selection. Different approaches are possible: indeed, each commission, context or site may call for a different approach to awarding the commission. It is therefore important to always tailor any selection or award procedure to the art commission in question.

The artistic mediator should ideally be closely involved in deciding on the design of this selection process. If a selection procedure has already been decided on before a mediator has been appointed, the mediator may propose, if necessary, in the context of the description of the commission, to supplement or even modify this procedure. The mediator therefore does not so much facilitate the decision of *who* is selected, but instead develops a vision in the first instance of *how* best to make this selection.

If the Law on public contracts applies – which is often, but not always, the case – then of course any proposed selection approach must be consistent with it.

—> Insert: Law on public procurement It is therefore a question of choosing an award strategy that respects the principles of the law, and properly justifying the final selection of an artist based on this legal framework.

The Decree on Commissioned Art in the context of public construction projects

This new decree on commissioned art of 1 March 2019* replaces the original Flemish ‘percentage decree’ of 1986 that requires public building clients to spend a portion of the construction cost on art commissions.

This decree applies to all Flemish public building clients and all private building clients who finance at least 30% of their building costs with public funds. The new decree extends the obligation for an art commission to private building clients who develop a building which will be made available to a public user on a long-term basis, as well as other forms of public-private partnerships, such as long-term leasing. For example, a private building client may have to apply the decree but may not be subject to the law on public contracts.

The construction cost serves as the basis for calculating the art budget to be spent on an art commission. This construction cost includes works as well as professional fees and study costs. From this construction budget, a percentage is then calculated in bands. The amounts that determine these bands are index-adjusted every year. These amounts have been in effect since 1 March 2024 (so be sure to always check the most recent amounts):

1.5% (band lower/equal to € 1,286,770)

1% (band lower/equal to € 1,286,770 and lower/equal to € 3,860,320)

0.5% (band lower/equal to € 3,860,320 and lower/equal to € 128,677,380)

0.25% (band higher than € 128,677,380)

If the construction cost is less than € 643,390 then the decree does not apply. The platform Art by Commission has developed a handy calculator* to exactly calculate the current amounts of this art budget.

This art budget is set based on the architect’s estimate of the construction cost from the approved procurement file, and therefore does not need to be recalculated each time. The amounts do however exclude VAT, and as already mentioned are indexed every year.

This art budget can only be used for the production of the artwork, the artist’s remuneration and expenses: only elements that are inherent to the artist’s artistic creation and creative process. This means that the remuneration of the mediator, any communication actions, the inauguration, signage or implantation costs that are not strictly necessary for the work of art cannot be reimbursed from the art budget → Budget but must be paid for separately by the principal.

* These sources are only available in Dutch

Another new aspect in the decree is the principle of the basket and the relative autonomy of the various policy areas involved (including education, healthcare, sports, culture) to draw up a master- and multi-year plan in which they can develop their own vision with their own emphases. This means that principals can combine art budgets from different construction projects into larger art commissions, and also means that an art commission does not necessarily have to end up in the construction project that triggered the decree framework.

Another important consideration is the replacement of renovation in construction projects with conversions and repurposing: this ensures that the decree only applies to major works and no longer to renovation works such as replacing windows, for example. The decree does not apply either for completely private use (social housing) or only for public sector personnel.

The decree significantly broadens the concept of art and makes room for more ephemeral artistic expressions, such as performance. On the other hand, the decree stipulates that the sustainable output and life cycle of the art commission has to be justified in the context of selecting an artist, and encourages principals to explicitly include aftercare.

In the first instance, every award procedure needs to answer this question:

- Does the law on public contracts apply and how do we apply it? What procedure do we follow and on the basis of which award criteria do we make a final selection? If the law applies, a separate set of specifications is drawn up based on the description of the commission, and after being awarded, an award report and an award decision.

In addition, each award procedure also needs to address the questions listed below. When the law on public contracts applies, the award procedures are of course approached from the legal framework and its principles:

- Do we award the art commission directly or do we organise a competition? Does this competition take place in one or more rounds?
- Do we work by invitation only, or can any artist apply through an open call? Who decides which artists we invite?
- Do we work with an artistic jury, a mixed jury (artistic experts, principal(s), stakeholders, other actors), or does the principal alone decide, together with the mediator? What is the role of the architect? Do we work with a fixed jury setup or do we change it if there are several rounds?
- What will we ask of the artists and how do we envisage this for each round if there are several rounds: do we only request a portfolio, a concept/vision or a developed proposal? How do we understand the difference between a concept/vision and a proposal? What remuneration is envisaged?
- If we work by invitation and with several rounds, from which round do we gauge in advance (informally or otherwise) the availability and interest of the artists we have in mind?
- Do we evaluate proposals on paper or do we also ask for a presentation?
- On what criteria do we make an assessment, and do these criteria change each round? Do we stay with criteria that are based on the commission, or do we add more general criteria? If the law on public contracts applies and a competition is decided on, then objective award criteria are mandatory, but criteria are also appropriate outside the legal framework.
- What is the timing of the award procedure? What are the submission dates and possible presentation sessions?
- Are there site visits and who is the contact point for questions?
- Does the principal expect a participatory process, and if so, what are their expectations and any prompts?

Include these considerations:

Vision versus proposal

When multiple artists are asked to submit a proposal in the selection process, the principal(s) often expect as detailed and specific a proposal as possible. However, there are advantages to awarding an art commission based on an artistic concept or vision for the commission that still leaves room for development and deepening, and is based on the artistic practice of the artist. The time and input given to an artist during a selection round is limited, and initial ideas are often only a starting point: only once the commission is awarded can the artist start working on a deeper level, initiate dialogue, and build understanding of the context and the site where they will implement their artwork. Opting for a practice and a vision, rather than an already decided on project, creates space for a creative process, which contributes to the anchoring, support and quality outcome of the art commission.

Criteria

If the law on public contracts applies, then objective selection criteria are mandatory. But irrespective of the legal framework, selection criteria contribute to principles of transparency and good governance. These criteria are always based on the commission, of course, but can also have more broad emphases. Establishing these criteria encourages the principal (and any other actors who help decide) to be explicit about the emphases they wish to place. In this process, certain expectations can also be framed, and if necessary, countered (a classic condition: it has to be a local artist). In the selection process, these established criteria help to make intelligent choices, not simply based on personal preferences or a 'click' with an artist.

Direct award

There are sometimes valid reasons to award an art commission directly. The Law on public contracts \rightarrow Insert: Law on public procurement permits this when there is a monopoly situation, but stipulates that there must always be a convincing argument for it. In this case, however, it is always advisable to have the artist in question work out a concept in any case before awarding the art commission to them.

Law on public procurement

The federal law on public contracts* is based on European legislation and applies to all public authorities in Belgium. Among other things, this law stipulates that a public government, or a (private) legal person (or project) with at least 50% public funding must follow a tender or award procedure to order works, supplies or services. These award procedures (sometimes called placement procedures) are intended to ensure that public funds are spent properly and transparently, and that different tenderers are evaluated equally at all times.

When the amount to be spent is less than € 30,000 (excluding VAT), the flexible system applies (the law refers to a 'low-value contract'). This means that accepting the invoice is proof that the contract has been concluded. From € 30,000 upwards (excluding VAT), the law specifies different award procedures. From € 144,000 upwards (excluding VAT), an opinion from the Inspectorate of Finance is required in addition to an award procedure, and from € 500,000, € 1,000,000 and € 2,000,000 (for services, supplies and works, respectively), agreement from the government.

According to the law on public contracts (last revised on 30 June 2017), an art commission with a budget of up to € 140,000 (excluding VAT) can be awarded via an award procedure that the law describes as a 'negotiation procedure without prior publication'.

The general principle of this negotiation procedure without prior publication is that the award documents (the specifications) must be sent to at least three possible tenderers in order to ensure a certain level of competition. However, unlike other procedures described in the law, this procedure does not stipulate that this award (or placement) be 'publicly announced' in advance. The contracting authority may therefore select and write to (at least three) tenderers to submit a tender, and then compare these tenders based on the criteria in the specifications, and then proceed to an award. Specifically, this means that the principal may directly ask artists to submit a vision in the form of a tender.

The same negotiation procedure also provides for the possibility of awarding a contract directly to a successful tenderer, i.e. without the obligation to call for multiple tenders, especially when there is a situation of monopoly or exclusivity. These are 'unique' works, supplies or services which from an objective perspective can only be provided or performed by a single tenderer. To illustrate this monopoly situation, the law explicitly mentions the art commission that (freely translated) 'the purpose of which is to produce or acquire a unique work of art or to provide a unique artistic performance.'

* These sources are only available in Dutch

Moreover, under this monopoly situation, performers and producers of art commissions can also be directly appointed. Indeed, the law states that a monopoly can also arise 'due to technical reasons', and to this end invokes the reasoning that a given work of art can only be performed by a specifically qualified subcontractor.

However, it must always be possible to objectively substantiate an award in the context of a monopoly situation in the final award report and award decision, and this is not always straightforward in practice. An award also needs to be substantiated in the award report and the award decision of a negotiation procedure without prior publication in which at least three artists submit a tender (because there is no monopoly situation), based on objective criteria. \mapsto Allocation procedure Because legal services do not always have a lot of experience with art commissions, it is important that the mediator can provide appropriate support and input in this regard.

If the budget of the art commission exceeds € 140,000 (excl. VAT) then the 'negotiation procedure without prior publication' is cancelled and the open procedure applies. However, the monopoly situation can always be invoked, regardless of the amount of the contract, and thus provides a first solution. In addition, in some cases, it may be more interesting, if there is a large budget, to realise not one but several art commissions, whereby the amount can be divided into several lots and awarded to different artists.

In principle, a public principal can request surety (or a surety bond). A surety bond is a financial guarantee made available by the artist (as the successful tenderer) to the principal (contracting authority in this case) as a guarantee of full and proper performance of the contract, usually in the form of a sum of money in an escrow account. The surety amounts to 5% of the total tender sum (excl. VAT). This sum will be refunded after the handover. In the past, this surety was required by law for contracts over € 50,000 (excluding VAT) but this law was recently amended, and the surety is now optional. However, the principal may still request surety.

Jointly deciding means jointly promoting

It is important to think strategically about who can take part in selecting an artist. If there is a substantial public budget, or an art commission in a symbolic public place, it may make sense to involve not only experts but also other stakeholders and actors involved in the selection process. However, an open call for everyone to have their say is incompatible with the Law on public contracts and is therefore not possible if this law applies. On the other hand, in a more internal setting, such a broad approach is not always necessary, and a small but carefully hand-picked group can provide a good basis for selecting an artist. In either case, the mediator, or an external artistic jury, can ensure the artistic quality of such a broad decision-making process, by demarcating a longlist of artist practices in the first stage.

Working with subcontractors

In certain cases, the scale and scope of the realisation (or installation) of an art commission exceeds the artist's capabilities: an implantation within the landscape, an intervention on an architectural scale, or the production of a complex element. The artist has to rely on other expertise – architects, craftsmen, producers – or needs the operational structure to pre-finance and organise this, which raises questions about liability and insurance. Direct cooperation and calls for tender between the principal and these subcontractors, separate from the artist, may offer a solution, but this is cumbersome. A second procurement procedure may also limit the artist's choice of a specific subcontractor, and lead to misunderstanding and conflict over authorship → Insert: Copyright in art commissions over the work.

Realisation & installation of the art commission

There is a lot of implementing work involved in producing a new work of art in and for public spaces, often a lot more than the principal envisioned in the beginning. This working framework makes it possible to map out this implementing work in advance, and have clear agreements with clear expectations about who will take on exactly what for the realisation and installation of the art commission.

'Realisation of the art commission' means the production of the work of art itself: this may be (partly) in the artist's studio or (partly) directly on site; by the artist him or herself, through possible subcontractors or in collaboration with operational services of the principal, or still through the architect. Installation includes transport to and installation of the work at the intended site, including the temporary and/or permanent installation of lighting, greenery, signage, fencing, etc.

This working framework for the realisation and installation provides answers to these questions:

- What can we already estimate as important implementing tasks relating to the realisation and installation of the art commission, and who will take the lead in this regard?
- What does the principal expect from the artist in terms of realisation and installation? Does the principal want the artist to work as autonomously as possible or is he or she willing to call in services or employees who can help (including to reduce costs?) In other words, what is the operational work structure around the art commission, from an integral perspective?
- What is the role of the architect in implementation and/or installation?
- What timing needs to be taken into account? What are the important consultation moments, events and deadlines?
- What are the technical conditions and requirements the work needs to comply with? Town planning prescriptions, restrictions as regards installation and implantation of the work? This is a dynamic addition to the description of the commission in Part 1 of the description of the commission.

Include these considerations:

Making is thinking out loud

When an artist produces a new work of art, the creative and production phases are rarely two separate phases that neatly follow each other. It is not that the artist first comes up with something and then executes it. For many artists, making is a way of thinking: only when a sculpture takes shape can the artist properly assess whether or not the idea works. In the art commission process, many final artistic decisions are therefore not made until they are specifically tested out in the production process. Specifically, this means that the final art commission may still look different from approved concepts and even developed proposals. The mediator can help clarify this process, which often makes a logical substantive progression, if necessary, to the principal(s) and other stakeholders.

Communication & participation

Communication can also be included in the working framework for the realisation and installation, but sometimes the expectations surrounding an art commission are on such a scale that a separate working framework around communication is still desirable.

Communication means external communication in the first instance, but in the case of an extensive stakeholder list and/or a complex work structure, this working framework may also briefly address internal communication.

Participation is a buzzword and a catch-all term that can take many different forms: does the principal want to work with an open call for artists? A broad participatory process regarding the appointment of the artist in which different stakeholders can participate in the decisions? Does the principal want an interactive artwork, or for the artist to co-create his or her work, and if so, with whom? Does the principal expect a work aimed at particular target groups? These are very different questions, each requiring a different approach. This working framework prompts the principal to clarify their vision and expectations in terms of participation.

This working framework for communication and participation provides answers to these questions:

- At what times/with what phasing does the principal want to communicate externally about the art commission? On what media and who/what service will take care of this?
- How does the principal want to permanently frame the art commission in terms of communication? What actions and possible merchandise should be included?
- What are important internal moments when the principal wants and needs to communicate about the art commission?
- What are the principal's vision and expectations, if any, for organising participation around the art commission?
- What does the principal expect from the artist and mediator in this participatory process?

Copyright in art commissions

Copyright comes into play twice in the art commission: first and foremost, authorship over the work of art itself, and then also over the use of images of this work.

The artist always retains copyright over a created work of art, even if it is sold to another owner. The latter acquires ownership over the use, de facto display of the artwork, and certain agreements can be made in this regard (in terms of credit, information about loaning the work and the such like).

If the artist collaborates with certain performers, producers or collaborators, then there may be a situation of co-authorship, but only if there is a demonstrable intellectual or creative contribution to the art commission, and not a purely executive role. This distinction is not always easy to make and clear agreements are essential in this regard at the start of any cooperation, also vis-à-vis the principal. Especially for complex and large works in the public space, this has led to copyright disputes in a number of cases.

Both the artist and the photographer retain copyright over an image of the artwork they have created and photographed, respectively. This means that the principal and subsequent 'owner' may not use any image of the work on any medium. In practice, agreements can be made in this regard between the artist and principal. The photographer also stipulates on which media his or her photos can (or cannot) be used. In general, it is important to check off all communication with the artist.

Include these considerations:

No communication without an artist

It is important to point out to the principal that the artist always wants to have a say and be involved in the communication about the art commission and the final artwork, and that copyright law protects the artist in this regard. —→ Insert: Copyright in art commissions Images of the artwork cannot be used without the agreement of the artist (and the photographer). For example, if the principal wants to develop merchandise relating to the final artwork, and/or use it as an image in campaigns, or expects the artist to give a number of lectures on it, it is best to include this already in the description of the commission as a clear expectation.

Artists are not social workers

More and more principals expect the artist to organise a participatory process in which various groups and stakeholders can participate, as an integral component and 'guiding partner' of the art commission. This is often the case when an artist is asked to work with specific target groups in the context of community projects or projects. In the latter case, it is important to point out to the principal that not every artist is interested from an art perspective in participatory or co-creative processes, let alone equipped for them. Artists are not social workers: not all artists can or will mediate complex social realities: they can, of course, reflect on them and/or give commentary on them through art. Participation must therefore always be an autonomous choice of the artist.

If participation is an important part of the commission, then this needs to be an explicit criterion in the award process, and artistic practices need to be selected and evaluated accordingly. It is important to point out to the principal that this may limit the number of artistic practices that can be considered for the art commission and, in any case, sufficient autonomy must be ensured.

Participation via mediation

Another option is to roll out a participatory process via a mediator. This means that interaction and participation can be provided for without fundamentally affecting the autonomy of the artist. It also ensures that more artistic practices can come into the picture for an art commission, including those that do not specialise in (participatory) art commissions. A mediated participation process can provide for participation at different points in the process: in the drafting of the description of the commission, the selection of the artist or around the creation process. A participatory process does involve a great deal of preparation and extra work, and requires a mediator with the necessary expertise. It also comes with a price tag that should not come at the expense of the artist's budget and remuneration.

Aftercare and collection perspective

This working framework is a reason to look at the art commission from a broader heritage perspective as early as the description of the commission stage: from identifying important points of attention and the expectations of the principal in terms of maintenance and aftercare of the artwork, to situating an art commission in an existing collection framework or patrimony. Moreover, if applicable, aftercare is a working framework which is explicitly mandated by the most recent Decree on Commissioned Art.

This collection or patrimony perspective can provide relevant substantive and artistic leads in addition to important technical conditions. Indeed, after the art commission is handed over, it becomes part of a cultural patrimony or collection, especially when there are multiple artworks in a shared territory, with the same principal(s) or stakeholders.

The reflection on how the art commission relates to or can contribute to this broader framework can become part of the substantive analysis.

—> *Analysis of the commission* This reflection can also be a chance for the principal to formulate a number of preferences and points of attention for multiple commissions, and therefore contribute to each individual commission from a collection perspective. This can facilitate permanent improved access and public communication around the art commissions, helping to build public support.

This working framework for aftercare provides answers to these questions:

- What lifespan does the principal have in mind for the artwork?
- What maintenance conditions are feasible for the principal?
- Who is in charge of maintenance and aftercare, and what does the principal expect from the artist in terms of aftercare?
- Who is responsible (substantively) for the permanent improved access of the final artwork?
- Is this work included in a collection or patrimony framework, is this an occasion to examine this framework?

Diversity and the decolonisation of the public space

Calls for decolonisation have been growing louder in recent years, including the various colonial images that can still be found in our public space. How to deal with these 'problematic' images? This is clearly a complex and multifaceted question, but every new art commission offers an opportunity from this broader collection perspective to replace these with 'other' images or narratives.

This includes the overrepresentation of heteronormative male figures and artists in the artistic patrimony of the public space, and the overstereotyping in the way women, native peoples, or people of colour are depicted. Every art commission can be an occasion to think about, question, dismantle and 'queering' the prevailing representations in the public space. Every art commission that enters the public space should have a minimal awareness of this issue.

Diversity in representation comes from a heightened awareness of these questions and issues, but is primarily achieved when a more diverse group of curators and mediators also introduce more diverse networks, relationships, insights and artist practices to the process of an art commission. Only from a broader perspective and a broader concept of art can more diversity and the decolonisation of the public space be made a structural priority.

Section 4. Checklist & Road map

This road map is developed from the perspective and remit of the mediator, and starts when the mediator is appointed.

If the principal decides to first invite a number of prospective mediators to explain their vision and approach and only then appoint a mediator, another step comes before this one. The appointment process in this prior step can be organised with a written application, an interview, or a combination of both, and takes 1 to 2 months. If there is also an award process, this may take a little longer.

This road map consists of four consecutive steps, each worked out with a checklist of actions to be taken, as much as possible in a chronological order. Not all actions are always applicable, and that is listed as such in the checklist. Following the checklist is an estimate of the time frame for each step, with a brief explanation.

This road map serves as a guide but also as a concrete illustration of the fact that every art commission is very time intensive.

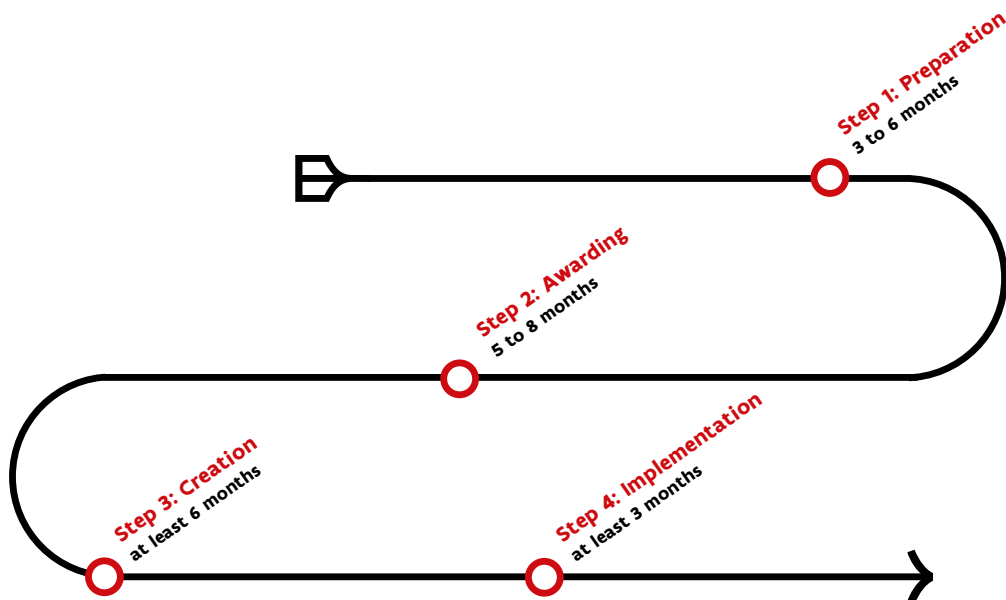


Diagram 6 Road map

Step 1: Preparation

From the principal's question to an integral description of the commission

- Extensive introduction to the principal(s)
- Mapping of stakeholders and actors, possibly with (separate) discussions
- Specify the organigram and work structure based on this mapping
- Prepare the analysis of the commission, possibly with (separate) discussions
- Workshop(s) on the description of the commission with the principal(s) and (if applicable) selection of stakeholders/actors (after mapping)
- Decide on the competition format (as part of description of the commission) in accordance with legal frameworks (if applicable) and criteria, followed by drafting of (separate) specifications for the award (if applicable), together with relevant (legal) services
- Finalise the description of the commission, after feedback session(s)
- If applicable: political or internal decision-making on the finalised description of the commission and (if applicable) final specifications (before award)
- Decide on key data with the principal(s) and (if applicable) with selection of stakeholders/actors (based on mapping)
- If applicable: support initial communication action

Time frame: 3 to 6 months

In this first step, political decision-making and the negotiation and finalisation of the specifications in particular can take quite some time. Therefore, it may be an option to start the preparation and initial elaboration of the award phase in the meantime, in the next step.

Step 2: Awarding

From description of the commission to award

- Develop and document longlists and shortlists of artists
- Poll artists, provide input and final feedback, organise and facilitate site visits and input moments
- Organise, facilitate and document selection and assessment meetings for the purpose of reports and award documents (if any)
- If applicable: political or internal decision-making on the final selection and (if applicable) award, support (formal) communication with unsuccessful candidates
- Organise disbursement for non-rejected candidates who made a proposal
- Support a second set of communication actions: communication from an open call to vote (if applicable) to communication about the final selection of the artist(s)

Time frame: 5 to 8 months

The duration of this second stage depends to a large extent on the design, scale and number of rounds in the chosen award procedure. A procedure with a public call has to be effectively and broadly communicated, and sufficient time has to be given for responses. But even for a more internal process, an artist must be given time to find their rhythm before they can put a concept on the table. A jury also needs to be given time to review proposals in advance. Finally, even in this second step, (political) decision-making and awarding can slow down the process.

Step 3: Creation

From artistic concept to artwork to be realised

- Drafting and signing a formal agreement (if not already done via the award) and deciding on a payment procedure and operational structure for the art commission, organising an initial and possibly second or third instalment through this third phase of elaboration
- Support the artist in preparing a budget, including an initial negotiation (with, if applicable, the decree framework in the background) about the costs that the artist will cover from the envisaged art budget and which costs are paid and organised separately by the principal, e.g. relating to signage, lighting, implantation in the landscape, etc. Make any choices and agreements about this together
- Facilitate work visits for selected artist(s), including setting up meetings, interaction or collaboration between selected artist(s) and principal(s) and selection of stakeholders/actors (after mapping)
- With particular attention in this regard to facilitating consultation on specific questions for the creation, realisation, installation and possible aftercare of the selected concept (both substantively and in terms of production) and continue this consultation towards a final proposal
- Throughout this consultation, support the artist(s) in refining and specifically elaborating the selected concept into a clearly realisable work of art with technical detailing, concrete realisation strategy with timing, indication of subcontractors (if any) and if applicable, support the services involved in awarding subcontractors

Time frame: at least six months

This stage is usually skipped to a large extent in the art commission process, when in fact it is a crucial phase that gives the artist the space to arrive at a mature and anchored work of art, both in terms of the substantive concept and the production concept. The concept needs to keep being refined, with or without consultation with the principal(s), stakeholders and actors, and from a deeper understanding and engagement with the question and the site and any regulations in place. The parties also need time to think about material, form, structure and execution, to consult on this with any subcontractors, executors or engineers/architects, and also to specifically test things. Six months is therefore a minimum.

Step 4: Implementation

From artwork to handover and aftercare

- Include the final design of the artwork to be realised in specific working and agreement frameworks in the description of the commission and have them validated again (at least informally), with final agreements on cost sharing and the copyright situation
- Start up and finalise possible award procedures and/or application for permits
- Support production of text and final imagery for communication and improved access of the final artwork, including the set-up of the inauguration and signage, including making relevant agreements between artist(s), principal(s) and services involved
- Support the artist(s) in preparing a file with guidelines on maintenance, aftercare and use of the artwork
- Provide support in the realisation of the artwork, mediating and clarifying where necessary, both informally and through consultation sessions, with a view to the final handover

Time frame: at least 3 months

This time frame is the most difficult to estimate because the time taken for the concrete realisation of the work can vary to a significant extent. An artwork on an architectural scale is a completely different realisation than devising a performance. Nevertheless, a minimum of 3 months is realistic, as this phase also needs to focus on communication and aftercare. This is a phase that can last at least a year, perhaps longer.

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