

DRAFT DATED 5 February 2024

**ADMINISTRATIVE AND
LEGAL AFFAIRS
DEPARTMENT**

Regulation of the State Secretary for Infrastructure and Water Management
No IENW/BSK-2023/231591 of, laying down rules on the pyro-pass (Pyro-pass
Regulation)

The State Secretary for Infrastructure and Water Management,

Having regard to Article 9.5.8(4) of the Environmental Management Act [Wet
milieubeheer], and Article 4.2(3) and Article 4.5(5) of the Fireworks Decree
[Vuurwerkbesluit];

HEREBY DECREES AS FOLLOWS:

Article 1

1. The application for a pyro-pass shall be submitted to the Minister of Infrastructure and Water Management.
2. With the application, the applicant shall provide the following data and documents:
 - a. Surname and first name, date of birth, and, where applicable, the name and contact details of the company concerned.
 - b. Where applicable, a copy of a valid registration of the applicant as a fireworks arranger or fireworks operator as referred to in Article 4.9(2) of the Working Conditions Decree [Arbeidsomstandighedenbesluit].
 - c. Where applicable, a copy of the application permit as referred to in Article 3B.1 of the Fireworks Decree or the environmental permit as referred to in Article 1.1.2a(1)(a) of the Fireworks Decree.

Article 2

The model pyro-pass is set out in Annex 1 to this Regulation.

Article 3

This Regulation shall be cited as the: Pyro-pass Regulation.

Article 4

This Regulation shall enter into force with effect from **PM**. [along with order in council]

This Regulation and the explanatory notes shall be published in the Government Gazette.

THE STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT,

V.L.W.A. Heijnen

Annex 1 to Article 2

Model pyro-pass

Pyro-pass			
<p><u>Toepassingsgebied:</u> onderhavig controledocument heeft alleen betrekking op het op de markt aanbieden van pyrotechnische artikelen welke uitsluitend mogen worden verstrekt aan personen met gespecialiseerde kennis.</p> <p><u>Champ d'application:</u> <i>Le présent document de contrôle ne concerne que la mise à disposition sur le marché d'articles pyrotechniques qui ne peuvent être fournis qu'à des personnes ayant des connaissances particulières.</i></p> <p><u>Scope :</u> This control document merely relates to the making available on the market of pyrotechnical articles that shall be made available only to persons with specialist knowledge.</p>			
1	<p>Bevoegde autoriteit die de persoon met gespecialiseerde kennis heeft gemachtigd: <i>Autorité compétente qui a agréé la personne ayant des connaissances particulières :</i> Competent authority having authorised the person with specialist knowledge:</p>		
	<p>a) Naam van de bevoegde autoriteit: <i>Nom de l'autorité compétente:</i> Name of the competent authority: ...</p>		
	<p>b) Contactgegevens van de bevoegde autoriteit: <i>Coordonnées de l'autorité compétente:</i> Contact details of the competent authority: ...</p>		
2	<p>Categorie of categorieën pyrotechnische artikelen waarvoor de machtiging is verleend: <i>Catégorie ou catégories d'articles pyrotechniques pour laquelle ou lesquelles l'agrément a été délivré :</i> Category or categories of pyrotechnical articles for which the authorisation has been granted:</p>	3	<p>Geldigheidsduur van de machtiging: <i>Durée de validité de l'agrément :</i> Period of validity of the authorisation:</p>
	<p>Aanvinken wat van toepassing is en schrappen wat niet past: <i>Cocher la case appropriée et biffer les mentions inutiles :</i> Tick the relevant box and delete as appropriate:</p> <p><input type="checkbox"/> Vuurwerk van categorie F4 <i>Artifices de divertissement de la catégorie F4</i> Fireworks of categorie F4</p> <p><input type="checkbox"/> Pyrotechnische artikelen voor theatergebruik van categorie T2 <i>Articles pyrotechniques destinés au théâtre de la catégorie T2</i> Theatrical pyrotechnic articles of category T2</p> <p><input type="checkbox"/> Andere pyrotechnische artikelen van categorie P2 <i>Autres articles pyrotechniques de la catégorie P2</i> Other pyrotechnical articles of category P2 (meer bepaald/ <i>plus précisément</i> / more specifically: ...)</p> <p><input type="checkbox"/> In voorkomend geval, vuurwerk van categorie F3 <i>Le cas échéant, artifices de divertissement de la catégorie F3</i> If applicable, fireworks of category F3</p>		<p>...</p> <p>...</p> <p>...</p> <p>...</p>
Vervolg op blz. 2 / suite sur la page 2/ continues on page 2			
4	<p>Identificatie van de persoon met gespecialiseerde kennis:</p>		

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Identification de la personne ayant des connaissances particulières : Identification of the person with specialist knowledge:	
a) Naam en voornaam: <i>Nom et prénom:</i> Name and first name: ...	Zie identiteitskaart/ <i>Voyez la carte d'identité /</i> See ID card
a) Geboortedatum : <i>Date de naissance :</i> Date of birth :	
b) In voorkomend geval, naam en contactgegevens van de betrokken onderneming(en): <i>Le cas échéant, le nom et les coordonnées de l'entreprise concernée (ou des entreprises concernées) :</i> If applicable, name and contact details of the relevant company (or companies): ...	
5	Register waarin het document is opgeslagen: Registre dans lequel le document est enregistré : Register in which the document is registered:
a) Naam en contactgegevens van de organisatie die het register bijhoudt: <i>Nom et coordonnées de l'organisation qui tient le registre :</i> Name and contact details of the organisation that holds the register: ...	
b) Vindplaats van het register (webadres): <i>Emplacement du registre (adresse Internet) :</i> Location of the register (internet address): ...	
c) Volgnummer van het document in het register: <i>Numéro du document dans le registre :</i> <i>Number of the document in the register:</i> ...	

EXPLANATORY NOTES

General

1. Introduction

The purpose of this Ministerial Regulation is to implement the Benelux Decision on the pyro-pass¹.

To implement this Benelux Decision, the Environmental Management Act (hereinafter: Wm)² and the Fireworks Decree³ have already been modified. This introduced the pyro-pass register and the pyro-pass. The technical details of the pyro-pass register and the pyro-pass application process are detailed in this Ministerial Regulation.

2. Outline of the proposal

The aim of the Benelux Decision on the pyro-pass is to introduce a uniform control document within Benelux: the pyro-pass. On the basis of the pyro-pass, a seller of certain pyrotechnic articles must check whether a person has the appropriate specialised knowledge to be able to purchase those articles. As this makes it easier for the seller to check, it removes an obstacle to the proper functioning of the internal market. In addition, the pyro-pass can make a significant contribution to the fight against illicit trafficking and the prevention of injury and property damage. The improper 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.

With the amendment of the Environmental Management Act, Article 9.5.8 was inserted which establishes – in short – that there is a pyro-pass register in which pyro-pass holders are registered, and that sellers check the pyro-pass and consult this register before providing pyrotechnic articles intended exclusively for persons with specialised knowledge. The Fireworks Decree details how this check should take place, who is eligible for a pyro-pass, what data are included in the register and who can consult it.

This Ministerial Regulation lays down detailed rules to ensure proper implementation. In view of Article 4.2(3) of the Fireworks Decree, this concerns the model pyro-pass, the requirements for the application and the application procedure. No more data are requested than necessary. For example, a certificate of good conduct (VOG) is already requested in the context of the application permit (every 5 years) and for registration as a fireworks worker or fireworks operator (every 3 years). Therefore, a VOG is not requested again for the pyro-pass. It also lays down detailed rules on the method of entering and consulting

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.

² Article VI(B) of the 2021 Infrastructure and Water Management Collecting Act [Verzamelwet IenW] (Government Gazette 2023, 143).

³ Decree amending the Fireworks Decree in connection with the implementation of the Benelux Decision on the introduction of a pyro-pass and some other amendments (Government Gazette ..., ...).

data and documents in the pyro-pass register by those with access to that system.⁴

3. Relationship to higher law

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.

4. Relationship to national regulations

Pyrotechnic articles are regulated in Dutch law mainly through the Fireworks Decree. Article 9.2.2.1(1) and (2) of the Wm and Article 9.5.8 of the Wm constitute the main basis for the implementation of the Benelux Decision on the pyro-pass in the Fireworks Decree and this Ministerial Regulation. Article 9.5.8(4) of the Wm provides that a general administrative order shall designate the data and documents to be included in the pyro-pass register and lay down rules on the accessibility of the system and the period during which the data and documents are kept. Detailed rules may be laid down by Ministerial Regulation to ensure proper implementation.

5. Consequences (excluding financial consequences)

Impact on regulatory burden

The impact on regulatory burden has already been described in the Fireworks Decree in the context of the implementation of the Benelux Decision on the pyro-pass. As this Ministerial Regulation relates to further specification, no additional impact on the regulatory burden is foreseen.

Impact on privacy

In the context of the amendment to the Environmental Management Act and the Fireworks Decree, the impact on the privacy of data subjects has already been addressed. For this purpose, data protection impact assessments (DPIAs) have also been drawn up. Since the Ministerial Regulation does not introduce new data flows, but is merely a more concrete elaboration of what has already been provided for and regulated in the Fireworks Decree, this Ministerial Regulation has no additional impact on privacy.

Impact on legal protection

This Regulation lays down detailed rules on the application procedure and the application documents. The application for a pyro-pass is an application followed by a decision having legal effects. The decision on the application is therefore a decision within the meaning of the General Administrative Law Act [Algemene wet bestuursrecht] against which an objection or appeal may be lodged.

6. Implementation and enforcement

The pyro-pass register is carried out by Hobéon/SKO (Kiwa) under the mandate of the Minister of Infrastructure and Water Management. This organisation also handles pyro-pass applications.

⁴ See Article 4.6(5) of the Fireworks Decree.

Fireworks regulations are enforced under both administrative and criminal law. The Human Environment and Transport Inspectorate (ILT) oversees provisions relating to the safety and quality of the fireworks placed on the market by companies. The ILT is also the supervisory authority for the transport of hazardous substances, including fireworks, under transport legislation, and for the import and export of fireworks by companies under the Fireworks Decree. In terms of administrative law, an order for periodic penalty payments or an order for coercive administrative action may be imposed under the Wm. Various provisions in the Fireworks Decree are punishable under the Economic Offences Act [Wet op de economische delicten] and these are enforced by the police and the Public Prosecutor's Office. This applies, for example, to sales to private individuals of fireworks that are not intended for consumers. The impact of the introduction of the pyro-pass on implementation and enforcement has been addressed in the explanatory notes on the amendment to the Fireworks Decree.

7. Financial impact

The Ministerial Regulation has no impact on the national budget. The costs of constructing and managing the pyro-pass register, as well as of issuing the pyro-pass, are part of the current budget.

8. Opinion and consultation

Online public consultation

From 12 October to 9 November 2023, the draft Regulation was open to online public consultation. The draft Regulation that was submitted at the time also concerned the implementation of the Benelux Decision on improper use.⁵ It was chosen to split up this Regulation, because the implementation of the Decisions has different timeframes.

A total of 134 responses were submitted, of which 102 are public. Most of the responses related to the implementation of the Benelux Decision on improper use. Those responses shall be dealt with in a separate amending regulation. A number of responses related to the pyro-pass.

Many of the responses saw the usefulness, necessity and effectiveness of introducing the pyro-pass. One of the responses stated that it is undesirable that the pass is not introduced across Europe, leading to unfair competition and increased regulatory burden. According to another response, this is all the more the case now that the pyro-pass shall apply in addition to the notification register pursuant to Article 1.4 of the Fireworks Decree. Also, according to one of the responses, careless consideration was given as to whether less restrictive measures were possible to safeguard security and tackle illegal trade. The above aspects have already been explained in the explanatory notes on the amendment to the Fireworks Decree introducing the pyro-pass. One of the responses stated the importance of introducing a clear and transparent procedure for licensing and certification in order to protect the rights of individuals. In the context of F3 and F4 fireworks, theatrical fireworks and P2 articles, there is already a requirement that these types of pyrotechnic articles may only be sold to persons with specialised knowledge. The introduction of the pyro-pass does not aim to adapt the underlying licensing system. One response stated that when covering the implementation of issuing the pyro-pass to another party, it must be avoided that costs fall on the industry. As stated in the amendment to the Fireworks Decree, there is no charge for the pyro-pass application.

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The responses indicated that there is a fear that the measures will increase illegal trade by moving sales to the illegal market. It also follows from a number of responses that, in particular, truly illegal fireworks need to be tackled. Regarding this, it can be noted that the government is committed to tackling the illegal trade in, and the illegal use of, heavy fireworks. The government also does this at EU level, for example in the context of the evaluation of the European Pyrotechnics Directive.⁶ One of the responses stated that enforcement is not a task of business operators. That is not what the Regulation aims to achieve. However, business operators are prohibited from selling certain pyrotechnic articles to persons who are not specialised for this purpose or who do not have the proper permit for them. In this context, they are obliged to check whether the buyer meets the conditions.

One of the responses stated that time and effort can be better put into countering the misclassification of pyrotechnic articles. The Netherlands is committed, at international level, to ensuring the correct classification of pyrotechnic articles. At EU level, the Netherlands does so within the framework of the European established conformity procedures. The ILT also conducts classification surveys and conformity tests to assess whether articles entering the Netherlands are correctly classified or meet the conformity requirements.

There are fears that the measures taken in this Regulation are a step towards a total ban on fireworks. This Regulation does not alter the permitted consumer fireworks, as specified in the Regulation on consumer and theatrical fireworks [Regeling aanwijzing consumenten- en theater vuurwerk].

Enforceability, feasibility and fraud resistance test [HUF-toets]

The draft Regulation was submitted to the Human Environment and Transport Inspectorate (ILT) and the National Public Prosecutor's Office for Financial, Economic and Environmental Offences (FP) to carry out a test on enforceability, feasibility and fraud resistance. The draft Regulation submitted to ATR also concerned the implementation of the Benelux Decision on improper use. These explanatory notes shall only address the comments relating to the pyro-pass.

The ILT states that, in accordance with Article 1(2)(b), a copy of a valid registration of the applicant as a fireworks worker or fireworks operator must be provided with the application, where applicable. For this purpose, reference is made to Article 4.9(2) of the Working Conditions Decree, but it is not clear to the ILT whether those concepts are defined there. The Working Conditions Decree is being adapted simultaneously (?) with this Regulation; the concepts are explained therein. The ILT has questions regarding the model pyro-pass as set out in Annex 1 to the Regulation. The ILT asks whether the data as listed in Annex 1 are also the data that the users of the system shall see when they consult the system. This is not the case. Users only see whether someone has a valid pyro-pass (hit/no-hit). The ILT further asks whether, in the context of identifying a person with specialised knowledge, a copy of the identity card is stored, or whether it is a step in the identification procedure. This is a step in the procedure; no copy of the identity card is stored. The ILT indicates that any financial impact on the standard

⁶ For the broader commitment to tackling illegality with heavy fireworks, see, among others, Parliamentary Paper 28664, No 718 and Parliamentary Paper 36251, No 3.

addressee has not been made clear. As described in the explanatory notes on the amendment to the Fireworks Decree to introduce the pyro-pass, pursuant to Article 9.5.8(5) of the Wm, it is possible to charge a fee for the pyro-pass application. No provision is made for this. As a result, the financial impact on the sector with this proposal is very limited.

The FP indicated that they had read the Regulation with interest, but did not see any reason to make any comments or observations.

Advisory Board on Regulatory Burden (ATR)

The draft Regulation was submitted to ATR for its opinion. The Board issued the opinion on 17 November 2023. ATR advises against adopting the Regulation. As this would constitute a violation of international agreements, this has not been chosen. However, the recommendations of ATR are responded to below. The draft Regulation submitted to ATR also concerned the implementation of the Benelux Decision on improper use. These explanatory notes shall only address the comments relating to the pyro-pass.

ATR recommends limiting the mandatory data to be supplied with the pyro-pass application by re-using data already known to the government. The data processed for the purposes of the pyro-pass, the application permit and the registration as a fireworks worker and fireworks operator fall under different controllers (Minister of Infrastructure and Water Management or Minister of Social Affairs and Employment), and the processing does not have a similar purpose. Re-use of data therefore requires data exchange between controllers. The impact of this must be examined, which is not feasible before the required entry into force. However, this shall be included in the pyro-pass evaluation.

Data Protection Authority

The draft Regulation (including implementation of the Benelux Decision on improper use) was submitted to the Dutch Data Protection Authority (AP) for its opinion. The AP issued the opinion on 28 November 2023 and stated that it had no comments on the Regulation.

9. Evaluation

The laws and regulations surrounding the pyro-pass and the operation of the pyro-pass shall be evaluated after 3 years. This is also important to be able to determine whether this system works within Benelux, and to provide input for possible introduction at European level.

10. Entry into force

The Regulation shall enter into force on [PM]. This date is the same as the date of entry into force of the amendment to the Fireworks Decree. This does/does not deviate from the fixed moments of change for regulations.

Explanatory notes by article

Article 1

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Paragraph 1 of this Article specifies to whom applicants can apply for a pyro-pass. Paragraph 2 lists the specific data and documents that must be provided in order to be able to assess the application.

Article 2

The model pyro-pass itself follows directly from the Benelux Decision and has been copied directly from the Decision.

THE STATE SECRETARY FOR INFRASTRUCTURE AND WATER MANAGEMENT,

drs. V.L.W.A. Heijnen