**DRAFT DATED 24 April 2023**

**Decree of... amending the Fireworks Decree in connection with the implementation of the Benelux Decision concerning the introduction of a pyro pass and other amendments**

On the recommendation of the State Secretary for Infrastructure and Water Management of, No Ien/BSK, Central Department of Administrative and Legal Affairs;

Having regard to Article 9.2.2.1(1) and (2) and Article 9.5.8(3), (4) and (6) of the Environmental Management Act;

Having heard the opinion of the advisory division of the Council of State (opinion of, No. );

Considering the detailed report of the State Secretary for Infrastructure and Water Management of, No IenW/BSK-, Central Department of Administrative and Legal Affairs;

Have approved and hereby decree the following:

**ARTICLE I**

The Fireworks Decree [Vuurwerkbesluit] is amended as follows:

A

In the alphabetical order of Article 1.1.1(1), the following definitions shall be inserted:

Pyro pass: inspection document issued by the competent authority in Belgium, Luxembourg or the Netherlands allowing the holder to demonstrate that pyrotechnic articles of category F3 and F4, pyrotechnic articles for theatre use of category T2 and other pyrotechnic articles of category P2 may be provided to them;

Pyro pass register: register referred to in Article 9.5.8(1) of the Environmental Management Act;

responsible person: person with specialised knowledge, fireworks processor or fireworks operator designated by legal person with the right to use, store or make available on the market pyrotechnic articles, to handle or use pyrotechnic articles on behalf of that legal person;

Firework processor: person registered in the Register of fireworks processors referred to in Article 4.9(2) of the Working Conditions Decree;

Firework operator: person registered in the Register of fireworks operators referred to in Article 4.9(1) of the Working Conditions Decree.

B

A paragraph is added to Article 1.1.3 with the following text:

3. Chapter 4 also applies to pyrotechnic articles of category P2.

C

In Article 1.2.5(2), 'a registration certificate or a consignment note as referred to in Articles 20 and 29 of the Road Freight Act' shall be replaced with 'a consignment note as referred to in Article 2.13 of the Road Freight Act'.

D

A paragraph is added to Article 3B.1, reading:

7. The application permit shall be valid for five years.

E

A paragraph is added to Article 3B.6, reading:

6. An amendment to the data referred to in paragraph 1(a) shall be immediately notified to Our Minister.

F

After Chapter 3B, a chapter is inserted as follows:

**Chapter 4. The pyro pass**

**Article 4.1**

1. Operators may make professional fireworks, theatre pyrotechnic articles and pyrotechnic articles of category P2 available on the market only to persons with specialised knowledge, on presentation of a control document and identity document.
2. In addition, where a natural person acts on behalf of a legal person entitled to apply, store or make pyrotechnic articles available on the market, the pyrotechnic articles concerned may only be provided on presentation of the control document and identity document of the person designated by that legal person.
3. For persons with specialised knowledge or responsible persons designated as such under the law in Belgium, Luxembourg or the Netherlands, with the exception of persons with specialised knowledge as referred to in Article 1.1.2a(1)(c) to (f), the pyro pass shall constitute the control document referred to in paragraph 1.
4. Pyro pass holders authorised for category F3 or F4 fireworks shall also be deemed to be authorised for category F2 fireworks not designated for private use.
5. Pyro pass holders authorised for pyrotechnic articles for the use of category T2 pyrotechnic articles shall also be deemed to be authorised for category T1 pyrotechnic articles.
6. When checking the pyro pass, economic operators shall also consult the pyro pass register to verify the validity of the pyro pass.
7. For persons with specialised knowledge who have not been designated as such in Belgium, Luxembourg or the Netherlands, the control document shall consist of written proof of the authorisation received by a person in a Member State of the European Union not part of the Benelux as referred to in Article 1.1.2a(2).
8. Market operators who supply fireworks as referred to in the first paragraph shall retain a copy of the control document in the records, together with the relevant invoice and the transport document concerned, as required by Annex 1 of the Regulation on the carriage of dangerous substances by land, which is the Dutch translation of Annexes A and B of the ADR and the accompanying annexes, for seven years

**Article 4.2**

1. The following natural persons are eligible for a pyro pass:
	1. a person with specialised knowledge as referred to in Article 1.1.2a(1)(a), who is also a fireworks processor;
	2. a person with specialised knowledge as referred to in Article 1.1.2a(1)(b), who is also a fireworks operator;
	3. a responsible person;
	4. a person with specialised knowledge for pyrotechnic articles of category P2.
2. The application for a pyro pass for a responsible person shall be submitted to Our Minister by the holder of an application permit together with the person responsible.
3. The model for the pyro pass, the requirements for the application and the application procedure, as established by ministerial order. , apply.
4. The pyro pass of firework processors and operators expires when their registration in the Register of firework processors or the Register of firework operators expires.
5. The period of validity of the pyro pass shall be the registration validity period as a firework processor or fireworks processor, unless an environmental permit as referred to in Article 1.1.2a(1)(a) or the application permit has a shorter period of validity.
6. Our Minister shall withdraw the pyro pass if the person to whom the pyro pass has been issued:
	1. no longer meets the requirements for a person with specialised knowledge, as referred to in Article 1.1.2a, or is no longer designated by a person with specialised knowledge to handle or use fireworks on behalf of that person;
	2. has misused the pyro pass.
7. Misuse as referred to in paragraph 6(b) shall include:
	1. the making available on the market of fireworks of category F3 and F4, theatre pyrotechnic articles of category T2 and other pyrotechnic articles of category P2 to a person other than someone with specialised knowledge;
	2. the storage of these in an unlicensed location.
8. Our Minister shall indicate in the register if the pyro pass is withdrawn or has expired.

**Article 4.3**

The following data and documents shall be entered in the pyro pass register:

1. a copy of the pyro pass;
2. proof that the applicant has been designated as a person with specialised knowledge for pyrotechnic articles of category P2; or
3. proof of registration of the applicant as a fireworks operator or user; and
4. where applicable, a copy of the application permit or environmental permit referred to in Article 1.1.2a(1)(a);

**Article 4.4**

Our Minister shall ensure that the data and documents entered in the pyro pass register are made available without delay to the authorities to which the data and documents are accessible pursuant to Article 4.5(1) and (2).e

**Article 4.5**

1. The data and documents included in the pyro pass register shall be accessible to the competent authorities in Belgium, Luxembourg and the Netherlands responsible for monitoring compliance with the rules applicable to pyrotechnic articles and for the enforcement of those rules.
2. The particulars and documents entered in the pyro pass register shall be accessible to economic operators referred to in Article 4.1(1) in order to verify the validity of the control documents and pyro pass.
3. For access to the pyro pass register, eRecognition or any other electronic means of authentication designated by the registry manager shall be used.
4. Access to the pyro pass register shall be limited to employees of the authorities referred to in paragraphs 1 and 2 who are directly involved in the performance of the legal task of the body concerned or the work carried out by the company concerned for the sale of pyrotechnic articles, and authorised by the body or company.
5. Detailed rules laid down by ministerial order shall apply with regard to the inputting and consultation of data and records in the pyro pass register by those who have access to that system, including the required level of reliability of the eRecognition.

**Article 4.6**The data and documents entered in the pyro pass register shall be kept for 12 years.

**Article II Transitional provision**

Without prejudice to the provisions of Article 3B.1(6), application licences already granted at the time of entry into force of this Decree shall lose their validity from 1 January 2025.

**Article III**

This Decree shall come into force at a time specified by Royal Decree, which may differ for the individual articles or parts thereof.

I hereby order this Decree and its associated explanatory notes to be published in the Bulletin of Acts and Decrees.

THE STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT,

**EXPLANATORY NOTES**

**General**

1. **Introduction**

The purpose of this Decree is to implement a Benelux Decision[[1]](#footnote-2) in the field of fireworks in the Fireworks Decree. This Decree further operationalises the pyro pass register, as announced in the explanatory memorandum to the bill amending some of the laws of the Ministry of Infrastructure and Water Management (IenW Collective Act 2021).[[2]](#footnote-3) The establishment of the pyro pass register is governed by Article 9.5.8 of the Environmental Management Act (hereafter: Wm). The elaboration thereof takes place in this Decree. The technical details of the register and the application process shall be elaborated by ministerial order. The basis for this Decree is the text of the Fireworks Decree as it shall be following the entry into force of the Environmental Act and the amendment of the Fireworks Decree, which enters into force at the same time as the Environment Act (Bulletin of Acts and Decrees 2022, 291).

1. **Implementation legislation**

On the basis of Directive 2013/29/EU[[3]](#footnote-4) (hereinafter: the Pyro Directive), certain pyrotechnic articles may only be made available on the market to persons with specialised knowledge. On 7 December 2020, a Benelux Decision was signed with the aim of introducing a uniform control document so that a person wishing to purchase the pyrotechnic articles in question can prove that they have the necessary specialised knowledge in a cross-border context. The introduction of the pyro pass, a uniform control document within the Benelux, can make it easier for a seller of such pyrotechnic articles in a Benelux country to verify a document for authenticity and validity. This removes an obstacle to the proper functioning of the internal market. In addition, this instrument can make a significant contribution to combating illicit trade and preventing injury and material damage. The Benelux countries wish to take the lead within the EU, with the aim of establishing an arrangement that shall eventually apply to persons authorised as persons with specialised knowledge in other EU Member States.

The Benelux Decision is limited in scope and subject matter. The Benelux Decision does not aim at harmonising the substantive requirements that the respective Benelux countries may or may not impose to empower someone as a person with specialised knowledge.[[4]](#footnote-5) Nor does the Benelux Decision alter the current – European or Dutch – prohibitions from making certain pyrotechnic articles available to the general public. The Benelux Decision also contains no rules on the handling and/or use of pyrotechnic articles after their purchase.

1. **Principles of the proposal**

The inappropriate use of pyrotechnic articles by persons not authorised to do so is a persistent problem that results in a great deal of injury and damage every year. Certain types of heavier pyrotechnic articles may only be made available on the market to persons with specialised knowledge. Although the person who wishes to purchase such products in a cross-border context may present a document from another country to prove it, the seller is not in a position to assess the authenticity and validity of that document adequately. The introduction of the pyro pass as a uniform control document can remedy this with regard to persons authorised as persons with specialised knowledge in another Benelux country. This makes it possible to make the legal trade flows visible, so that the illegal sale of professional fireworks can be more effectively reduced. In addition, it contributes to the proper functioning of the internal market for professional fireworks lighters who wish to provide their services in another country.

The present amendment to the Fireworks Decree sets out the cases in which verification of the required inspection documents should be carried out on the basis of the pyro pass, the obligation to verify it, and the grounds for withdrawal. In addition, the accessibility of the pyro pass register is also further elaborated.

This proposal obliges economic operators (manufacturers, importers and distributors) making professional fireworks, pyrotechnic articles for theatre use and pyrotechnic articles of category P2 available on the market to verify whether this person is entitled to purchase those pyrotechnic articles. For persons designated under the law of the Benelux countries as a person with specialised knowledge or a responsible person, this verification shall be carried out on the basis of the pyro pass. The operator is then able to verify the validity of the pyro pass in the system equipped for that purpose. In addition, the economic operator is obliged to keep a copy of the pyro pass and the invoice in their records. The pyro pass may be withdrawn when the designation as a person with specialised knowledge or responsible person is no longer valid or in case of misuse.

In addition, the opportunity is used to attach a period of validity to the application permit, and certain minor omissions are rectified. This shall be discussed in more detail in the article-by-article notes.

1. **Relationship to higher law**

European Law

Pyrotechnic articles are largely regulated by the Pyro Directive. Article 5 of that directive stipulates that Member States are to take the necessary measures to ensure that pyrotechnic articles are made available on the market only if they comply with the requirements of this Directive. Article 6 of that directive defines fireworks of category F4, pyrotechnic articles for theatre use of category T2 and other pyrotechnic articles of category P2 as intended exclusively for use by persons with specialised knowledge, and stipulates that Member States must inform the European Commission of the procedures under which they identify and authorise persons with specialised knowledge. Article 7(3) of the Pyro Directive stipulates that the aforementioned articles may only be made available on the market by manufacturers, importers or distributors to persons with specialised knowledge. Under Article 4(2) of the Pyro Directive, a Member State is able to take measures to prohibit or restrict certain pyrotechnic articles. Thus, in the Netherlands, for example, making pyrotechnic articles of category T1, fireworks of category F3 and certain articles of category F2 available on the market to persons who do not have specialised knowledge is completely prohibited.

Benelux

The legal basis for the Benelux Decision is Article 6(2)(a) of the Treaty establishing the Benelux Union and Article 1(b) of the Protocol of 29 April 1969 on the abolition of checks and formalities at the internal borders of the Benelux and on the elimination of obstacles to free movement. On the basis of these provisions, the Committee of Ministers may make decisions with a view to coordinating the laws of the three Benelux countries in order to remove certain obstacles. The Benelux Decision focuses primarily on the proper functioning of the internal market for pyrotechnic articles. This makes the sale of pyrotechnic articles easier to persons with the necessary specialised knowledge. In addition, the Benelux Decision also contributes to combating illicit trade and the prevention of injury and material damage, in which the Benelux Union wishes to assume a leading role.

1. **Relationship to national regulations**

Pyrotechnic articles are primarily regulated in Dutch law in the Fireworks Decree. Article 9.2.2.1(1) and (2) of the Wm constitutes the principle basis for the Fireworks Decree. However, for the implementation of the pyro pass register, a specific basis is required in relation to processing personal data, which has been realised for this purpose in Article 9.5.8 of the Wm. The present Decree is therefore based on both paragraphs 1 and 2 of Article 9.2.2.1 and Article 9.5.8(3) and (4) of the Wm.

Article 1.1.2a(1) of the Fireworks Decree designates persons with specialised knowledge. Pursuant to Article 1.1.2a(2), a person with specialised knowledge shall also be designated as such in relation to fireworks and pyrotechnic articles for theatre use in another Member State of the European Union.

In practice, the largest group of persons with specialised knowledge consists of the holders of an application permit (Article 1.1.2a(1)(b)). However, in the light of Article 3B.1(6), the holder of an application permit may be both a legal person and a natural person, whereas the pyro pass can only be provided to a natural person under the Benelux Decision. However, the Benelux Decision also includes the figure of a ‘responsible person’. This is a person designated by a legal person entitled to store or make available on the market pyrotechnic articles to use pyrotechnic articles on behalf of that legal person.

The person who actually lights the fireworks is usually not the same person (legal or otherwise) as the holder of an application permit. Training and registration is required for setting off professional fireworks under the Working Conditions Decree. In order to obtain an application permit, applicants must, inter alia, submit a copy of a valid entry in the Register of fireworks operators referred to in Article 4.9(1) of the Working Conditions Decree, issued to the person by whom the acts covered by the application are carried out and which relates to those acts. In addition, there are also fireworks processors (Article 4.9(2) of the Working Conditions Decree) who perform work consisting of the sale, processing or making consumer fireworks, professional fireworks or pyrotechnic articles available for theatre use. These persons are designated as ‘responsible person’.

On the basis of the Working Conditions Decree and further elaborated in the Working Conditions Regulation, it is regulated who has access to the register of fireworks processors and fireworks operators. Pursuant to Article 1.5o(c) of the Working Conditions Decree, the registers can be consulted by other persons directly affected (in addition to, among others, the client or the authorised representative of the client) with regard to the registration or suspension of a person. The explanatory memorandum to that decision states that this might include, for example, public authorities making decisions on the basis of the Fireworks Decree. This is relevant for verifying whether the registration of a fireworks worker or fireworks worker is valid in the context of the pyro pass.

The model for the pyro pass and the more technical details, as provided for in the legal basis, shall be elaborated in a ministerial regulation.

**6. Consequences (excluding financial consequences)**

*Impact on regulatory burden*

This amendment to the Fireworks Decree has regulatory consequences for various parties within the fireworks sector. This applies to operators and persons required to apply for pyro pass. When calculating the administrative burden, the national methodology for regulatory pressure effects is prescribed, which assumes EUR 50 per hour in costs.

Economic operators shall soon be obliged to request the pyro pass when selling certain pyrotechnic articles, to verify their validity in the pyro pass register and to keep proof thereof in their records. At present, these parties are also required to verify whether the person who buys pyrotechnic articles is a person with specialised knowledge. As a result, the effects of the introduction of the pyro pass on these batches are small and shall even make checks easier. However, economic operators shall have to take note of the new obligations; for this purpose, approximately one hour per economic operator is allocated. In addition, economic operators are obliged to keep information in their records, for which five minutes per operation is calculated per economic operator. There are around 10 market participants active in the Netherlands. This means that the regulatory burden of these changes is virtually zero for this target group.

For persons with specialised knowledge or responsible persons, the amendment to the Fireworks Decree means that they must be able to demonstrate, on the basis of the pyro pass, that they are authorised as such. They must apply for a pyro pass. This constitutes an additional act for these parties, although no new training requirements or other requirements are imposed. As a result, the consequences for this target group have been kept as limited as possible. Two hours is allocated to take note of the obligation and application for the pyro pass and collect the necessary data. It is currently difficult to estimate how many people shall apply for a pyro pass. This is expected to be between 50 and 150 people. This means that the regulatory burden of these changes for this target group as a whole is estimated at a total of EUR 5 000 to EUR 15 000.

This Decree attaches a period of validity to the application authorisation. This means that the application authorisation must be applied for once again following the expiry of the period of validity. At present, there are around 75 holders of an application permit. The application for the application permit, including the required Declaration of Conduct (hereinafter: VOG), is estimated at two hours. No fees are charged for the application for the licence itself. This means that for this specific target group, the overall regulatory burden is estimated at around EUR 7 500.

*Effectiveness and efficiency*

With the pyro pass system being introduced only in the Benelux, effectiveness and efficiency shall initially be limited. However, the introduction also has an important trial role, and results from the EU are being monitored. The aim of the Benelux is that the pyro pass is rolled out within the European Union.

*Consequences for privacy*

This decree leads to the processing of personal data. The bill establishing the pyro pass register is the primary basis for this; as part of this, a DPIA has been drawn up and an opinion has been requested from the Dutch Data Protection Authority. No comments were made in that regard.

A new DPIA has been drawn up for the present amendment. The Minister for Infrastructure and Water Management (IenW) is the controller. For the purposes of this Decree, various data processing operations are foreseen, namely the application for the pyro pass, its assessment, and the issuance of the pyro pass. In addition, the necessary data – as required by the Benelux Decision – is kept in the pyro pass register. Where pyrotechnic articles of category F3, F4, T2, or P2 are sold by an economic operator, this seller is obliged to verify the pyro pass and the identity document, and to consult the pyro pass register. In addition, the economic operator must store certain documents as referred to in Article 4.1(8) in his records. Finally, personal data are processed when bodies responsible for monitoring compliance with the rules applicable to pyrotechnic articles, and the enforcement of those rules, are granted access to the register, for instance. The proportionality and subsidiarity requirement has been taken into account both in the context of the Benelux Decision and in the current implementation. In all processing operations, no more personal data are processed than necessary, nor are they processed further than for the purpose for which they were obtained (purpose binding), except in the context of monitoring compliance with the rules applicable to pyrotechnic articles and the enforcement of those rules by the relevant authorities. The latter is relevant, for example, when the Public Prosecutor’s Office (hereinafter: OM) receives access to the register.

The data shall not be stored for longer than necessary. The records and data entered in the pyro pass register shall be kept for 12 years. For this purpose, it is aligned to the maximum limitation period of fireworks offences.

Operators shall keep a copy of the control document in the records together with the invoice concerned and, where applicable, the transport document concerned for seven years. This is aligned with the national retention period for records.

The issue of the pyro pass and the implementation and management of the pyro pass register shall be carried out under instruction by an organisation to be determined. The necessary agreements, such as a processing agreement, shall be concluded for this purpose.

**7. Execution & Enforcement**

The pyro pass register should be created and managed. This power was conferred on the Minister of IenW in this Decree. To be specified

The fireworks regulations are enforced both concerning both administrative and criminal law. In terms of administrative law, a fine may be imposed on the basis of the Wm, or as an administrative penalty. The Environment and Transport Inspectorate (ILT) oversees the safety and quality of the fireworks placed onto the market by companies. The ILT is the supervisory authority for the transport of hazardous substances, including fireworks, under transport legislation and the import and export of fireworks by businesses under the Fireworks Decree. The ILT also issues the application permits. The Draft Decree was submitted to the ILT on xx for a trial of enforceability, practicability and fraud resistance. The Decree has been assessed by the ILT as … PM HUF test.

Various provisions in the Fireworks Decree are punishable in the Act on Economic Offences, and these are enforced by the police and the Public Prosecution Service. This applies, for example, to the sale of professional fireworks to private individuals. The IenW Collective Act 2021 amends the Economic Offences Act to also enforce Article 9.5.8(6). In the case of an offence, the sentence shall be a maximum prison term of up to six years, community service or fine of the fifth category (currently EUR 90 000). The Draft Decree was submitted to the Public Prosecutor’s Office on xx. HUF test to be specified

**8. Financial impact**

Pursuant to Article 9.5.8(5) of the Wm, charging a tariff for the application of the pyro pass is possible. This is not currently provided for here, which makes the financial impact on the sector very limited. No fee is requested for the application permit, meaning that the introduction of a period of validity does not lead to higher costs.

1. **Advice and consultation**

Several parties were consulted on the drafting of this Decree. The performance tests of OM and ILT have already been discussed above. An initial draft has also been discussed with representatives of the VEN (Dutch Event Fireworks Association), the BPN (Dutch Pyrotechnics Association) and the Stichting VuurwerkCheck. As a result, the Decree provides that pyro pass holders authorised for category F3 or F4 fireworks are also deemed to be authorised for category F2 fireworks not designated for private use. It is also provided that holders of a pyro pass authorised for pyrotechnic articles for the use of category T2 pyrotechnic articles are also deemed to be authorised for pyrotechnic articles for theatre use of category T1. Although the industry has indicated that the approach to the illicit trade with fireworks is important, they have doubts about the effectiveness of the pyro pass on illegal trade flows, since because it is only imported within the Benelux. The pyro pass is a tool that is part of a broader package of measures to reduce illegality with professional fireworks. It is the desire of the Benelux that the pyro pass be rolled out within the European Union. The industry has indicated that the introduction of the pyro pass is seen as an increase in administrative burden, because they believe that the pyro pass is a duplication of the notification under Article 1.4.1 of the Fireworks Decree. The administrative burden, as explained in paragraph 6 of the explanatory memorandum, has been kept as limited as possible. The pyro pass makes it easier for economic operators to check whether a buyer has the permits required. Moreover, there is no duplication with the reporting system referred to in Article 1.4.1 of the Fireworks Decree, because the purpose of the notification system is not exactly comparable to the purpose of the pyro pass. The reporting system refers to the mapping of cross-border product flows, while the pyro pass relates to sales transactions.

Due to the very limited impact on the regulatory burden, no SME test took place.

An opinion from the Dutch Data Protection Authority was requested on xx...

An internet consultation on the present Decree took place. On the basis of paragraph 4 of Article 21.6, the Draft Decree has also been pre-published in the Government Gazette to give everyone the opportunity to inform Our Minister in writing within a period of four weeks. In this case, Internet consultation may be omitted.

PM internet consultation comments and pre-publication.

In addition, the Draft Decree was offered on date x to the First and Second Chambers in the context of the legally required suspension (Article 21.6(4) of the Wm). PM input attachment.

1. **Evaluation**

This Decree and the functioning of the pyro pass shall be evaluated after three years. This is also important to be able to determine whether this system works within the Benelux, and to provide input for possible introduction at European level.

1. **Transitional law and entry into force**

Transitional law is desirable with regard to the period of validity of the application permit in order to prevent licences granted (a long time) in the past suddenly no longer being valid. To this end, a transitional period of one year has been set. This period gives the sector as well as the licence provider sufficient time process an application.

Pursuant to Article 7(2) of the Benelux Decision, the Benelux countries must bring into force the laws, criminal law, regulatory and administrative provisions necessary to comply with the provisions of this Benelux Decision no later than three years after the entry into force of the Benelux Decision. The Benelux Decision entered into force on 7 December 2020, meaning that the implementation of this Benelux Decision must be completed on 7 December 2023. The entry into force of this Decree shall take place by Royal Decree, with the aim of bringing this amendment into force on 1 January 2024. Entry into force on 1 January 2024 is desirable on account of related amendment to the Working Conditions Decree (Bulletin of Acts and Decrees 2019, 471), which also enters into force on this date. PM further transitional law if necessary.

**Explanatory notes by article**

**Article I, Part A**

In this provision, a number of definitions are added to Article 1.1.1(1) of the Fireworks Decree. The concept of responsible person follows from the Benelux Decision. For the Dutch situation, in addition to a person with specialised knowledge, it is more specifically stated that this may be a fireworks processor or fireworks operator designated by a legal entity entitled to store or make available on the market (often the holder of the application permit). The concepts of firework processor and firework operator are linked to the system of the Working Conditions Decree which regulates the registration of these professions. This ensures that this is a person who has professional knowledge of the fireworks articles in question, and has received training for this purpose.

**Article I, Part B**

Article 1.1.3 contains the scope of the Fireworks Decree. Through the amendment of the Fireworks Decree of 20 June 2022 (Bulletin of Acts and Decrees 2022, 291), this has been extended to pyrotechnic articles of categories P1 and P2 used as fireworks or apparently intended to be used as fireworks. With this current amendment, it is necessary to supplement this because the sale of P2 is not allowed without verification of the control documents, even if this article is not used or intended to be used as a firework. However, the extension of the scope of application to this point applies only to the new Chapter 4 of the Fireworks Decree.

**Article I, Part C**

The opportunity has been used to correct a reference to a law that has now expired. In Article 1.2.5(2), reference was made to provisions of the Road Freight Act. However, this law expired on 1 May 2009 and was replaced with the Road Freight Act. The former Article 20 of the Road Freight Act, which in short included the registration obligation and accompanying registration certificate, was hereby repealed. Article 29, the prohibition to carry out transport without a consignment note being drawn up, has been replaced in substance by Article 2.13 of the Road Freight Act. Article 1.2.5(2) has been amended accordingly.

**Article I, Part D**

The application licence is currently granted for an undefined period of time. The implementation of this Benelux Decision has demonstrated that this is no longer desirable. Attaching a validity period of five years to the application permit means it is necessary to re-verify within five years whether the applicant (still) meets all the requirements, such as a VOG. This aids the supervision and enforcement of the application permit.

**Article I, Part F**

After Chapter 3B, a new chapter is inserted into the Fireworks Decree with the main provisions for the pyro pass.

***Article 4.1***

Article 4.1(1) prohibits operators from making the pyrotechnic articles specified in that paragraph available on the market without checking documents of persons with specialised knowledge. Paragraph 2 provides that when pyrotechnic articles are supplied and a natural person is acting on behalf of a legal person, the inspection document and identity document of that responsible person must be checked. Paragraph 3 regulates which persons with specialised knowledge or responsible persons must demonstrate this with a pyro pass. The requirements of the Pyro Directive and therefore of the Benelux Decision do not apply to pyrotechnic articles for non-commercial use, in accordance with national law, by armed forces, police or fire brigades. Therefore, these groups also do not need to request a pyro pass (Article 1.1.2a(1), subsections c to f). The model of the pyro pass is laid down in the Benelux Decision and only certain categories of pyrotechnic articles are included. However, in the Netherlands, fireworks of category F2 that are not designated for private use and pyrotechnic articles for theatre use of category T1 are also reserved for persons with specialised knowledge. Therefore, paragraph 4 provides that persons authorised for category F3 or F4 fireworks are also authorised for category F2 fireworks and in paragraph 5, that persons authorised for pyrotechnic articles for theatre use of category T2 are also authorised for pyrotechnic articles for theatre use of category T1. Otherwise, this would lead to the situation that, for example, a person with specialist knowledge must show their pyro pass for a sales transaction for category T2 pyrotechnic articles and another document proving that they are a person with specialist knowledge for category T1 articles. That is deemed undesirable. Paragraph 8 lays down the documents to be kept by economic operators and for what duration. In cases where transport takes place, the relevant transport document shall be kept. On the basis of the Benelux Decision, it is necessary to comply with time-limits laid down in national law. In the Netherlands, companies' financial administration must be kept for seven years. This shall be annexed to this Decree.

***Article 4.2***

This article lists the persons eligible for a pyro pass in the Netherlands. Although this is not directly regulated by the Benelux Decision, it is important to define who can apply for the pyro pass. It is agreed in the Benelux context that persons with specialised knowledge shall apply for the pyro pass in the country where they are designated under the applicable law as a person with specialised knowledge. However, the explanatory memorandum to the Benelux Decision states that the pyro pass is always a personal document. Therefore, this article provides that only natural persons are eligible for a pyro pass. The Benelux Decision also regulates P2 articles. On the basis of Article 3 of the Regulation on other pyrotechnic articles, persons with specialised knowledge are designated who may use pyrotechnic articles belonging to category P2 due to the performance of their function. These people are also eligible for a pyro pass.

Paragraph 2 specifically provides that the application for a pyro pass for a responsible person is to be carried out together with the holder of an application permit. In this way, it can be ensured that both the holder of the application permit and the person responsible agree to the application.

The pyro pass shall also have a validity period indicated on the pyro pass. The Benelux Decision itself does not regulate this period of validity. Due to the link with the registration as a fireworks processor or fireworks operator, it has been decided to align with the period of validity of the registration. Once it has expired, a new pyro pass must be requested after a maximum of five years. However, the validity period of the pyro pass may be shorter depending on whether the application permit or environmental permit is shorter than the registration. This ensures the register is up to date.

A number of more technical and procedural aspects are developed by ministerial regulation. For example, the model of the pyro pass, as it is also annexed to the Benelux Decision, is established by ministerial regulation.

The pyro pass system can only function properly if there are also possibilities to withdraw the pyro pass. Paragraphs 6 and 7 specify the circumstances in which this is the case. These circumstances are implementation of the Benelux Decision.

***Article 4.3***

This article specifies which documents are stored in the pyro pass register. In doing so, no more information is stored than necessary to carry out the checks.

***Article 4.4***

The parties that have access to the pyro pass register, in practice economic operators and regulatory bodies, should have at their disposal without delay the necessary information from the register in order to fulfil their duty. Therefore, this article stipulates that Our Minister must ensure that data and documents in the pyro pass register are made available without delay.

***Article 4.5***

This Article sets out to whom the particulars and documents in the pyro pass register are accessible. First of all, it is important that the enforcement authorities in the field of pyrotechnic articles have access to the register. In practice, these are the ILT and the Public Prosecution Service. These are designated in paragraph 1. In addition, economic operators should have access when making articles available on the market, but only for the purpose of verifying the validity of the pyro pass. As a result, they have no more access to any personal data than necessary.

***Article 4.6***

This Article establishes the retention period of the data in the pyro pass register at 12 years. Personal data may not be stored longer than necessary. In view of the maximum limitation period for fireworks offences, the retention period is linked to this.

**Article II**

The application authorisations already granted before the entry into force of this Decree are granted for an indefinite period. The deadline of 1 January 2025 has been chosen for the validity period of the current application permits. This one-year period offers both applicants and the Minister of IenW, as a permit provider, sufficient time to submit and assess an application.

**Article III**

This Decree shall come into force at a time specified by Royal Decree, which may differ for the individual articles or parts thereof. As explained in the general section of the explanatory memorandum, the Benelux Decision is to be implemented on 7 December 2023. The goal is to align as closely as possible with this, by entering into force on 1 January 2024. Entry into force earlier than 1 January 2024 is not desirable due to the entry into force of the amendment to the Working Conditions Decree (Bulletin of Acts and Decrees 2019, 471) which has consequences for this Decree. 1 January is also a fixed time for a general administrative order (or an amendment thereto) as referred to in Note 4.17 of the Regulations. Pursuant to Article 21.6 (5) of the Wm, this Decree shall, after its adoption, be transmitted to the two chambers of the States General and shall enter into force no earlier than four weeks after the date of issue of the Official Gazette in which it was published.

THE STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT,

1. Decision of the Benelux Committee of Ministers on the introduction of a pyro pass – M (2020) 14 (Benelux Official Journal 2021, No 1), amended by M (2022) 9. [↑](#footnote-ref-2)
2. *Parliamentary Documents II* 2022-2023, 36268, No 3, p. 8 [↑](#footnote-ref-3)
3. Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (OJ 2013, L 178). [↑](#footnote-ref-4)
4. However, more convergence is pursued through Recommendation M (2020) 15 of the Benelux Committee of Ministers on the requirements of specialised knowledge for the handling and/or use of pyrotechnic articles. [↑](#footnote-ref-5)