

**A C T No. 21/1997 Coll.**

**On Control of Exports and Imports of Goods and Technologies  
Subject to International Control Regimes  
as amended by Act No. 204/2002 Coll.**

The Czech Parliament has passed the following Act:

**PART ONE  
General Provisions**

**§ 1  
Subject Matter**

(1) This Act stipulates conditions under which it is possible to export from or import to the Czech Republic goods and technology subject to international control regimes (hereinafter referred to as “control regime”) and defines the authority of state administration bodies in this area.

(2) The state administration bodies responsible for the application of the control regime pursuant to this Act, shall be obliged to take into account the objectives of international institutions involved in the area of multilateral control of strategic goods and in the area of non-proliferation of nuclear, chemical, and biological weapons, a member of which the Czech Republic is or which the Government of the Czech Republic recognizes, while at the same time respecting the foreign policy, security and trade interests of the state in this area.

**Definition of Basic Terms**

**§ 2**

(1) Dual use items, including software and technology which can be used for both civilian and military purposes due to their character, including those that can be used for both non-explosive purposes and any form of support of production of nuclear weapons or other nuclear explosive devices, chemical and biological weapons production (hereinafter referred to as “controlled goods”) are subject to the control regime under this Act.

(2) The controlled goods referred to in paragraph (1) are listed in an implementing regulation (hereinafter referred to as “list of controlled goods”).

(3) “Controlled goods” under this Act shall also mean goods subject to the licensing proceedings in special cases under § 19.

**§ 3**

(1) “Exporter” shall mean for the purpose of this Act a person that:

- a) submits an export declaration or on whose behalf an export declaration is submitted and who, at the time when the declaration is accepted, holds the

contract with the foreign consignee and has the power for determining the sending of controlled goods out of the customs territory of the Czech Republic; if this person does not act on its own behalf, or if no contract of controlled goods delivery has been concluded, the power for determining the sending of these goods out of the customs territory of the Czech Republic shall be decisive, or

- b) decides to transmit software or technology by electronic means, fax or telephone to a destination outside the territory of the Czech Republic.

(2) If, pursuant to the contract on which export may be effected, the benefit of a right to dispose of controlled goods belongs to a person with its registered office or domiciled outside the territory of the Czech Republic, such exporter shall be considered for the purposes of this Act to be the contracting party with its registered office in the Czech Republic.

(3) ‘Export’ shall mean for the purposes of this Act:

- a) release of controlled goods to the export or to the outward processing or the customs approved treatment for re-exportation of goods, upon decision issued by the customs office in proceedings under special regulations,<sup>6)</sup>
- b) transmission of software and technology by electronic means, fax or telephone to a destination outside the territory of the Czech Republic; an oral transmission of technology by telephone is considered export only if the technology contained in the document is read out or described over the telephone in such a way as to achieve the substantially the same result as if the document was submitted. The provision of special legal regulations shall not be impaired thereby.

(4) ‘Importer’ shall mean a person that imports controlled goods to the Czech Republic. If, pursuant to the contract on which import may be effected, the benefit of a right to dispose of controlled goods in the Czech Republic belongs to a person with its registered office or domiciled abroad, this importer shall be considered for the purpose of this Act the contracting party with its registered office in the Czech Republic.

(5) ‘Import’ shall mean for the purpose of this Act the release of controlled goods into free circulation or to any of the customs modes with economic effect.

(6) The Government may determine with a regulation that the declaration related to the release of controlled goods to the customs mode can only be submitted at a certain customs office.

#### **§ 4**

#### **General Obligations of Exporters, Importers, and Users**

(1) The exporter/importer shall be obliged to ensure that not later upon commencement of the customs proceedings the competent customs office is informed that controlled goods are involved. The exporter shall indicate clearly in the commercial documents, i.e. sales contract, order confirmation and invoice, that controlled goods are involved.

(2) The exporter/importer shall submit to the competent customs office that decides on the release of controlled goods the original of an individual licence or individual open licence for export and import of controlled goods; otherwise controlled goods may not be released.

(3) The exporter of controlled goods shall also be obliged:

- a) to arrange for the issue of a certificate of end use for the controlled goods and for compliance with possible conditions specified in the export licence,
- b) upon request by the Ministry of Industry and Trade (hereinafter referred to as 'Ministry') to submit, after conclusion of the export transaction, a delivery verification document evidencing the acceptance of the controlled goods in the approved country of destination, issued by the relevant authority of that country,
- c) to keep records, for at least five years from the end of the calendar year in which the controlled goods were exported, containing the fundamental data necessary for identification of the goods:
  1. name and identification code of the goods according to the list of controlled goods,
  2. amount and value of the goods,
  3. licence identification,
  4. date of sale,
  5. name and address of both the foreign contractual partner and the end user,
  6. purpose of the use of goods, including the relevant documents (contracts, guarantee of use, invoices, transportation and other shipping documents), and to submit these records to the Ministry upon request,
- d) upon export of controlled goods previously imported, to comply with the terms and conditions stipulated in the export licence issued by the foreign supplier,
- e) to co-operate as necessary in the performance of control activities in compliance with §§ 20 to 22.

(4) The importer of controlled goods shall also be obliged:

- a) for the period of at least three years from the import of controlled goods and in case of ownership rights to the controlled goods for the period of duration of this ownership and for a minimum period of three years from this ownership transfer to another user, unless provided for otherwise by a special regulation,<sup>3) 4)</sup> to keep records of the controlled goods containing the following fundamental data necessary for their identification:
  1. name and identification code of the goods according to the list of controlled goods,
  2. amount and value of the goods,
  3. licence identification,
  4. location of the goods,
  5. upon resale of the goods, the name and address of the new user and the date of sale,
  6. purpose of the use of goods,

- including the relevant documents (contracts, guarantee of use, documents of potential production consumption, invoices, transportation and other shipping documents),
- b) upon a change in the user of the controlled goods in the Czech Republic, to inform the new user in writing about the fact that controlled goods are involved, about the conditions imposed by the primary manufacturer, about the terms and conditions stipulated in the import licence, and about the obligation to comply with the conditions of special regulations applicable to individual types of goods; the new user shall be obliged to keep records of the controlled goods to the extent as laid down in a) above and to agree with periodic checks in compliance with §21,
  - c) to co-operate as necessary in the performance of control activities in compliance with §§ 20 to 22.

(5) Users of controlled goods shall be obliged to use the controlled goods only for purposes stipulated in the relevant licence and to observe the terms and conditions stipulated therein as well as the conditions imposed on the foreign exporter in the export licence, and to fulfil the obligations of an importer as specified in paragraph 4).

## **PART TWO**

### **Licensing Proceedings**

#### **§ 5**

The exporter is entitled to export and the importer is entitled to import controlled goods only based on, to the extent of, and under the terms and conditions specified in the export or import licences granted by the Ministry (hereinafter referred to as ‘licence’) as an individual licence, an individual open licence, or a general licence.

### **Individual Licence**

#### **§ 6**

(1) An individual licence is a written decision made by the Ministry in a standard form under § 7 paragraph 2 that authorises the exporter or the importer to export/import, all at once or in partial shipments, the specified type and amount of controlled goods based on an arrangement between the exporter/importer and its foreign business partner.

(2) The exporter/importer shall submit a written application for an individual licence grant to the Ministry, having first received a written expression of the foreign partner’s intent to conclude a contract of sale specifying the concrete type and amount of the controlled goods. A separate individual licence application shall be filed for each contract referring to the export or import of controlled goods.

(3) The application for an individual licence grant shall contain the following information:

- a) the exporter's/importer's name or firm and registered office, or name and place of business,
- b) the exporter's/importer's identification number or, in respect of a natural person, his/her birth certificate number and permanent or long-term domicile in the Czech Republic,<sup>5)</sup>
- c) a foreign contractual partner's or a local contractual partner's name or firm and registered office, or name and place of business,
- d) an agent's name or firm and registered office, or name and place of business, if different from the exporter,
- e) a consignee's name or firm and registered office, or name and place of business, if different from the foreign contractual partner,
- f) sub-item of the customs tariff combined nomenclature,
- g) name of the goods according to the commercial documents and their code according to the list of controlled goods, the amount of the goods, their price, and manufacturer's designation,
- h) the country to/from which the controlled goods are to be exported/imported,
- i) the purpose for which the goods are to be used,
- j) the end user's name or firm and registered office or long-term or permanent residence,
- k) the proposed term of the individual licence requested.

(4) The following documents shall be enclosed to each individual licence application:

- a) a draft or executed contract between the exporter/importer and their foreign contractual partner specifying exactly the controlled goods including their amount,
- b) upon export, either an import licence granted by the relevant authority of the country of destination, or a declaration of the foreign end user that the goods will not be used for the production or development of nuclear, chemical, or biological weapons, specifying the exact purpose of their use, which must comply with the data stated in the licence application, and a declaration that the goods will not be re-exported without the consent of the exporter's country; upon import, an analogous declaration containing a written covenant of the user that the specified goods will only be used for the approved purpose; these documents do not have to be submitted if the State Office for Nuclear Safety issued a licence, based on government assurances provided by the country to which the goods are exported,
- c) a licence granted by the State Office for Nuclear Safety in cases of export and import of nuclear controlled goods under a special law,<sup>4)</sup>
- d) a declaration concerning other facts if they could be significant for the results of the proceedings,
- e) upon the Ministry's request, additional documents and information necessary for a due assessment of the transaction at hand.

(5) A sample application for individual licences shall be laid down in an implementing regulation.

## § 7

(1) The Ministry shall decide on applications for individual licences.

(2) Each decision on the grant of an individual licence to import/export controlled goods must contain in particular the following items:

- a) the exporter's/importer's name or firm, registered office and identification number, or name and place of business, in respect of a natural person, their birth certificate number and long-term or permanent residence in the Czech Republic,<sup>5)</sup>
- b) sub-item of the customs tariff combined nomenclature,
- c) name of the goods and their code according to the list of controlled goods, the amount of the goods and their price,
- d) name or firm and registered office, or name and place of business, of a foreign contractual partner, or of a consignee if different from the foreign contractual partner, and name and registered office of the end user of goods,
- e) validity term of the individual licence,
- f) other possible conditions imposed by the individual licence arising from obligations by which the Czech Republic is bound,
- g) date, seal, and signature of an authorised employee of the Ministry.

(3) In its decision the Ministry shall reserve space for records of the customs authorities<sup>7)</sup> concerning the use of the granted individual licence.

## § 8

(1) Unless stipulated otherwise in the individual licence conditions, the exporter/importer shall inform the Ministry about the amount of performed delivery after its completion, not later than within two weeks after the expiration of the individual licence.

(2) If an individual export or import licence is not used, the exporter/importer shall notify the Ministry of this fact without delay giving reasons and return the granted licence.

## § 9

The Ministry shall refuse to grant an individual licence:

- a) if the exporter/importer fails to meet the conditions stipulated in § 6, or
- b) if the exporter/importer violates the conditions of the control regime or, in connection therewith violates domestic or foreign legal regulations applicable to this area, or
- c) if the exporter/importer fails to fulfil their obligation to request a prior consent with negotiations referred to in § 15 paragraph 3, or
- d) for reasons connected with the Czech Republic's foreign policy, trade, or security interests, or
- e) if the intended end use fails to guarantee sufficiently that the goods will not be used in connection with weapons of mass destruction, missiles capable of delivering such weapons or for military purposes, or
- f) if conditions stipulated in a special law are not met.<sup>3)4)</sup>

## **§ 10**

(1) The Ministry shall cancel a granted individual licence:

- a) if the licence was granted on the basis of false or incomplete data, or
- b) upon violation of the terms and conditions of the granted licence.

(2) The Ministry shall modify or revoke the granted individual licence if it is justified by the Czech Republic's foreign policy, trade, or security interests.

(3) The granted individual licence may not be cancelled, modified or revoked if the controlled goods were completely released to the customs mode or for re-export.

(4) The Ministry shall suspend the granted individual licence for a period necessary to exclude any suspicion that there is a reason for its cancellation, modification or revocation. Unless reasons are found to decide for the cancellation, modification or revocation of the granted licence, the licence suspension shall terminate.

## **§ 11**

(1) No remonstrance may be filed against the Ministry's decision to grant or refuse an individual licence. The right of a judicial inspection of the administrative decision shall not be impaired thereby<sup>8)</sup>.

(2) No remonstrance may be filed against the Ministry's decision to cancel, modify or revoke a granted individual licence. The right of a judicial inspection of the administrative decision shall not be impaired thereby<sup>8)</sup>. No remonstrance or appeal may be filed against the decision to suspend a granted individual licence.<sup>8)</sup>

## **Individual Open Licence**

## **§ 12**

(1) An individual open licence is a written decision by the Ministry in a standard form pursuant to § 13 paragraph 1 that authorises a particular exporter or importer to export or import controlled goods of identical character in the form of recurring shipments.

(2) The Ministry may grant an individual open licence in the event of expected recurring exports/imports of controlled goods in a determined structure and territorial scope, for a certain period of time (usually a calendar year) and based on a written application filed by the exporter/importer.

(3) The application for an individual open licence shall contain the following information:

- a) the exporter's/importer's name or firm and registered office, or name and place of business,
- b) the exporter's/importer's identification number; in respect of a natural person, his/her birth certificate number and long-term or permanent residence in the Czech Republic,<sup>5)</sup>
- c) sub-items of the customs tariff combined nomenclature,
- d) name of the goods and their code according to the list of controlled goods, the expected amount of the goods and their total price,
- e) countries into/from which the controlled goods are to be exported/imported,
- f) the expected use of the goods,
- g) end users' name or firm and registered office or long-term or permanent residence, if known as of the date of the application,
- h) the proposed validity term of the individual open licence.

(4) The application for an individual open licence shall include the following enclosures:

- a) a list of foreign trade partners,
- b) commercial documents evidencing the expected supplies of controlled goods for which the individual open licence is requested, if already agreed upon between the domestic exporter/importer and its foreign business partner,
- c) a licence granted under a special law<sup>4)</sup> by the State Office for Nuclear Safety, if controlled nuclear goods are to be exported/imported in a nuclear area,
- d) a declaration concerning other facts that might be significant for the result of the proceedings,
- e) upon request of the Ministry also additional documents and information necessary for a due assessment of the transaction at hand.

(5) A sample application for individual licences shall be laid down in an implementing regulation.

### § 13

(1) The decision granting an individual open licence for export or import of controlled goods must contain in particular the following information:

- a) the exporter's/importer's name or firm, registered office, and identification number, or name and place of business; in respect of a natural person, his/her birth certificate number and long-term or permanent domicile in the Czech Republic,<sup>5)</sup>
- b) sub-items of the customs tariff combined nomenclature,
- c) name of the goods and their code according to the list of controlled goods, the amount of the goods and their total price,
- d) countries to/from which the exporter/importer is authorised to export/import the controlled goods,
- e) validity term of the individual open licence and the mandatory dates for submitting interim reports of performed transfers,
- f) any other additional conditions under which the specified controlled goods may be exported/imported,
- g) date, seal, and signature of an authorised employee of the Ministry.

(2) In its decision the Ministry shall reserve space for records of the customs authorities<sup>7)</sup> concerning the use of the granted individual open licence.

#### **§ 14**

(1) An individual open licence already granted may be cancelled, modified, revoked or suspended subject to the reasons and conditions stipulated in § 10.

(2) No remonstrance may be filed against the Ministry's decision to cancel, modify or revoke a granted individual open licence. The right of a judicial inspection of the administrative decision shall not be impaired thereby.<sup>8)</sup> No remonstrance or appeal may be filed against the Ministry's decision to suspend a granted individual open licence.<sup>8)</sup>

#### **§ 15**

##### **Preliminary Consent with Negotiations**

(1) Prior to filing an individual licence application, the exporter/importer may submit to the Ministry a written request for a preliminary consent with negotiations with a foreign partner. The request shall contain the expected data as referred to in § 6 paragraph 3 and paragraph 4 letter d).

(2) The Ministry shall decide on the request within 30 days after its filing. The preliminary consent already granted may be modified following a change in the conditions under which it was granted; the state shall not be held liable for any possible prejudice thus suffered by the exporter or the importer. The preliminary consent shall not replace an individual licence.

(3) Instances of export/import of controlled nuclear, chemical and biological goods especially important for the state interests, in which the exporter/importer shall be obliged to request the Ministry's preliminary consent with negotiations with a foreign partner, are defined in an implementing regulation.

(4) Criteria for the classification of controlled goods as especially important pursuant to the provisions of the preceding paragraph 3 include:

- a) the specified amount of controlled goods exported under a single contract in view of the specific item of controlled goods,
- b) the technical and utility characteristics of controlled goods that increase the risk of their use in the manufacture and proliferation of weapons of mass destruction,
- c) sensitivity of the expected site of the end use of controlled goods exported from the Czech Republic from the point of view of either foreign policy or specific conditions imposed by the relevant international control regime,
- d) a combination of the conditions specified under a) to c) above.

## **General Licences**

### **§ 16**

(1) A general licence authorises importers/exporters not identified in advance to import/export controlled goods under strictly defined conditions without the necessity to file an application with the Ministry. No general licences shall be granted for the export or import of controlled goods in the nuclear area.

(2) The Ministry may grant a general import or export licence by means of a decree delimiting:

- a) the structure of goods,
- b) the range of countries covered by the general licence,
- c) conditions under which controlled goods may be exported or imported under a general licence.

(3) If a general licence is applied, no individual or individual open licence shall be submitted to the customs authorities upon import/export; instead, the number of the Decree under which the relevant general licence has been granted is indicated in the customs declaration.

(4) A general export licence may not be applied if the exporter was informed by the competent authorities that the concerned controlled goods, in their entirety or in part, are or may be intended for the purposes set out in § 19 paragraph 2 or if the exporter knows or suspects that the goods are intended for the above use. The provisions of §§ 6 – 11 shall apply to further procedure.

### **§ 17**

(1) An exporter/importer who intends to export/import controlled goods under a granted general licence shall be obliged:

- a) prior to the first application of the general licence, to file with the Ministry a registration form stating its business firm, registered office, or name, residence and identification number, and to enclose a copy of the certificate of incorporation (if incorporated) or their trade licence,
- b) to inform the Ministry about any changes in the data contained in the registration form or about the termination of deliveries of controlled goods under a general licence.

(2) The registration performed under the preceding paragraphs shall apply to all general licences granted.

### **§ 18**

Having established that an exporter/importer has violated any of the terms and conditions of a general licence, the Ministry may disqualify such exporter/importer from using the general licences. The Ministry shall send a copy of such decision to the Ministry of Finance.

## § 19 Licensing Proceedings in Special Instances

(1) Licensing proceedings in special instances shall apply to the export of goods and technology which are not referred to in the list of controlled goods, including the provision of technical assistance that is connected with the movement of persons and includes also oral forms of assistance.

(2) Special instances are involved if:

- a) the exporter was informed by the Ministry that the goods not referred to in the list of controlled goods is or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or proliferation of chemical, biological or nuclear weapons or other nuclear explosive devices or with the development, production, maintenance or storage of missiles capable of delivering such weapons,
- b) the purchaser's country or the country of destination is subject to an arms embargo decided by a common position or a joint action accepted by the EU Council or upon decision of the OSCE or to an arms embargo imposed by a resolution of the Security Council of the United Nations and if the exporter was informed by the Ministry that the goods not referred to in the list of controlled goods are or may be intended, in their entirety or in part, for a military end use; "military end use" shall mean for the purpose of this Act:
  - 1. incorporation in the list of military material issued under a special legal regulation<sup>8b)</sup> (hereinafter referred to as "list of military material"),
  - 2. use of production-, test- or analytical equipment and components therefor for the development, production or maintenance of military material referred to in the list of military material,
  - 3. use of any unfinished products in the production of military material referred to in the list of military material,
- c) the exporter was informed by the Ministry that the goods not referred to in the list of controlled goods are or may be intended, in their entirety or in part, for use as parts or components of items referred to in the list of military material that were exported contrary to a special regulation<sup>8b)</sup>,
- d) a regulation of the Government determines that a serious threat to public order or public security is or may be related to the export of goods not referred to in the list of controlled goods<sup>8c)</sup>, or
- e) technical assistance provided outside the territory of the Czech Republic is intended or the Provider is aware that it is intended for use in connection with activities referred to under letters a) and b).

(3) If the exporter is aware that technical assistance which the exporter is going to provide or goods not referred to in the list of controlled goods which the exporter offers for export are intended, in their entirety or in part, for any of the uses under paragraph 2 letters a) to c), the exporter shall be obliged to inform the Ministry.

(4) If the exporter suspects, or should suspect considering the circumstances, that goods not referred to in the list of controlled goods may be intended, in their entirety or in part, for any of the uses under paragraph 2 letter a), the exporter shall be obliged to inform the Ministry; the exporter shall relieve himself from the above obligation if the exporter adopts all available measures aimed at establishing the actual use of the exported goods and makes sure that there is no danger of them being misused.

(5) The Ministry shall decide in the cases under paragraph 2 letter b) and under paragraphs 3 and 4 whether the export of such goods shall be subject to the licensing proceedings under this Act. The Ministry shall determine the requested form of licence.

(6) Within the licensing proceedings in specific cases the exporter shall be obliged to proceed in compliance with this Act. §§ 6 – 14 shall similarly apply to the licence grant proceedings.

### **PART THREE**

#### **Check of Compliance with the Terms and Conditions of the Control Regime and Penalties**

##### **§ 20**

Prior to deciding whether to grant a licence, the customs authority<sup>7)</sup> and, if nuclear controlled goods are involved, the State Office for Nuclear Safety, either on their own account or upon an invitation from the Ministry, shall perform a preliminary check aimed at verifying the data stated in the application, the purpose and suitable conditions of use of the imported controlled goods referred to in the application for an individual or individual open licence.

##### **§ 21**

The authorities referred to in § 20 shall carry out periodic checks at the site where the controlled goods are located, aimed at establishing compliance with the terms and conditions of the granted licence as well as the general conditions stipulated in § 4. The authorities shall also check imported and exported goods not included in the list of controlled goods if in possession of information that the goods may be used for purposes referred to in § 19 paragraph 2. Such check shall be also effected upon request from the Ministry or a relevant state authority of the supplier' s country. The results of such checks shall be communicated to the Ministry.

##### **§ 22**

(1) The authorities referred to in § 20 shall be authorised, under conditions stipulated in special regulations,<sup>9)</sup> in the performance of preliminary and periodic checks of controlled goods, to enter the premises and locations where the controlled goods are located or should be located according to the relevant documentation, to examine documents related to the controlled goods and to keep records thereof.

(2) If a competent state authority of the supplier' s country requests participation in a preliminary or periodic check, the authorities specified in § 20 shall satisfy the request taking into account the specific conditions arising from other legal regulations<sup>9)</sup>.

## **§ 23**

In support of the control activities, the Ministry of Finance shall keep records of imported controlled goods and the customs authorities shall keep records within their jurisdiction and communicate to the Ministry necessary information about performed exports or imports of controlled goods.

### **§ 23 a**

(1) The customs office shall interrupt customs procedures or, if necessary, stop in any other manner the export or import of controlled goods for which a licence was granted under this Act if:

- a) circumstances have changed since the licence grant, or
- b) the customs office was asked to do so by the Ministry in case of serious findings.

(2) In the cases referred to in paragraph 1, the customs office shall immediately inform the Ministry, which shall decide on further proceedings within 10 business days, in particularly complicated cases within 30 business days. If the customs office does not receive a decision of the Ministry concerning further proceedings or a notification of the term extension, they shall release the goods after the expiration of 10 business days. The customs office shall proceed similarly after the expiration of the extended term if they receive a notification of the term extension.

## **Penalties**

### **§ 24**

(1) Should the exporter/importer or any other entity transfer controlled goods from the bonded territory of the Czech Republic abroad, or from abroad to the bonded area of the Czech Republic without a valid licence, although a licence is required hereunder, the following penalties shall be imposed:

- a) a fine of up to 20 million CZK or five times the value of the goods whichever is higher, or
- b) forfeit of the controlled goods.

The sanctions under a) and b) above may be imposed separately or concurrently.

(2) Should the exporter, importer or user of imported controlled goods other than nuclear controlled goods fail to comply with the obligations under § 4, a fine of up to 5 million CZK may be imposed.

(3) The amount of fines imposed under paragraphs 1 and 2 shall be determined considering the extent, significance and duration of the threat to the Czech Republic's foreign

policy, trade, or security interests, or possibly considering the damage caused by the illegal acts involved. Sanctions applicable under special regulations shall not be impaired thereby.<sup>10)</sup>

## **§ 25**

(1) The customs office of jurisdiction under the Customs Act determining customs offences shall impose a fine and the forfeit of controlled goods under § 24 by a decision. In deciding on the forfeiture of controlled goods, the provisions of § 300 of the Customs Act shall be reasonably applied. The customs office that imposed the sanction shall also enforce and collect it.

(2) The fine may be imposed and the goods may be forfeited within two years after the date on which the violation was established upon a control report, however not later than within ten years following the actual date of violation. An appeal against the decision issued under paragraph 1 above shall have a suspensory effect.

(3) An imposed fine shall be due and payable within 15 days after the date of legal force of the relevant decision, and shall be income of the state budget.

(4) Lawfully forfeited controlled goods are usually sold by the customs office in an auction; the net revenue shall be income of the Czech Republic's state budget. When pursuing this procedure, the customs office acts consistently with the provisions of § 4, paragraph 4, letter b). A procedure under a special law<sup>4)</sup> shall apply to nuclear controlled goods.

## **PART FOUR Common, Transitory, and Final Provisions**

## **§ 26**

Prior to the import of controlled goods, the Ministry shall grant to the importer, upon request of the foreign supplier involved, an import certificate along with an individual licence or individual open licence. The import certificate shall contain data identical to those contained in the import licence.

## **§ 27**

Once import is effected, the customs authority, upon request from the foreign supplier, shall confirm a delivery verification document for the importer. If discrepancies are later discovered concerning the imported controlled goods, the customs authority shall inform, through the Ministry, the competent state authority of the exporter's country.

## § 28

The proceedings under this Act shall be governed by the Administrative Procedure Code with the exceptions:

- a) specified in § 11 a § 14 paragraph 2 with regard to appeals, in § 15 paragraph 2 with regard to the term required for the grant of a preliminary consent with negotiations, and in § 25 paragraph 1 with regard to jurisdiction of the customs authorities imposing sanctions,
- b) specified in Part Two of this Act when the party to the administration proceedings is the person referred to in § 3 paragraphs 1 and 3 and, if proceedings under Part Three hereof are involved, also the user of controlled goods as well as any other person specified in § 24 paragraph 1,
- c) from the right of the party to examine documents, to make excerpts from and comment on them<sup>11)</sup> if they concern the opinion of the competent state authorities and demonstrate possible foreign policy or security interests of the state resulting in the procedures referred to in § 9 letters d) and e) and § 10 paragraph 2 and 4 hereof; the administrative body shall however be obliged to give reasons in the justification of the decision applied in their decision-making.

## § 29

(1) In order to enforce this Act properly, the Ministry may demand from state administration bodies their opinion on individual instances of the export or import of controlled goods with regard to the foreign policy and security interests of the state as well as information about parties involved in the export and import of controlled goods or about exporters and importers applying for a licence relative to this activity as well as about their business if it is related to the controlled goods. The competent state administration bodies shall express their opinion, unless prevented from doing so by special legal regulations,<sup>12)</sup> within 30 days or within a period adequately extended upon agreement with the Ministry.

(2) The Ministry and the Ministry of Finance shall inform each other about the licensing and customs proceedings, to the extent of data referred to in the licence under § 7 and § 13 of the Act. They inform each other immediately about facts important for the approval proceedings and for the control of compliance with conditions of the control regime and penalising.

(3) The Ministry and the State Office for Nuclear Safety inform each other about the approval and licensing proceedings, in a manner and to the extent stipulated in a co-operation agreement relative to ensure activities resulting from this Act and relative legal regulations.<sup>3)</sup>

(4) In matters governed by this Act the Ministry shall also be entitled to co-operate with the international institutions specified in § 1 paragraph 2, and to provide such information as required from the Czech Republic on the basis of its membership in these institutions. The Ministry may also co-operate with the state administration bodies of other countries responsible for the fulfilment of national control regime tasks in the area of controlled goods.

### **§ 30**

(1) Decisions issued hereunder shall not replace decisions issued under special regulations.<sup>1), 2), 3), 4)</sup>

(2) Individual and individual open licences are untransferable. The person that has been granted an individual or individual open licence, must therefore present the licence to the customs office as a person making a customs declaration, by themselves or through a direct representative<sup>6)</sup>. The validity of registration for the application of general licences shall be verified by the customs office during the customs proceedings.

### **§ 30a**

The state shall not be held liable for any prejudice suffered due to the decision for reasons laid down in this Act; the state's liability under a special legal regulation<sup>13)</sup> shall not be impaired thereby.

### **§ 31**

(1) Valid licences for the export and import of controlled goods, granted under regulations in force, shall be deemed licences granted hereunder. In respect of controlled goods imported under regulations in force, if the user has changed, the previous user, instead of being obliged to apply for an approval to dispose differently of the controlled goods, shall be now obliged to inform the new user that controlled goods are involved; the obligation of the customs authorities to keep records of the movement of controlled goods on the territory of the Czech Republic shall be cancelled.

(2) The licensing proceedings initiated prior to the effective date hereof shall be concluded by issuing decisions under the regulations in force.

### **§ 32**

The Ministry shall issue a Decree implementing the provisions of § 2 paragraph 2, § 6 paragraph 5, § 12 paragraph 5, and § 15 paragraph 3 hereof.

### **§ 33**

The following shall be repealed:

1. Act No. 547/1990 Coll., On Dealing with Certain Kinds of Goods and Technologies and Control Thereof.
2. Decree of the Federal Ministry of Foreign Trade No. 50/1992 Coll., implementing Act No. 547/1990 Coll., On Dealing with Certain Kinds of Goods and Technologies and Control Thereof, as amended by Decree of the Federal Ministry of Foreign Trade No. 505/1992 Coll., by Decree of the Ministry of Industry and Trade No. 22/1994 Coll., and by Decree of the Ministry of Industry and Trade No. 234/1994 Coll.

## § 34

This Act shall come into effect on the date of its publication.

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*Note:* By Act No. 204/2002 Coll. also the provisions specified below have been accepted, which will come into effect on the date when the Treaty of Accession of the Czech Republic to the European Union comes into force:

*In § 3 paragraph 1 the words “of the Czech Republic” shall be replaced by the words “of the European Community”.*

*In § 3 paragraph 2 the words “of the Czech Republic” shall be replaced by the words “of the European Community” and the words “in the Czech Republic” shall be replaced by the words “in the European Community”.*

*In § 3 paragraph 3 letter b) the words “of the Czech Republic” shall be replaced by the words “of the European Community”.*

*In § 4 paragraph 4 letter b) the words “in the Czech Republic” shall be replaced by the words “in the European Community”.*

*New § 18a shall be added, which reads:*

### *“§ 18a*

- (1) The general export authorisation of the European Community<sup>8a)</sup> has the character of a general export licence.*
- (2) A general export licence may not be granted for controlled goods for the transfer of which within the European Community a licence is required.”.*

*In § 19 paragraph 2 letter e) the words “ of the Czech Republic” shall be replaced by the words “of the European Community”.*

*In § 24 paragraph 1 the words “of the Czech Republic abroad” shall be replaced by the words “of the European Community”.*

*In § 24 a new paragraph 2 shall be added following paragraph 1, worded as follows:*

*“(2) If the exporter or any other person transfers controlled goods from the territory of the Czech Republic without a licence, although a licence is required for their transfer also within the European Community, the procedures laid down in paragraph 1 shall apply.”.*  
*The existing paragraphs 2 and 3 shall become paragraphs 3 and 4.*

*In § 24 paragraph 4 the words “under paragraphs 1 and 2” shall be replaced by the words “under paragraphs 1 and 3”.*

*In § 29 paragraphs 5 and 6 shall be added, which read:*

*“(5) The obligation of notification under this Act towards the competent bodies of the European Union shall be performed by the Ministry.*

*(6) “Foreign person” means under this Act a natural person or a legal entity with their registered office or place of business in a non-Member state.”.*

## Footnotes

- 1) Act No. 287/1993 Coll. on Competence of the State Office for Nuclear Safety as amended by Act No. 85/1995 Coll.
- 2) Decree of the Czechoslovak Commission for Atomic Energy No. 28/1977 Coll., On Registration and Control of Nuclear Materials, as amended by Decree of the Czechoslovak Commission for Atomic Energy No. 100/1989 Coll.
- 3) Act No. 19/1997 Coll. on some of the measures related to the chemical weapons ban and amending Act No. 50/1976 Coll. on Town and Country Planning and Building Rules (Building Act) as later amended, Business Act No. 455/1991 Coll. as later amended and Penal Act No. 140/1961 Coll. as later amended.
- 4) Act No. 18/1997 Coll. on Peaceful Use of Nuclear Power and Ionising Radiation (Nuclear Act) and on changes in some of the related acts.
- 5) Act No. 135/1982 Coll. on Reporting and Registration of Citizens.  
Act No. 123/1992 Coll. on Residence of Foreigners in the Czech and Slovak Federative Republics as later amended.
- 6) Act of the Czech National Council No. 13/1993 Coll., Customs Act, as amended by Act of the Czech National Council No. 35/1993 Coll.
- 7) § 11 of Act of the Czech National Council No. 13/1993 Coll.
- 8) § 248 of Act No. 99/1963 Coll., Civil Procedure Act, as later amended
- 8a) Council Regulation (EC) No. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology, in force since 28 September 2000.
- 8b) Act No. 38/1994 Coll. on Foreign Trade with Military Material and amending Business Act No. 455/1991 Coll., as later amended, and Penal Act No. 140/1961 Coll., as later amended.
- 8c) Articles 36 and 114 of the European Agreement establishing an association between the Czech Republic on one side and the European Community and its member countries on the other side published in the Collection of Laws as Communication of the Ministry of Foreign Affairs No. 7/1995 Coll.  
Article 30 of the Treaty establishing the European Community published in the Official Bulletin of EC No. C340 of 10 November 1997
- 9) For instance, Act No. 28/1984 Coll. on State Supervision over Nuclear Safety of Nuclear Equipment, Decree of the Czechoslovak Commission for Atomic Energy No. 100/1989 Coll. on Protection of Nuclear Equipment and Nuclear Materials.
- 10) For instance, Act of the Czech National Council No. 13/1993 Coll. as amended by Act of the Czech National Council No. 35/1993 Coll.

- 11) § 23 and 33 of Act No. 71/1967 Coll. on Administrative Procedures (Administrative Procedure Code)
- 12) For instance, § 8 paragraph 3 of Act No. 153/1994 Coll. on Intelligence Services in the Czech Republic.
- 13) Act No. 82/1998 Coll. on liability for damage caused in the performance of public authority by a decision or an incorrect official procedure and amending Act of the Czech National Council No. 358/1992 Coll. on notaries and their activity (Notarial Procedure Code) as amended by Act No. 120/2001 Coll.