



Conseil de sécurité

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**Lettre datée du 27 décembre 2001, adressée au Président
du Conseil de sécurité par le Président du Comité du Conseil
de sécurité créé par la résolution 1373 (2001) concernant la lutte
antiterroriste**

Le Comité contre le terrorisme a reçu le rapport ci-joint, présenté par la Pologne en application du paragraphe 6 de la résolution 1373 (2001) (voir annexe).

Je vous serais obligé de bien vouloir faire distribuer le texte de la présente lettre et de son annexe en tant que document du Conseil de sécurité.

Le Président du Comité contre le terrorisme
(*Signé*) Jeremy **Greenstock**



Annexe

[Original : anglais]

**Lettre datée du 21 décembre 2001, adressée au Président
du Comité du Conseil de sécurité créé par la résolution
1373 (2001) concernant la lutte antiterroriste
par le Représentant permanent de la Pologne
auprès de l'Organisation des Nations Unies**

D'ordre de mon gouvernement, j'ai l'honneur de soumettre au Comité contre le terrorisme, conformément au paragraphe 6 de la résolution 1373 (2001) du Conseil de sécurité en date du 28 septembre 2001, le rapport concernant les mesures prises par la République de Pologne pour appliquer les dispositions de ladite résolution (voir pièce jointe).

Mon gouvernement attache beaucoup d'importance à l'application intégrale des dispositions de la résolution 1373 (2001), qui constitue un instrument clef dans la lutte contre le terrorisme international.

Conscient du fait que pour être efficace, la lutte contre le terrorisme doit aussi comprendre des mesures éducatives, je tiens à vous informer que la République de Pologne se propose de présenter une initiative à cet égard.

Mon gouvernement se tient prêt à fournir au Comité des rapports ou informations complémentaires si le Comité le demande.

Je vous serais obligé de bien vouloir faire distribuer le texte de la présente lettre et du rapport ci-joint comme document du Conseil de sécurité.

L'Ambassadeur,
Représentant permanent
(*Signé*) Janusz **Staćzyk**

Pièce jointe

Rapport au Comité créé par la résolution 1373 (2001) concernant la lutte antiterroriste

Observations générales

Il n'existe pas, en droit polonais, que ce soit dans la Constitution ou dans la législation, de dispositions régissant l'application de décisions prises par des organisations internationales dont la République de Pologne est membre. Un projet de loi est en cours d'élaboration à cet effet mais, compte tenu du caractère juridique multidisciplinaire et relativement complexe de ces décisions, la rédaction du projet n'est pas achevée.

Toutefois, dans le cadre des amendements qui devront être apportés à la Constitution afin de définir le statut juridique des décisions de l'Union européenne, il sera peut-être nécessaire de définir des principes concernant l'application de résolutions des organisations internationales, y compris les mesures à caractère contraignant adoptées par le Conseil de sécurité de l'ONU en vertu du Chapitre VII de la Charte des Nations Unies.

Dans la situation actuelle, en l'absence de dispositions expresses dans le droit interne, on peut considérer que l'obligation d'appliquer la résolution 1373 (2001) adoptée par le Conseil de sécurité en date du 28 septembre 2001 découle directement de la Charte des Nations Unies, traité international ratifié par la Pologne.

Conformément à la pratique établie en Pologne, une décision expresse du Conseil des ministres (Gouvernement) est nécessaire pour appliquer toute mesure à caractère contraignant du Conseil de sécurité de l'ONU. En vertu d'une telle décision, les ministres compétents doivent prendre des mesures appropriées pour appliquer les dispositions des résolutions du Conseil de sécurité.

Afin d'appliquer les mesures prescrites dans la résolution 1373 (2001) du Conseil de sécurité, le Conseil des ministres, à la demande du Ministre des affaires étrangères, a pris une telle décision le 5 novembre 2001, dans laquelle il a prié les Ministres de l'économie, des finances, de l'intérieur et de la justice :

- De prendre sans délai des mesures appropriées pour appliquer ladite résolution et, notamment :
 - a) D'indiquer les mécanismes juridiques existants pouvant être utilisés pour appliquer la résolution; et
 - b) Si de tels mécanismes n'existent pas, de proposer les mesures juridiques qu'il conviendrait d'adopter pour appliquer la résolution, y compris en formulant des projets de lois;
- D'informer le Ministère des affaires étrangères des mesures prises.

Dans sa décision, le Conseil des ministres a autorisé le Ministre des affaires étrangères à établir un rapport et à le soumettre au Comité créé conformément au paragraphe 6 de la résolution 1373 (2001) du Conseil de sécurité, et l'a chargé d'assurer la liaison et la coordination pour tout ce qui a trait à l'application de la résolution.

Paragraphe 1

Alinéa a) – *Quelles mesures, le cas échéant, ont été prises pour empêcher et supprimer le financement des actes terroristes en plus de celles énumérées dans vos réponses aux questions sur les alinéas 1 b) à 1 d)?*

La législation en vigueur permet à la Pologne de lutter efficacement contre le financement des actes terroristes. Les principales mesures prévues à cet effet figurent dans la loi du 16 novembre 2000 sur la lutte contre les transactions financières portant sur des avoirs provenant de sources illicites ou indéterminées. La loi définit le champ de compétence des « institutions responsables » (banques, autres institutions et entités financières, et entités menant des activités liées aux fonds et avoirs financiers), donne l'obligation d'enregistrer les transactions et d'indiquer l'identité des clients, et prévoit l'échange d'informations sur les transactions et les infractions, les autorités chargées de prévenir les activités illégales portant sur des avoirs financiers, les conditions dans lesquelles les transactions peuvent être gelées et les mesures de suivi. En outre, les dispositions du Code pénal relatives aux infractions financières, l'article 299 du Code pénal (relatif au blanchiment de l'argent) et l'article 106 de la loi du 29 août 1997 (sur les activités bancaires) peuvent également s'appliquer.

La Pologne a signé, le 4 octobre 2001, la Convention internationale pour la répression du financement du terrorisme, adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1999. Le processus de ratification est en cours.

Après les attentats terroristes contre les États-Unis, le service chargé de la lutte contre le crime organisé au Bureau du Procureur national a renforcé sa coopération avec la police, le Service de la sûreté nationale et l'Inspecteur général chargé de l'information financière, afin de découvrir les transferts illicites de fonds appartenant à des entités susceptibles d'être impliquées dans des actes terroristes, et de poursuivre ces entités en justice.

En Pologne, les bureaux des procureurs ont examiné plusieurs affaires sur la base d'indices révélant des liens éventuels avec des activités terroristes. Les dossiers relatifs aux affaires en question sont conservés au Bureau du Procureur national. Des renseignements complémentaires et détaillés peuvent être communiqués au Comité à sa demande. En raison de la nature de ces dossiers, de telles informations doivent être gardées confidentielles.

Alinéa b) – *Quelles sont les activités énumérées dans cet alinéa qui constituent des infractions dans votre pays et quelles sont les peines applicables?*

Il n'existe aucune disposition dans la législation polonaise visant à ériger automatiquement en infraction la fourniture ou la collecte délibérée par des Polonais, par quelque moyen que ce soit, directement ou indirectement, de fonds qui pourraient être utilisés ou dont on sait qu'ils seront utilisés pour perpétrer des actes de terrorisme. Toutefois, les tribunaux peuvent qualifier une telle activité de complicité d'acte terroriste. Les peines applicables en pareil cas dépendent du type d'acte terroriste commis.

Alinéa c) – *Quelles dispositions législatives ou procédures existent dans votre pays pour le gel des comptes et avoirs détenus dans les banques et institutions financières? Il serait utile que les États donnent des exemples de mesures pertinentes qu'ils auront prises.*

Selon la législation en vigueur, il n'est pas possible de geler sans attendre les fonds ou autres avoirs financiers ou ressources économiques des personnes qui commettent, ou tentent de commettre, des actes de terrorisme, les facilitent ou y participent, ou des autres entités mentionnées à cet alinéa de la résolution.

Le Ministre des finances prépare donc un projet d'amendement à la loi du 16 novembre 2000 sur la lutte contre les transactions financières portant sur des avoirs provenant de sources illicites ou indéterminées, en vue d'autoriser l'Inspecteur général chargé de l'information financière à demander le gel effectif de transactions inspirant la suspicion. Une solution analogue sera prise en ce qui concerne le gel immédiat des fonds ou autres avoirs financiers mentionnés dans cet alinéa. Lorsque la loi en question sera amendée, il faudra aussi examiner plusieurs autres textes régissant le fonctionnement des institutions financières en Pologne.

L'élaboration du projet d'amendement est un travail complexe. Le texte sera exhaustif et couvrira les aspects suivants : définition du terrorisme et des organisations terroristes dans le système juridique polonais, détermination des cas dans lesquels les avoirs financiers pourront être gelés d'office ou à la demande d'une des « institutions responsables » mentionnées dans la loi du 16 novembre 2000 ou d'autres entités, définition des principes de responsabilité civile et pénale, détermination des entités étrangères pouvant demander à l'Inspecteur général chargé de l'information financière d'entreprendre la procédure de gel des fonds déposés sur un compte, etc. Un groupe d'experts du Ministère des finances, du Ministère des affaires étrangères et du Service de la sûreté nationale, qui doit être créé sous peu, sera chargé d'examiner les projets d'amendement des lois en vigueur. Il est envisagé d'appliquer une procédure législative d'urgence pour l'adoption des lois antiterroristes.

Jusqu'à l'adoption de l'amendement mentionné ci-dessus, les mesures visées dans l'alinéa peuvent être fondées sur les dispositions du Code de procédure pénale, et appliquées par les bureaux des procureurs ou le Service de la sûreté nationale, dans le cadre de leurs attributions. De telles mesures ont été prises, comme il est indiqué dans la réponse concernant l'alinéa a) ci-dessus.

Alinéa d) – *Quelles sont les mesures mises en place pour interdire les activités énumérées dans cet alinéa?*

Les règles, procédures et mesures décrites dans le cadre des réponses concernant les alinéas a), b) et c) s'appliqueront également à ces activités.

Paragraphe 2

Alinéa a) – *Quelles mesures législatives ou autres avez-vous mises en place pour donner effet à cet alinéa? En particulier, quelles sont les sanctions pénales prévues dans votre pays pour réprimer i) le recrutement de membres de groupes terroristes; et ii) l'approvisionnement en armes des terroristes? Quelles autres mesures avez-vous prises pour empêcher ces activités?*

i) La principale disposition permettant de réprimer le recrutement de membres de groupes terroristes se trouve dans l'article 258 du Code pénal (voir appendice I).

ii) En ce qui concerne la lutte contre l'approvisionnement en armes des terroristes, il existe des mécanismes et procédures de contrôle des échanges de

marchandises, techniques et services stratégiques touchant la sécurité nationale et le maintien de la paix et de la sécurité internationales. On trouvera, dans les appendices II, III et IV, des informations détaillées et une traduction de la loi du 22 juin 2001 sur l'application de la Convention sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction, et de la loi du 29 novembre 2000 sur le commerce extérieur des marchandises, techniques et services d'importance stratégique touchant la sécurité nationale et le maintien de la paix et de la sécurité internationales et portant amendement de certaines lois.

Alinéa b) – *Quelles autres mesures prenez-vous pour empêcher que des actes de terrorisme ne soient commis et, en particulier, quels mécanismes d'alerte rapide avez-vous mis en place pour pouvoir échanger des renseignements avec d'autres États?*

Selon la loi du 6 avril 1990 relative au Service de la sûreté nationale, le Directeur de ce Service est l'autorité chargée de prévenir les actes de terrorisme et autres crimes contre la sûreté nationale, ainsi que les crimes ayant une dimension internationale, notamment la production, la possession et le trafic illicites d'armes, de munitions ou d'explosifs, de stupéfiants ou de substances psychotropes, ainsi que de matières nucléaires ou radioactives, et de poursuivre en justice les auteurs de ces infractions. Après les attentats terroristes du 11 septembre 2001 contre les États-Unis, les mesures préventives prises par le Service de la sûreté nationale et par la police ont été renforcées.

En ce qui concerne les mécanismes d'alerte rapide permettant d'échanger des renseignements avec d'autres États, la Pologne est partie à des accords multilatéraux et bilatéraux en matière de lutte contre le crime organisé. La Pologne a conclu 30 accords de ce type, et 11 autres sont en cours de négociation. On trouvera dans l'appendice V au présent rapport une liste complète de ces accords. Les accords bilatéraux sur l'échange d'informations classées secrètes font aussi partie de ces mécanismes. Dans ce contexte, la coopération entre la police et les autres services compétents avec leurs homologues d'autres États et avec les organisations internationales, notamment Interpol, est essentielle.

Le 3 octobre 2001, le Gouvernement de la République de Pologne et l'Office central européen de police criminelle (EUROPOL) ont signé un accord de coopération en matière de lutte contre la criminalité. Lorsqu'il aura été ratifié, cet accord constituera un instrument juridique important de lutte contre le terrorisme. En effet, aux termes du paragraphe 1 de l'article 2 de la Convention d'EUROPOL, l'un des principaux objectifs de cette organisation est « d'améliorer, par les mesures prévues dans la Convention, l'efficacité des services compétents des États membres et leur coopération en ce qui concerne la prévention et la lutte contre le terrorisme ». Le processus législatif relatif à la ratification de l'accord sera entamé dès que le Directeur d'EUROPOL aura communiqué l'assentiment du Conseil européen à cet accord.

La Pologne attache une grande importance à l'échange d'informations avec ses alliés de l'Organisation du Traité de l'Atlantique Nord (OTAN) concernant l'évaluation des menaces et des renseignements, ainsi que la conception, la structure, le matériel, la formation et l'entraînement des forces militaires qui doivent combattre le terrorisme, et concernant les autres mesures susceptibles d'améliorer les moyens de défense de l'alliance contre de telles menaces.

Alinéa c) – *Existe-t-il des lois ou des procédures interdisant de donner asile aux terroristes – par exemple, des lois visant à exclure ou à expulser les types de personnes visés à cet alinéa? Il serait utile que les États donnent des exemples des mesures prises à cet égard.*

Cette question est régie par la loi du 25 juin 1997 sur les étrangers qui stipule, à l'alinéa 4) du paragraphe 1 de l'article 13, que le Gouvernement peut refuser d'accorder un visa ou l'entrée sur le territoire de la République de Pologne à un étranger s'il y a des raisons plausibles de soupçonner qu'il commet ou organise des actes terroristes ou y participe, ou qu'il est membre d'une organisation terroriste. En outre, l'alinéa 5) du paragraphe 1 stipule qu'un étranger peut se voir refuser un visa ou l'entrée sur le territoire s'il y a des raisons de soupçonner qu'il traverse la frontière en transportant, sans l'autorisation nécessaire, des armes, des munitions, des explosifs, des matières radioactives ou des stupéfiants ou substances psychotropes, ou qu'il participe à de telles activités, les organise ou est membre d'une organisation menant de telles activités.

L'entrée en Pologne peut aussi être refusée à un étranger si son entrée ou son séjour est considéré comme indésirable eu égard aux obligations découlant des traités internationaux auxquels la Pologne est partie [par. 1, al. 8)], ou s'il constitue une menace pour la sécurité nationale, la défense ou le maintien de l'ordre public.

Aux termes de la loi susmentionnée, le Président de l'Office des rapatriés et des étrangers est l'autorité compétente chargée de tenir la liste des personnes indésirables. Celle-ci est tenue régulièrement à jour et communiquée aux missions diplomatiques et consulaires de la Pologne à l'étranger. Chaque demande de visa est examinée à la lumière de la liste en question, et le visa ou l'autorisation d'entrée sur le territoire est refusé à toute personne jugée indésirable. La coopération entre les autorités compétentes garantit une application rigoureuse des dispositions de la résolution en la matière.

Pour les mêmes raisons, en vertu de l'alinéa 4) du paragraphe 1 de l'article 52, tout étranger indésirable peut être expulsé du territoire polonais par une décision administrative de l'autorité compétente.

Aucune mesure spécifique n'a donc été nécessaire pour donner suite à cet alinéa.

Alinéa d) – *Existe-t-il des lois ou des procédures empêchant que des terroristes n'utilisent votre territoire pour commettre des actes de terrorisme contre d'autres États ou contre les citoyens de ces États? Il serait utile que les États donnent des exemples de mesures prises à cette fin.*

En l'occurrence, la disposition du Code pénal visée dans la réponse à l'alinéa a) du paragraphe 2, à savoir l'article 258 (chap. XXXII – Atteintes à l'ordre public) trouve également application.

Aucune mesure spécifique ne s'imposait.

Alinéa e) – *Quelles mesures avez-vous prises pour que les actes de terrorisme soient érigés en infractions graves et pour que la peine infligée soit à la mesure de la gravité de ces actes? Veuillez donner des exemples de condamnations obtenues et de peines prononcées.*

Sans définir le « terrorisme », le Code pénal polonais incrimine plusieurs comportements ayant le caractère d'actes de terrorisme. Ces comportements prohibés par la loi sont punis suivant leur gravité. Ce régime juridique antérieur à l'adoption de la résolution 1373 (2001) résultait des obligations internationales souscrites par la Pologne, y compris la Convention européenne pour la répression du terrorisme. On trouvera ci-joint à l'annexe I le texte des dispositions du Code pénal en question.

Le Président de la République polonaise a chargé une commission spéciale d'apporter au Code pénal des modifications tendant notamment à durcir les sanctions prévues pour les faits ci-après assimilables à des actes de terrorisme : le fait d'attaquer une unité des forces armées de la République polonaise (art. 140), le fait de provoquer un événement constituant une menace sérieuse pour la vie ou la santé de nombreuses personnes ou pour les biens (art. 163), le fait de mettre gravement en danger la vie ou la santé de nombre de personnes ou de biens (art. 165), le fait de fabriquer, de détruire ou de commercialiser illégalement des matières explosives ou radioactives (art. 171), le fait de causer des dégâts à l'environnement, le fait de donner la mort à nombre de personnes ou de porter gravement atteinte à leur santé (art. 185), le fait de participer à un groupe ou une association ayant pour but de commettre un crime ou une infraction au préjudice du trésor et d'en créer ou d'en diriger un (art. 258).

La commission a réfléchi à l'idée d'élargir le domaine de la loi pénale pour réprimer la préparation d'un homicide (nouveau libellé du paragraphe 2 de l'article 148), la capture de moyens de transport public terrestre (art. 166) et l'exportation de substances dangereuses pour l'environnement (art. 183, par. 2).

La commission a achevé ses travaux et le Parlement sera saisi sous peu des projets de modifications au Code pénal.

À ce jour, les tribunaux n'ont été saisis d'aucune affaire.

Alinéa f) – *Quelles procédures et mécanismes avez-vous mis en place pour aider les autres États? Veuillez donner des détails sur la manière dont ces procédures et mécanismes ont été utilisés dans la pratique.*

Le Code de procédure pénale organise l'assistance judiciaire. Les procédures et mécanismes y relatifs sont également définis dans les accords internationaux visés dans la réponse à l'alinéa b) du paragraphe 2 ainsi que dans les conventions et accords internationaux d'entraide judiciaire en matière pénale.

Alinéa g) – *Comment les contrôles effectués aux frontières de votre pays empêchent-ils les mouvements de terroristes? Quelles procédures appliquez-vous à cette fin pour la délivrance de documents d'identité et de documents de voyage? Quelles mesures avez-vous prises pour en empêcher la contrefaçon, etc.?*

Les restrictions évoquées plus haut sous l'alinéa c) trouvent application. À la suite des attentats terroristes du 11 septembre, le Service de surveillance des frontières, agissant en coopération avec d'autres autorités, a durci les contrôles aux frontières.

Les dispositions régissant la délivrance et la protection des pièces d'identité et titres de voyage contre toute falsification sont contenues dans plusieurs textes dont la loi du 25 juin 1997 sur les étrangers, le décret en Conseil des ministres du 21 novembre 2000 sur le spécimen de carte d'identité et la procédure régissant la

délivrance, le renouvellement, la rétrocession ou la perte des cartes d'identité, l'Arrêté du Ministre de l'intérieur et de l'administration en date du 10 mars 1999 sur le spécimen et la procédure de délivrance des passeports, les pièces requises à cet effet et la procédure suivie par les gardes frontière en cas de détection de faux à l'occasion de contrôles aux frontières, l'Arrêté du Ministre de l'intérieur et de l'administration en date du 27 juin 2001 définissant les principes, procédures et les spécimens des pièces délivrées aux étrangers.

Ces conditions et mesures de sécurité pointilleuses (y compris le matériel moderne obtenu de l'Union européenne) permettent de prévenir les mouvements de terroristes à travers les frontières et la contrefaçon de pièces d'identité et titres de voyage.

Paragraphe 3

Alinéa a) – *Quelles mesures avez-vous prises pour intensifier et accélérer l'échange d'informations opérationnelles dans les domaines visés à cet alinéa?*

L'échange d'informations opérationnelles repose sur les accords internationaux évoqués dans la réponse à l'alinéa b) du paragraphe 2 ainsi que sur les conventions et accords internationaux d'entraide judiciaire en matière pénale. Il emprunte également les circuits de coopération internationale directs entre autorités de police et autres autorités compétentes.

Alinéa b) – *Quelles mesures avez-vous prises pour échanger des renseignements et coopérer dans les domaines visés à cet alinéa?*

L'échange d'informations opérationnelles repose sur les accords internationaux évoqués dans la réponse à l'alinéa b) du paragraphe 2 ainsi que sur les conventions et accords internationaux d'entraide judiciaire en matière pénale. Il emprunte également les circuits directs de coopération internationale entre autorités de police et autres autorités compétentes.

Alinéa c) – *Quelles mesures avez-vous prises pour coopérer dans les domaines visés à cet alinéa?*

Le Conseil de l'Atlantique Nord a qualifié les attentats terroristes du 11 septembre 2001 d'attaques armées non contre un allié seul mais contre tous les États parties au Traité de Washington, et a ainsi fait jouer pour la première fois l'article 5 dudit traité. Aussi, la Pologne a-t-elle décidé d'apporter son appui aux opérations militaires menées par les États-Unis contre les terroristes et participé à la campagne internationale menée par la coalition antiterroriste.

En vertu des pouvoirs qui lui sont conférés par la Constitution, le Président de la République polonaise a décidé de dépêcher des effectifs militaires polonais en Afghanistan par application de l'Article 51 de la Charte des Nations Unies.

Il exerçait aussi le droit naturel de légitime défense, individuelle et collective, consacré par l'Article 51 de la Charte et confirmé par le Conseil de sécurité en ses résolutions 1368 (2001) et 1373 (2001) en date des 12 et 28 septembre 2001 respectivement, qui demandent à tous les États de collaborer d'urgence pour traduire en justice les auteurs, organisateurs et commanditaires de ces actes de violence.

En outre, la Pologne a ouvert son espace aérien aux aéronefs des forces armées des États-Unis.

La Pologne oeuvre sérieusement au sein de l'OTAN à s'acquitter de la mission qui lui est confiée d'assurer la protection de sa population, de son territoire et de ses forces, à réfléchir aux moyens d'adapter et de renforcer les moyens militaires de l'Alliance, y compris la manière dont cette dernière pourrait apporter sa contribution défensive à la lutte contre le terrorisme et à des propositions de nature à mieux la préparer pour faire face à des attaques terroristes à l'arme chimique, biologique, radiologique ou nucléaire, ainsi qu'aux incidences du terrorisme sur les plans de défense nationaux dans le contexte du système de planification des forces de l'OTAN.

Alinéa d) – *Quelles sont les intentions de votre gouvernement en ce qui concerne la signature ou la ratification des conventions et protocoles visés à cet alinéa?*

La Pologne n'est pas encore partie à quatre conventions et protocoles consacrés à la lutte contre le terrorisme :

1. Convention internationale pour la répression des attentats terroristes à l'explosif, adoptée par l'Assemblée générale des Nations Unies le 15 décembre 1997. La Pologne a signé la Convention le 14 juin 1999. La procédure de ratification en est en cours.
2. Convention internationale pour la répression du financement du terrorisme, adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1999. La Pologne a signé la Convention le 4 octobre 2001 lors de la cinquante-sixième session de l'Assemblée générale. La procédure de ratification en est en cours.
3. Protocole pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale, complémentaire à la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signé à Montréal le 24 février 1988. La demande de ratification en est en cours d'élaboration.
4. Convention sur le marquage des explosifs plastiques et en feuilles aux fins de détection, signée à Montréal le 1er mars 1991. La demande de ratification en est en cours d'élaboration.

Alinéa e) – *Donnez tous renseignements pertinents sur l'application des conventions, protocoles et résolutions visés à cet alinéa*

La Pologne est partie aux conventions et protocoles de lutte contre le terrorisme ci-après :

1. Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, adoptée par l'Assemblée générale des Nations Unies le 14 décembre 1973.
2. Convention internationale contre la prise d'otages, adoptée par l'Assemblée générale des Nations Unies le 17 décembre 1979.
3. Convention relative aux infractions et à certains autres actes survenant à bord des aéronefs, signée à Tokyo le 14 septembre 1963.
4. Convention pour la répression de la capture illicite d'aéronefs, signée à La Haye le 16 décembre 1970.

5. Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, signée à Montréal le 23 septembre 1971.
6. Convention sur la protection physique des matières nucléaires, signée à Vienne le 3 mars 1980.
7. Convention pour la répression d'actes illicites dirigés contre la sécurité de la navigation maritime, signée à Rome le 10 mars 1988.
8. Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, fait à Rome le 10 mars 1988.
9. Convention européenne pour la répression du terrorisme, conclue à Strasbourg le 27 janvier 1977.

La Pologne est résolue à donner pleinement effet aux conventions et aux protocoles auxquels elle est partie ou est en passe d'être partie, ainsi qu'aux résolutions du Conseil de sécurité susmentionnées dans lesquelles elle voit un instrument propre à faciliter la coopération dans le domaine de la lutte contre le terrorisme.

Alinéa f) – *Quels lois, procédures et mécanismes avez-vous mis en place pour vous assurer que les demandeurs d'asile n'ont pas participé à des activités terroristes avant de leur octroyer le statut de réfugié? Veuillez citer des exemples à ce sujet.*

Les textes en vigueur empêchent véritablement que des demandeurs d'asile qui seraient impliqués dans des activités terroristes se voient accorder l'asile en Pologne.

Le droit de tout étranger de demander asile en Pologne est consacré par l'article 56 de la Constitution du 2 avril 1997. Les principes qui gouvernent la matière sont définis par la loi du 25 juin 1997 sur les étrangers qui dispose en son article 50 que tout étranger peut, sur sa demande, se voir accorder l'asile en République de Pologne si la protection ou l'intérêt supérieur de la République de Pologne le commandent. L'étranger qui cesse de remplir les conditions requises pour être admis au bénéfice de l'asile ou qui se livre à une activité contraire à la défense du pays et à l'ordre public interne peut se voir retirer cette qualité.

Alinéa g) – *Quelles procédures avez-vous mises en place pour empêcher que les terroristes ne détournent à leur profit le statut de réfugié? Veuillez donner des détails sur les lois ou les procédures administratives qui empêchent que la revendication de motivations politiques ne soit considérée comme pouvant justifier le rejet de demandes d'extradition de terroristes présumés. Veuillez citer des exemples.*

La matière est régie par la loi sur les étrangers susévoquée qui définit en ses articles 41a et 42 les conditions de refus d'admission à la qualité de réfugié et empêche ainsi que le régime en soit détourné par des terroristes présumés. En outre, l'article 42 vise l'article 1 A (conditions d'éligibilité) et l'article 1 F (circonstances) de la Convention relative au statut des réfugiés, signée à Genève le 28 juillet 1951 et du Protocole y relatif fait à New York le 31 janvier 1967. Les dispositions de la Convention et du Protocole s'appliquent de plein droit en Pologne.

En ce qui concerne les demandes d'extradition, la Pologne est liée par la Convention européenne d'extradition faite à Paris le 13 décembre 1957 et par les dispositions d'accords bilatéraux.

Appendix I

Penal Code (excerpt):

Chapter XVI Crimes against peace, humanity and war crimes

Art. 120. A person who uses the weapon of mass destruction prohibited by international law, shall be sentenced to imprisonment for the time not shorter than 10 years, for 25 years or for life.

Art. 121. § 1. A person who, in contravention of the prohibitions of the international law or provisions of law (statute), manufactures, collects, acquires, sells, stores, transports or transmits the weapons of mass destruction or develops them with the view to their manufacturing or use, shall be sentenced to imprisonment for 1 year up to 10 years.

§ 2. The same penalty shall be applicable to a person, who allows the commitment of the act referred to in § 1.

Chapter XVII Crimes against the Republic of Poland

Art. 134. A person who commits attempt on the life of the President of the Republic of Poland, shall be sentenced to imprisonment for time not shorter than 12 years, for 25 years or for life.

Art. 136. § 1. A person who in the territory of the Republic of Poland commits an active assault against the head of foreign state or accredited chief of diplomatic mission of such a state or person entitled to similar protection in virtue of laws, agreements and generally accepted international custom, shall be sentenced to imprisonment for 3 months up to 5 years.

§ 2. A person who in the territory of the Republic of Poland commits an active assault against a person belonging to the personnel of the diplomatic mission of foreign state or consular official of foreign state, in connection with discharging by him of official functions, shall be sentenced to imprisonment for up to 3 years.

§ 3. The penalty referred to in § 2 shall be applicable to a person, who in the territory of the Republic of Poland publicly insults the person referred to in § 1.

§ 4. A person who in the territory of the Republic of Poland publicly insults the person referred to in § 2, shall be sentenced to fine, limitation of freedom or imprisonment for up to 1 year.

Chapter XVIII Crimes against defence

Art. 140. § 1. A person, who with the view to diminishing the defence powers of the Republic of Poland commits violent assault against an unit of the Armed Forces of the Republic of Poland, destroys or damages object or facility with defence significance, shall be sentenced to imprisonment for up to 10 years.

§ 2. If as a result of the act human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 2 up to 12 years.

§ 3. A person who makes preparations to commit crime referred to in § 1, shall be sentenced to imprisonment for up to 3 years.

§ 4. In the case concerning the crime referred to in § 1-3 the court may rule seizure referred to in Article 39 subparagraph 4, also when, the objects do not constitute property of the perpetrator.

Chapter XIX **Crimes against life and health**

Art. 148. § 1. A person who kills, shall be sentenced to imprisonment for the time not shorter than 8 years, for 25 years or for life

§ 2. A person who kills:

- 1) with particular cruelty,
- 2) in connection with taking a hostage...
- 3) as a result of motivation that is worthy of particular condemnation,
- 4) using fire arms or explosive materials,

shall be sentenced to imprisonment for the time not shorter than 12 years, for 25 years or for life.

§ 3. The penalty referred to in § 2 shall be applicable to the person who kills more than one person or was legally convicted before for homicide.

...

Chapter XX **Crimes against public security**

Art. 163. § 1. A person who causes event, which poses threat to life or health of many persons or to property at large scale, in form of:

- 1) fire,
- 2) destruction of a building, deluge, landslip, slip of rocks or snow,
- 3) explosion of explosive or flammable materials or other violent release of energy, proliferation of poisonous, toxic or blistering substances,
- 4) violent release of nuclear energy or release of ionising radiation,

shall be sentenced to imprisonment for 1 year up to 10 years.

§ 2. The perpetrator acting unintentionally, shall be sentenced to imprisonment for 3 months up to 5 years.

§ 3. If as a result of the act referred to in § 1 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 2 up to 12 years.

§ 4. If as a result of the act referred to in § 2 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 6 months up to 8 years.

Art. 164. § 1. A person who causes direct threat of the event referred to in Article 163 § 1, shall be sentenced to imprisonment for 6 months up to 8 years

§ 2. The perpetrator acting unintentionally, shall be sentenced to imprisonment for up to 3 years.

Art. 165. § 1. A person who causes event, which poses threat to life or health of many persons or to property at large scale:

- 1) causing epidemiological threat or proliferation of contagious disease or epidemic,
- 2) manufacturing or introducing to trade substances harmful to health, food or other articles of common use or pharmaceutical means which do not meet quality requirements in force,
- 3) causing damage or immobilisation of facility of public use, in particular of facility supplying with water, light, heat, gas, or facility securing against common danger or used to its elimination,
- 4) disturbing, hindering or otherwise affecting automatic processing, collecting or transfer of information,
- 5) acting otherwise in especially dangerous circumstances,

shall be sentenced to imprisonment for 6 months up to 8 years.

§ 2. The perpetrator acting unintentionally, shall be sentenced to imprisonment for up to 3 years.

§ 3. If as a result of the act referred to in § 1 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 2 years up to 12 years.

§ 4. If as a result of the act referred to in § 2 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 6 months up to 8 years.

Art. 166. § 1. A person who uses ruse or violence against a person or threat of direct use of such violence, takes over the control of vessel or aircraft, shall be sentenced to imprisonment for 2 years up to 12 years.

§ 2. A person who, acting in the manner referred to in § 1, causes direct danger for life or health of many persons, shall be sentenced to imprisonment for time not shorter than 3 years.

§ 3. If as a result of the act referred to in § 2 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced to imprisonment for the time not shorter than 5 years or for 25 years.

Art. 167. § 1. A person, who places on vessel or aircraft facility or substance posing threat to safety of persons or property with significant value, shall be sentenced to imprisonment for 3 months up to 5 years.

§ 2. The same penalty shall be applicable to a person who destroys, damages or makes unserviceable navigation instrument or hinders its operation, if it may pose threat to the safety of persons.

Art. 168. A person who makes preparations for the crime referred to in Article 163 § 1, Article 165 § 1, Article 166 § 1 or in Article 167 § 1, shall be sentenced to imprisonment for up to 3 years.

Art. 171. § 1. A person who without required permission or in contravention of its conditions manufactures, processes, collects, possesses, uses or effects trade in explosive substance or instrument, radioactive material, facility releasing ionising radiation or other object or substance that may pose threat to life or health of many persons or property at large scale, shall be sentenced to imprisonment for 6 months up to 8 years.

§ 2. The same penalty shall be applicable to the person, who in contravention of the obligation commits the act referred to in § 1.

§ 3. The same penalty shall be applicable to the person, who transfers the objects referred to in § 1 to non-authorised person.

Art. 172. A person who hinders the action, undertaken with the view to preventing the danger to life or health of many persons or to property at large scale, shall be sentenced to imprisonment for 3 months up to 5 years.

Chapter XXI

Crimes against safety of transportation

Art. 173. § 1. A person who causes disaster in road, water or air transport posing threat to life or health of many persons or to property at large scale, shall be sentenced to imprisonment for one year up to 10 years.

§ 2. The perpetrator acting unintentionally, shall be sentenced to imprisonment for 3 months up to 5 years.

§ 3. If as a result of the act referred to in § 1 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 2 years up to 12 years.

§ 4. If as a result of the act referred to in § 2 human death or serious harm to health of many persons is caused, the perpetrator shall be sentenced for 6 months up to 8 years.

Art. 174. § 1. A person who causes direct danger of disaster in road, water or air transport shall be sentenced to imprisonment for 6 months up to 8 years.

§ 2. The perpetrator acting unintentionally, shall be sentenced to imprisonment for up to 3 years.

Art. 175. A person who makes preparations for the crime referred to in Article 173 § 1, shall be sentenced to imprisonment for up to 3 years.

Chapter XXXII

Crimes against public order

Art. 258. § 1. A person who participates in organised group or association, which aim is to commit crimes shall be sentenced to imprisonment for up to 3 years.

§ 2. If the group or association referred to in § 1 is of military nature the perpetrator shall be sentenced to imprisonment for 3 months up to 5 years.

§ 3. A person who establishes the group or association referred to in § 1 or 2 or manages such a group or association shall be sentenced to imprisonment from 6 months up to 8 years.

Appendix II

MINISTRY OF ECONOMY

INFORMATION

concerning the control of external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security

1. Introduction

Poland belongs to a majority of states which have set their plans for economic growth on the foundation of external trade.

However, the growing volume of international trade exchange fuels fears of strategically sensitive goods, dual-use technologies, arms and military equipment falling into the wrong hands. Which highlights the need for continuous, meticulous and efficient control of the flow of trade with foreign countries.

There are a host of reasons why so many states exercise control of their external trade in strategic goods and technologies, prominent among them being:

- national security, delivered by preventing proliferation of mass destruction weapons,
- pursuit of long-term international policy objectives,
- the need to keep international obligations,
- ensuring national enterprises' access to state-of-the-art technologies.

This also explains why so many international firms have decided to put in place their own internal control systems.

An expanding, external trade-led Polish economy rules out the prospect of each and every transaction being administered by the government. This would trigger the growth of procedures and mechanisms which would effectively strait-jacket the control system. This, in turn, would slow down, or even impose constraints upon, economic growth.

It is certainly much easier to strike a balance between the interests of the state and those of company operators when the latter can understand with crystal clarity the significance of both foreign trade control and the rules governing it.

That is why in modifying the export control system which had existed till the end of 2000, the Ministry of Economy has applied its guiding principle whereby enterprise owners' freedom to go ahead with their external trade contracts is contingent upon their obligation to deploy their own internal control systems.

It goes without saying that it is the manufacturers of and dealers in goods and technologies involved in external trade that have the most extensive knowledge of their application and potential users. Which is another reason why Polish firms are so important players in the country's external trade control system, their respective in-house control systems being crucial in preventing transfers of strategically sensitive goods to wrong users.

An in-house control system is also in the interest of the Polish business community, because:

- it safeguards a Polish firm against an inadvertent failure to comply with the regulations which would render it liable to economic sanctions and a fine,
- it can be a circumstance encouraging a lenient treatment of a Polish company (and its board) should it be found in breach of export control regulations,
- its absence can affect business contacts with foreign entities, should the latter insist on adherence to trade control principles.

The system being proposed to Polish company operators is fully consistent with international standards, is structured in keeping therewith and uses the identical terminology.

The concept of internal control system has been prompted by cooperation of the business community and government institutions aimed at preventing stockpiling of arms and dual-use goods and technologies which could pose a threat to international peace and security.

The deployment in a Polish firm of an in-house control system is as important for the firm concerned as it is for the whole country.

In Poland, the control of external trade in strategic goods is regulated by the 29 November 2000 Law on external trade in goods, technologies and services of strategic importance for state security, as well as for international peace and security.

2. Application of international solutions relevant to control of trade in dual-use goods and technologies, as well as arms

More than 30 of the world's most advanced nations are parties to the international system of control of trade in arms, as well as dual-use goods and technologies, hammered out by international non-proliferation organisations and control regimes.

Poland is a member of all non-proliferation organisations and groupings and has ratified all relevant international conventions and treaties.

We cooperate with parties to the said agreements and regimes with the aim of furthering regional and international security and stability through enhanced transparency and responsibility in handling transfers of conventional weapons and dual-use goods and technologies.

The said cooperation is focused primarily on:

- countering the growth of the military capabilities of states posing a threat to international security,
- blocking the proliferation of mass-destruction and conventional weapons, as well as technologies serving development of both,
- imposing constraints on trade prejudicial to certain institutions and organisations based in countries covered by total or partial embargoes of the United Nations Organisation and the European Union,
- bringing to a halt trade exchange with states fighting wars and supporting international terrorism,
- pursuit of joint operations targeting recognised or suspected terrorist organisations.

Poland's membership of NATO today, and of the European Union in the near future, has prompted modifications of legal regulations, mechanisms and procedures relevant to its external trade in armaments and military equipment, as well as dual-use goods and technologies.

On 1 January 2001 a law came into force regulating the country's external trade in goods, technologies and services of strategic consequence for its security, as well as for the keeping of international peace and security.

The law incorporates mechanisms ensuring implementation of the European Union Code of Conduct in Arms Export which in June 1998 won approval from the EU's General Affairs Council.

The assumption behind the new legal regulations is that - like in EU member states and NATO - the control in Poland of external trade in arms and dual-use goods is the resultant of business people interacting very closely with the government administration. The idea of Poland's external trade control system is underpinned by the concept of industrial enterprises, trade companies and research and development centres running their own, in-house control systems. Control on the ground must be organised by Polish manufacturers, exporters, users, research and development centres, etc., manufacturing, using and exporting dual-use goods and technologies, military equipment and armaments subject to international control. Control must also be exercised by brokers, dispatchers, hauliers, operators of cargo-handling plants and trade consultants on their own turf.

The track-record of mature trade control systems highlights both the motivation of manufacturers or exporters willing to succumb to control procedures, and the two-way flow of information which between them pave the way to confidence and cooperation between the government administration, business people and scientists. The aim of such cooperation is to deploy control mechanisms and procedures which - adding up to a

control system meeting international standards - will not constrain the Polish business people's operating freedom above the necessary minimum, and will not put them at a disadvantage vis-a-vis their foreign partners.

It has become necessary for Poland to embrace NATO and EU rules governing control of trade in dual-use commodities and technologies, because external trade control is moving away from being an internal affair of individual states, and towards becoming the principal common foreign policy pillar upholding international peace and the security of both NATO and EU member states.

3. Regulations enshrined in Polish law

The law regulating Poland's external trade in goods, technologies and services of strategic consequence for its security, as well as for the keeping of international peace and security, encapsulates experience accumulated by Poland over the years. It also incorporates some earlier legal regulations which have been applied with positive results. These include procedures governing the issuance of licences, their withdrawal and change, the institution of international import certificate, delivery verification certificate, the end user's statement and turnover control. Due attention has further been given therein to key elements of external trade control in dual-use goods and technologies, as well as armaments, applied across European Union member states and NATO. In sum, the law:

- introduces general and global licences covering export, import or transit of goods or technologies subject to control,
- extends control to commodities which do not figure on control lists if there is no certainty about their end use,
- ushers in control of trade in "elusive" technologies, i.e. which can be transmitted by way of computers, fax machines and telephones, or conveyed during training courses,
- makes possible involvement of a company in the exercise of control of external trade in strategic goods,
- lays the groundwork for development of partnership and cooperation of business operators with government administration.

The law says that the ban on external trade in strategic goods and services remains in force unless a business operator has complied with all the terms and restrictions laid down in the said law, in other laws, as well as international agreements and arrangements. In other words, an export, import or transit licence, or one covering services issued by the Ministry of Economy is a privilege bestowed on a business owner who has complied with all the relevant terms and conditions established by law and laid down in international agreements and arrangements. Such a privilege – which takes the form of a licence – can be withdrawn or changed, or else, the enterprise owner may be denied it at all.

The new, modified concept of external trade control draws its strength from internal control and turnover management systems existing in each and every enterprise trading in strategic goods. Mechanisms ensuring correct order delivery-related decision-making and suitable verification thereof, are vital components of such systems.

4. Export control

Pursuant to the aforesaid law, the Ministry of Economy demands that a Polish business owner submit an end-user's international import certificate or end statement, confirmed by the relevant government authorities of a foreign importer.

The end-user's statement is issued by a foreign end-user, and its contents must meet the requirements of the Ministry of Economy. This statement, too, has to bear a confirmation of both a foreign importer and the authorities of a country of destination.

The document in question is used in all export transactions with the aim of transferring responsibility on to foreign trading partners and their authorities, as well as safeguarding goods against being forwarded to unauthorised destinations.

The statement shall:

- name the country of destination,
- furnish the name and address of the end user,
- give a description of the strategic commodity, its quantity and value,

- name intermediate recipients and buyers,
- contain an undertaking not to pass the strategic commodity in question on to any other recipient without a prior consent of Polish trade control agencies. It should further contain an undertaking to the effect that a foreign end-user and importer shall not:
 - re-export,
 - sell,
 - lend to any entity,
 - or in any other way dispose of the goods/technologies named in the statement outside the end-user's country, without a prior consent of the Government of the Republic of Poland.

This undertaking also covers spare parts, specialist equipment, documentation and instructions needed for post-sale maintenance and servicing.

The undertakings to be entered at the Ministry of Economy's request into an end-user's statement, a foreign importer's statement and a confirmation issued by the government administration of an end-user's country, allow to cede all responsibility to foreign authorities and reduce to a minimum the danger of a shipment of goods ending up at the address of an unauthorised user.

5. Import control

The Ministry of the Economy can, pursuant to the 29 November 2000 law, issue an import certificate, or confirm the statement of an end user, only when the authorities of a foreign importer's country so require.

The law further stipulates that the international import certificate and the end-user's statement are documents meant to be submitted to the appropriate authorities beyond Poland's borders. They testify to the Polish importer's credibility and to his being subject to the relevant agencies' control of his transactions involving import to Poland of strategic goods. The Ministry of Economy can refuse to issue an import certificate or deny a confirmation to an end-user's statement if it cannot obtain a confirmation of control being exercised over imports to Poland, or there is no guarantee that trade in strategic goods will be conducted in keeping with the provisions of the law.

6. Control of trade in goods which do not figure on control lists

Polish legal regulations make a business operator duty-bound to apply for an export licence, or a licence to broker exports of goods not entered in the lists of strategic goods, but the handling of which requires a licence, if he knows or has a legitimate reason to surmise that:

- the goods or services he is about to export can be utilised – in toto or partly – for breaking or suppressing human rights and basic freedoms,
- his delivery of goods will pose a threat to peace or will in some other way contribute to upsetting the stability of the region,
- the final-destination country supports terrorism, makes it easier for terrorists to operate or encourages terrorism or international crime,
- the goods he is about to export can be used in a manner other than to meet the receiving nation's legitimate defence and security-related needs.

7. Transit control

Under the above-mentioned law, the transiting of a dual-use commodity which has originated in a foreign country requires a licence. The latter is issued by the director of a border customs office at the request of a haulier.

Licences for indirect transit are issued by the Ministry of Economy. Indirect transit consists in transport of armaments and dual-use goods and technologies across the Polish customs area, as well as transshipment thereof, say, in a seaport.

Export, import or transit of strategic goods must be handled solely by specially designated customs offices.

8. Issuance of licences

Administrative decisions preceding the licencing of external trade in strategic goods are also elements of control. Licences are issued by the Ministry of Economy and cover:

- export, import and transit of dual application goods and technologies, as well as arms and military equipment,
- gifts, lending and leasing of the said goods,
- dispatching, transport and loading services,
- brokerage, trade consulting and assistance in concluding contracts involving trade in strategic goods.

At present, only individual licences are issued for export, import and transit of arms and military equipment, or services associated therewith. They name a commodity or a service associated therewith and the country with which an operator is thus allowed to trade.

Under the 29 November 2000 law, after three years the Ministry of Economy will also start issuing:

- general licences, covering a type or category of dual-use goods and indicating one or more countries a licence holder is thereby allowed to trade with,
- global licences, covering a type or a category of dual-use goods, without actually naming countries that can be traded with in the said goods.

Apart from the aforesaid licences, the Ministry of Economy also issues international import certificates and approve end-users' statements.

9. Other government institutions involved in control and licencing processes

The Ministry of Economy issues an individual licence after seeking an opinion on the matter of the relevant institution and becoming satisfied that the applicant has met all the conditions laid down in the law of the land.

Under the 29 November law, institutions authorised to deliver opinions are:

- the Minister of Foreign Affairs,
- the Minister of National Defence,
- the Finance Minister,
- the Minister of Internal Affairs,
- the Head of the State Protection Office,
- the President of the State Agency for Nuclear Research,
- the President of the Main Customs Office,
- the General Customs Inspector.

No licence can be issued without opinions given by the above institutions.

10. Licences denied, revoked and altered

The Ministry of Economy refuses, on the strength of an administrative decision, to issue an export, import or transit licence, or one covering the services associated with the trade in question, if:

- the pursuit of such trade would be in breach of obligations assumed by the Republic of Poland under international agreements,
- the issuance of the licence would prejudice the interests of the foreign policy of the Republic of Poland,
- such a decision is called for by national defence or security-related considerations,

- such a decision is called for by important economic interests of the Republic of Poland,
- the applicant enterprise owner does not make any warranty as to the lawful conduct of his operations.

The Ministry of Economy refuses to licence trade in strategic goods if it suspects that all or part of the latter can be utilised illegally, or in a manner prejudicial to the interests of the Republic of Poland, for implementation, production, exploitation, operation, maintenance, storage, detection, identification or proliferation of mass destruction weapons, notably of chemical, biological or nuclear weapons, as well as for the implementation, production, maintenance and storage of delivery systems for such weapons.

The Ministry can deny a licence to anyone if it fears:

- there is a risk the end use or destination of strategic goods can be changed,
- the applicant business operator has been in breach of regulations governing trade in strategic goods.

Having heard the opinions of the aforesaid institutions, the Ministry of Economy can at any time, on the strength of an administrative decision, revoke or alter a licence already issued to an individual operator if at least one of the circumstances mentioned above has come into play, or the operator acts in contravention of the terms laid down in the licence.

11. Control lists

The currently binding list of strategic goods was adopted in July 2001. It was published as an annexe to a decree of the Minister of Economy. It replaced the previous one of August 1998.

The list features arms and military equipment, as well as dual-use goods and technologies subject to external trade control.

The Polish control lists (the list of dual-use goods and technologies and the armaments list) are faithful translations of EU control lists, their contents strictly adhering to the catalogue of items controlled within the European Union.

12. The internal control system

Pursuant to the 29 November 2000 law, before he files an application for an individual licence, the enterprise owner is under the obligation to check whether:

- the end-user intends to use the armaments for breaking or suppressing human rights and fundamental freedoms,
- the arms he is about to deliver will raise a threat to peace or in some other way will contribute to upsetting the region's stability,
- the country of ultimate destination supports, facilitates or encourages terrorism or international crime,
- the arms to be exported can be used for a purpose other than meeting the legitimate defence and security-related needs of the receiving state.

To comply with the above requirements, the contractor is duty-bound to create and apply an in-house system of control and management of trade in strategic goods to help him run each and every transaction, with properties peculiar thereto and obligatory legal regulations duly observed.

Seen from the perspective of management, an in-house control system is an instrument safeguarding a company against actions incompatible with national trade control requirements and relevant international arrangements.

Fitted with their own, internal control systems, Polish firms will be able to protect both their commercial interests and their respective images internationally.

In September 2001 the Ministry of Economy supplied the business community involved in external trade in strategic goods with a programme on CDs containing information needed for the deployment of in-house control systems. The programme is consistent with the norms of the ISO 9000 series and additional requirements

approved of by the Ministry. It features the following elements of an in-house control system to be incorporated by the recipients of the CDs in their respective systems:

- a corporate policy statement,
- personnel selection,
- data storage,
- training,
- order realisation procedures,
- notification,
- analysis of the rejected applications list,
- product classification,
- analysis of risks raised by product destination change,
- in-house control,
- system certification.

The Ministry has launched training sessions for companies in programme application and in-house control systems.

13. Monitoring and control of firms involved in external trade in strategic goods

In May 2001 the Ministry of Economy received from the Government of the United States a gift of the TRACKER system, consisting of computer equipment, complete with a programme imparting automation to licencing procedures. The system is applicable to external trade in goods, technologies and services of strategic importance for state security. It is also used for the maintenance of international peace and security. It can:

- store and process a much larger volume of data,
- run an automatic archive of both the consecutive phases of consultation and opinions given,
- analyse in-depth both decision-making processes and information pertaining to goods, technologies, services, applicants and other parties to a contract,
- prepare export, import, transit and service licences,
- prepare certificates,
- impart greater efficiency to export, import and transit control.

The TRACKER system definitely improves the efficiency of the decision-making process, the latter requiring, among other things:

- that several control lists of goods and technologies be used, and that diverse modes of conduct worked out within the respective frameworks of four different international non-proliferation agreements be taken into account,
- adherence to the decisions of international organisations imposing constraints on trade with certain countries,
- that decisions taken in previous periods be appealed against; that applications for licences by domestic firms be filed with due account being taken of several months needed for the process of licence-issuing to be completed; and that import certificates and end-user statements be correlated with export licences,
- that risk data bases, created both in reliance on in-house and domestic, as well as external information be consulted,
- that agreements with other countries banning re-exportation of imported goods and spare parts do definite countries be duly taken into account,
- that exchange of information gets off the ground between internal organisational units and the Ministry of Economy and interested government offices and agencies.

14. Control of the business community

The TRACKER system further makes possible building a data-base of companies which act in defiance of the law of the land or are in need of improving their knowledge thereof. Information stored in the system comes in handy when companies involved in external trade in strategic goods are being controlled.

The controllers, in particular, look into:

- a company's records for any inconsistency with its trading licence; they verify a transaction after its completion,
- the operation of an in-house control system,
- the way a company keeps its records of trade in strategic goods.

The Ministry of Economy is in charge of the said controls with experts from relevant government offices and agencies taking part.

In the event an irregularity is uncovered in his external trade in strategic goods, the Ministry of Economy summons the business owner responsible to re-embrace the rules within one month from the delivery of the summons. When this fails to produce the expected results, the Ministry of Economy revokes his licence by administrative decision.

In the case of a global and/or general licence, the Ministry of Economy issues an administrative decision forbidding a businessman to use the licence and advising of its decision the opinion-giving institutions.

The businessman stands a chance of being issued another licence but no sooner than in 3 years after the withdrawal of the former licence has become final.

15. Offences punishable with imprisonment and fines

Under the 29 November 2000 law on external trade in goods, technologies and services of strategic importance for the security of the state, and also for international peace and security:

- Whoever is involved in unlicensed export, import, transit or services associated therewith, or even unintentionally acts in contravention of the conditions laid down in his licence, is liable to a prison sentence of up to 10 years.
- If a perpetrator has unintentionally conducted trade in contravention of the conditions laid down in his licence, and has re-established his company's conformity with the law, he is liable to a fine, restriction of freedom or imprisonment of up to two years.
- If a sentence has been imposed for the aforesaid offences, the court can order confiscation of the strategic goods or other items used, or meant to be used in committing the offence, or obtained through crime indirectly or directly, such as legal tenders and equities, even if these are not owned by the perpetrator.
- Whoever obstructs control of a company is liable to a fine.
- A business operator involved in trade without a valid licence is fined up to 20,000 zlotys by a trade control institution.
- A business operator who is involved in trade conducted in contravention of the conditions laid down in his licence is fined up to 100,000 zlotys by a trade control institution.

16. Summary

The aforesaid system of control of external trade in goods, technologies and services of strategic importance for the security of the state, and also for international peace and security went into effect on 1 January 2001 and is now in the initial phase of implementation.

Its effectiveness is contingent on full commitment thereto of all those involved in trade. Polish business owners must further understand that their submitting to control mechanisms and procedures, which add up to a control system consistent with international standards, is not tantamount to a surrender of any of their operating freedom, but can in fact turn out to be a *sui generis* privilege.

One can accept that by introducing a control system and imposing restrictions on deliveries of arms, military equipment, as well as goods and technologies which might be used by terrorist organisations for

production of mass destruction weapons, Poland has joined the pursuit by the international community of a common policy to help safeguard international peace and security.

To fully understand the role being played by all those taking part in the control system, the Ministry of Economy has launched a series of training schemes for businessmen. These are being financed from foreign funds which, however, will stop being available in the near future.

The continuation of these and other actions assisting the inclusion of enterprise owners in the control system should be financed from the state budget.

The said training schemes should further be extended to cover university-level schools, research and development institutions and other centres representing advanced degrees of technological accomplishment, as these organisations have at their disposal what is known as "elusive technologies." The transfer of these strategically important technological assets very often takes place in the course of scientific seminars, conferences and training sessions, which is why a degree of self-control should be exercised in the conveyance of such knowledge.

Appendix III

LAW of 22 June 2001

on the implementation of the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction

(J. of L.¹ No. 76, item 812)

Chapter 1 General provisions

Article 1.

This Law determines the principles of the implementation in the territory of the Republic of Poland of the obligations resulting from the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, done at Paris on 13 January 1993 (J. of L. of 1999, No. 63, item 703), hereinafter referred to as “the Convention”.

Article 2.

1. The provisions of this Law shall apply to the natural persons in the territory of the Republic of Poland, legal persons and organisational units without legal personality and other entities with place of business in the territory of the Republic of Poland, as well as foreign entrepreneurs carrying out in the territory of the Republic of Poland the activity with chemicals and their precursors, covered by the Convention.
2. The territory of the Republic of Poland shall also include aircraft and vessels as well as other navigating units, of the Polish nationality.

Article 3.

1. Whenever this Law refers to the “chemical weapons”, “toxic chemicals”, “discrete organic chemicals”, “precursors”, “riot control agents”, “chemical weapons production facilities” as well as “purposes not prohibited under the Convention”, these terms shall have the meaning used by the Convention.
2. The term “escorting team” shall mean “in-country escort” in the meaning of the Convention.

Chapter 2 Prohibitions and restrictions

Article 4.

It is prohibited in the territory of the Republic of Poland, subject to Article 5:

- 1) development, production, manufacturing, processing, consumption or otherwise acquiring, collecting, stockpiling, sale or transfer to anyone of chemical weapons,
- 2) use of chemical weapons,
- 3) engaging in any military preparations to use chemical weapons,
- 4) use of riot control agents as a method of warfare,
- 5) abetting or assistance in engaging in the activity prohibited under subparagraphs 1-4 above.

¹ Journal of Laws of the Republic of Poland.

Article 5.

The production, manufacturing, processing, consumption, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors, mentioned in Schedule 1 of the Annex of Chemicals to the Convention, hereinafter referred to as “the Schedule 1”, may be carried out only for the purposes not prohibited under the Convention and in the amounts allowed therein and in accordance with its requirements.

Article 6.

1. The production, manufacturing, processing, consumption, acquiring, collecting, storage, sale, transfer of use of toxic chemicals or their precursors mentioned in the Schedule 1 may be carried out on the basis of a permit.
2. The permit referred to in paragraph 1 shall be issued by the minister for economy, subject to paragraph 3.
3. The permits referred to in paragraph 1, for the organisational units and cells subjected to the Minister for National Defence and supervised by it, as well as for state-owned enterprises, for which it is founding organ, shall be issued by the Minister for National Defence.

Article 7.

1. The permit for production, manufacturing, processing, consumption, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors, mentioned in the Schedule 1 is independent of the entry to the record of entrepreneurs as well as of the concession and permission, referred to in the provisions related to the business activity.
2. Granting, refusal to grant, modification and withdrawal of permit or limitation of the scope thereof in relation with the application shall be effected through administrative decision.
3. The permit shall be granted for a limited period of time, not shorter than 2 years and not longer than 50 years.
4. To granting, refusal to grant, modification and withdrawal of permit or limitation of the scope thereof in relation with the application the provisions of Article 16, Article 17 par. 1 and 2, Article 18, Article 20, Article 21 par. 1-5, Article 22, Article 23 and Article 26 of the Law of 19 November 1999 – Law on Business Activity (J.of L. No. 101, item 1178, of 2000, No. 86, item 958, No. 114, item 1193 and of 2001 No. 49, item 509) shall apply accordingly.

Article 8.

The minister for economy shall determine through regulation the procedure of issuing of permits for the production, manufacturing, processing, consumption, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors mentioned in the Schedule 1. The said regulation shall determine in particular:

- 1) the specimen of applications to issue permit for production, manufacturing, processing, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors mentioned in the Schedule 1,
- 2) documents to be attached to the applications, referred to in subparagraph 1,
- 3) specimen of permit for production, manufacturing, processing, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors mentioned in the Schedule 1.

Article 9.

1. The Minister for National Defence shall determine through regulation the scope and detailed conditions of production, manufacturing, processing, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors mentioned in the Schedule 1 in the organisational units and cells subjected to or supervised

by it as well as in the state-owned enterprises for which it is founding organ. The regulation shall determined in particular:

- 1) manner of preparation of the applications for permit to carry out the activity referred to in Article 6 as well as the documents to be attached to the applications,
 - 2) organisational units authorised to produce toxic chemicals or their precursors for protective purposes,
 - 3) conditions of production of toxic chemicals or their precursors for research, medical or pharmaceutical purposes,
 - 4) procedure and periods of transfer of information connected with the production, manufacturing, processing, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors mentioned in the Schedule 1,
 - 5) conditions of training of military forces related to the use of toxic chemicals.
2. The Minister for National Defence shall transfer to the minister for economy the copies of the issued permits for production, manufacturing, processing, acquiring, collecting, storage, sale, transfer or use of toxic chemicals or their precursors in the organisational units and cells referred to in par. 1.

Chapter 3

External trade in toxic chemicals and their precursors

Article 10.

1. The importation, exportation and transit through the Polish customs area of toxic chemicals and their precursors mentioned in the Schedule 1 is allowed, subject to permission, and furthermore subject to Article 11.

The permission for importation, exportation and transit referred to in par. 1 shall be issued by the minister for economy in accordance with the principles and in the manner determined in the Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws (J. of L. No. 119, item 1250).

Article 11.

1. The exportation, importation and transit through the Polish customs area of toxic chemicals and their precursors mentioned in the Schedule 1, to and from the States, which are not party to the Convention is prohibited.
2. The exportation, importation and transit through the Polish customs area of toxic chemicals and their precursors mentioned in the Schedule 1, to and from the States - Parties to the Convention is allowed only for the purposes not prohibited under the Convention and in the amounts allowed therein and in accordance with its requirements.

Article 12.

1. The exportation, importation and transit through the Polish customs area of toxic chemicals and their precursors mentioned in the Schedule 2 of the Annex of Chemicals to the Convention, hereinafter referred to as "the Schedule 2" is allowed only to and from States – Parties to the Convention.
2. The exportation, importation and transit through the Polish customs area of toxic chemicals and their precursors mentioned in the Schedule 3 of the Annex of Chemicals to the Convention, hereinafter referred to as "the Schedule 3" is allowed only to and from States – Parties to the Convention, subject to par. 3.
3. The exportation, importation and transit through the Polish customs area of toxic chemicals and their precursors, mentioned in the Schedule 3 from the States – Parties to the Convention is allowed to and from

States, which are not party to the Convention, provided that in case of the exportation and transit to these States, such exportation and transit shall be subject to the delivery of end user declaration, issued by competent authorities of the said States.

The declaration referred to in par. 3 shall contain the data determined in the Article 23 par. 4 of the Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws.

Chapter 4

Declarations and their verification

Article 13.

1. The minister for economy shall maintain the national system of collection and processing of data connected with the activity covered by the Convention and shall prepare draft declarations required by the Convention.
2. The minister for economy shall transmit draft declarations referred to in par. 1 to the minister for foreign affairs.

Article 14.

1. The entities and entrepreneurs, referred to in Article 2, carrying out the activity with toxic chemicals and their precursors, covered by the provisions of the Convention shall transmit to the minister for economy, the information on that activity connected with:
 - 1) production, manufacturing, consumption, processing, acquiring, collecting, storage, sale, transfer and use of chemicals mentioned in the Schedule 1, taking into account the provisions of Part VI of the Annex on implementation and verification to the Convention,
 - 2) production, consumption, processing or trade in chemicals mentioned in the Schedule 2, taking into account the provisions of Part VII of the Annex on implementation and verification to the Convention,
 - 3) production or trade in chemicals mentioned in the Schedule 2, taking into account the provisions of Part VIII of the Annex on implementation and verification to the Convention,
 - 4) production of discrete organic chemicals not mentioned in the Schedule 1, Schedule 2 and Schedule 3, taking into account the provisions of Part IX of the Annex on implementation and verification to the Convention,
 - 5) external trade in toxic chemicals and their precursors mentioned in the Schedule 1, Schedule 2 and Schedule 3,
 - 6) possessing of riot control agents.
2. The entities and entrepreneurs referred to in Article 2 shall transmit every year the information referred to in par. 1, within the following periods:
 - 1) before 30 September – in case of the information, which relates to the activity planned in the following calendar year,
 - 2) before 28 February – in case of the information, which relates to the activity carried out in the preceding calendar year.
3. The information referred to in par. 1 shall be true, reliable and full as well as shall meet the requirements determined in the Convention.
4. The minister for economy, in consultation with the minister for foreign affairs and Minister for National Defence shall determine through regulation the detailed data, which should be included by the information referred to in par. 1. The regulation shall determine in particular:
 - 1) the specimen of declarations, which should contain the information on the activity with chemicals and their precursors covered by the provisions of the Convention,

- 2) procedure and periods of transmission of information for the purposes of the preparation of the declarations.

Article 15.

1. The information referred to in Article 14 par. 1-3 shall be subject to verification.
2. The minister for economy shall be the organ competent for the verification referred to in par. 1, except the organisational units and cells subjected to the Minister for National Defence and supervised by it, as well as state-owned enterprises, for which it is founding organ.
3. The verification referred to in par. 1, in the organisational units and cells subjected to the Minister for National Defence and supervised by it, as well as in the state-owned enterprises for which it is founding organ, shall be carried out by the Minister for National Defence.

To the verification referred to in par. 1 the provisions of the Law of 28 September 1991 on treasury control (J. of L. of 1999, No. 54, item 572, No. 83, item 931, of 2000 No. 70, item 816, No. 104, item 1103, No. 116, item 1216 as well as of 2001 No. 14, item 143) concerning control proceedings as well as the provisions of Articles 29-31 of the Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws, shall apply accordingly.

Chapter 5 Inspection activity

Article 16.

The inspection team, within its tasks determined in the Annex on implementation and verification to the Convention shall be entitled to:

- 1) enter the premises of each facility in the territory of the Republic of Poland in relation with which:
 - a) the information or declaration was submitted in connection with the activity carried out in accordance with Article VI of the Convention,
 - b) challenge inspection was requested in accordance with Article IX par. 8 of the Convention,
 - c) an investigation has been initiated in accordance with Article X par. 9 of the Convention,
- 2) carry out other inspection activity, in accordance with the Convention,
- 3) use equipment authorised in accordance with the Convention, including installation of equipment used for permanent monitoring of the facilities,
- 4) interview the owner of the controlled facility or his/her representative,
- 5) review documents and records,
- 6) take samples for analysis.

Article 17.

1. The inspection team shall be accompanied by escorting team, designated by the minister competent for the controlled facility, in consultation with the minister for foreign affairs.
2. The members of the escorting team shall have the same rights as the members of the inspection team referred to in Article 16.

Article 18.

1. During the inspection the controlled entities and entrepreneurs, referred to in Article 2 above, shall in relation with the inspection team and the escorting team:

- 1) make available the facilities and plants, in which the activity is carried out with chemicals and their precursors covered by the provisions of the Convention,
 - 2) be present during the inspection,
 - 3) provide with relevant information and facilitate insight into the documents and records within the scope of control,
 - 4) make copies of requested documents and records,
 - 5) take samples or co-operate in taking of samples,
 - 6) facilitate to the inspection team the use of communications services as well as, if possible, other equipment in the controlled facility,
 - 7) ensure appropriate working conditions, including individual premises and places for storage of documents.
2. During the inspection the provisions of Article 17 par. 2, 3 and 5 of the Law of 28 September 1991 on treasury control shall apply accordingly.

Article 19.

During the inspection the controlled entities and entrepreneurs, referred to in Article 2 above shall be entitled to:

- 1) participate in the works of the escorting team,
- 2) submit explanations and formulate reservations during the inspections,
- 3) be acquainted with findings of the inspection and collected documentation,
- 4) receive the report of the inspection and formulate observations thereto,
- 5) participate in de-briefing meetings of the inspection and formulate observations.

Article 20.

1. The costs connected with the inspection shall be borne from the funds of the state budget, which shall be planned by appropriate ministers regarding their respective parts of the budget.
2. The ministers competent for the inspections shall submit to the minister for foreign affairs the application for the compensation of the incurred costs, which shall be transmitted to the Organisation for the Prohibition of Chemical Weapons, hereinafter referred to as "the Organisation".

Article 21.

The Council of Ministers shall determine through regulation the detailed procedure for the receipt of inspections of the Organisation in the territory of the Republic of Poland. The regulation shall determine in particular:

- 1) procedure of notification on the inspection,
- 2) composition of the escorting team,
- 3) obligations of the minister competent for inspected facility, related to:
 - a) notification of competent authorities as well as owner of the facility on planned inspection,
 - b) preparation of the inspection,
 - c) assurance to the inspection team and escorting team of access to the facility covered by the inspection, transportation to and from the inspection site, accommodation, working premises, translations, use of communication services as well as medical care,
 - d) assurance that the inspection is carried out in accordance with the procedures set forth in the Convention,
- 4) manner of coverage of inspection costs as well as procedure of application to the Organisation for the compensation of incurred costs.

Chapter 6

Protection of information

Article 22.

1. The information obtained in connection with the implementation of the Convention, marked with the clause “OPCW restricted” shall be protected and made available in accordance with the principles determined in the law of 22 January 1999 on the protection of secret information (J. of L. No. 11, item 95, of 2000 No. 12, item 136, No. 39, item 162 and of 2001 No. 22, item 247 and No. 27, item 298) related to the secret information marked with the clause “restricted”.
2. The information obtained in connection with the implementation of the Convention, marked with the clause “OPCW protected” shall be protected and made available in accordance with the principles determined in the law referred to in par. 1, related to the secret information marked with the clause “confidential”.
3. The information obtained in connection with the implementation of the Convention, marked with the clause “OPCW highly protected” shall be protected and made available in accordance with the principles determined in the law referred to in par. 1, related to the secret information marked with the clause “secret”.
4. The information obtained from the entities and entrepreneurs, referred to in Article 2 above, in connection with the obligation referred to in Article 14, and marked with appropriate clauses shall be protected and made available in accordance with the principles determined in the law referred to in par. 1, accordingly to the clause attributed to it.

Chapter 7

Competencies of the organs of public administration

Article 23.

1. The functions of the National Authority referred to in the Convention shall be carried out by the minister for foreign affairs.
2. The tasks of the minister for foreign affairs, as National Authority, shall include:
 - 1) preparation and realisation of the assumptions of the policy of the Republic of Poland in relation with the Organisation,
 - 2) contacts with the Organisation and with other States – Parties to the Convention within the issues connected with the implementation of its provisions,
 - 3) co-participation in the receipt of inspections of the Organisation in the territory of the Republic of Poland,
 - 4) co-ordination of actions undertaken in the territory of the Republic of Poland in connection with the implementation of the obligations resulting from the Convention,
 - 5) provision to the States – Parties to the Convention, in consultation with the Minister for National Defence, through the Organisation, of assistance in case of threat of use or use against them of chemical weapons, in accordance with the provisions of the Convention.

Article 24.

1. Minister for economy shall supervise the activity connected with the implementation of the provisions of the Convention in the territory of the Republic of Poland.
2. When supervising the activity referred to in par. 1 the minister for economy shall:

- 1) maintain national system of collection and processing of data resulting from the activity referred to in Articles 5-12, as well as shall prepare draft declarations required by the Convention and shall transmit them to the minister for foreign affairs,
- 2) monitor the activity of entities and entrepreneurs referred to in Article 2 above, in the sphere of the implementation of the Convention in the Republic of Poland, except the organisational units and cells subjected to the Minister for National Defence and supervised by it as well as state-owned enterprises for which it is founding organ; in particular it shall ensure the monitoring of external trade in toxic chemicals and their precursors, mentioned in the Schedule 1, Schedule 2 and Schedule 3,
- 3) ensure, in co-operation with the Minister for National Defence the possibility of chemical analyses connected with the implementation of the Convention,
- 4) carry out, in co-operation with the minister for foreign affairs, Minister for National Defence and minister for interior the activity connected with the preparation, receipt and realisation of inspections of the Organisation in the territory of the Republic of Poland , except the organisational units and cells subjected to the Minister for National Defence and supervised by it as well as state-owned enterprises for which it is founding organ, as well as the organs and organisational units subjected to and supervised by the minister for interior.

Article 25.

1. The Minister for National Defence shall ensure the implementation of the Convention by the organisational units and cells subjected to and supervised by it as well as state-owned enterprises for which it is founding organ, through:
 - 1) monitoring of the implementation of the Convention,
 - 2) assurance, in co-operation with the minister for economy, of possibility of chemical analyses connected with the implementation of the Convention,
 - 3) – in co-operation with the minister for foreign affairs, minister for economy and minister for interior – the activity connected with the preparation, receipt and carrying out of the inspections of the Organisation.
2. The Minister for National Defence may designate, upon request of the minister for foreign affairs, within possessed forces and assets destined for the protection against the chemical weapons, the part thereof in order to provide, through the Organisation, other States – Parties to the Convention, with the assistance in case of threat of use or use against them of chemical weapons.

Article 26.

1. The minister for interior shall monitor the implementation of the Convention in the organs and organisational units subjected to or supervised by it, as well as shall determine the tasks of the said organs and units to this end.
2. The minister for interior shall ensure:
 - 1) border control of inspection teams in accordance with the principles applied to the members of diplomatic personnel in designated border crossing points,
 - 2) security to the members of the inspection teams during their stay in the territory of the Republic of Poland and during their transit,
 - 3) – in co-operation with the minister for foreign affairs and minister for economy – the activity connected with the preparation, receipt and carrying out of inspections of the Organisation in the organisational units subjected to and supervised by it.

Chapter 8 Penal sanctions²

Article 27.

A person who uses riot control agents as a method of warfare, shall be sentenced to imprisonment for 1 year up to 10 years.

Article 28.

1. A person who, without required permit or in contravention of its conditions, for the purposes not prohibited under the Convention, produces, manufactures, processes, acquires, collects, stores, sells, transfers, uses or possesses toxic chemicals or their precursors mentioned in the Schedule 1, shall be sentenced to fine, limitation of freedom or imprisonment for 3 months up to 5 years.
2. The same penalty shall be applicable to a person who transfers the toxic chemicals or their precursors mentioned in the Schedule 1 to unauthorised person.

Article 29.

A person, who without required permit or in contravention of its conditions, effects external trade in toxic chemicals or their precursors, mentioned in the Schedule 1, shall be sentenced to fine, limitation of freedom or imprisonment for 3 months up to 5 years.

Article 30.

1. A person who fails to meet the obligation to inform authorised organ or transmits false information on the activity connected with toxic chemicals or their precursors, covered by the Convention, shall be sentenced to fine, limitation of freedom or imprisonment for 3 months up to 5 years.
2. The perpetrator of the act referred to in par. 1 acting unintentionally, shall be sentenced to fine, limitation of freedom or imprisonment for up to 1 year.

Article 31.

A person who refuses the access to the inspection team or escorting team to the controlled facility, submits false information to the members of the said teams or otherwise impedes or hinders the inspection, shall be sentenced to fine, limitation of freedom or imprisonment for up to 3 years.

Article 32.

In case of sentence for the crime determined in Article 27-29 the court may rule the seizure of goods, technologies and other objects used in or destined for the commitment of crime or obtained directly or indirectly

² This Law does not repeat the sanctions contained in the Penal Code of the Republic of Poland, which relate to the weapons of mass destruction. Articles 120 and 121 of the Code state the following:

“Art. 120. A person who uses the weapon of mass destruction prohibited by international law, shall be sentenced to imprisonment for the time not shorter than 10 years, for 25 years or for life.

Art. 121. § 1. A person who, in contravention of the prohibitions of the international law or provisions of law (statute), manufactures, collects, acquires, sells, stores, transports or transmits the weapons of mass destruction or develops them with the view to their manufacturing or use, shall be sentenced to imprisonment for 1 year up to 10 years.

§ 2. The same penalty shall be applicable to a person, who allows the commitment of the act referred to in § 1.”

from the crime, including monetary means, securities and currency values, as well as other property benefits, even if not owned by the perpetrator.

Chapter 9
Transitional and final provisions

Article 33.

The entities and entrepreneurs carrying out on the day of the entry into force of this Law the activity without permit, referred to in Article 6 par. 1 may within 30 days as from the entry into force of this Law apply to the competent organ for the issuance of required permit.

Article 34.

This Law shall enter into force after 3 months as from its publication.³

³ The Law entered into force on 26 October 2001.

Appendix IV

LAW of 29 November 2000

on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws

Chapter 1 General Provisions

Article 1.

This Law regulates the principles governing external trade in strategic goods, technologies and services relevant to the national security, as well as for the maintenance of international peace and security, principles of control and recording of such a trade as well as responsibility for illegal trade in the said goods, technologies and services.

Article 2.

External trade, referred to in Article 3 item 8 shall be prohibited by law, if the conditions and limitations set forth in this Law, provisions of other Laws and international agreements and other international obligations are not met.

Article 3.

The definitions used in the present Law shall have the following meaning:

- 1) dual use goods – the goods and technology, which may be used both for civilian and military purposes, determined in the list referred to in Article 6 section 2 (1),
- 2) armaments – weapons, munitions, explosives, products, their parts and technologies determined in the list referred to in Article 6 section 2 (2),
- 3) strategic goods – dual use goods and armaments,
- 4) Polish customs area – territory of the Republic of Poland,
- 5) exportation – activity consisting in the exportation of strategic goods from the Polish customs area, including re-exportation as well as their transfer, particularly by phone, fax and other electronic media,
- 6) importation – activity consisting in the introduction of strategic goods to the Polish customs area as well as their transfer, particularly by phone, fax and other electronic media,
- 7) transit – procedure set forth in Article 97 § 1 item 1 and 2 of the Law of 9 January 1997 – Customs Code (Dz.U. No. 23, item 117, No. 64, item 40, No. 121, item 770, No. 157, item 1026, No. 160, item 1084, of 1998, No. 106, item 668, No. 160, item 1063, of 1999, No. 40, item 402, No. 72, item 802, of 2000, No. 22, item 269),
- 8) trade:
 - a) any transfer through the border of the Republic of Poland of strategic goods, caused in particular by exportation, importation, transit or conclusion of leasing, donation, loan, lease contracts, or contribution to a company,
 - b) intermediary service, trade consulting, assistance in the conclusion of contracts as well as participation in any form in the activities referred to in subparagraph (a), also abroad,
- 9) entrepreneur – entrepreneur in the meaning of the provisions of the Law of 11 November 1999 – Business Activity Law (Dz.U. No. 101, item 1178),
- 10) trade control organ – minister for economy,

- 11) consulted organs – minister for foreign affairs, Minister for National Defence, minister for internal affairs, Chief of State Protection Office, Chairman of National Customs Office, Chairman of National Atomic Agency as well as National Customs Inspector.

Article 4.

Importation to the Polish customs area, exportation from the Polish customs area as well as transit through the Polish customs area of weapons and munitions by natural persons, for the purposes other than commercial and industrial ones shall be regulated by separate provisions of law.

Article 5.

To the issues not regulated in this Law the provisions of Administrative Proceedings Code shall apply, unless the present Law provides otherwise.

Chapter 2 Permits for trade in strategic goods

Article 6.

1. The trade in strategic goods may be effected only on the basis and in accordance with the scope determined in the permit for exportation, importation or transit, as well as for intermediary services, trade advisory services, assistance in the conclusion of contracts and for participation in any form in the activities referred to in Article 3 item 8 (a), hereinafter referred to as “the permit”, subject to article 19 section 1.
2. Minister for economy, in agreement with the minister for foreign affairs and Minister for National Defence, taking into account the view of the Chief of State Protection Office shall determine in a regulation:
 - 1) the list of dual use goods, for which trade the permit is required,
 - 2) list of armaments, for which trade the permit is required –
 - taking into account, when preparing the said lists, the appropriate international lists.
3. The Council of Ministers shall determine in a regulation the list of countries, to which the exportation or transit by Polish customs area of strategic goods is prohibited or limited, taking into account:
 - 1) important interest of the foreign policy of the Republic of Poland,
 - 2) factors of defence or security of the Republic of Poland,
 - 3) important economic interest of the Republic of Poland,
 - 4) obligations of the Republic of Poland resulting from the international agreements, including those related to the non-proliferation and control of strategic goods.
4. The entrepreneur shall apply for permit for exportation or intermediary services in the exportation of goods non mentioned in the lists referred to in section 2, if he knows or he has been informed that the exported goods will or may be used in total or in part for the purposes or in the circumstances referred to in Article 10 section 1.

Article 7.

1. The following permits shall be issued for the trade in dual use goods:
 - 1) Individual permit – which covers particular dual use good or service concerning the said good as well as the country or countries with which the trade may be carried out by appropriate intermediary,
 - 2) general permit – which covers the type or category of dual use goods, which may be subject of trade with one or more particular countries,
 - 3) global permit – which covers the type of category of dual use good, and which may be subject to trade, without determining the country, to which such a trade may be effected.

2. In case of the trade in armaments or rendering of services only individual permits shall be issued.

Article 8.

1. The minister for economy shall issue global and general permits in a regulation.
2. The permits referred to in section 1 may use entrepreneur who evidences the application for the period of at least 3 years of internal control and trade administration system, referred to in article 10 section 2, subject to article 50 section 2, as well as submits to the control organ declaration on the commencement of external trade in strategic goods.

Article 9.

1. Individual permit shall be issued upon the request of entrepreneur.
2. Trade control organ shall be competent for the issuance of individual permits, subject to Article 19 section 1.
3. The application for individual permit shall contain:
 - 1) identification of the entrepreneur, its registered place of business and address,
 - 2) number in entrepreneurs' register, referred to in separate provisions,
 - 3) determination of type and scope of business activity carried out by entrepreneur,
 - 4) identification of exporter or importer, their registered places of business and addresses,
 - 5) identification of manufacturer and end user, their registered places of business and addresses,
 - 6) determination of strategic goods or services, subject to external trade, their description, quantity and value,
 - 7) information on the manner of use of strategic goods by end user,
 - 8) determination of final destination country,
 - 9) declaration stating that entrepreneur will undertake all steps necessary so that the goods referred to in the application reach the end user and that he will inform the foreign importer that the modification of use or end user requires prior consent of Polish trade control organ,
 - 10) other data determined in the regulation issued on the basis of section 6.
4. The entrepreneur shall attach in particular to the application for individual permit for trade in strategic goods:
 - 1) declaration that there are no circumstances in the trade referred to in Article 10 section 1,
 - 2) copy of concession for activity related to the trade in explosives, weapons and munitions as well as products and technologies with military or law enforcement destination, referred to in the separate provisions,
 - 3) draft agreement concerning the said trade,
 - 4) copy of certificate referred to in Article 11 section 4,
 - 5) importation certificate or end user declaration in case of exportation,
 - 6) other documents, which in the view of the entrepreneur may be relevant to the examination of the case.
5. The document made in foreign language shall be accompanied by its translation into Polish made by sworn translator.
6. Minister for economy shall determine, in a regulation:
 - 1) other data, which should be contained in the application for individual permits,
 - 2) specimens of applications for individual permit for exportation, importation and transit of strategic goods, intermediary services, trade consultant services, assistance in the conclusion of contracts, as well as participation in the actions referred to in Article 3 subparagraph 8 (a),
 - 3) documents other than those mentioned in section 4 that should be attached to the application referred to in section 3,
 - 4) specimens of individual permits for the trade

- taking into account the types of goods and forms of the trade.

Article 10.

1. Before the submission of the application for individual permit the entrepreneur shall make sure that:
 - 1) end user intends to use the armaments to infringe or repressions in the area human rights and fundamental freedoms,
 - 2) delivery of armaments poses threat to peace or otherwise contributes to the destabilisation in the region,
 - 3) end destination country supports, facilitates or encourages terrorism or international crime,
 - 4) armaments may be used for other purpose than for the satisfaction of justified needs of defence and security of receiver's country.
2. For the purpose of the realisation of the obligation referred to in section 1, the entrepreneur shall create and apply internal control and management system related to the strategic goods trade, hereinafter referred to as "internal control system".
3. Should the entrepreneur, having shown the best diligence possible, not be able to find whether there appear circumstances referred to in section 1, it may request from the trade control organ the binding explanation concerning that issue. Trade control organ shall provide the entrepreneur with the said explanation, within 3 months as from the submission of the application. In justified cases that period may be extended to 6 months.

Article 11.

1. Internal control system shall determine in particular the tasks of the enterprise organs, basic tasks for the posts related to the control and management of the trade, manner of co-operation of entrepreneur with governmental administration in this area, principles of staff recruitment, archiving of data, training, internal control, realisation of procurements.
2. Internal control system shall possess the certificate of consistency with requirements of international norms ISO 9000 and principles determined in section 1.
3. Certification referred to in section 2 shall be carried out by the authorised control units, which possess accreditation within the national accreditation system created on the basis of the Law of 28 April 2000 on the system of consistency evaluation, accreditation and amending certain laws (Dz.U. No. 43, item 489).
4. Certificate of consistency with requirements, referred to in section 1 shall be issued by the units referred to in section 3.
5. Certificate referred to in section 4 shall be valid for 3 years.
6. Within the validity period of the certificate the authorised control units shall carry out at least 5 controls of consistency of functioning of internal control and management system of trade with the requirements referred to in section 1 and 2.
7. Minister for economy, shall determine in a regulation the list of certifying units authorised to carry out the certification and control of control and trade management system, among the accredited units in national accreditation system.

Article 12.

1. Trade control organ, having obtained the view of consulting organs, shall issue individual permit, having found that the requirements required for its issuance have been met.
2. The issuance of individual permit shall be effected through an administrative decision.

3. Consulting organs, when preparing their view, referred to in section 1, shall be entitled to request from the entrepreneur the information facilitating the verification of the data contained in the application for individual permit.
4. Before taking decision concerning individual permit trade control organ:
 - 1) shall require the entrepreneur to complete, within the specified period of time, the application with lacking certifying documentation, stating that the legal requirements necessary for the trade in strategic goods have been met,
 - 2) may effect trial verification of information contained in the application.
5. To the control referred to in section 4 (2) the provisions of Art. 29 section 4 and Article 30 section 1 and 2 of the present Law shall apply accordingly.
6. The entrepreneur shall inform trade control organ any alterations concerning the data contained in the application within 14 days as from their creation.

Article 13.

When the entrepreneur knows or has justified basis to suspect that the strategic goods were or may be used in total or in part for the purposes and in the circumstances referred to in Art. 10 section 1, he shall take all the steps necessary to find the factual use of the said goods and inform the trade control organ thereon.

Article 14.

1. Individual permit as well as the rights resulting therefrom shall be inalienable.
2. Individual permit for trade in strategic goods shall be the document significant for the purposes of customs clearance.
3. Original of individual permit shall be attached to customs declaration or application for issuance of customs destination.
4. Issuance of individual permit for exportation or transit as well as for the intermediary services in exportation or transit may be depending on the meeting of additional requirements and conditions determined by the trade control organ, and in particular on the submission by foreign end user of the declaration on the use of strategic goods or submission if international importation certificate.
5. Individual permit shall state the validity term thereof, not longer however than one year.
6. A fee shall be collected for the issuance of individual permit. It shall constitute the income of the state budget.
7. Minister for economy in consultation with the minister for public finances shall determine in a regulation the amount of fees for the issuance of individual permit. The fees shall be determined on the level reflecting costs actually incurred by trade control organ when issuing individual permit.

Article 15.

1. Trade control organ shall refuse, through administrative decision, the trade permit if:
 - 1) trade is in breach with the obligations of the Republic of Poland resulting from international treaties,
 - 2) it is required by the important interest of foreign policy of the Republic of Poland,
 - 3) it is required by factors of defence or security of the Republic of Poland,

- 4) it is required by important economic interest of the Republic of Poland,
 - 5) entrepreneur does not guarantee that the trade would be carried out in accordance with the legal provisions.
2. Trade control organ shall refuse, through administrative decision, the permit for trade in strategic goods, if the said goods may be in total or in part used for illegal or inconsistent with the interest of the Republic of Poland implementation, production, exploitation, service, maintenance, storage, detection, identification or proliferation of mass destruction weapons and in particular of chemical, biological or nuclear weapons, as well as implementation, production, maintenance, storage of the means able to transfer such weapons.

Article 16.

Trade control organ may refuse, through administrative decision the individual permit if:

- 1) there is a risk of alteration of end user of destination of strategic goods,
- 2) the entrepreneur in its hitherto activity infringed the legal regulations concerning the trade in strategic goods.

Article 17.

1. Trade control organ, taking into account the view of consulting organs, may at any time, through administrative decision, withdraw or modify individual permit if:
 - 1) it is required by important interest of foreign policy of the Republic of Poland,
 - 2) it is required by the factors of defence and security of the Republic of Poland,
 - 3) it is required by important economic interest of the Republic of Poland,
 - 4) it is necessary for the implementation of international treaties to which the Republic of Poland is a party,
 - 5) there is a risk of alteration of end use or destination of strategic goods,
 - 6) the entrepreneur carries out the trade in the manner inconsistent with the conditions determined in the permit,
 - 7) the entrepreneur due to his fault, lost warrant of trade consistent with law.
2. The withdrawal or modification of individual permit caused by the entrepreneur shall be without compensation.

Article 18.

The entrepreneur, whose permit was withdrawn for the reasons, referred to in Art. 17 section 1 (6) may apply once again for the issuance of permit not earlier than after expiration of 3 years as from the day, on which the decision on withdrawal of permit became final.

Article 19.

1. Transit of foreign dual use goods, which transport shall end outside the Polish customs area, requires the permit to be issued by the director of boundary customs office.
2. The permit referred to in section 1 shall be issued on the request of the carrier.
3. Minister for public finances in consultation with the minister for economy shall determine in a regulation the specimen of application referred to in section 2 and specimen of permit for transit of dual use goods.
4. The specimen of application and of permit referred to in section 3 shall contain in particular: the number of exportation license, country of origin of the goods, name of carrier, number of lading bill, name of exporter and its registered address, name of receiver and its registered address, name and full description of the goods or technology, control number, quantity and value, name of border crossing point, through which the goods will be introduced to the Polish customs area, declaration of the carrier that the goods covered by

international control will be transported through the Polish customs area on the basis of exportation license from exporter's country to the indicated receiver in the same condition, in which it was introduced to the Polish customs area.

Article 20.

1. Exportation, importation or transit of strategic goods may be effected in indicated customs offices.
2. Minister for public finances, in consultation with the minister for economy, shall determine in a regulation the customs offices, referred to in section 1, taking into account the assurance of proper control of exportation, importation and transit of strategic goods.

Article 21.

1. There shall be a register, hereinafter referred to as "the register" of granted individual permits and of entrepreneurs, who met the conditions referred to in Article 8 section 2.
2. The register shall be carried out by trade control organ.
3. The entry of individual permit to the register shall be made immediately after it has been granted. The entry of the entrepreneur shall be effected immediately after the submission by him of a declaration referred to in Article 8 section 2.
4. Minister for economy shall determine in a regulation the manner, in which the register is carried out, taking into account in particular the types of granted permits as well as the quantity and value of strategic goods covered by the permit.

Chapter 3 **Importation Certificate and end user declaration**

Article 22.

1. When it is required by the competent authorities of the country of foreign exporter, trade control organ, upon request of entrepreneur, may issue importation certificate or confirm the end user declaration.
2. To the application for the issuance of importation certificate the provisions of Article 9 section 3-5 shall apply accordingly.
3. Importation certificate as well as end user declaration shall be the documents to be shown to the competent authorities outside the Republic of Poland and shall certify the credibility of the importer and the control by competent organs of the Republic of Poland of transactions related to the importation into the Polish customs area of strategic goods.
4. A fee shall be collected for the issuance of importation certificate as well as the confirmation of end user declaration. It shall constitute the income of the state budget.
5. Minister for economy in consultation with the minister for public finances shall determine in a regulation the amount of fees for the issuance of importation certificate and confirmation of end user declaration. These fees shall be determined on the level reflecting the costs actually incurred by the trade control organ when issuing importation certificate and confirmation of end user declaration.
6. Trade control organ may refuse the importation certificate or refuse to confirm the end user declaration if it is not possible to confirm the facts referred to in section 3, due to the lack of warrant of legal trade in strategic goods or non-application by the entrepreneur of internal control system.

7. Minister for economy shall determine in a regulation specimen of importation certificate.
8. Specimen referred to in section 7 shall contain in particular: name of importer, name of exporter, their registered places of business and addresses, name and description of strategic goods, control number, quantity and value, description of final use of the strategic goods as well as the declaration that the importer:
 - 1) has pledged itself that it is going to introduce the goods specified in the certificate to the Polish customs area and to inform immediately the trade control organ on any modifications of the contract terms,
 - 2) has submitted the declaration that he is conscious that the re-exportation, modification of end user or declared final use of the goods require prior consent of the trade control organ,
 - 3) in consultation with end user has pledged himself to facilitate the control of consistency of use of goods with the conditions of permit to be carried out by trade control organ, with possible participation of the representatives of the authorities of country of exporter and at the place of their use during whole period while they are in the Polish customs area.

Article 23.

1. For the purposes of the exportation of strategic goods, trade control organ shall request from the entrepreneur the submission of importation certificate or end user declaration confirmed by competent authorities of the country of foreign importer.
2. End user declaration shall be issued by foreign end user and shall contain the data required by trade control organ.
3. Declaration referred to in section 2 shall be also confirmed by foreign importer and competent authorities of final destination country.
4. Declaration referred to in section 2 shall contain in particular:
 - 1) determination of final destination country,
 - 2) name and address of foreign end user,
 - 3) determination of strategic goods, its description, quantity and value,
 - 4) description of final use of strategic goods,
 - 5) indication of intermediary receivers and purchasers,
 - 6) obligation not to transfer the strategic goods to any other receiver without prior consent of trade control organ.

Article 24.

1. Entrepreneur who has obtained importation certificate, shall, within 30 days as from the clearance of strategic goods, apply to the director of customs office competent for the registered place of business of end user of the said goods for the issuance of certificate confirming that the goods covered by the said certificate have been actually and in the manner consistent with the legal regulations introduced to the Polish customs area. It shall be hereinafter referred to as "delivery verification certificate".
2. To the issuance of delivery verification certificate the provisions of Chapter VII of Administrative Proceedings Code shall apply accordingly.
3. The entrepreneur shall cover the costs incurred by customs office during the proceedings leading to the issuance of delivery verification certificate.
4. Minister for economy, taking into account the view of the Chairman of National Customs Office shall determine in a regulation the specimen of delivery verification certificate and manner of registration of issued certificates.

5. Specimen of delivery verification certificate shall contain in particular: name of importer, name of exporter, their registered places of business and addresses, name and description of goods or technology, control number, quantity and value, description of end use of the goods or technology, SAD number, number of bill of lading, bill of consignment or other document confirming the importation of goods or technologies and confirmation that the importer has submitted credible evidence confirming the delivery and introduced the goods or technologies mentioned in the certificate to the Republic of Poland, in accordance with the laws in force.
6. In case of exportation of strategic goods, trade control organ may request from the entrepreneur the submission of delivery verification certificate, issued by competent authorities of the importer's country.

Chapter 4

Recording of trade in strategic goods and information concerning that trade

Article 25.

1. The entrepreneur effecting trade in strategic goods shall record the said trade.
2. Minister for economy shall determine in a regulation manner of such recording, referred to in section 1, taking into account the conditions to be met by internal control system.

Article 26.

1. The entrepreneur effecting trade within general and global permits shall submit to trade control organ at least once per 6 months, the information on the realisation of the said trade.
2. Minister for economy shall determine in a regulation the scope of information referred to in section 1, covering in particular: quantity and value of goods, determination of country with which the said trade is carried out, names of importer, exporter, their registered places of business and addresses, indication of indirect receivers and purchasers.

Article 27.

Upon request of consulting organs trade control organ shall submit to the said organs the information on the realisation of trade in strategic goods.

Chapter 5

Trade control

Article 28.

1. The trade shall be subject to control.
2. The control shall include in particular:
 - 1) observance of the consistency of trade with the permit, including verification of the transaction after it is done,
 - 2) operation of internal control system,
 - 3) correctness of recording referred to in Article 25.
3. The control shall be carried out by trade control organ, with the assistance of the organs referred to in Article 29 section 2.
4. Trade control organ may request the control to be made by other competent state control organ.

Article 29.

1. To the control referred to in Article 28 section 1 trade control organ may nominate control team, hereinafter referred to as “the team”.
2. On the request of the minister for economy, minister for foreign affairs, Minister for National Defence, minister for public finances, minister for interior, Chief of State Protection Office, Chairman of National Atomic Agency, Chairman of National Customs Office and General Customs Inspector, shall designate to the team employees, soldiers or employees of subjected or supervised organisational units. The minister for economy may nominate to the team the experts, upon their consent.
3. Trade control organ, when nominating the members of the team shall designate the director, who co-ordinates the control procedures as well as prepares post-control protocol.
4. Control activities are carried out on the basis of the authorisation for control issued by the trade control organ.
5. Minister for economy shall determine, in a regulation specimen of control authorisation. The specimen shall contain in particular: indication of person, type and number of identity document, validity date of authorisation document as well as the information that upon request of the authorisation owner who carries out control actions, the directors, members of management as well as the employees of controlled entrepreneurs shall give information and show documents.

Article 30.

1. The members of the team shall be entitled in particular to:
 - 1) Have access to the real estate, building, premises or their parts, where the entrepreneur carries out the business activity, on the days and within the hours in which it is or should be carried out,
 - 2) request oral or written explanations, documents or other information carriers as well as submit data related to the object of the control.
2. Control actions shall be carried out in the presence of the controlled person, deputies of the controlled person or employed by him, and in case of absence of the said persons in the presence of the witness.
3. Post-control protocol shall be submitted by the team leader to the trade control organ.

Article 31.

1. In case of incorrectness in the trade, trade control organ shall request the entrepreneur to restore the status consistent with the present Law within one month as from the delivery of the request.
2. Upon ineffective expiration of the period referred to in section 1 trade control organ shall withdraw, through administrative decision, individual permit. In case of global and general permits trade control organ shall issue administrative decision prohibiting to the entrepreneur the use the permit. The trade control organ shall immediately inform consulting organs on the issuance of the said decision.
3. In the case referred to in section 2 the entrepreneur may obtain subsequently the individual permit or use global or general permit not earlier than upon expiration of 3 years accordingly, as from the day on which the decision on the withdrawal of individual permit and the decision on the prohibition of use of general or global permit became final.

Article 32.

To the issues not regulated in this Chapter the provisions of the Law of 28 September 1991 on treasury control (Dz.U. of 1999, No. 54, item 572, No. 83, item 931, and of 2000, No. 70, item 816) concerning control procedure shall apply.

Chapter 6
Penal provisions and monetary penalties**Article 33.**

1. He who effects trade without permit, or even inadvertently, contrary to the conditions determined in the permit, shall be subject to imprisonment from one year to 10 years.
2. If the perpetrator, effecting trade contrary to the conditions determined in the permit Laws inadvertently and has restored the status referred to in Article 31 section 1, shall be subject to fine, limitation of liberty or imprisoned up to 2 years.
3. The punishment referred to in section 1 shall apply to the perpetrator who committed the Law determined in section 1 or 2.
4. In case of sentence for the crime determined in sections 1-3 the court may decide on the seizure of strategic goods and of other objects used in or destined for the perpetration of or resulting directly or indirectly from the crime, including financial means and securities, even if they are not the property of the perpetrator.

Article 34.

He who fails to carry out obligations and conditions referred to in Article 24 section 1 or in Article 26 section 1, shall be subject to fine.

Article 35.

He who impedes control referred to in Article 28 section 1 shall be subject to fine.

Article 36.

The decision in the cases referred to in Articles 34 and 35 shall be made in accordance with the procedures determined in the Code on procedures in case of offences.

Article 37.

The entrepreneur who is not natural person, and who carries out trade without valid permit, shall be punished by the trade control organ with fine in amount of 200.000 zloty.

Article 38.

The entrepreneur who is not natural person and who carries out trade contrary to the conditions determined in the permit shall be punished by trade control organ in administrative decision with fine in amount up to 100 000 zloty.

Article 39.

The entrepreneur who is not natural person, and who fails to fulfil the obligations or conditions referred to in Article 24 section 1 or Article 26 section 1 shall be punished by trade control organ in administrative decision with fine in amount up to 50.000 zloty.

Article 40.

1. Monetary penalty shall not be sentenced if from the day on which the basis for liability referred to in Articles 37-39 were found the period of 5 years has lapsed.
2. The sentenced monetary penalty shall not be collected upon expiration of 5 years as from the day on which the sentence became final.

Article 41.

1. The period of payment of monetary penalty shall amount to 30 days as from the day on which the sentence became final.
2. Monetary penalty not regulated within the specified period shall be executed together with the interest for delay, in accordance with the procedure determined in the provisions on execution proceedings in administration.

Article 42.

If the payment of the monetary penalty within the period specified in Article 41 section 1 limits considerably or impedes further realisation of business activity by the entrepreneur, trade control organ may, upon request of the entrepreneur, issue administrative decision on the postponement of payment period or division thereof into instalments, for the period not longer than one year.

Chapter 7 Amendments to existing provisions

Article 43.

In the Law of 9 January 1997 Customs Code (Dz.U. No. 157, item 1026, No. 160, item 1084, of 1998 No. 106 item 668, No. 160, item 1063, of 1999 No. 40, item 402, No. 72, item 802, as well as of 2000, No. 22 item 269) in Article 14 paragraph 6a shall be replaced by the following:

“§ 6a. To the permits referred to in § 6 the provisions of article 17 item 20 of the Law of 11 December 1997 on the administration of external trade in goods and services (Dz.U. of 1997 No. 157, item 1026, of 1999, No. 5 item 587, No. 101, item 1178) shall apply.”

Article 44.

In the Law of 11 December 1997 on the administration of external trade in goods and services and on special trade (Dz.U. of 1997 No. 157, item 1026, of 1999, No. 5 item 587, No. 101, item 1178) the following amendments shall be introduced:

- 1) in the title the words “as well as in special trade” shall be deleted,
- 2) in article 1 section 1 the words “as well as in special trade” shall be deleted,
- 3) item 3 in Article 2 shall be deleted,
- 4) Chapters 4-6 shall be deleted,
- 5) Article 55 shall be deleted.

Article 45.

In the Law of 10 September 1999 on some compensation agreements concluded in connection with contracts on delivery for the purposes of national defence and security (Dz.U. No. 80, item 903) in Article 3 item 5 shall be replaced by the following:

“5) armaments or military equipment – shall mean armaments in the meaning of the Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws.

Article 46.

In the Law of 7 October 1999 on the support for industrial restructuring of defence potential and technical modernisation of the Armed Forces of the Republic of Poland (Dz.U. No. 83, item 932) in Article 4 item 6 shall be replaced by the following:

“6) armaments or military equipment – shall mean armaments in the meaning of the Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws.

Chapter 8
Transitional and final provisions

Article 47.

The proceedings instituted on the basis of the provisions of the Laws referred to in Article 44 and 51 and not finalised before the entry into force of this Law with final decision shall be cancelled.

Article 48.

1. The permits for importation, exportation or transit of goods and technologies covered by the lists of goods and technologies subject to specific control issued on the basis of Article 3 section 1 of the Law of 2 December 1993 on the principles of specific control of external trade in goods and technologies in connection with the international agreements and obligations (Dz.U. No. 129, item 598, of 1996 No. 106, item 496, of 1997 No. 88, item 554, and No. 157, item 1026 as well as of 1999 No. 70 item 775, and No. 83, item 931) with the entry into force of the present Law shall become individual decisions in the meaning of Article 7 section 1 item 1 and shall remain in force for the period for which they were issued, not longer however than until 31 December 2001.
2. The permits issued on the basis of Article 38 section 1 of the Law of 11 December 1997 on the administration of external trade in goods and services and on special trade (Dz.U. of 1997 No. 157, item 1026, of 1999, No. 5 item 587, No. 101, item 1178) within the scope related to the special trade, with the entry into force of the present Law shall become individual decisions in the meaning of Article 7 section 2 and shall remain in force for the period for which they were issued, not longer however than until 31 December 2001.

Article 49.

Executive provisions concerning the lists of goods and technologies covered by specific control of external trade issued before the entry into force of the present Law on the basis of hitherto existing provisions, shall remain in force until new executive provisions on the basis of the present Law are issued, not longer however than for 6 months as from the entry into force of the present Law.

Article 50.

1. Until the entry into force of the provisions of Article 9 section 1 and 4 and Article 10 section 1 individual permits may be issued to the entrepreneurs who before the entry into force of the present Law have been entered to the register of entrepreneurs carrying out special external trade on the basis of the provisions of Article 33 of the Law of 11 December 1997 on the administration of external trade in goods and services and on special trade as well as to those who submitted certificate referred to in Article 11 section 4.
2. Before the entry into force of Article 8 section 2 only individual permits shall be issued for the trade in dual use goods.

Article 51.

The Law of 2 December 1993 on the principles of specific control of external trade in goods and technologies in connection with the international agreements and obligations (Dz.U. No. 129, item 598, of 1996 No. 106, item 496, of 1997 No. 88, item 554, and No. 157, item 1026 as well as of 1999 No. 70 item 775, and No. 83, item 931) shall terminate.

Article 52.

The present Law shall enter into force on 1 January 2001, except:

- 1) Article 8 section 2, which shall enter into force after 3 years as from the publication of this Law,
- 2) Article 9 section 4 item 1 and 4 and Article 10 section 1, which shall enter into force on 1 January 2002.

Appendix V

No.	STATE	STATUS	SIGNATURE
1.	Bulgaria	Executive	22 April 1993
2.	Croatia	Executive	8 November 1994
3.	Cyprus	Executive	26 October 1992
4.	Czech Republic	Executive	6 September 1991
5.	Czech Republic	Executive	12 April 1995
6.	Egypt	Governmental	17 October 1996
7.	Finland	Governmental	4 November 1999
8.	France	Governmental	12 September 1996
9.	Greece	Governmental	18 June 1993
10.	Spain	Governmental	27 November 2000
11.	Netherlands	Executive	30 October 1996
12.	Ireland	Governmental	12 May 2001
13.	Lithuania	Governmental	4 April 2000
14.	Lithuania	Executive	28 September 1992
15.	Lithuania	Executive	10 November 2001
16.	Latvia	Executive	14 July 1994
17.	Morocco	Executive	26 June 1995
18.	Germany	Governmental	6 November 1991
19.	Russian Federation	Executive	20 November 1992
20.	Romania	Executive	13 August 1992
21.	Romania	Governmental	11 July 2001
22.	Slovakia	Executive	30 March 1993
23.	Slovenia	Governmental	28 August 1996
24.	Thailand	Governmental	23 September 1996
25.	Tunisia	Governmental	26 September 1994
26.	Turkey	Executive	30 January 1993
27.	Ukraine	Executive	12 March 1992
28.	Ukraine	Governmental	3 March 1999
29.	Hungary	Governmental	15 May 1996