



Bill modifying the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles

(version of 19 January 2024)

I. Explanatory notes

The amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles (hereinafter referred to as 'the Act of 27 May 2016') transposes into national law 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 and lays down rules to ensure the free movement of pyrotechnic articles on the Luxembourg market while taking into account the safety and protection of users and the environment.

The Act of 27 May 2016 provides, inter alia, for the classification of pyrotechnic articles into different categories according to their type of use, purpose or level of risk, as well as their noise level. Some of these pyrotechnic articles may only be made available on the market for persons with specialist knowledge.

The aim of this Bill is to transpose into national law the Decision of 7 December 2020 of the Benelux Committee of Ministers on the introduction of a pyro-pass - M (2020) 14, as amended by the Decision of 27 September 2022 of the Benelux Committee of Ministers - M (2022) 9, the purpose of which is to introduce a uniform control document (pyro-pass), so that a person wishing to purchase the pyrotechnic articles concerned can prove, even in a cross-border context, that they have the required knowledge.

This Bill provides that this uniform control document will be issued either by the Inspectorate of Labour and Mines or by an authority of another Benelux Member State and that it will enable economic operators in the three Benelux countries adequately to assess the authenticity and validity of said document and more easily verify whether the person wishing to purchase the pyrotechnic articles is a person with specialist knowledge.

This Bill also provides that economic operator may make the pyrotechnic articles concerned available on the market not only for persons holding a qualification or pyro-pass issued by the Inspectorate of Labour and Mines, but also for persons holding a document issued by a competent authority of another Member State of the European Union certifying that the holder is a person with specialist knowledge.

The aim of this Bill is therefore to transpose into national law the Decision of the Benelux Committee of Ministers of 27 September 2022 on combating the misuse of pyrotechnic articles intended for the general public - M (2022) 7, which provides that pyrotechnic articles in categories F3 and T1 and some of the other pyrotechnic articles in category P1 listed in Annexes I and II to said Decision may only be placed on the market for persons with specialist knowledge.

This Bill also provides that the Inspectorate of Labour and Mines shall make an IT tool available to economic operators that must be used to check the validity of the qualifications that it has issued.

Finally, it provides that the Inspectorate of Labour and Mines may withdraw the qualification from persons who no longer meet the conditions for obtaining it laid down by grand-ducal regulation, or who have made improper use of the qualification.

II. Text of the Bill

Article 1.

Article 3 of the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles is amended as follows:

1° Point (18) is amended to read as follows:

‘(18) person with specialist knowledge: a natural person with the necessary ability to handle or use fireworks in categories F3 or F4, theatrical pyrotechnic articles in categories T1 or T2, or other pyrotechnic articles in category P1a or P2;’

2° In point (21) the full stop is replaced by a semicolon.

3° After point (21), three new points (22) to (24) are added, worded as follows:

‘(22) pyro-pass: a document issued by the Inspectorate of Labour and Mines or by an authority of another Benelux Member State competent for the implementation of the amended Decision of 7 December 2020 of the Benelux Committee of Ministers relating to the introduction of a pyro-pass – M (2020) 14, certifying that its holder is a person with specialist knowledge in relation to fireworks in category F3 or F4, theatrical pyrotechnic articles in category T2, or other pyrotechnic articles in category P2;

(23) qualification: a pyro-pass or a certificate issued by the Inspectorate of Labour and Mines certifying that its holder is a person with specialist knowledge in relation to theatrical pyrotechnic articles in category T1 or other pyrotechnic articles in category P1a;

(24) responsible person: a duly mandated person with specialist knowledge who is designated by a legal person authorised to store pyrotechnic articles or make them available on the market, with a view to their handling or using pyrotechnic articles on behalf of that legal person.’

Article 2.

Article 6 of the same Act is amended as follows:

1° Paragraph 1 is amended as follows:

(a) In point (a), Roman numeral (iii), the words ‘only by persons with specialist knowledge’ are inserted between the words ‘intended to be used’ and the words ‘in the open air’.

(b) In point (b), Roman numeral (i), the words ‘only by persons with specialist knowledge’ are inserted between the words ‘representing a low risk’ and the semicolon.

(c) After letter (c) Roman numeral (i), and before Roman numeral (ii), a new Roman numeral (ia) is added, worded as follows:

‘(ia) subcategory P1a: the following pyrotechnic articles in category P1 intended for use only by persons with specialist knowledge and which:

1. have a flash composition or are designed to produce sound and which have more than 1 gram of net explosive content per item;
2. have a flash composition or are designed to produce a sound with a sound level greater than 120 dB(A, impulse) at a distance of 8 metres;
3. are designed to produce light or smoke, unless they are fitted with a wheel mark as defined in Article 2(12) of the amended Act of 23 December 2016 on marine equipment or unless they are designed to produce a rescue signal in an emergency situation and are furthermore recognisable as such, being waterproof and marked with a legible indication of their intended use, and are held, used or sold for the purpose of producing a rescue signal in an emergency situation.’

Article 3.

Article 7(3) of the same Act is amended as follows:

1° In subparagraph 1, the words ‘issued by the Inspectorate of Labour and Mines, the conditions for obtaining which are laid down by grand-ducal regulation’ are replaced by the words ‘or a document issued by a competent authority of another Member State of the European Union and certifying that its holder is a person with specialist knowledge for the category concerned’.

2° In point (a), the word ‘and’ is replaced by the word ‘or’.

3° Point (b) is amended as follows:

‘theatrical pyrotechnic articles in categories T1 and T2;’

4° After subparagraph (b), a new letter (c) is added, worded as follows:

‘c) other pyrotechnic articles in categories P1a or P2.’

5° Following the first subparagraph, four new paragraphs are added, worded as follows:

‘The qualification or document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge for fireworks in category F4 will be considered sufficient for the purposes of making fireworks in category F3 available on the market.

The qualification or document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge for theatrical pyrotechnic articles in category T2 will be considered sufficient for the purposes of making theatrical pyrotechnic articles in category T1 available on the market.

The conditions for obtaining a qualification issued by the Inspectorate of Labour and Mines are laid down by grand-ducal regulation.

Where a natural person acts on behalf of a legal person, the pyrotechnic articles concerned may only be supplied to a responsible person designated by that legal person.’

Article 4.

Following Article 7, a new Article 7a is added, worded as follows:

'Article 7a. Checking and retention.

(1) Economic operators shall check the validity of the qualification or of the document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge, before making the pyrotechnic articles referred to in Article 7(3) available on the market.

(2) The Inspectorate of Labour and Mines shall make an IT tool available to economic operators that must be used to check the validity of the qualification that it has issued.

(3) For any supply of a pyrotechnic article, economic operators shall retain a copy of the qualification or the document referred to in the first paragraph of the invoice and, where applicable, the accompanying transport document. These documents shall be retained for 10 years from the end of the financial year to which they relate.'

Article 5.

Following Article 7a, a new Article 7b is added, worded as follows:

"Article 7b b Withdrawal.

(1) The Inspectorate of Labour and Mines shall withdraw the qualification that it has issued, from any person who:

1° either no longer meets the conditions for obtaining it, laid down by grand-ducal regulation;

2° or has made improper use of the qualification.

(2) the abuses referred to in paragraph 1(2) in any event include, but are not limited to, the following cases:

1° making available on the market to any person who does not have the specialist knowledge for the pyrotechnic articles referred to in Article 7(3);

2° storing pyrotechnic articles in a place not authorised for that purpose.'

Article 6.

Following Article 7b, a new Article 7c is added, worded as follows:

'Article 7c Exchange of data and information.

Personal data and information concerning the acquirer of pyrotechnic articles, the economic operators and the qualification or the document issued by a competent authority of another Member State of the European Union may be exchanged between the Inspectorate of Labour and Mines and the competent authorities of other Member States of the European Union.'

Article 7. Entry into force

This Act shall enter into force on the day of its publication in the Official Journal of the Grand-Duchy of Luxembourg.

III. Comments on the articles

Article 1 - Amendment of Article 3

Ad 1°

In Article 3(18) of the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles, the definition of 'person with specialist knowledge' has been amended to take account of the provisions of the Decision of the Benelux Committee of Ministers of 27 September 2022 on combating the misuse of pyrotechnic articles intended for the general public – M (2022) 7, which provides that pyrotechnic articles in categories F3 and T1 and some of the other pyrotechnic articles in category P1 listed in Annexes I and II to the aforementioned Decision may be made available on the market only to persons with specialist knowledge.

Ad 2°

In Article 3(21) of the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles, the full stop is replaced by a semicolon.

Ad 3°

In Article 3 of the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles, a new point 22 is inserted defining the 'pyro-pass', whose term was established through the Decision of the Benelux Committee of Ministers of 7 December 2020 on the introduction of a pyro-pass – M (2020) 14, as amended by the Decision of 27 September 2022 of the Benelux Committee of Ministers – M (2022) 9. It is clarified that the 'pyro-pass' is a document certifying that its holder has specialist knowledge in relation to certain pyrotechnic articles and that it is issued either by the Inspectorate of Labour and Mines or by an authority of another Benelux Member State.

Following point (22), a new point 23 is inserted defining the 'qualification', which is a 'pyro-pass' or a certificate issued by the Inspectorate of Labour and Mines, which certifies that its holder has specialist knowledge in relation to certain other pyrotechnic articles.

Following point (23), a new point (24) is inserted, which defines 'responsible person' as a duly mandated person with specialist knowledge, who is designated by a legal person to handle or use pyrotechnic articles on behalf of that legal person.

Article 2 - Amendment of Article 6

Ad 1°

In Article 6(1), letter (a), Roman numeral (iii) and (b), Roman numeral (i) it is clarified that F3 and T1 pyrotechnic articles are intended to be used only by persons with specialist knowledge.

In Article 6(1), letter (c), a new Roman numeral (ia) is inserted with the new subcategory of pyrotechnic articles P1a, which are listed in Annex I to the Decision of the Benelux Committee of Ministers of 27 September 2022 on combating the misuse of pyrotechnic articles intended for the general public – M (2022) 7 and which are intended to be used only by persons with specialist knowledge.

Article 3 - Amendment of Article 7

Ad 1° to Ad 4°

Article 7(3), first subparagraph, provides that economic operator may make the pyrotechnic articles concerned available on the market not only for persons holding a qualification issued by the Inspectorate of Labour and Mines, but also to persons in possession of a document issued by a competent authority of another Member State of the European Union certifying that its holder is

a person with specialist knowledge. In addition, economic operators may make the pyrotechnic articles concerned available on the market to persons with a pyro-pass issued by the Inspectorate of Labour and Mines or by the competent authority of another Member State of the Benelux Union.

In addition, pyrotechnic articles in category T1 and P1a are added, which are listed in Annexes I and II to the Decision of 27 September 2022 of the Benelux Committee of Ministers on combating the misuse of pyrotechnic articles intended for the general public – M (2022) 7 and which are now also intended for use only by persons with specialist knowledge.

Ad 5°

Four new subparagraphs are inserted after Article 7(3), first subparagraph.

Subparagraph 2 provides that a person who has a qualification or document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge for fireworks in category F4 may, with this same qualification or document, also acquire fireworks in category F3.

Subparagraph 3 provides that the person who has a qualification or document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge for theatrical pyrotechnic articles in category T2 may, with this same qualification or document, also acquire theatrical pyrotechnic articles in category T1.

Subparagraph 3 reproduces the elements of the first subparagraph, which provide that the conditions for obtaining a qualification issued by the Inspectorate of Labour and Mines are laid down by grand-ducal regulation.

Subparagraph 4 provides that natural person acting on behalf of a legal person must be designated by that legal person.

Article 4 - New Article 7a

Article 7a(1) provides that economic operators must check the validity of the qualification or of the document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge before making the pyrotechnic articles concerned available on the market.

Paragraph (2) provides that the Inspectorate of Labour and Mines shall make an IT tool available to economic operators that must be used to check the validity of the qualification that it has issued.

In order to check the authenticity and validity of the certificate of competence presented by the acquirer, the economic operator consults the above-mentioned IT tool either via the dedicated website or by scanning the barcode on the qualification. Following this consultation, the economic operator is directed to a control document including the number of the qualification and the categories of pyrotechnic articles that the holder is authorised to acquire at the time of consultation of the control document.

In accordance with the provisions on data protection, the control document only indicates a positive or negative result regarding the validity of the qualification, without displaying the holder's personal data. Moreover, economic operators can only consult the data of valid and active qualifications, i.e. those that have not expired or been withdrawn. Therefore, the economic operator cannot freely search for qualification holders' data using this IT tool.

Paragraph (3) provides that whenever a pyrotechnic article is supplied, the economic operator shall retain a copy of the qualification or the document issued by a competent authority of another Member State of the European Union certifying that the holder is a person with specialist knowledge, together with the related invoice and, where applicable, the related transport

document. Furthermore, it is stipulated that these documents must be kept for 10 years from the end of the financial year to which they relate.

Article 5 - New Article 7b

Article 7b provides for the insertion of the provisions of Article 5 of the amended Decision of the Benelux Committee of Ministers of 7 December 2020 on the introduction of a pyro-pass – M (2020) 14, enabling the Inspectorate of Labour and Mines to withdraw the qualification from persons who no longer fulfil the conditions for obtaining it, as laid down by grand-ducal regulation, or who have made improper use of the qualification.

Article 6 - New Article 7c

Article 7c provides that personal data and information concerning the acquirer of pyrotechnic articles, the economic operators and the qualification or the document issued by a competent authority of another Member State of the European Union may be exchanged between the Inspectorate of Labour and Mines and the competent authorities of other Member States of the European Union.

Article 7 - Entry into force

This Article specifies the date of entry into force of this Bill.

IV. Coordinated text

Amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles

[...]

Article 3. Definitions.

For the purposes of this Act the following definitions apply:

- (1) accreditation: accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;
- (2) firework: a pyrotechnic article intended for entertainment purposes;
- (3) pyrotechnic article: any article containing explosive substances or an explosive mixture of substances designed to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions;
- (4) theatrical pyrotechnic articles: pyrotechnic articles designed for indoor or outdoor stage use, including film and television productions or similar use;
- (5) pyrotechnic articles for vehicles: components of safety devices in vehicles which contain pyrotechnic substances used to activate these or other devices;
- (6) distributor: any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a pyrotechnic article available on the market;

- (7) conformity assessment: the process demonstrating whether the essential safety requirements of this Act relating to a pyrotechnic article have been fulfilled;
- (8) manufacturer: a natural or legal person who manufactures a pyrotechnic article, or has such an article designed or manufactured, and markets that pyrotechnic article under their name or trademark;
- (9) importer: any natural or legal person established within the European Union who places a pyrotechnic article from a third country on the European Union market;
- (10) European Union harmonisation legislation: any European Union legislation harmonising the conditions for the marketing of products;
- (11) CE marking: a marking by which the manufacturer indicates that the pyrotechnic article is in conformity with the applicable requirements set out in European Union harmonisation legislation providing for its affixing;
- (12) making available on the market: any supply of a pyrotechnic article for distribution, consumption or use on the European Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (13) placing on the market: the first making available of a pyrotechnic article on the European Union market;
- (14) ammunition: projectiles and propelling charges and blank ammunition used in portable firearms, other guns and artillery;
- (15) harmonised standard: a harmonised standard as defined in Article 2(1)(c) of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council;
- (16) economic operators: the manufacturer, the importer and the distributor;
- (17) conformity assessment body: a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (18) person with specialist knowledge: a **natural** person with the necessary ability to handle ~~and/or~~ use fireworks in categories F3 ~~and/or~~ F4, theatrical pyrotechnic articles in categories ~~ies~~ **T1 or T2 and/or other pyrotechnic articles in the category-ies P1a or P2;**
- (19) recall: any measure aimed at achieving the return of a pyrotechnic article that has already been made available to the end-user;
- (20) withdrawal: any measure aimed at preventing a pyrotechnic article in the supply chain from being made available on the market;
- (21) technical specifications: a document that prescribes technical requirements to be fulfilled by a pyrotechnic article-;
- (22) **pyro-pass: a document issued by the Inspectorate of Labour and Mines or by an authority of another Benelux Member State competent for the implementation of the amended Decision of 7 December 2020 of the Benelux Committee of Ministers relating to the introduction of a pyro-pass - M (2020) 14, certifying that its holder is a person with**

specialist knowledge in relation to fireworks in category F3 or F4, theatrical pyrotechnic articles in category T2, or other pyrotechnic articles in category P2;

(23) qualification: a pyro-pass or a certificate issued by the Inspectorate of Labour and Mines certifying that its holder is a person with specialist knowledge in relation to theatrical pyrotechnic articles in category T1 or other pyrotechnic articles in category P1a;

(24) responsible person: a duly mandated person with specialist knowledge who is designated by a legal person authorised to store pyrotechnic articles or make them available on the market, with a view to their handling or using pyrotechnic articles on behalf of that legal person.

[...]

Article 6. Categories of pyrotechnic articles.

(1) Pyrotechnic articles shall be classified by the manufacturer in a category according to their type of use, purpose or level of risk, as well as their noise level. The notified bodies referred to in Article 21 shall confirm the category classification as part of the conformity assessment procedures referred to in Article 17.

The categories are as follows:

(a) fireworks:

- (i) category F1: fireworks which present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings;
- (ii) category F2: fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas;
- (iii) category F3: fireworks which present a medium hazard, which are intended for outdoor use **only by persons with specialist knowledge**, in large open areas and whose noise level is not harmful to human health;
- (iv) category F4: fireworks which present a high hazard, which are intended for use only by persons with specialist knowledge (commonly known as fireworks for professional use) and whose noise level is not harmful to human health;

(b) theatrical pyrotechnic articles:

- (i) category T1: pyrotechnic articles for stage use, **only by persons with specialist knowledge**, which present a low hazard;
- (ii) category T2: pyrotechnic articles for stage use which are intended for use only by persons with specialist knowledge;

(c) other pyrotechnic articles:

- (i) category P1: pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which present a low hazard;

(ia) subcategory P1a: the following pyrotechnic articles in category P1 intended for use only by persons with specialist knowledge and which:

1. **have a flash composition or are designed to produce sound and which have more than 1 gram of net explosive content per item;**

2. have a flash composition or are designed to produce a sound with a sound level greater than 120 dB(A, impulse) at a distance of 8 metres;
3. are designed to produce light or smoke, unless they are fitted with a wheel mark as defined in Article 2(12) of the amended Act of 23 December 2016 on marine equipment or unless they are designed to produce a rescue signal in an emergency situation and are furthermore recognisable as such, being waterproof and marked with a legible indication of their intended use, and are held, used or sold for the purpose of producing a rescue signal in an emergency situation.

- (ii) category P2: pyrotechnic articles, other than fireworks and theatrical pyrotechnic articles, which are intended to be handled and used only by persons with specialist knowledge.

(2) The Inspectorate of Labour and Mines shall inform the European Commission of its procedures for the identification and approval of persons with specialist knowledge.

Article 7. Age limits and other restrictions.

[...]

(3) Manufacturers, importers and distributors shall not make the following pyrotechnic articles available on the market for any person who does not hold a qualification ~~issued by the Inspectorate of Labour and Mines, the conditions for obtaining which are laid down by grand-ducal regulation~~ or a document issued by a competent authority of another Member State of the European Union certifying that the holder is a person with specialist knowledge of the category concerned:

- (a) fireworks in categories F3 and ~~or~~ F4;
- (b) theatrical pyrotechnic articles ~~in~~ categoryies T1 or T2 and other pyrotechnic articles of category P2;
- (c) other pyrotechnic articles in categories P1a or P2.**

The qualification or document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge for fireworks in category F4 will be considered sufficient for the purposes of making fireworks in category F3 available on the market.

The qualification or document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge for theatrical pyrotechnic articles in category T2 will be considered sufficient for the purposes of making theatrical pyrotechnic articles in category T1 available on the market.

The conditions for obtaining a qualification issued by the Inspectorate of Labour and Mines are laid down by grand-ducal regulation.

Where a natural person acts on behalf of a legal person, the pyrotechnic articles concerned may only be supplied to a responsible person designated by that legal person.'

[...]

Article 7a. Checking and retention.

(1) Economic operators shall check the validity of the qualification or of the document issued by a competent authority of another Member State of the European Union certifying that its holder is a person with specialist knowledge, before making the pyrotechnic articles referred to in Article 7(3) available on the market.

(2) The Inspectorate of Labour and Mines shall make an IT tool available to economic operators that must be used to check the validity of the qualification that it has issued.

(3) For any supply of a pyrotechnic article, economic operators shall retain a copy of the qualification or the document referred to in the first paragraph of the invoice and, where applicable, the accompanying transport document. These documents shall be retained for 10 years from the end of the financial year to which they relate.

Article 7b. Withdrawal.

(1) The Inspectorate of Labour and Mines shall withdraw the qualification that it has issued, from any person who:

1° either no longer meets the conditions for obtaining it, laid down by grand-ducal regulation;

2° or has made improper use of the qualification.

(2) the abuses referred to in paragraph 1(2) in any event include, but are not limited to, the following cases:

1° making available on the market to any person who does not have the specialist knowledge for the pyrotechnic articles referred to in Article 7(3);

2° storing pyrotechnic articles in a place not authorised for that purpose.'

Article 7c. Exchange of data and information.

Personal data and information concerning the acquirer of pyrotechnic articles, the economic operators and the qualification or the document issued by a competent authority of another Member State of the European Union may be exchanged between the Inspectorate of Labour and Mines and the competent authorities of other Member States of the European Union.

[...]



V. Financial sheet

Title of the Bill:	Bill modifying the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles
Initiating ministry:	Ministry of Labour, Inspectorate of Labour and Mines
Author(s):	Nadine WELTER, Marco BOLY
Tel.:	247-86315, 247-76100
Email:	nadine.welter@mt.etat.lu; marco.boly@itm.etat.lu
Objective(s) of the Bill:	The purpose of this Bill is to modify the amended Act of 27 May 2016 on the making available on the market of pyrotechnic articles and to transpose several decisions of the Benelux Committee of Ministers
Other Ministries/Bodies/ Municipality/ies involved:	Ministry of the Economy, Luxembourg Institute of Standardisation, Accreditation, Safety and Quality of Products and Services (ILNAS).
Date:	19.01.2024

The Bill does not have any financial impact.