

Environmental Licensing (General Provisions) Bill: Summary

Purpose of the Bill

The main purpose of the Environmental Licensing (General Provisions) Bill (henceforth referred to by its Dutch acronym Wabo) is to establish a single, straightforward procedure and a single competent authority for persons or businesses seeking permission for activities which affect the physical environment. It has been drawn up with careful regard for the circumstances of entrepreneurs and businesses.

The new Bill seeks to reduce red tape, and thereby increase economic productivity. This policy is the driving force behind not only the Wabo, but also other projects seeking to modernise government and simplify licensing systems.

A single environmental licence

The Wabo means that someone wishing to carry out a physical project, e.g. start a business in a new building, can get the necessary permissions through an integrated procedure: just one licence from one procedure, one set of rules to follow, one system of remedies and one enforcement agency. The licence application will where possible be processed electronically.

The new licensing system will replace much of the existing legislation regulating activities which affect our physical environment. Some 25 existing systems for issuing permits, licences, exemptions, and so on are being replaced by a single environmental licence. This new licence will apply to the demolition, construction, establishment or use of a physical facility. Activities affected will typically be location-specific projects which have an impact on our physical environment, i.e. air, water and soil, wildlife and biodiversity, landscape and cultural-historical elements.

The modernisation of the licensing system will not mean new or different standards. The Wabo will not change the levels of protection provided under current law. Nor will there be any change in the amount of freedom available to the competent authority to attach conditions to licences. But it does provide that conflicts between such conditions must be avoided.

The Wabo gives flexibility to developers by letting them choose between making a single application for an entire project and making separate applications for different project components. The Bill also allows an application to be made for a phased licence. This flexibility allows a developer to weigh the pros and cons of these different possibilities and choose accordingly.

Integration is more than just coordination

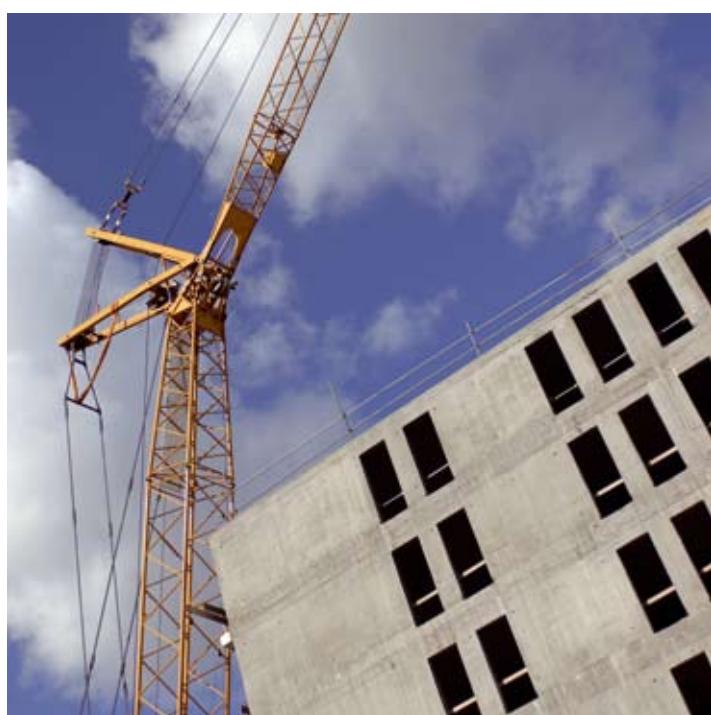
Integrated licensing means more than simply coordinating existing licensing systems. Coordination would basically imply that separate permits and licences would be dealt with simultaneously, on the basis of separate applications to different competent authorities. The Wabo integrated procedure, by contrast, involves making just one application for the desired activities, to one address, on one form in accordance with a single set of submission rules; it involves just one decision by one competent authority based on a single set of rules, and a single objection and appeal procedure. Integration has a number of obvious advantages over coordination, in terms of both the procedure and the content of the licence. The most tangible procedural advantage of the Wabo is that a single administrative authority has the final responsibility for assessing a physical project, by means of a single licence. This has the advantage that the separate aspects of a project are evaluated consistently and as a whole. At present the Wabo achieves procedural integration, and substantive coordination. In relation to the latter, the Wabo places a new statutory obligation on the competent authority to ensure consistency between the rules attached to the various licence and permit systems. This avoids a problem which can occur under existing legislation, that different permits and licences may have conflicting rules or stipulations. In future, the assessment criteria themselves may be integrated and harmonised, but this would require more radical change, which for the moment is not the intention of the Wabo. Depending on experience with the new single environmental licence and the substantive coordination, further changes to the law to achieve greater integration are possible in future.



Full and incidental integration

The Bill provides for two different forms – full and incidental – of integration of existing licensing and permit systems. Full integration means a requirement for permission is fully subsumed within the new Bill. This is applicable to activities which are in all cases location-specific and where other permissions are also likely to be required. Full integration applies to the following permissions:

- exemptions from the land-use plan;
- demolition permits and planning permission under the new Spatial Planning Act;
- building permits;
- fire safety permits;
- exemptions from the Buildings Decree 2003, made pursuant to the Housing Act;
- permits to modify or demolish a protected building under the Monuments and Historic Buildings Act 1988;
- environmental licences;
- notifications made under Section 8.19 of the Environmental Management Act;
- mining industry environmental licences under the Mining Act.



A number of permits required under provincial, and particularly municipal, by-laws will also be fully integrated:

- logging concessions;
- permits for constructing, using or changing street access;
- advertising display permits;
- burglar alarm permits;
- storage of goods permits.

Incidental integration, on the other hand, applies to licensing systems for activities which may or may not be location-specific. These are only integrated in cases where they relate to a location-specific activity, i.e. where both a single environmental licence and a permit under the relevant regulations are required. Incidental integration means that in such situations a person or a business does not have to apply for separate permissions, since the single environmental licence covers all requirements.

Incidental integration applies to a number of specific permissions under the Environmentally Hazardous Substances Act, the Environmental Management Act, the Air Pollution Act, the Soil Protection Act, the Noise Abatement Act, the Flora and Fauna Act and the Nature Conservancy Act 1998. Procedural matters related to incidental integration will be regulated by a separate implementing act.

Competent authority and advisory bodies

There will be a single competent authority for environmental licensing. This rationalisation is a precondition for having a single licence. The Bill puts an end to the present system in which different authorities are competent for different permits and licences. The municipal executive will in most cases be the body which issues the new single environmental licence, except for activities which touch on provincial or national interests, when that competence will be assigned to the provincial executive or the relevant minister, respectively. The administrative authorities previously competent to issue a particular permit will have an opportunity in the new system to comment on the relevant part of the single environmental licence application. Detailed rules in this regard will be laid down in an environmental licensing decree.

There will be cases where a particular administrative authority has greater involvement, through having issued a declaration of



no-objection. The Wabo provides that the competent authority cannot override such a declaration. The former authority therefore influences the decision on the licence application, unlike with an ordinary advisory opinion, which a competent authority may disregard, provided it states its reasons.

Single point of contact, one electronic application form

The Wabo provides for a single point of contact for environmental licence applications, using as far as possible a national standard form. Efforts have also been made to ensure that as far as possible applications can be submitted and processed electronically via the internet. In the future, the one-stop-shop approach will also extend to cases where another permit is also required.

The licensing procedure

The Bill provides for a standard and an extended procedure for single environmental licences. The standard procedure will apply to more common and straightforward projects, while the extended procedure will be necessary for more complex projects involving, for example, environmental or fire safety issues. These two procedures draw as far as possible on the standard provisions of the General Administrative Law Act, supplemented and extended by several specific provisions.

The time limit allowed for the standard procedure is 8 weeks. This can be extended once by a further 6 weeks. The deadline represents a cut-off point. If it is exceeded the licence is automatically granted in accordance with the application. This is intended to ensure that the competent authority assesses the application promptly. The Wabo does, however, contain extra procedural guarantees to prevent this default provision prejudicing the interests of third parties or certain social goods.

The extended procedure broadly follows the provisions of Part 3.4 of the General Administrative Law Act. Essentially, the administrative authority must decide on the application within 6 months of receipt, unless there are very complex or controversial issues, when the Wabo allows for the time limit to be extended by 6 weeks. But a licence is not automatically issued immediately

on expiry of this time limit. A single environmental licence issued under this procedure does not enter into force until the time limit for objections and appeals has elapsed. An application for an injunction will suspend the time limit until the application has been decided on.

The Bill provides two types of remedy in the standard and extended procedures. Firstly, decisions made in the standard procedure can be challenged by means of the objection procedure described in Chapter 7 of the General Administrative Law Act. An application for judicial review may then be lodged with the court and thereafter an appeal can be lodged with the Administrative Jurisdiction Division of the Council of State. In the case of an extended procedure, stakeholders will be given the opportunity to respond to the draft licence. Applications for judicial review of subsequent decisions can be lodged directly with the district court and appeal then lies to the Administrative Jurisdiction Division.

In future, remedies will be available at two levels (judicial review and appeal). Where existing legislation provided for appeal at only one level, for example on environmental licences, the Bill represents a departure.

Enforcement

The government will endeavour to ensure that new environmental licensing regulations are enforced uniformly and consistently. The rules for enforcement under administrative law are being streamlined and integrated. Businesses and individuals will deal with a single competent authority which follows transparent procedures.

The administrative authority competent to issue the single environmental licence will generally also be responsible for the enforcement under administrative law of the licence and of the other relevant regulations, although another authority may be responsible for enforcing certain elements in a few special situations.

Certain standards will be specified to ensure the quality of enforcement. Under the Bill, the Minister is responsible for the implementation and enforcement of the single environmental licensing system. In this context, the Minister has the power to



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direct that a competent authority takes particular enforcement measures. If it fails to do so, the Minister can take the appropriate enforcement action at the expense of that authority.

Impact of the Bill on households and businesses

A regulatory impact assessment was made which showed that the introduction of the single environmental licence will reduce the administrative costs of the private sector by about €33.2 million per year and of households by €3 million per year. This equates to about 6% and 3% respectively of total present costs. It should be noted that these figures exclude the expected savings from a simplified objection procedure and the saving in administrative costs for interested third parties.

Implementation of the Act

The new single environmental licence will mean considerable change, both for the applicants and for the authorities which issue licences. Its introduction will therefore be strongly supported by pilot projects and an implementation project with particular emphasis on public information, ICT and training. Such activities have already started, alongside the drafting of the Bill, with a project preparing for the introduction of the single environmental licence and a project on a website for on-line licence applications.

The implementation of the single environmental licence will necessitate amendments to the relevant legislative framework. These amendments will be laid down in separate legislation establishing the Wabo. In addition, an implementing decree and a ministerial order will be required, covering for example the designation of the competent authority and the information to be submitted with the single environmental licence application. An electronic application form based on a national standard will be made available.

More information

For the latest information on the project, go to website in Dutch Ministry of Housing, Spatial Planning and the Environment: www.vrom.nl/vergunningen, or email vrom.vergunning@minvrom.nl.

Other useful links for information in Dutch are listed below.

For various reports, guidance documents and accounts of others' experiences with single environmental licensing systems, go to www.omgevingsvergunning.vrom.nl.

For more information on deregulation at the Ministry of Housing, Spatial Planning and the Environment, go to www.vrom.nl/modernisering.

For more information about the modernising the general rules under the Environmental Management Act, go to www.vrom.nl/840amvb.

