

ACT of 15 February 1994

to regulate trade in military material with foreign countries and to supplement Act No. 455/1991, on Small Businesses (Small Business Act), amended by later legislation, and Act No. 140/1961, Penal Code, amended by later legislation

The Parliament hereby passed the following Act of the Czech Republic:

PART ONE General Provision

Extent of the operation of the Act and definition of basic terms

Art. 1

(1) This Act regulates the conditions of trade in military material with foreign countries (hereinafter referred to as "trade in military material") and the jurisdiction of State administration bodies in this sphere.

(2) The execution of State administration in the sphere of trade in military material must be in accordance with the international commitments of the Czech Republic and its foreign policy, commercial and security interests.

Art. 2

(1) Trade in military material means the export of military material from the Czech Republic, the import of military material into the Czech Republic, the handling of military material abroad by persons authorized in the sense of this Act, and the fulfilment of obligations towards foreign persons [1] and accepting supplies from foreign persons the object of which is military material listed in Art. 5 Para 3 of this Act, by persons authorized in the sense of this Act.

(2) For the purpose of this Act trade in military material also means the written expression of intent by persons authorized in the sense of this Act aimed at concluding contracts regulating relations as per Para 1 and the related transfer of information and advertising.

Art. 3

This Act does not apply to the export and handling of military material in connection with the operations of the Army of the Czech Republic, the Police Force of the Czech Republic outside its territory under international agreements and contracts concluded by the appropriate State bodies of the Czech Republic. It also does not apply to the import and handling of military material in connection with the operation of armed units of other states, the United Nations and other international organizations on the territory of the Czech Republic under international agreements and contracts.

Art. 4

Mass destruction weapons, meaning nuclear, chemical and biological arms, may not be the object of trade in military material.

Art. 5

(1) Military material, for the purpose of this Act, is

a) products, parts thereof and spare parts the technical properties and design of which are characterized as being produced specifically for use in the armed forces, armed

security corps and services, or which are used by these forces on a mass scale to ensure the defence and security of the State,

b) machinery, equipment and plant produced, adjusted, fitted out or constructed for military purposes, especially for the development, production, control and testing of other products and components and spare parts thereof listed under Sub-paragraph a).

(2) Military material listed in Paragraph 1 is divided into the following categories:

a) small- and large-calibre weapons,

b) ammunition,

c) bombs, torpedoes, projectiles and mines,

d) military explosives and fuels,

e) tanks, armoured and other vehicles,

f) airplanes and helicopters, unmanned air vehicles, aircraft engines and airplane and helicopter equipment and the related ground facilities,

g) rockets and parts thereof, components and technologies for their production,

h) warships and special naval equipment,

i) electronic equipment,

j) photographic, electro-optic, infrared and thermal imaging instruments and equipment,

k) software,

l) special equipment for military training or simulation of combat situations,

m) complementary military material,

n) plant, technological equipment and machinery designed for the production of military material listed under the above Letters.

(3) For the purpose of this Act, military material also covers services provided in connection with military material listed in Paragraphs 1 and 2, especially repairs, adjustments, supply of information, sending and receiving of experts for the purpose of research, development, design, production, adjustment, repair, maintenance, use and control of military material.

(4) The list of military material according to the preceding paragraphs shall be determined by an implementation regulation.

PART TWO

Issuing Permits for Trade in Military Material

Art. 6

(1) Only corporate persons with their place of business in the Czech Republic (hereinafter referred to as "corporate persons") and with a permit to this effect may carry out trade in military material.

(2) The permits are issued by the Ministry of Industry and Trade (hereinafter referred to as "Ministry"), based on the prior consent of the Ministry of Foreign Affairs with regard to foreign policy interests of the Czech Republic, and the Ministry of Defence and the Ministry of the Interior with regard to the security interests of the Czech Republic, after considering the commercial interests of the Czech Republic.

(3) The Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of the Interior shall give their decision on the application to issue a permit by notice in writing within 20 days of the day on which the Ministry delivered them a copy of the application, or within a term adequately prolonged on request by either of them. Failing which it shall be assumed that they agree with the issue of the permit.

Conditions for the Issue of a Permit

Art. 7

(1) A permit may be issued under the condition that

- a) not more than 49 % of the equity capital of the corporate person was invested by foreign persons,
- b) the members of the statutory body of the corporate person and the chief clerks
 - 1. have reached 21 years of age,
 - 2. are citizens of the Czech Republic,
 - 3. have their permanent residence in the Czech Republic,
 - 4. are qualified to perform legal acts,
 - 5. have a clean record,
 - 6. are reliable in relation to the object of business in respect of the protection of people's lives, their health, property and other rights and the interests of the State,
- c) the trade in military material shall be carried out by a corporate person in his own name and to his own account,
- d) the financial backing of the trade in military material by the corporate person is adequate in respect of the expected size of the business.

(2) The conditions set in Para 1 Sub-para b) must be met even by founders, or founding members of the corporate person, in case they are natural persons and the corporate person has not yet been entered in the Companies Register.

(3) The corporate person shall prove the facts stated in Art. 7 Para 1 Sub-para b) within 30 days of any personal changes in the statutory body.

Art. 8

For the purpose of this Act, persons

- a) who have been sentenced for a criminal offence committed by negligence in connection with activities relating to the object of the application, or for a criminal offence committed intentionally,
- or
- b) persons who from 25 February 1948 to 17 November 1989 were persons mentioned by a special law, [2] for the duration of the validity of this law, shall not be considered as having a clean record.

Applications for the Issue of Permits

Art. 9

(1) In the application for the issue of a permit (hereinafter referred to as "application for a permit") must be stated

- a) commercial name and place of business of the corporate person,
 - b) name, permanent residence and number of the birth certificate of members of the statutory body of the corporate person, with an indication of their authority to act on its behalf,
 - c) identification number, if allocated,
 - d) object of business of the corporate person,
 - e) specification of the military material in the sense of Art. 5 Para 4 of this Act, with the territorial structure of the trade and the requested term of validity of the permit.
- (2) Applications for a permit must be supported by

- a) the appropriate contract or document proving the establishment or founding of the corporate person, with officially verified signatures of the establishers or founders, and in the case of persons entered in the Companies Register also an extract from the Companies Register,
 - b) documents on capital deposits of the founders proving the facts stated in Art. 7 Para 1 Sub-Para a),
 - c) documents on the State citizenship, permanent residence, extracts from the Crimes Register not more than three months old and certificates issued under the special law [3] for members of the statutory body of the corporate persons and for the chief clerks,
 - d) financial statement not more than 6 months old from the day of filing the application, in the case of already existing corporate persons verified by an auditor, and documents proving the financial securing of the envisaged business deal involving military material,
 - e) a statement of the statutory body on facts listed under Art. 7 Para 1 Sub-Para c).
- (3) The essentials as per Para 1 Sub-Para b) and the documents as per Para 2 Sub-Para c) shall be stated also in the case of founders or founding members of the corporate persons if they are natural persons and the corporate person's name has not yet been entered in the Companies' Register.
- (4) The application for a permit and the required documents shall be submitted to the Ministry in four copies.
- (5) The specimen of the application for a permit shall be determined by the implementation regulation.

Art. 10

The decision on the issue of a permit shall contain

- a) the commercial name and place of business of the corporate person and its identification number if already allotted,
- b) the object of the corporate person's business,
- c) the territories covered by the business deal involving military material,
- d) other conditions applying to corporate persons trading in military material under the provisions of Art. 1 Para 2 of this Act,
- e) the term of validity of the permit, which must not be more than 5 years,
- f) number of the permit, day of its issue, seal and signature of the authorized official of the Ministry.

Art. 11

(1) The Ministry shall not issue a permit in case the conditions for its issue stipulated in Art. 7-9 were not met, or in case the awarding of the permit might endanger the foreign policy, trade or security interests of the Czech Republic.

(2) No permit shall be awarded for a period of three years after bankruptcy, after the confirmation of settlement and compulsory settlement or a judicial decision refusing permission to declare bankruptcy on the ground of lack of property, and for a period of one year after the issue of a previous decision refusing the award of a permit to carry out trading in military material, or the extinction of a permit as per Art. 13 Para 1 Sub-Para d).

Art. 12

(1) The Ministry shall issue its decision on the application within 60 days of its delivery. No remonstrance against this decision is possible.

(2) Trading in military material in accordance with the issued permit may begin only after this object of business was entered in the Companies Register.

Extinction of a Permit

Art. 13

(1) A permit shall become extinct

a) by the removal of the corporate person from the Companies or other Register,

b) by the declaration of bankruptcy, by the issue of a permission of settlement or forced settlement, or the refusal of a bankruptcy proposal for lack of property,

c) by the expiry of the time for which the permit was issued,

d) by the decision of the Ministry on the cancellation of the permit if

1. the permit was awarded on the basis of incorrect or incomplete facts,

2. the corporate person has ceased to fulfil the conditions applying to the award of a permit,

3. this is required by foreign policy, commercial and security interests of the Czech Republic,

4. the holder of the permit violated any provisions of this Act,

5. a situation mentioned in Art. 18 Sub-Para b) of this Act occurred,

e) by the announcement of the corporate person that it has wound up the business for which the application was filed.

(2) The permit is untransferable. At the extinction of the corporate person it does not go over to its legal successor.

PART THREE

Conditions for Awarding a Licence and Its Use

Licences

Art. 14

(1) A corporate person authorized to carry out trade in military material may import some kinds of military material into the Czech Republic, export such material from the Czech Republic or handle it abroad only on the basis of a licence, and to the extent and conditions stipulated in that licence.

(2) A licence must be applied for every single contract the object of which is trade in military material as per Art. 2 Para 1 of this Act.

Application for the Award of a Licence

Art. 15

(1) Only corporate persons having a permit to trading in military material (hereinafter referred to as "applicants") may apply, in writing, to the Ministry for the award of a licence. The application for a licence may be filed only after the applicant has received a written expression of intent from a foreign contracting partner to conclude with him a contract involving a specific kind and amount of military material. In the case of applicants having entered an international competition of tenders, the application for a licence may be filed already after the applicant has received an invitation to participate in a public competition of tenders.

(2) The application for a licence must contain

- a) the commercial name and place of business of the applicant,
- b) the identification number of the applicant,
- c) the commercial name and place of business, and/or the name and place of business of the foreign contracting partner, or domestic contracting partner,
- d) the number of the permit by which the applicant was authorized to carry out trading in military material,
- e) the number, and if possible the item or sub-item of the combined nomenclature of the customs tariff,
- f) the name of the military material according to the list of military material, and its amount,
- g) the proposed time of validity of the licence,
- h) the name of the state from which the military material is to be imported or to which it is to be exported, or with which the military material abroad is to be handled, even if it is not transported via the Czech Republic,
- i) the purpose of the export or import, and/or other handling of the military material,
- j) the bid or contractual price of a unit of the amount of the military material in Czech crowns and the total price in Czech crowns,
- k) the name and place of business of the final user.

(3) The application for a licence must be supported by

- a) a draft contract or a signed contract with a precise specification of the military material and its amount,
- b) a document on its final use,
- c) at the Ministry's request by other documents enabling a proper assessment of the case,
- d) the standpoint of the Ministry of Defence to the proposed export, import or other handling of the military material in the sense of Art. 20 Para 4 of this Act from the point of view of the defence ability of the Czech Republic.

(4) The specimen of the licence application shall be determined by the implementation regulation.

Art. 16

(1) The Ministry shall issue the decision on the award of a licence on the basis of a prior consent of the Ministry of Foreign Affairs within 60 days of the delivery of the consent. The Ministry of Foreign Affairs shall give its opinion on the application, in writing, within 20 days of the day on which a copy of the application was delivered to it. In especially complicated cases the period for giving the opinion may be extended adequately on the basis of a written agreement between the Ministries.

(2) The decision on awarding the licence shall contain

- a) the commercial name, place of business and identification number of the applicant,
- b) the number of the permit to carry out trade in military material,
- c) the number and/or item, or sub-item of the combined nomenclature of the customs tariff,
- d) the name of the military material and its amount,
- e) the total price of the military material in Czech crowns,
- f) the commercial name and place of business, and, if appropriate, the name and place of business of the foreign contracting partner and the final user of the military material,
- g) the period of validity of the licence,
- h) other conditions of the licence, if appropriate,

- i) instructions concerning withdrawal,
 - j) day of issue, seal and signature of the authorized official of the Ministry.
- (3) In the decision, space must be reserved for entries of the customs authorities on the use of the awarded licence.

Art. 17

- (1) The corporate person to whom a licence was awarded shall inform the Ministry about the use of the licence always by the tenth day of the month following the last month of the calendar quarter.
- (2) The original of the decision on the award of a licence that will not be used or on the basis of which the purpose for which it was issued had been fulfilled, or whose validity has ended, must be returned to the Ministry without delay by the corporate person to whom it was awarded.
- (3) The corporate person to whom a licence was awarded shall inform the Ministry in writing about circumstances preventing the use of the awarded licence within 15 days of the day on which the person learned about those circumstances.

Non-Awarding and Withdrawal of a Licence

Art. 18

The Ministry shall not award a licence if

- a) the applicant did not fulfil the essentials required by Art. 15, or if
- b) in carrying out foreign trade, or in connection with this trade, the applicant violated domestic or foreign legislation relating to this sphere, or
- c) this is called for by foreign policy, commercial or security interests of the Czech Republic.

Art. 19

- (1) The Ministry shall withdraw the licence if the business deal involving military material did not materialize or was not fully completed, and
- a) the licence was awarded on the basis of false or incomplete information, or
 - b) this is required by the foreign policy or security interests of the Czech Republic, or
 - c) the conditions stipulated in the licence were not observed, or
 - d) the permit as per Art. 13 of this Act had expired.
- (2) In cases listed in Para 1 the State shall not be held responsible towards the holder of the licence for any damage the latter may have suffered in consequence of the withdrawal of the licence.

Important Military Material

Art. 20

- (1) In the case of military material important from the point of view of the effectiveness of its use in combat or from the point of view of its amount (hereinafter referred to as "important military material"), the applicant, still before filing his licence application, may ask to be given a preliminary consent to negotiating the contract with his foreign partner.
- (2) In his application for the preliminary consent he must state the expected facts listed in Art. 15 Para 2.

(3) The Ministry shall decide on the application after consulting the case with the Ministry of Foreign Affairs within 30 days of the day on which the request for consultations was made. The preliminary consent may be withdrawn if conditions under which it was issued changed. This preliminary consent does not substitute the award of a licence.

(4) The term Important Military Material as per Para 1 shall be defined by an implementation regulation.

Art. 21

The corporate person to whom a licence has been awarded is required to ensure that the original of the licence is submitted to the appropriate customs authority. Failing which the military material shall not be released for export or import.

Art. 22

The appropriate authority to make a statement on the final use of military material imported into the Czech Republic required by foreign persons is the Ministry.

PART FOUR

Control of Trade in Military Material

Art. 23

(1) The Ministry controls the observance of this Act on the part of corporate persons to whom a permit to trading in military material was issued and on the part of corporate and natural persons if there is good cause to believe that they are dealing in military material (hereinafter referred to as "persons"). The Ministry shall make out a protocol on its checks.

(2) Persons being checked for the observance of the Act as per Para 1 shall ensure the employees authorized by the Ministry to carry out the check access to all documents relating to the check and enable them to inspect the premises and goods to the extent determined by the Ministry in advance. The inviolability of homes is guaranteed. Persons to whom a permit to trading in military material was issued shall inform the Ministry in writing, within the determined period of time, about matters concerning trade in military material, and especially report to it the use of the licence.

(3) The controlled persons are entitled to becoming acquainted with the content of the protocol on the check, to obtaining a copy of the protocol and to giving an opinion on the content of the protocol within the period allowed to them.

(4) Control rights under special legislation [4] are not affected by the provisions of the previous paragraphs.

Art. 24

To ensure the consistent control of the observance of this Act the Ministry is entitled to demand from State authorities information about persons engaged in trade in military material and persons applying for permission to carry out this trade, as well as about their entrepreneurial activities if they are related to trading in military material.

Imposition of Fines

Art. 25

(1) In case a person has violated the provisions of this Act by trading in military material without a permit or licence, or by supporting his application for a permit to export or import military material or his application for a licence as per Art. 14 by false or incomplete documents, or if he has withheld circumstances important for the decision with the aim of illegally obtaining the permit or licence, or refused without good reason to allow the check to be carried out or if he has refused the decision of the Ministry to set right the ascertained shortcomings, may be imposed a fine of up to 5,000,000 Czech crowns. The amount of the fine shall be determined with regard to the extent, importance and duration of the endangering of the foreign policy, commercial or security interests of the State, and with regard to the damage caused by the unlawful action.

(2) If such a violation has caused damage to the Czech Republic, or if important foreign policy, commercial or security interests of the State have been damaged, the fine may reach up to 30,000,000 Czech crowns.

(3) The provisions of the previous paragraphs do not affect special laws⁴).

Art. 26

(1) The fines are imposed by the Ministry.

(2) The fine may be imposed within two years of the day on which the violation of the Act was ascertained by a protocol on the check, but not later than ten years after the day on which the violation occurred.

Art. 27

(1) The fine is payable within 15 days of the day on which the decision by which it was imposed came into effect, and is the income of the State Budget of the Czech Republic.

(2) The enforceable decision by which the fine was imposed is a title for the administrative or judicial execution of the decision. The administrative execution of the decision shall be carried out by the Ministry by assigning the claim.

PART FIVE

to supplement Law No. 455/1991 on Small Businesses (Small Business Act), amended by later legislation

Art. 28

In Art. 3 Para 2 of Law No. 455/1991 on Small Businesses (Small Business Act), amended by Law No. 231/1992, Law No. 591/1992, Law No. 600/1992 and Law No. 273/1993, Sub-Paragraph m) shall be added, which reads:

"m) trade in military material with foreign countries".

PART SIX

to supplement Law No. 140/1961, Penal Code, amended by later legislation

Art. 29

Law No. 140/1961, Penal Code, amended by Law No. 120/1962, Law No. 53/1963, Law No. 56/1965, Law No. 81/1966, Law No. 148/1969, Law No. 45/1973, Law No. 43/1980, Law No. 175/1990, Law No. 457/1990, Law No. 545/1990, Law No. 490/1991, Law No. 557/1991, ruling of the Czechoslovak Constitutional Court of 4 September 1992 No. 93/1992 and Law No. 290/1993 shall be supplemented as follows:

1. In Art. 66 the words "violation of regulation on trade in military material with foreign countries (Art. 124d, 124e, 124f)" shall be inserted after the words "(Art. 124a, 124b, 124c)".
2. Art. 124d, 124e and 124f shall be inserted after Art. 124c. They read as follows, including the heading:

"Violation of regulations on trade in military material with foreign countries

Art. 124d

(1) A person who has made a business deal with a foreign partner involving military material without a permit or licence shall be punished by a prison term of from one to eight years or the winding up of his business activity or by a financial fine.

(2) A person who has committed an act as per Para 1 will be punished by a prison sentence of three to ten years

- a) if he has committed the act in collusion with an organized group,
- b) if he has committed the act in conditions of State emergency,
- c) if he has repeated such an act,
- d) if he has gained considerable benefit by such an act, or
- e) if he has caused a great damage or if this act has had serious consequences.

Art. 124e

(1) A person who has violated or failed to perform an important duty in his employment, profession, position or function thereby causing the illegitimate issue of a permit to trading in military material with a foreign country or a licence for a specific deal involving military material, or has issued a fraudulent or incomplete document on the basis of which such a permit or licence were illegitimately issued, shall be punished by a prison term of from six months to three years or by a ban on his business activity or a financial punishment.

(2) A prison term of from two to five years or a financial punishment shall be imposed on a person who committed an act as per Para 1

- a) if the military material was shipped to a foreign country,
- b) if the act was committed with the aim of gaining considerable benefit,
- c) if the act caused considerable damage or had a specially serious consequence,
- d) if such an act was committed in collusion with an organized group.

(3) A prison term of from three to ten years or a financial punishment shall be imposed on a person who has committed an act as per Para 1

a) if he committed the act in collusion with an organized group operating in several states,

b) if he has committed such an act with the aim of gaining large-scale benefit, or

c) if the act caused large-scale damage or had a specially serious consequence.

Art. 124f

(1) A person who has supported his application for a permit or a licence to trade in military material with a foreign country with a false or incomplete document or has withheld facts important for the issue of the permit or licence, is punishable by a prison term of up to three years or a financial fine.

(2) An equal punishment shall be imposed on a person who has destroyed, damaged or made unusable supporting documents necessary for keeping records of trade in military material with foreign countries, who has concealed his records or has failed to keep the records, or who has interfered with the technical equipment or computer software keeping records of trade in military material with foreign countries."

3. In Art. 167 the words "violation of regulations on trade in military material with foreign countries (Art. 124d, 124e, 124f)" shall be inserted after the words "(Art. 124a, 124b, 124c)".

4. In Art. 168 the words "violation of regulations on trade in military material with foreign countries (Art. 124d, 124e, 124f)" shall be inserted after the words "(Art. 124a, 124b, 124c)".

PART SEVEN

Common, Temporary and Final Provisions

Art. 30

General regulations on administrative proceedings [5] apply to proceedings under this Act, unless otherwise provided for by this Act.

Art. 31

(1) Employees of central State administration bodies listed in Art. 6 Para 2 of this Act are bound by secrecy concerning facts having the nature of business or service secrets, about which they learned in connection with the issue of permits and licences or the control of trade in military material, even if they are no longer employees of these bodies. They may be relieved of this duty for serious reasons by the Minister to whom they are or were subordinated.

(2) Employees of central State administration bodies listed in Art. 6 Para 2, who are directly involved in the execution of this Act and are bound by secrecy according to the previous Paragraph, may not be employed by corporate persons authorized to trade in military material for a period of three years after their working contract has ended.

Art. 32

(1) Valid official permits issued under existing legislation [6] are considered licences in the sense of this Act.

(2) Corporate persons who on the effective date of this Act are holders of valid official permits to trade in military material may continue their business activities for six months after the day on which this Act became effective.

During this time they are required to apply for a permit as per Part Two of this Act, to which the provision of Art. 9 Para 3 applies even if the corporate person's name is entered in the Companies Register. Failing which his existing official permit to trade in military material shall become invalid after the expiry of this period.

Art. 33

(1) The Ministry, in agreement with the Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of the Interior shall issue a decree to implement Art. 5 Para 4, Art. 9 Para 5, Art. 15 Para 4 and Art. 20 Para 4 of this Act.

(2) Until the Decree issued in accordance with the previous Paragraph becomes effective, Annex E to Decree No. 560/1991 on Conditions Governing the Issue of Official Permits to Import and Export Goods and Services shall be considered a list of military material as per Art. 5 Para 4 of this Act.

Art. 34

This Act shall come into effect on 1 April 1994.

Notes:

1) Art. 21 Para 2 of the Commercial Code

2) Sub-paragraphs a) and b) of the provisions of Art. 2 Para 1 of Law No. 451/1991, stipulating additional prerequisites for the execution of certain functions in State bodies and organizations of the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic

3) Art. 4 Para 1 of Law No. 451/1991, stipulating additional prerequisites for the execution of certain functions in State bodies and organizations of the Czech and Slovak Federal Republic, the Czech Republic and the Slovak Republic

4) For example Law No. 13/1993, Customs Act

5) Law No. 71/1967 on Administrative Proceedings

6) Decree No. 560/1991 on conditions for the issue of official permits for the import and export of goods and services, amended by later legislation